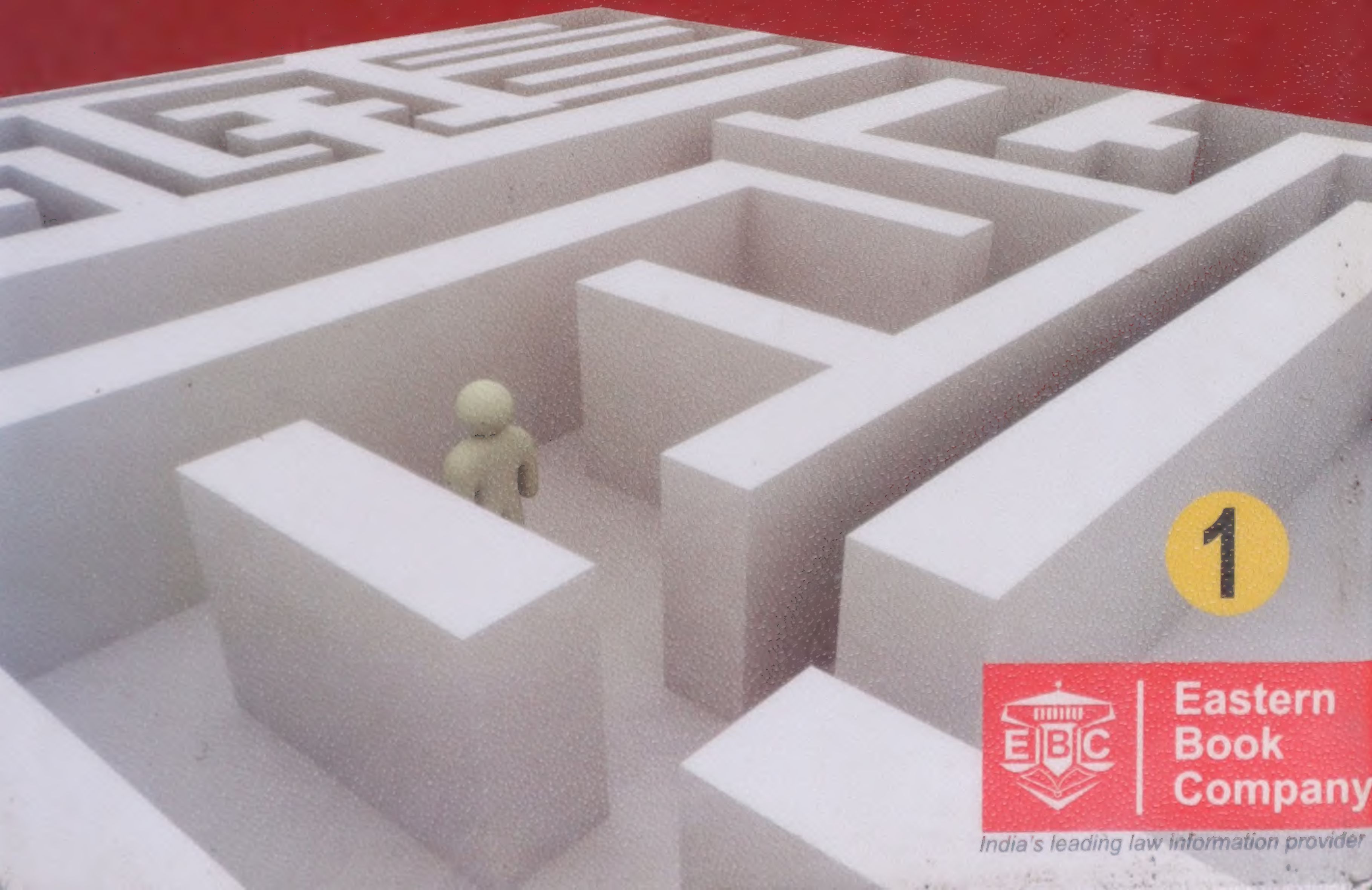
Supreme Court on Criminal Procedure Code & Criminal Trial

Surendra Malik • Sudeep Malik



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About the Book

The present three volume Digest covers the law laid down on Criminal Procedure Code and Criminal Trial by the Supreme Court from its inception in1950 till date. It has been conceived and planned to enable the discovery of all the rulings, easily and quickly. It is based on the time-tested **SCC index system** that is now widely accepted and used.

Special Features

- The rulings are placed under both topic and **statutory headings**, interconnected by a well-planned **cross-reference** system supported by **synopses** wherever necessary.
- Rulings that could not be placed under the provisions of any particular statute have been placed under the non-statutory topic heading **Criminal Trial**.
- To enable **strict section-wise research**, an exhaustive section-wise list of docket numbers i.e. the unique case note number allotted to each ruling, has been provided at the beginning of sections treated collectively.
- **Table of Cases Digested** facilitate finding citations and cross-citations of any decision.
- The Digest also contains **annotations, editorial notes and comments and coram details.**

The Digest will prove to be an indispensable tool to a wide range of legal professionals as well as the Bench.

यतो धर्मस्ततो जयः

SUPREME COURT ON CRIMINAL PROCEDURE CODE & CRIMINAL TRIAL

Case law since 1950 till date

VOLUME 1

§§ [1] to [4123]

"The law is the last interpretation of the law given by the last Judge." **—Anon.**

"Precedents keep the law predictable and so more or less ascertainable." **—Lord Devlin**

"There is no such thing as a judicial precedent on facts though counsel, and even judges, are sometimes prone to argue and to act as if they were." **—Bose, J., (1955) 2 SCR 1140, 1169**

"The law declared by the Supreme Court is the law of the land; it is precedent for itself and for all the courts/tribunals and authorities in India." **—Syed Shah Mohammed Quadri, J., (2002) 4 SCC 388**

"The better wisdom of the Court below must yield to the higher wisdom of the Court above." **—O. Chinnappa Reddy, J., (1985) 1 SCC 260, 268**

"... the judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted." **—Lord Diplock, (1972) 1 All ER 801, 874**

"Most of the decisions of the Supreme Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases."

—N. Santosh Hegde, J., (2002) 4 SCC 234, para 22

"... a decision is not an authority for a proposition which did not fall for its consideration."

—S.B. Sinha, J., (2005) 4 SCC 649, para 256

"The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided." **—Arijit Pasayat, J., (2003) 7 SCC 197**

"The trend of judicial opinion is that stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience."

— R.C. Lahoti, C.J., (2005) 8 SCC 534, para 112

"The doctrine of stare decisis has no statutory sanction but it is a rule of convenience, expediency, prudence and above all public policy." **—Pattanaik, J., (2001) 1 SCC 91**

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs." **—Pathak, C.J., (1989) 2 SCC 754, 766**

"A decision is available as a precedent only if it decides a question of law."

—L.M. Sharma, J., (1992) 1 SCC 489, 491

"... the law is, what the judges say it is since the power to interpret the law vests in the judges."

—S. Ratnavel Pandian, J., (1994) 3 SCC 569, 625

"Precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts." **—N. Santosh Hegde, J., (2000) 1 SCC 644, para 12**

"The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of the Supreme Court." **—N. Santosh Hegde, J., (2002) 4 SCC 234, para 22**

"... a judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says." **—B.P. Jeevan Reddy, J., (1993) 2 SCC 368, 393**

"Judicial propriety, dignity and decorum demand that being the highest judicial tribunal even *obiter dictum* of the Supreme Court should be accepted as binding. ... But statements on matters other than law have no binding force." **—Krishna Iyer, J., (1975) 1 SCC 794**

"Taking recourse to the doctrine of stare decisis would be an imperative necessity to avoid uncertainty and confusion." **—U.C. Banerjee, J., (1999) 4 SCC 11, para 16**

"It is not everything said by a Judge while giving judgment that constitutes a precedent. ... The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent" **—K. Ramaswamy, J., (1996) 6 SCC 44, 51, 52**

Supreme Court on Criminal Procedure Code & Criminal Trial

containing

case law since 1950 till date
in THREE VOLUMES

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Vol. 1

CRIMINAL PROCEDURE CODE, 1973

[From Section 1 to Section 377]

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PREFACE

Amongst the abiding principles of our Constitution is the one stated in Article 141 that the law declared by the Hon'ble Supreme Court is binding on all courts. It is therefore imperative for everyone concerned with law within the legal system to know and understand what this binding law is. For this the rulings lying embedded in the learned judgments and orders of the Hon'ble Judges are to be culled out and made accessible, with proper citations to locate them in authentic law reports. Since one may discover many rulings on the same point, bench strength and the date of decision are also relevant under the doctrine of precedents.

Coverage and Method

The present volumes, covering the law laid down on CrPC and Criminal Trial by the Supreme Court from its inception in 1950 till date, has been designed particularly to meet the above need. It has been conceived and planned to enable the discovery of all the rulings, easily and quickly. It is based on the time-tested SCC index system that is now widely accepted and used.

Systematic arrangement

But the search for the relevant rulings would still be tedious if they were not systematically arranged. Much effort has therefore been directed towards the proper placement of the rulings under both topic and statutory headings, interconnected by a well-planned cross-reference system supported by synopses wherever necessary. Also no effort has been spared in making this digest most comprehensive and detailed.

Criminal Trial

Since many rulings and principles cannot be docketed under the provisions of any particular statute they have been placed under the non-statutory topic heading **Criminal Trial**.

Synopsisation under sections of CrPC

Where the number of rulings under any section or set of sections is large, for convenient research they have been placed under topic headings and a synopsis added for quick reference.

A few sections have been treated collectively as such collective treatment seemed more conducive to enabling systematic and convenient research on the provisions of law contained therein. Sections 125 to 128 which deal with a Magistrate's power to award maintenance have been dealt with collectively. So also Sections 155 to 159, which deal with the power and conduct of investigation by police. So also Sections 161 and 162.

However, to enable strict section-wise research, an exhaustive section-wise list of docket numbers i.e. the unique case note number allotted to each ruling, has been provided at the beginning of each such collective treatment of sections.

Table of Cases Digested: Looking at dockets nearby

It is also possible to conduct a search through the Table of Cases Digested. Since digest notes on the same or similar points are naturally placed close to each other, by locating the digest notes on any known case from the Table of Cases Digested, other relevant rulings on that point can easily be located nearby. For convenience the docket numbers are indicated at the top corners of pages. The Table of Cases Digested is also a convenient source for finding the citation and cross-citations of any decision.

Annotations, notes and comments

This Digest also contains annotations under some digest notes with respect to earlier connected cases of the Supreme Court and the High Courts, especially those appealed against, and some editorial notes and comments.

Coram details: Names of Hon'ble Judges and author(s) of the opinion(s)

Another feature of interest added is that below each ruling are given the names of the Hon'ble Judges who constituted the Bench which heard the matter, with the name of the Hon'ble Judge(s) who has/have given the opinion(s) indicated in bold. In case of several opinions in a case, the superscript numbers after the names of Judges indicate the sequence of the opinions as well as which other Judges signed each of those opinions.

Acknowledgement

An analytical, systematic and comprehensive work such as this necessarily involves the combined effort of several persons. Each one of them has contributed in his own way. The merit and accuracy of this work therefore is the result of their dedication, commitment, sustained effort and team work. We warmly appreciate their efforts and contribution and they can justly feel proud of this publication.

Appreciation and our commitment

We equally appreciate and value the goodwill and continued support received from our subscribers and readers. We are trying our best to publish the volumes as quickly as is expected of us but we prefer not to be hasty and instead make this Digest as comprehensive and neatly arranged as is possible, and also cover the case law up to the date of publication. We are beholden to our readers for their patience and understanding. Besides, in trying to provide through Supreme Court Cases™ (SCC) and various digests all the rulings of the Supreme Court we seek to fulfil our own commitment to serve the legal profession as well as the cause of justice.

— Authors and Publishers

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Supreme Court on CrPC & Criminal Trial

Volume 1

CRIMINAL PROCEDURE CODE, 1973

[1] — Nature — An exhaustive code — Provides complete and corrective machinery

The Code of Criminal Procedure is an exhaustive code providing a complete machinery to investigate and try cases, appeals against the judgments. It has provisions at each stage to correct errors, failures of justice and abuse of process under the supervision and superintendence of the High Court as would be evident from the following:

(*i*) The Court has the power to direct investigation in cognizable cases under Section 156(3) read with Section 190 CrPC.

(*ii*) A Magistrate can postpone the issue of process and inquire into the case himself under Section 202(1) CrPC.

(*iii*) When a charge-sheet is filed, the court can refuse to accept the same and proceed to take cognizance of the offence on the basis of the materials on record. The court can direct further investigation into the matter.

(*iv*) The Magistrate may treat a protest petition as a complaint and proceed to deal therewith in terms of Chapter XV CrPC.

(*v*) Once the case is committed, the Sessions Judge may refer the matter to the High Court.

(*vi*) In the event, without taking any further evidence, it is found that while passing the order of commitment, the Magistrate has committed an error in not referring the case of an accused or left out an accused after evidence is adduced, the court may proceed against a person who was not an accused provided it appears from the evidence that he should be tried with the accused.

(*vii*) The Revisional Court during pendency of the trial may exercise its revisional jurisdiction under Section 397 in which case, it may direct further inquiry in terms of Section 398 CrPC.

(*viii*) The revisional powers of the High Court and the Sessions Court are pointed out in the Code separately; from a perusal whereof it would appear that the High Court exercises larger power.

(*ix*) In the event of any conviction by a Court of Session, an appeal thereagainst would lie to the High Court. The appellate court exercises the power laid down under Section 386 CrPC in which event it may also take further evidence or direct it to be taken in terms of Section 391 thereof.

(*x*) The High Court has inherent power under Section 482 CrPC to correct errors of the courts below and pass such orders as may be necessary to do justice to the parties and/or to prevent the abuse of process of court. (Para 21). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength 2. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

[2] — Generally

Code is complete and that makes it different from a statute. *Joseph Peter* v. *State of Goa, Daman and Diu*, (1977) 3 SCC 280: 1977 SCC (Cri) 486: AIR 1977 SC 1812: 1977 Cri LJ 1449.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision: 4-5-1977]

[3] — Generally — Inherent jurisdiction of Magistrates, if any — *Code does not permit a magistrate to exercise an inherent jurisdiction which he otherwise does not have. A.S. Gauraya* v. *S.N. Thakur*, (1986) 2 SCC 709: 1986 SCC (Cri) 249: AIR 1986 SC 1440: 1986 Cri LJ 1074.

Bench Strength 2. Coram: *V. Khalid* and *M.M. Dutt*, JJ. [Date of decision: 25-4-1986]

[4] — Generally — Interpretation of a provision of an ongoing statute — Doctrine "contemporanea expositio est optima et fortissima in lege" — Applicability of — *Held, the said doctrine has no application when interpreting a provision of an ongoing statute/Act like CrPC* (Para 18). *State of Maharashtra* v. *Praful B. Desai (Dr.)*, (2003) 4 SCC 601: 2003 SCC (Cri) 815: AIR 2003 SC 2053: 2003 Cri LJ 2033: (2003) 2 Mah LJ 868: (2003) 2 MPLJ 434.

Bench Strength 2. Coram: **S.N. Variava** and *B.N. Agrawal*, JJ. [Date of decision: 1-4-2003]

Francis Bennion: Statutory Interpretation, 2nd Edn., p. 617, relied on

National Textile Workers' Union v. P.R. Ramakrishnan, (1983) 1 SCC 228: 1983 SCC (Tax) 2: 1983 SCC (L&S) 72; CIT v. Podar Cement (P) Ltd., (1997) 5 SCC 482; State v. S.J. Choudhary, (1996) 2 SCC 428: 1996 SCC (Cri) 336; SIL Import, USA v. Exim Aides Silk Exporters, (1999) 4 SCC 567: 1999 SCC (Cri) 600; Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, followed

[5] — Generally — Interpretation of (mandatory) provisions of — Effect of non-compliance — Need for prejudice — *Held, CrPC is a compendium of law relating to criminal procedure — Provisions contained therein are required to be interpreted keeping in view that procedural prescriptions are meant for doing substantial justice — If violation of procedural provision does not result in denial of fair hearing or does not cause prejudice to parties, such provision has to be treated as directory notwithstanding use of the word "shall"* (Para 7). *Shivjee Singh* v. *Nagendra Tiwary*, (2010) 7 SCC 578.

Bench Strength 2. Coram : **G.S. Singhvi** and *A.K. Ganguly*, JJ. [Date of decision : 6-7-2010]

[6] — Generally — Practice of any High Court under the old Code cannot be relied upon

It is difficult to appreciate the reference to practice, by the High Court, so far as appeals by State are concerned when the new Code of Criminal Procedure, for the first time, provided for obtaining leave to appeal by the State only from April 1, 1974. It is admitted that there are no rules laid down by the High Court in the matter of application for leave to appeal by the State. It is, therefore, not possible to decide the matter relying upon the so-called practice soon after the provision has been introduced. *State of Rajasthan* v. *Ramdeen*, (1977) 2 SCC 630: 1977 SCC (Cri) 393: AIR 1977 SC 1328: 1977 Cri LJ 997.

Bench Strength 3. Coram: *Y.V. Chandrachud*, **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 4-3-1977]

[7] — Generally — Procedural law — Nature of — Interpretation of procedural law — *CPC, 1908*

All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by the express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. (Paras 10, 11 and 14). *Rani Kusum* v. *Kanchan Devi*, (2005) 6 SCC 705: AIR 2005 SC 3304.

Bench Strength 2. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 16-8-2005]

Kailash v. Nanhku, (2005) 4 SCC 480; Salem Advocate Bar Assn. v. Union of India (II), (2005) 6 SCC 344, followed

Sk. Salim Haji Abdul Khayumsab v. *Kumar*, (2006) 1 SCC 46: AIR 2006 SC 396: (2006) 1 KLJ 223: (2006) 37 AIC 937 (SC): (2006) 1 Mah LJ 178: (2006) 1 MPLJ 11.

Bench Strength 2. Coram: **Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 18-11-2005]

Sushil Kumar Sen v. State of Bihar, (1975) 1 SCC 774; Blyth v. Blyth, (1966) 1 All ER 524: 1966 AC 643: (1966) 2 WLR 634; Shreenath v. Rajesh, (1998) 4 SCC 543; Sangram Singh v. Election Tribunal, Kotah, (1955) 2 SCR 1: AIR 1955 SC 425, relied on

[8] — Preamble — Maintains a distinction between powers conferred by and powers conferrable under the Code

There is a broad divide between the powers conferred and powers conferrable by or under the Code on the Executive Magistrate. The powers conferred by the Code on the Executive Magistrates are the powers which are attached to the post of Executive Magistrate. Any person appointed as Executive Magistrate is entitled to exercise such powers. The powers located under Ss. 107, 108, 109, 110, 129, 145 and 147 etc. are the instances of such powers. These are not the powers conferrable on the Executive Magistrate though they may be conferred on others like the Commissioner of Police under S. 20 sub-section (5). There are other provisions in the Code such as Ss. 133, 143 and 144, which may be said to be conferrable powers under the Code. The Executive Magistrates cannot exercise such powers unless they are empowered in that behalf. (Para 15). *State of Maharashtra* v. *Mohd. Salim Khan*, (1991) 1 SCC 550: 1991 SCC (Cri) 253: (1991) 1 Crimes 120.

Bench Strength 3. Coram: *K.N. Singh*, **K. Jagannatha Shetty** and *Kuldip Singh*, JJ. [Date of decision: 22-11-1990]

[9] — No inconsistency or repugnancy between the provisions of Criminal Procedure Code, 1973 and Haryana Children Act, 1974 in terms of Art. 254(1) — *Constitution of India, Art. 254(1). Raghbir* v. *State of Haryana*, (1981) 4 SCC 210: 1981 SCC (Cri) 818: AIR 1981 SC 2037: 1981 Cri LJ 1497.

Bench Strength 3. Coram: *O. Chinnappa Reddy*, *A.P. Sen* and **Baharul Islam**, JJ. [Date of decision: 8-9-1981]

[10] — Procedure under Special Courts Act, 1979, held, not harsher and less advantageous than that prescribed under Criminal Procedure Code, 1973 — *Arts. 14 and 21 not violated — Special Courts Act, 1979. V.C. Shukla* v. *State (Delhi Admn.)*, 1980 Supp SCC 249: 1980 SCC (Cri) 849: AIR 1980 SC 1382 (Judgmen: 1980 Cri LJ 965.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**, *P.S. Kailasam* and *A.D. Koshal*, JJ. [Date of decision: 11-4-1980]

[11] — S. 1(2) proviso and Ss. 93-105 — Seized property and material must be handed over to the officer-in-charge of the nearest police station at the earliest in accordance with the provisions of CrPC — *Even where the provisions of CrPC are not applicable substance of the rules of CrPC will apply — Armed Forces (Special Powers) Act, 1958 — S. 4(d)*

Though there is no provision similar to Section 5 requiring the handing over of the property or arms, ammunition, etc. that are seized during the course of search under Section 4(*c*) but since such seized property or material will be required in the proceedings to be initiated against the culprits from whose possession the same was recovered, it is implicit in the power that has been conferred under Section 4(*d*) that it should be exercised in accordance with the provisions relating to search and seizure contained in the Criminal Procedure Code and the property or the arms, ammunition, etc. that is seized during the course of search under Section 4(*d*) must be handed over to the officer-in-charge of the nearest police station with the least possible delay together with a report of the circumstances occasioning the search and seizure.

In view of the proviso to sub-section (2) of Section 1 CrPC the provisions of CrPC, other than those relating to Chapters VIII, X and XI thereof, are not applicable to the State of Nagaland and tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. The inapplicability of the provisions of CrPC in those areas is of little consequence because in the context of Nagaland it has been held that even though the provisions of CrPC are not applicable in certain districts of the State of Nagaland, it only means that the rules of the CrPC would not apply but the authorities would be governed by the substance of these rules. In the circumstances, it must be held that the provisions of CrPC governing search and seizure have to be followed during the course of search and seizure under Section 4(*d*) and the property or arms, ammunition, etc. seized during the course of such search has to be produced by the officer of the armed forces before the officer-in-charge of the nearest police station with the least possible delay along with a report of the circumstances occasioning such search and seizure. *Naga People's Movement of Human Rights* v. *Union of India*, (1998) 2 SCC 109: 1998 SCC (Cri) 514: AIR 1998 SC 431.

Bench Strength 3. Coram: *J.S. Verma, C.J.* and *M.M. Punchhi* and **S.C. Agrawal**, JJ. [Date of decision: 27-11-1997]

— S. 2 *See also* Ss. 436, 2, 81 and Sch. I

[12] — S. 2(b) and Ch. XVII (Ss. 211 to 224) — "Charge" — Meaning — *Explained*

The Code of Criminal Procedure does not define what a charge is. It is the precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. A charge is not an accusation made or information given in the abstract, but an accusation made against a person in respect of an act committed or omitted in violation of penal law forbidding or commanding it. In other words, it is an accusation made against a person in respect of an offence alleged to have been committed by him. A charge is formulated after inquiry as distinguished from the popular meaning of the word as implying inculpation of a person for an alleged offence as used in Section 224 IPC. (Para 20). *Esher Singh* v. *State of A.P.*, (2004) 11 SCC 585: AIR 2004 SC 3030.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 15-3-2004]

— S. 2(c) *See* Ss. 41, 151, 2(c), 156 and 157(1)

See also Ss. 482 and 2(c) & (d), 154

[13] — Ss. 2(c) and 436 — Cognizable offence — Offences under State Prevention of Gambling Act — *Specific class of officers mentioned in S. 6(1) of the Bombay Prevention of Gambling Act, being competent also to personally arrest without warrant for offences under Ss. 4 and 5 of that Act, held, are 'police officers' and those offences are 'cognizable' within the meaning of S. 4(1)(f) of the Code — Such offences being bailable, held, persons arrested must be enlarged on bail by virtue of S. 496 of the Code and any administrative instruction having a contrary direction would be bad — CrPC, 1898 — Bombay Prevention of Gambling Act, 1887 (4 of 1887) — Ss. 4, 5 and 6 — CrPC, 1898 — Ss. 4(1)(f) and 496*

The expression 'police officer' in S. 4(1)(*f*) CrPC, 1898 does not necessarily mean 'any and every' police officer, and an offence will still be a 'cognizable offence' within this definition even if the power to arrest without warrant, for that offence is given by the statute to police officers of a particular rank or class only. Section 6 confers the power of arrest thereunder only on a specific class of police officers and not on any or ever police officer. A Commissioner of Police who is competent to direct, by issuing special warrant of general order under S. 6(1)(*i*) of the Bombay Prevention of Gambling Act, another police officer of the requisite rank to arrest persons found gambling or present in a gaming house, can also arrest personally the offender concerned. Therefore, by applying the principle laid in *I.C. Lala case* offences under Ss. 4 and 5 of the Act are cognizable. Such offences are admittedly bailable. Hence the commissioner of Police or the police officer who is authorised by him to search, arrest and investigate such offence, is under a legal obligation to release the accused on bail under the provisions of S. 496 CrPC, 1898. The authority to grant bail to the person arrested in execution of such a warrant is derived by the officer arresting from the statute and consequently, no executive instructions or administrative rules can abridge, or run counter to the statutory provisions of the Code. Therefore, the circular order issued by the District Superintendent of Police, Rajkot, directing all the Police sub-Inspectors not to release persons arrested in respect of offences under Ss. 4 and 5 of the Act on bail is contrary to or inconsistent with the provisions of the Code and on a true construction, there is nothing in S. 6 or any other provision of the Act, which takes away the right and power conferred by the Code on the police officer to grant bail to the person arrested by him for offences under Ss. 4 and 5 of the Act. Hence the impugned order was ultra vires and bad in law. *State of Gujarat* v. *Lal Singh Kishan Singh*, (1981) 2 SCC 75: 1981 SCC (Cri) 330: AIR 1981 SC 368: (1981) 22 GLR 450.

Bench Strength 2. Coram: **R.S. Sarkaria** and *R.S. Pathak*, JJ. [Date of decision: 12-8-1980]

Union of India v. I.C. Lala, (1973) 2 SCC 72: 1973 SCC (Cri) 738, applied

[14] — Ss. 2(c) & (d), 154, 155(2) & 190(1)(a) and (b) — Investigation into, and taking cognizance of, offence under S. 31, RP Act, 1950 (making fake declarations) — Legality — *Being a non-cognizable offence, investigation into offence under S. 31, RP Act, 1950 (making fake declarations) without an order of a competent Magistrate under S. 155(2), CrPC, held, illegal — Hence, the Magistrate could not take cognizance thereof upon the report submitted on completion of such investigation — Representation of the People Act, 1950 — S. 31*

On the own showing of the police, the offence under Section 31 of the Representation of the People Act, 1950 is non-cognizable and therefore the police could not have registered a case for such an offence under Section 154 CrPC when there was no order of a competent Magistrate under Section 155(2), CrPC. Therefore, neither the police could investigate into the offence in question nor submit a report on which the question of taking cognizance could have arisen.

The Explanation to Section 2(*d*), CrPC does say that the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a 'complaint' of the police officer concerned, but that explanation will not be available to the prosecution in the instant case as that relates to a case where the police initiates investigation into a cognizable offence — unlike the present one — but ultimately finds that only a non-cognizable offence has been made out. *Keshav Lal Thakur* v. *State of Bihar*, (1996) 11 SCC 557.

Bench Strength 2. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 11-10-1996]

— S. 2(d) *See* Ss. 2(c) & (d), 154, 155(2) & 190(1)(a) and (b)

See also Ss. 173, 190 and 2(d)

See also Ss. 341, 340, 2(d) and 482

See also Ss. 482 and 2(c) & (d), 154

See also Ss. 482 and 2(d), 154, 155 and 190, 200

[15] — S. 2(d) — "Complaint" — Form and Contents — *Not essential that it should verbatim contain all the ingredients of the offence alleged so long as the factual foundation for the offence has been laid. Rajesh Bajaj* v. *State (NCT of Delhi)*, (1999) 3 SCC 259: 1999 SCC (Cri) 401: AIR 1999 SC 1216: 1999 Cri LJ 1833.

Bench Strength 2. Coram: **K.T. Thomas** and *S.S.M. Quadri*, JJ. [Date of decision: 12-3-1999]

[16] — S. 2(d) — Complaint — Format for — *Held, there is no particular format for a complaint — Nomenclature is also inconsequential — A petition addressed to the Magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprits be suitably dealt with, as in the instant case, is a complaint* (Paras 15 and 16). *Mohd. Yousuf* v. *Afaq Jahan*, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460: AIR 2006 SC 705: (2006) 1 KLT 939: (2006) 2 Guj LR 1742: (2006) 38 AIC 70 (SC): 2006 Cri LJ 788.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 2-1-2006]

[17] — Ss. 2(d), 203 and 204 — Technical, curable defect in complaint — Effect — *Prosecution and trial against accused cannot be allowed to be defeated merely because of a technical and curable defect in the complaint. U.P. Pollution Control Board* v. *Modi Distillery*, (1987) 3 SCC 684: 1987 SCC (Cri) 632: AIR 1988 SC 1128.

Bench Strength 2. Coram: **A.P. Sen** and *S. Natarajan*, JJ. [Date of decision: 6-8-1987]

— S. 2(d) Expln. *See also* Ss. 173, 200 and 2(d) Expln.

[18] — S. 2(d) Expln. — Scope — *Held, covers only those cases where the police initiates investigation into a cognizable offence but the offence made out turns to be non-cognizable one. Keshav Lal Thakur* v. *State of Bihar*, (1996) 11 SCC 557.

Bench Strength 2. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 11-10-1996]

— S. 2(e) *See* Ss. 369 and 2(e)

— S. 2(g) *See* Ss. 193, 4, 5 and 2(g)

See also Ss. 193, 4(2), 5, 2(g) and 6(i)

See also Ss. 207, 209, 309, 170, 190 and 2(g)

See also Ss. 209, 319, 2(g), 227 and 228

See also Ss. 228, 167, 173, 2(g) & (h), 190 and 309

See also Ss. 262 (Ch. XXI), 251, 254(1)(Ch. XX), 319 and 2(g)

See also Ss. 428, 2(g) & (h)

See also Ss. 428, 5 and 475, 2(h), (g)

[19] — S. 2(g) — Trial distinct from "inquiry"

Though the word "trial" is not defined either in the Code or in the Act, it is clearly distinguishable from inquiry and inquiry must always be a forerunner to the trial. (Para 16). *Vidyadharan* v. *State of Kerala*, (2004) 1 SCC 215: 2004 SCC (Cri) 260: AIR 2004 SC 536: (2004) 1 KLT 105: 2004 Cri LJ 605: (2004) 2 MPLJ 251.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 14-11-2003]

[20] — Ss. 2(g), 157 and 161 — Enquiry — Meaning — *Held, the term "enquiry" is not defined under the Act — Hence, meaning assigned in S. 2(g) CrPC and meaning in etymological sense is to be applied — Empowered officer under the Act is entitled to examine any person for contravention of the Act — Such enquiry, therefore, shall be made in terms of enquiry as held under CrPC — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 67 and 42* (Para 19). *Raju Premji* v. *Customs, NER, Shillong Unit*, (2009) 16 SCC 496.

Bench Strength 2. Coram: **S.B. Sinha** and *R.M. Lodha*, JJ. [Date of decision: 6-5-2009]

Kanhaiyalal v. Union of India, (2008) 4 SCC 668: (2008) 2 SCC (Cri) 474, followed

[21] — S. 2(g) — "Trial", held, is distinct from "inquiry"

It is clear from Section 14 of the SC & ST Atrocities Act, 1989 that it is for trial of the offences under the Act that a particular Court of Session in each district is sought to be specified as a Special Court. Though the word "trial" is not defined either in the Code (Code of Criminal Procedure, 1973) or in the Act, it is clearly distinguishable from inquiry. The word "inquiry" is defined in Section 2(*g*) of the Code as "every inquiry, other than a trial, conducted under this Code by a Magistrate or court". So trial is distinct from inquiry and inquiry must always be a forerunner to the trial. Thus the Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Evidently, the legislature wanted the Special Court to be a Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of

Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for "trial before a Court of Session". (Paras 9 and 10). *Moly* v. *State of Kerala*, (2004) 4 SCC 584: 2004 SCC (Cri) 1348: AIR 2004 SC 1890: 2004 Cri LJ 1812.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 23-3-2004]

— S. 2(h) *See* Ss. 41 to 44 & 46 and 155 and 157, 2(h)

See also Ss. 150, 154 and 155 and S. 2(h)

See also Ss. 156(1) & 157 and 2(h)

See also Ss. 157, 154 and 162 & 2(h)

See also Ss. 162, 154, 157 and 2(h)

See also Ss. 167, 2(h), 4(2), 26(b) and Ch. XII (Ss. 154 to 176)

See also Ss. 167(1) and 2(h)

See also Ss. 170, 169, 173, 2(h), 24 and 482

See also Ss. 228, 167, 173, 2(g) & (h), 190 and 309

See also Ss. 428, 2(g) & (h)

See also Ss. 428, 5 and 475, 2(h) & (g)

See also Ss. 438, 437 & 438 and 2(h), 155 to 157 and 41 to 44 & 46

[22] — S. 2(h) — "Investigation" — Meaning and scope

Section 2(*h*) CrPC defines "investigation" and it includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. It ends with the formation of the opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and if so, taking the necessary steps for the same by filing of a charge-sheet under Section 173. (Para 11). *Union of India* v. *Prakash P. Hinduja*, (2003) 6 SCC 195: 2003 SCC (Cri) 1314: AIR 2003 SC 2612: 2003 Cri LJ 3117.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 7-7-2003]

State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 SC 221: (1964) 1 Cri LJ 140; H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150: 1955 Cri LJ 526, relied on

[23] — Ss. 2(h), 2(g) & 156(3) and 157 — Investigation and enquiry — Distinguished — Held, investigation in terms of S. 156(3) cannot be equated with enquiry as both are defined differently in terms of Ss. 2(h) and 2(g) (Para 11)

The appellants were depositors in a cooperative bank. Some of the borrowers had mortgaged their properties with the Bank. Alleging commission of offences under Ss. 406, 420, 423, 465, 477, 468, 471, 120-B, 124 and 34 IPC, Bank filed complaint petition before Judicial Magistrate against respondent-accused seeking direction against the police to register and investigate the case under S. 156(3) CrPC. The Magistrate upon considering the allegations granted the prayer. However, the complainant thereafter filed an application before Magistrate informing him that a compromise had been entered into by and between the accused and the Bank. Pursuant thereto, order directing enquiry was recalled by the Magistrate. A writ petition was filed by appellants challenging the same. The High Court by impugned judgment declined to interfere with the said order. Hence, the present appeal.

Allowing the appeals, the Supreme Court held as above. *Dharmeshbhai Vasudevbhai* v. *State of Gujarat*, (2009) 6 SCC 576.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 5-5-2009]

S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380; Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927; K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88; Everest Advertising (P) Ltd. v. State (Govt. of NCT of Delhi), (2007) 5 SCC 54: (2007) 2 SCC (Cri) 444; Dinesh Dalmia v. CBI, (2007) 8 SCC 770: (2008) 1 SCC (Cri) 36; S. Suresh v. Annappa Reddy, (2004) 13 SCC 424, followed

— S. 2(g) *See* Ss. 2(h), 2(g) & 156(3) and 157

[24] — Ss. 2(h) and 162 — "Investigation" — Steps taken for trapping of bribe-taker by Inspector after recording of complaint, held, investigation — *Statement made by accused to Inspector at the time of raid to be excluded — Prevention of Corruption Act, 1947 — Conduct of accused however relevant under S. 8, Evidence Act, 1872 — CrPC, 1898 — Ss. 4(1) and 162*

On a complaint made to the Inspector he recorded the same and arranged the raid by noting each step taken thereafter in a regular manner. What has been done by the Inspector in order to detect the accused while taking the bribe comes within the term 'investigation' under S. 4(1) of CrPC, 1898. The moment the Inspector had recorded the complaint with a view to take action to track the offender, whose name was not even known at the stage, and proceeded to achieve the object, visited the locality, questioned the accused, searched his person, seized the note and other documents, turns the entire process into an investigation under the Code.

Here the Inspector himself stated that he examined the witnesses under S. 161, CrPC and completed the investigation. The fact that he had also later on forwarded the complaint for formal registration of the case at the police station concerned does not do away with the character of the investigation already commenced by the Inspector or recording the complainant's statement disclosing a cognizable offence.

Therefore, any statement made by the accused in answer to questions put by the Inspector is inadmissible under S. 162, CrPC and neither the prosecution nor can the accused take advantage of these answers. *Maha Singh* v. *State (Delhi Admn.)*, (1976) 1 SCC 644: 1976 SCC (Cri) 135: AIR 1976 SC 449: (1976) 3 SCR 119: 1976 Cri LJ 346.

Bench Strength **2**. Coram: **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 8-1-1976]

— **S. 2(j)** *See* Ss. 181(2), 178 and 179 & 2(j)

— **S. 2(n)** *See* Ss. 162 and 2(n)

See also Ss. 188 proviso, 179 and 2(n)

[25] — S. 2(n) — Adults willingly engaging in sexual relations outside the marital setting, held, is not an offence, with exception of adultery as defined under S. 497 IPC — *General Clauses Act, 1897, S. 3(38) — Penal Code, 1860, Ss. 40 to 42 and 497*

"Offence" means "an act or instance of offending"; "commit an illegal act" and "illegal" means, "contrary to or forbidden by law". "Offence" has to be read and understood in the context as it has been prescribed under the provisions of Sections 40, 41 and 42 IPC which cover the offences punishable under IPC or under special or local law or as defined under Section 2(*n*) CrPC or Section 3(38) of the General Clauses Act, 1897. (Para 30)

There is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of "adultery" as defined under Section 497 IPC. (Para 31). *S. Khushboo* v. *Kanniammal*, (2010) 5 SCC 600.

Bench Strength **3**. Coram : *K.G. Balakrishnan, C.J.* and *Deepak Verma* and **Dr. B.S. Chauhan**, JJ. [Date of decision : 28-4-2010]

[26] — S. 2(n) — Bar against taking cognizance of offence under S. 64(3), Kerala Police Act, 1960 — *Held, not restricted to the offences specified in the Act alone but can encompass offences under other enactments including the Penal Code — Kerala Police Act, 1960 (5 of 1961) — S. 64(3)* (Paras 11 and 15). *P.P. Unnikrishnan* v. *Puttiyottil Alikutty*, (2000) 8 SCC 131: 2000 SCC (Cri) 1460: AIR 2000 SC 2952.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 5-9-2000]

Maulud Ahmad v. State of U.P., 1963 Supp (2) SCR 38: (1964) 2 Cri LJ 71, distinguished

[27] — S. 2(n) — 'Criminal offence', 'offence' and 'blameworthy conduct' — Distinction — *General Clauses Act, 1897 — S. 3(38) — Penal Code, 1860 — S. 40. Director of Enforcement* v. *M.C.T.M. Corpn. (P) Ltd.*, (1996) 2 SCC 471: 1996 SCC (Cri) 344: AIR 1996 SC 1100.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 9-1-1996]

[28] — S. 2(n) — Ex post facto laws — Protection against — Necessary conditions — Conviction for an "offence" and subjection to a "penalty" — *Order passed under SEBI Act, 1992, Ss. 11(4)(b) and 11-B(iii), restraining respondent for five years "from associating with any corporate body in accessing the securities market and also ... prohibiting from buying, selling or dealing in securities ..." — Held, such restraint order was passed for carrying out purpose of the 1992 Act, namely, protection of interests of investors, and not for any "offence" — Nor was the respondent subjected to any "penalty" as contemplated under Art. 20(1) — Bar against ex post facto applicability of laws not applicable in such case — General Clauses Act, 1897, S. 3(38) — SEBI Act, 1992, Ss. 11(4)(b) and 11-B(iii) — Constitution of India, Art. 20(1)*

The respondent was the Joint Managing Director of a company. A complaint was lodged with SEBI that the company made misstatements in the prospectus at the time of public issue in 1993. Show-cause notice was issued on 22-12-1999. The respondent gave his reply on 1-3-2000 and 10-7-2002. Thereafter, an opportunity of personal hearing was given to the respondent and ultimately an order dated 31-3-2004 was passed restraining the respondent from associating with any corporate body in accessing securities market and also prohibiting him from buying, selling or dealing in securities for a period of five years.

The respondent challenged this order before the Appellate Tribunal which accepted his plea that Section 11-B which came into existence in 1995 could not the applied to allegations relating to the year 1993. This plea found favour with the Tribunal.

Allowing the appeal,

Held :

Article 20(1) applies where an accused has committed an "offence" and has been subjected to a "penalty". The respondent has not been held guilty of any offence, nor has been subjected to any penalty. He has merely been restrained from associating with any corporate body in accessing the securities market and has also been prohibited from buying, selling or dealing in securities for a specified period. "Offence" is an act of omission or commission which is punishable by any law for the time being in force. Protection under Article 20(1) of the Constitution is not available to the respondent. (Paras 24, 25, 29 and 32). *SEBI* v. *Ajay Agarwal*, (2010) 3 SCC 765.

Bench Strength **2**. Coram : *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision : 25-2-2010]

Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, AIR 1953 SC 394: 1953 Cri LJ 1480; State of W.B. v. S.K. Ghosh, AIR 1963 SC 255: (1963) 1 Cri LJ 252; Director of Enforcement v. MCTM Corpn. (P) Ltd., (1996) 2 SCC 471: 1996 SCC (Cri) 344, relied on

Govind Das v. ITO, (1976) 1 SCC 906: 1976 SCC (Tax) 133, distinguished on facts

[29] — S. 2(o) — "Police officer" — Taking of fingerprints by Head Constables never questioned before the trial court nor the Head Constables cross-examined — Accused persons admitting their fingerprints — *Held, High Court erred in holding that fingerprints of accused persons on disputed documents not established on ground that such fingerprints had not been taken by 'police officer' as defined in S. 2(b) of the 1920 Act — Taking of fingerprints is a ministerial act for establishing identity of accused persons — Identification of Prisoners Act, 1920 — S. 2(b). State of T.N.* v. *T. Thulasingam*, 1994 Supp (2) SCC 405: 1994 SCC (Cri) 1504: AIR 1995 SC 1314.

Bench Strength **2**. Coram: *Kuldip Singh* and **Yogeshwar Dayal**, JJ. [Date of decision: 13-5-1994]

— S. 2(p) *See* Ss. 9(6), 194, 327 and 2(p)

— S. 2(q) *See* Ss. 302, 205 and 2(q)

See also Ss. 303 and 2(q)

See also Ss. 303 and 2(q), 205, 273

[30] — S. 2(q) — Pleader — A private person cannot of right seek to represent any party — *He can do so only on obtaining prior permission of the court on motion by the party he seeks to represent — The court may grant or withhold permission — Considerations before the court pointed out — Permission may be cancelled if the private person is found unworthy or reprehensible. Harishankar Rastogi* v. *Girdhari Sharma*, (1978) 2 SCC 165: 1978 SCC (Cri) 168: AIR 1978 SC 1019: 1978 Cri LJ 778: (1978) 4 ALR 353.

Bench Strength **1**. Coram: **V.R. Krishna Iyer**, J. [Date of decision: 13-3-1978]

— S. 2(u) *See* S. 24 and S. 2(u)

See also Ss. 24(1), 2(u) and 378

See also Ss. 406, 24, 2(u) and 7, 8 & 9

See also Ss. 406, 432(7), 385(1), 225, 2(u), 24 and 378

— S. 2(w) *See* Ss. 167(5), 173(2), 2(x) and (w)

See also Ss. 313(1)(b) proviso and 2(w) & (x), 205(1) and 317

— S. 2(x) *See* Ss. 167(5), 173(2), 2(x) and (w)

See also Ss. 313(1)(b) proviso and 2(w) & (x), 205(1) and 317

— S. 2(y) *See* Ss. 197 and 2(y)

See also Ss. 256, 249, 2(y) and Ch. XV

[31] — S. 2(y) — Words defined in IPC — Abetment — Validity of S. 3(3) POTA, 2002 — Mens rea — *Provision in S. 3(3) POTA, 2002 for punishment of a person who "abets", held, does not exclude the element of mens rea for constituting an offence thereunder — Penal Code, 1860 — S. 107 — Prevention of Terrorism Act, 2002 — Ss. 3(3) and 2(1)(i) & (a)*

In the instant petitions filed under Article 32, the petitioners challenged the constitutionality of various provisions of the Prevention of Terrorism Act, 2002 (for short "POTA"). They contended that:

* * *

Section 3(3) of POTA did not include the requirement of mens rea in the offence of "abetment" and was therefore prone to misuse,

* * *

Dismissing the petitions,

Held :

Under POTA the word "abets" is not defined at all. In view of Sections 2(1)(*i*) and 2(1)(*a*) thereof, and Section 2(*y*) CrPC, the definition of "abets" as appears in IPC will apply in a case under POTA. "*Mens rea*" element is a *sine qua non* for offences under IPC. Therefore, contention (*iii*) of the petitioners stands rejected. (Para 25). *People's Union for Civil Liberties* v. *Union of India*, (2004) 9 SCC 580: AIR 2004 SC 456.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *G.P. Mathur*, JJ. [Date of decision: 16-12-2003]

[32] — S. 2(y) — "Harbours" — Meaning of — Definition given in IPC cannot be adopted — *It must be understood in its ordinary meaning as for penal provisions — Penal Code, 1860 — Ss. 52-A,* *136, 312 and 157 — Terrorist and Disruptive Activities (Prevention) Act, 1987 — Ss. 3(4) and 2(1)(i)*

There are two hurdles in the way to adopt the IPC definition of the word "harbour" for TADA. First is that TADA permits reliance to be made only on the definitions included in the Procedure Code and not on the definitions in the IPC. Second is, the word "harbour" as such has not been used in the Procedure Code and hence the question of side-stepping to Penal Code definitions does not arise.

The word "harbours" used in TADA must be understood in its ordinary meaning as for penal provisions. In *Black's Law Dictionary* its meaning is shown as "to afford lodging to, to shelter, or to give a refuge to". The celebrated lexicographer has given the meaning of the word harbour as "receiving clandestinely and without lawful authority a person for the purpose of so concealing him that another having a right to the lawful custody of such person shall be deprived of the same". It is, therefore, reasonable to attribute a mental element (such as knowledge that the harboured person was involved in a terrorist act) as indispensable to make it a penal act. That apart, there is nothing in the Act, either expressly or even by implication, to indicate that mens rea has been excluded from the offence under Section 3(4) of TADA.

It is a settled legal position that unless the statute clearly excludes mens rea in the commission of an offence the same must be treated as essential ingredient of the criminal act to become punishable.

If Section 3(4) is understood as imposing harsh punishment on a person who gives shelter to a terrorist without knowing that he was a terrorist, such an understanding would lead to calamitous consequences. Many an innocent person, habituated to offer hospitality to friends and relatives or disposed to zeal of charity, giving accommodation and shelter to others without knowing that their guests were involved in terrorist acts, would then be exposed to incarceration for a long period. *Kalpnath Rai* v. *State*, (1997) 8 SCC 732: AIR 1998 SC 201.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 6-11-1997]

[33] — S. 2(y) — Definition — "Public servant" — Government company whether public servant — *Held, the term "public servant" is not defined in CrPC — S. 2(y) CrPC provides that words and expressions used but not defined in CrPC will have the meaning assigned to them under the Penal Code, 1860 — A government company is not a "public servant", but every employee of the company is a "public servant"*

The term "public servant" is not defined in the Code of Criminal Procedure. However, Section 2(*y*) CrPC provides that words and expressions used but not defined in the Code will have the meaning assigned to them under the Penal Code, 1860. Having regard to the aforesaid definition, it is clear that the appellant which is a government company is not a "public servant", but every employee of the appellant is a "public servant". (Para 11). *National Small Industries Corpn. Ltd.* v. *State (NCT of Delhi)*, (2009) 1 SCC 407.

Bench Strength **2**. Coram: **R.V. Raveendran** and *Dalveer Bhandari*, JJ. [Date of decision: 17-11-2008]

— S. 3 *See* Ss. 164(1), 167, 3, 6, 20(1) and (4)
See also Ss. 167 and 3

— S. 3(4)(a) *See* Ss. 11(1) proviso, 4(1) & (2), 3(4)(a), 26 and 245

— S. 4 *See also* S. 5, Criminal Procedure Code, 1898, pp. 961 et seq. in Vol. 2

— S. 4 *See* Ss. 5 and 4
See also Ss. 156(3), 190(1), 200 and 4
See also Ss. 167(2) proviso, 437 and 4
See also Ss. 193, 4, 5 and 2(g)
See also Ss. 320 and 4
See also Ss. 321, 4 and 5
See also Ss. 468(2), 470(3) and 4

[34] — Ss. 4, 6 and 7 — "Jurisdiction" — Meaning of — *CPC, 1908 — S. 9*

Jurisdiction means the authority or power to entertain, hear and decide a case and to do justice in the case and determine the controversy. In absence of jurisdiction the court has no power to hear and decide the matter and the order passed by it would be a nullity. (Para 10). *Harpal Singh* v. *State of Punjab*, (2007) 13 SCC 387: AIR 2008 SC 743.

Bench Strength **2**. Coram: **G.P. Mathur** and *G.S. Singhvi*, JJ. [Date of decision: 4-12-2007]

Black's Law Dictionary; Words and Phrases — Legally defined, 3rd Edn.; P. Ramanatha Aiyar: Law Lexicon, 2nd Edn., relied on

[35] — S. 4 — 'Otherwise dealt with' — *Means all aspects such as investigation, inquiry, trial and other dealing with the offence*

Under S. 4 CrPC the provisions of the CrPC are applicable where an offence under the Indian Penal Code or under any other law is being inquired into, tried and otherwise dealt with. From the words "otherwise dealt with" it does not necessarily mean something which is not included in the investigation, inquiry or trial and the word "otherwise" points to the fact that the expression "dealt with" is all comprehensive and that investigation, inquiry and trial are some of the aspects dealing with the offence. *State of Punjab* v. *Balbir Singh*, (1994) 3 SCC 299: 1994 SCC (Cri) 634: AIR 1994 SC 1872: (1994) 1 Crimes 753.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 1-3-1994]

[36] — S. 4 — Civil suit — Pendency of criminal proceedings relating to the same matter is no bar to — *So also criminal matters are rarely stayed and only under compelling circumstances — Criminal Procedure Code, 1908 — S. 9. State of Rajasthan* v. *Kalyan Sundaram Cement Industries Ltd.*, (1996) 3 SCC 87.

Bench Strength 2. Coram: *K. Ramaswamy* and *G.B. Pattanaik*, JJ. [Date of decision: 12-2-1996]

[37] — S. 4 — Applicability of Criminal Procedure Code

In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations. *A.R. Antulay* v. *Ramdas Sriniwas Nayak*, (1984) 2 SCC 500: 1984 SCC (Cri) 277: AIR 1984 SC 718: 1984 Cri LJ 647: 1984 Bom LR 228.

Bench Strength 5. Coram: **D.A. Desai**, *R.S. Pathak*, *O. Chinnappa Reddy*, *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

[38] — S. 4 — Criminal Court's jurisdiction in matrimonial offences — *Offence committed in the capacity of husband or wife, if made punishable under Penal Code, would be liable to criminal prosecution — Existence of alternate civil remedy would not bar criminal jurisdiction — Penal Code, 1860 — S. 40*

The mere factum of the husband and wife living together does not entitle either of them to commit a breach of criminal law and if one does then he/she will be liable for all the consequences of such breach. In the case of stridhan property also, the title of which always remains with the wife, if the husband or any other member of his family who are in possession of such property, dishonestly misappropriate or refuse to return the same, they will be liable to punishment for the offence of criminal breach of trust under Ss. 405 and 406, IPC. *Pratibha Rani* v. *Suraj Kumar*, (1985) 2 SCC 370: 1985 SCC (Cri) 180: AIR 1985 SC 628: 1985 Cri LJ 817.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**[1], **A. Varadarajan**[2] and *Sabyasachi Mukharji*, JJ. [Date of decision: 12-3-1985]

[39] — S. 4 — Criminal court's jurisdiction when ousted

Normally under the Criminal Procedure Code, the criminal courts of the country have the jurisdiction and the ouster of the ordinary criminal court in respect of a crime can only be inferred if that is the irresistible conclusion flowing from necessary implication of the new Act. *State of M.P.* v. *Rameshwar Rathod*, (1990) 4 SCC 21: 1990 SCC (Cri) 522: AIR 1990 SC 1849: 1990 Cri LJ 1756.

Bench Strength 2. Coram: **Sabyasachi Mukharji, C.J.** and *K.N. Saikia*, J. [Date of decision: 10-7-1990]

[40] — S. 4 — Trial of non-IPC offences — Jurisdiction of a court of general jurisdiction in respect of — *Held, can be excluded by setting up of a court of limited jurisdiction in respect of the limited field*

The jurisdiction of the criminal courts under Section 4 CrPC is comprehensive and exhaustive. To the extent that no valid machinery is set up under any other law for trial of any particular case, the jurisdiction of the ordinary criminal court cannot be said to have been excluded. Exclusion of jurisdiction of a court of general jurisdiction can be brought about only by setting up of a court of limited jurisdiction in respect of the limited field provided that the vesting and the exercise of that limited jurisdiction is clear and operative. Thus, where there is no valid machinery for the exercise of jurisdiction in a specific case, the exercise of jurisdiction by the Judicial Magistrates or the Metropolitan Magistrates, as the case may be, is not excluded. The law and procedure for trial of cases under the Indian Penal Code and those under other statutes, according to Section 4 CrPC, is not different except that in the cases of offences under other laws, the procedure laid down by the CrPC is subject to the provisions of the relevant enactment for the time being in force for regulating the manner of trial of offences under that enactment. *Attiq-Ur-Rehman* v. *MCD*, (1996) 3 SCC 37: 1996 SCC (Cri) 457: AIR 1996 SC 956.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 29-2-1996]

[41] — S. 4 — Trial under PC Act, 1988 — Provisions of CrPC — Applicability of — *Held, applicable subject to certain modifications as provided in S. 22 PC Act, 1988 unless the application of any provision of the Code is excluded either expressly or by necessary implication — Prevention of Corruption Act, 1988 — S. 22* (Para 12). *Vivek Gupta* v. *CBI*, (2003) 8 SCC 628.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 25-9-2003]

[42] — S. 4 — Procedure to be followed under — Procedure for inquiry, investigation and trial prescribed under CrPC to be followed — *Chartered Accountants Act, 1949 — Ss. 24, 24-A and 26*

Except the provision contained in Section 28 against the prosecution of a person, who is alleged to have acted in contravention of sub-section (1) of Sections 24, 24-A, 25 or 26 otherwise than on a complaint made by or under the order of the Council or the Central Government, the Act does not specify the procedure to be followed for punishing such person. In the absence of any such provision, the procedure prescribed in CrPC has to be followed for inquiry, investigation and trial of the complaint which may be filed for contravention of any of the provisions contained in Chapter VII of the Act, Section 4 CrPC. (Para 41). *Institute of Chartered Accountants of India* v. *Vimal Kumar Surana*, (2011) 1 SCC 534.

Bench Strength 2. Coram: **G.S. Singhvi** and *A.K. Ganguly*, JJ. [Date of decision: 1-12-2010]

[43] — Ss. 4, 5 and 14 — Jurisdiction of ordinary criminal court to take cognizance and try offences under Delhi Municipal Corporation Act where no court of Municipal Magistrate is constituted and there is no notification conferring powers of Municipal Magistrate on such criminal court — *Held, not barred — But once such Municipal Magistrates are appointed they alone would have jurisdiction to try offences under the Delhi Municipal Corporation Act — Delhi Municipal Corporation Act, 1957 (66 of 1957) — Ss. 469, 470, 466(a), 467 and 332/461*

In the absence of establishment of the Courts of Municipal Magistrate under Section 469 of the Act, the Magistrates of the First Class including Metropolitan Magistrates are competent to try offences punishable under the Act, rules, regulations or bye-laws made thereunder.

The Government has an *obligation* under Section 469 of the Act to appoint Municipal Magistrates for trial of offences under the Act, rules, regulations or bye-laws made thereunder. The use of the word 'may' in Section 469 of the Act only indicates that the Government has the discretion to appoint one or more Municipal Magistrates but it certainly does not relieve the Government of its *obligation* to appoint Municipal Magistrates and once such Municipal Magistrates are appointed, they alone would have the jurisdiction to try offences under the Act as per the mandate of Section 470 of the Act. The bar under Section 470 of the Act becomes operative only when a Municipal Magistrate has been appointed for trial of offences under the Act. The jurisdiction of the criminal courts under Section 4 CrPC is comprehensive and exhaustive. To the extent that no valid machinery is set up under any other law for trial of any particular case, the jurisdiction of the ordinary criminal court cannot be said to have been excluded. Exclusion of jurisdiction of a court of general jurisdiction can be brought about only by setting up of a court of limited jurisdiction in respect of the limited field provided that the vesting and the exercise of that limited jurisdiction is clear and operative. Thus, where there is no valid machinery for the exercise of jurisdiction in a specific case, the exercise of jurisdiction by the Judicial Magistrates or the Metropolitan Magistrates, as the case may be, is not excluded. The law and procedure for trial of cases under the Indian Penal Code and those under other statutes, according to Section 4 CrPC, is not different except that in the cases of offences under other laws, the procedure laid down by the CrPC is subject to the provisions of the relevant enactment for the time being in force for regulating the manner of trial of offences under that enactment.

In the absence of courts of special jurisdiction i.e. Municipal Magistrates to be appointed under Section 469 of the Act, a Judicial Magistrate of the First Class or a Metropolitan Magistrate, as the case may be, shall have the jurisdiction and powers to try the offences under the Municipal Act in accordance with the procedure envisaged by Section 467 of the Act and in accordance with the limitation and the time prescribed for initiation of the criminal proceedings under Section 471 of the Act. This interpretation is in accord with the position that every offence committed under the Indian Penal Code or under any other law for the time being in force must be tried and an accused cannot be permitted to raise any objection with regard to the forum for trial of the offence, where the specific forum has not been constituted under the Act because the law does not contemplate an offence, to go untried. Where, no court of a Municipal Magistrate has been constituted under Section 469 of the Act and no notification has also been issued conferring the powers of a Municipal Magistrate on a particular Judicial Magistrate of the First Class or a Metropolitan Magistrate, as the case may be, the jurisdiction of an ordinary criminal court to take cognizance of the offences committed under the Act, rules, regulations or bye-laws made thereunder is exercisable by the courts of general jurisdiction established to try offences under the Indian Penal

Code as well as the offences under any other law. *Attiq-Ur-Rehman* v. *MCD*, (1996) 3 SCC 37: 1996 SCC (Cri) 457: AIR 1996 SC 956.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 29-2-1996]

[**Ed.**: See also *State of M.P.* v. *Rameshwar Rathod*, (1990) 4 SCC 21: 1990 SCC (Cri) 522 and *Municipal Corpn.* v. *Commr. of Patiala Division*, (1995) 1 SCC 304.]

[44] — Ss. 4 and 5 — Scope of R. 16.38, Punjab Police Rules, 1934 — Held, mandatorily applicable to departmental proceedings alone — *Does not override provisions of CrPC — Criminal prosecutions under CrPC for offences under Penal Code or Prevention of Corruption Act, therefore, not vitiated for non-compliance with R. 16.38 — Police Act, 1861 — Ss. 7 and 12 — Penal Code, 1860 — S. 161 — Prevention of Corruption Act, 1947 — S. 5 — Punjab Police Rules, 1934, R. 16.38*

Rule 16.38 only mandates the investigation of cases pertaining to departmental enquiries and the holding of departmental enquiries in accordance with the procedure prescribed thereunder. The rule does not override the provisions of the Criminal Procedure Code in terms of Ss. 4 and 5 of the Code. The rule read in conjunction with the Police Act does not prescribe a different procedure for the investigation and prosecution of offences committed by police officers under the IPC or other Acts in connection with their relations with the public. Purpose underlying the rule is to enable the District Magistrate and the District Superintendent of Police to exercise personal control and supervision over the complaints received against members of the police force in the performance of their duties and enable the District Magistrate to ensure that the complaint is not a baseless or mala fide one and secondly to determine whether the complaint requires investigation by a police officer or by a selected magistrate. The procedure envisaged by the rule is for effective check being exercised against victimisation of efficient and honest police officers on the one hand and favouritism being shown to the delinquent police officers on the other. These rules were not intended to replace and certainly cannot override the provisions of the CrPC. *State of Punjab* v. *Raj Kumar*, (1988) 1 SCC 701: 1988 SCC (L&S) 441: 1988 SCC (Cri) 243: AIR 1988 SC 805.

Bench Strength 2. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 11-2-1988]

Raj Kumar, A.S.I. v. State of Punjab, (1976) 4 CLR (P&H) 39, reversed

State of Punjab v. Charan Singh, (1981) 2 SCC 197: 1981 SCC (Cri) 407, followed

Hoshiar Singh v. State, 1965 PLR 438 (Pun), approved

Raj Kumar v. State of Punjab, 1976 Lab IC 1519 (P&H), overruled

[45] — Ss. 4 and 181(4) — S. 4(2), PC Act, 1988, held, not subject to provisions of CrPC — *Prevention of Corruption Act, 1988 — S. 4(2)*

Absence of a non obstante clause linked with Section 4(2) of the PC Act does not lead to a conclusion that the sub-section is subject to the provisions CrPC. A reading of Section 4(2) of the Code (not the PC Act) gives the definite indication that the legal position is the other way round. If the PC Act has stipulated any place for trial of the offence under that Act the provisions of the Code would stand displaced to that extent in regard to the place of trial. Therefore, when the offence is under Section 13(1)(*c*) or Section 13(1)(*d*) of the PC Act the sole determinative factor regarding the court having jurisdiction is the place where the offence was committed. (Paras 41 and 42). *CBI* v. *Braj Bhushan Prasad*, (2001) 9 SCC 432: AIR 2001 SC 4014.

Bench Strength 3. Coram: **K.T. Thomas**, *S.S.M. Quadri* and *U.C. Banerjee*, JJ. [Date of decision: 5-10-2001]

Banwarilal Jhunjhunwalla v. Union of India, AIR 1959 Ker 311, explained and approved

Dhaneshwar Narain Saxena v. Delhi Admn., AIR 1962 SC 195: (1962) 3 SCR 259: (1962) 1 Cri LJ 203; M. Narayanan Nambiar v. State of Kerala, AIR 1963 SC 1116: 1963 Supp (2) SCR 724: (1963) 2 Cri LJ 186; State of Gujarat v. Manshankar Prabhashankar Dwivedi, (1972) 2 SCC 392: 1972 SCC (Cri) 728; Major S.K. Kale v. State of Maharashtra, (1977) 2 SCC 394: 1977 SCC (Cri) 356; Union of India v. Maj. I.C. Lala, (1973) 2 SCC 72: 1973 SCC (Cri) 738; K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510: 1999 SCC (Cri) 1284; Purushottamdas Dalmia v. State of W.B., AIR 1961 SC 1589: (1962) 2 SCR 101: (1961) 2 Cri LJ 728; L.N. Mukherjee v. State of Madras, AIR 1961 SC 1601: (1962) 2 SCR 116: (1961) 2 Cri LJ 736; Banwarilal Jhunjhunwala v. Union of India, AIR 1963 SC 1620: 1963 Supp (2) SCR 338: (1963) 2 Cri LJ 529, distinguished

[46] — Ss. 4 and 188 — Even if offence is committed by a citizen of India outside the country the same is subject to the jurisdiction of courts of India (Para 23). *A.V. Mohan Rao* v. *M. Kishan Rao*, (2002) 6 SCC 174: 2002 SCC (Cri) 1281: AIR 2002 SC 2653: (2002) 111 Comp Cas 390.

Bench Strength 2. Coram: **D.P. Mohapatra** and *K.G. Balakrishnan*, JJ. [Date of decision: 16-7-2002]

[47] — Ss. 4 and 439 — S. 37 of Narcotic Drugs and Psychotropic Substances Act, 1985 being a special enactment, general provisions of S. 439 CrPC have to be read subject to S. 37 in view of S. 4 CrPC. *Narcotics Control Bureau* v. *Kishan Lal*, (1991) 1 SCC 705: 1991 SCC (Cri) 265: AIR 1991 SC 558: (1991) 1 KLT 547: (1991) 52 ELT 328: 1991 Cri LJ 654.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 29-1-1991]

[48] — Ss. 4 and 482 — Quashing of FIR — Complaint regarding offences under W.B. Sales Tax Act as well as under IPC — FIR registered in accordance with the Code — Quashed by High Court on ground that investigation on the basis of complaint had to be conducted under the Sales Tax Act — Applicability of S. 4(2) of the Code — *Quashing of FIR whether justified — Abuse of process of court — All offences under IPC as well as under any other law have to be investigated, inquired into, tried or otherwise dealt with in accordance with the provisions of the Code — But in case of offence under the other law, the investigation, inquiry etc. shall be subject to any specific or contrary provisions contained in the enactment under which the offence is investigated, inquired into, tried or otherwise dealt with — S. 7 of the Act does not enjoin that the investigation has to be conducted only by the Bureau of Investigation constituted thereunder in respect of alleged tax evasion or connected malpractices — Offence under S. 88(6) of the Act is supplemental to any other penalty provided by law for the time being in force — Where during the course of a discreet investigation Bureau of Investigation finding that apart from offences under S. 88(1), (6), (7) of the Act those under IPC were also involved against the respondent, held, Bureau was justified in passing over the investigation to regular police — When pursuant thereto police registered FIR, High Court was not justified in quashing the FIR on the ground that under the Act only the Bureau could conduct the investigation and police had no such power — W.B. Sales Tax Act, 1994 — Ss. 88(1), (6) & (7) and 7 — Penal Code, 1860 — Ss. 468, 471 and 420*

When the Bureau of Investigation formed by the Government of West Bengal under the Sales Tax Act, got secret information about the fraud played by the respondent they conducted some discreet investigation and then it was revealed to them that the respondent had committed forgery and impersonation to defraud the Government of a huge sales tax amount. A complaint was presented by the Assistant Commissioner of Commercial Taxes to the Deputy Superintendent of Police who was then attached to the Bureau of Investigation. The said Deputy Superintendent, in turn, forwarded the complaint to the officer in charge of the police station, with a request to "start a case under Sections 403, 409, 465, 468, 471, 419, 420 read with Section 120-B of the Indian Penal Code and Sections 88(1)(*b*), (6) and (7) of the Sales Tax Act, 1994 treating the complaint as FIR". Pursuant thereto the Station House Officer of the police station registered the FIR. The respondent, getting scent of the same moved the City Civil Court, Calcutta for anticipatory bail but that was rejected. He then moved the High Court invoking its revisional and inherent jurisdiction for quashing the FIR and on such motion being made further investigation was stayed by the High Court. Finally the FIR was quashed. The High Court expressed the opinion that under the Sales Tax Act only a Bureau of Investigation constituted by the State Government can conduct the investigation or hold inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith, and hence no police officer can investigate into the offences under the Indian Penal Code or any other Act read with offences committed under Section 88 of the Sales Tax Act. Allowing the State's appeal,

Held :

So far as the offences under the Indian Penal Code are concerned sub-section (1) of Section 4 CrPC mandates that they can be investigated into and tried according to the provisions of the Code. As regards sub-section (2) of Section 4 which concern offences "under any other law", it is again the rule that such offences shall also be investigated and tried according to the provisions of the Code itself, but with a rider that such investigation or trial shall be subject to the regulation regarding "the manner or place of" such investigation or trial prescribed in any enactment for the time being in force. (Para 11)

The offence under sub-section (6) of Section 88 of the W.B. Sales Tax Act is specifically created as supplemental to any other penalty provided by any law for the time being in force. This means, offences falling under the Indian Penal Code and committed by a person while committing the offence contemplated in sub-section (6) cannot get displaced for the sole reason that the accused has committed the offence falling under sub-section (6) of Section 88. Section 7 of the Act makes it clear that creation of a Bureau of Investigation is for the purpose of discharging the function envisaged in sub-section (3) which, of course, includes investigation also. But there is nothing in Section 7 that such investigation can be carried on "*only*" by the Bureau and not any other investigating agency. It is open to the Bureau to get the assistance of any other legally-constituted investigating agency for effectively inquiring into all the ramifications of the offence. As in this case if offences falling under the Indian Penal Code or any other enactment are also detected during the course of investigation conducted by the Bureau there is no inhibition to pass over the investigation to the regular police. (Paras 16 and 17)

That apart, how could the FIR be quashed if the investigating agency should have been different? By lodging FIR alone no investigation is conducted by the police. It is the first step towards starting investigation by the police. If the High Court was of the opinion that investigation had to be conducted by the Bureau then also there was no need to quash the FIR. As offences under the Indian Penal Code are also involved, efficacious investigation can be conducted by entrusting it to the police investigating agency. The inherent powers of the High Court as recognised in Section 482 of the Code are reserved to be used "to give effect to any orders under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice". The High Court overlooked the reality that by quashing the FIR it did not achieve any one of the above factors. On the contrary, the result of quashing the FIR had rendered the allegations of offences made against a person to remain consigned in stupor perennially. Hence, instead of achieving the ends of criminal justice, the impugned order would achieve the reverse of it. (Para 19). *State of W.B.* v. *Narayan K. Patodia*, (2000) 4 SCC 447: 2000 SCC (Cri) 812: AIR 2000 SC 1405: 2000 Cri LJ 1811: (2000) 120 STC 370.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 6-4-2000]

Mirza Iqbal Hussain v. State of U.P., (1982) 3 SCC 516: 1983 SCC (Cri) 111; A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500: 1984 SCC (Cri) 277; Gangula Ashok v. State of A.P., (2000) 2 SCC 504, relied on

[49] — S. 4 and Chapters VII, XIII & XXXIV — Validity of S. 129-A, MV Act, 1939 — Held, valid being intra vires Art. 19(1)(g) — *S. 129-A must be read subject to Ss. 123(1), 127-B, 130 and 132, MV Act as also in conjunction with the relevant provisions of the Criminal Procedure Code — Procedural steps to be taken by police or appropriate person while acting under S. 129-A and power of criminal court when a complaint is laid before it indicated — Motor Vehicles Act, 1939 — S. 129-A — Constitution of India — Art. 19(1)(g)*

Section 129-A, MV Act does not infringe Art. 19(1)(*g*).

Whenever an offence is committed under a law other than the Penal Code which does not itself regulate the procedure to be followed, the provisions of CrPC have to be applied for further action by weaving into a single texture the provisions of CrPC and the special law. In view of S. 4(2) CrPC, therefore, S. 129-A, MV Act has to be read in conjunction with the provisions of the Code, especially Chapters VII, XIII and XXXIV, and so read there is no lacuna in regard to the proper custody and disposal of the motor vehicles seized under S. 129-A.

A pre-condition for exercise of power of seizure and detention of the vehicle under S. 129-A is that the police officer or the authorised person must have reason to believe that one or the other of the offences punishable under S. 123, MV Act has been or is being committed. Whenever property involved in the commission of an offence is seized, the seizure is generally expected to serve a manifold purpose such as to prevent repetition of the offence, to use the thing seized as material evidence in the prosecution to preserve the property so as to enable the court to pass appropriate orders for its disposal by way of destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise. There is no reason to assume that the seizure under S. 129-A is any different and is not to serve any of these purposes or any purpose at all.

The next step would be to consider the question whether the offence should be compounded as provided by S. 127-B, MV Act and any notification issued by the Government in that behalf. Thereafter, the police officer or the appropriate person would lay a complaint before the competent court, subject to the overriding provision of S. 132, MV Act. The court before which the complaint may be laid has to be determined in accordance with the provisions of Chapter XIII of the Code, and the case has to be tried in accordance with the provisions of the Code, subject to the special provision under S. 130 of the Act. The provisions of Chapter XXXIV of the Code are also attracted in dealing with offences under the Act.

The court thus has the power at the conclusion of the case to make appropriate orders regarding the disposal of the motor vehicle regarding which an offence appears to have been committed. A motor vehicle regarding whose temporary custody arrangements have been made under S. 129-A must be considered to have been produced before the criminal court as soon as a complaint is filed. In any case, the court has ample power under Chapter VII of the Code, S. 91 in particular, to compel the production of the vehicle before the court. The custody of the vehicle in the hands of the police officer or the authorised person is but temporary and he is therefore, obliged to act and take all further steps in the matter with all expedition. If, instead of releasing the vehicle on the offence being compounded, he lays a complaint before the court, the court acquires instant jurisdiction over the vehicle to pass suitable orders. In the remote event of the police officer or the authorised person not taking any further action after seizing and detaining the vehicle, the owner of the vehicle has remedy under Art. 226, but one does not have to presume that the police officer or the authorised person may not act according to law.

In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of sub-sections (4) and (5) of S. 100 of the Code. In the case of a seizure under the Act, there is no provision for preparing a list of the things seized in the course of the seizure for, all those things are seized not separately but as part of the vehicle itself. But it is in the interests of the very officer or person seizing the vehicle, so that they may not be open to any charge being laid against them later, that such officer or person takes care to prepare a list of detachable things which are ordinarily not part of the vehicle and give a copy of the list to the person incharge of the vehicle at the time of the seizure. *Transport Commr.* v. *S. Sardar Ali, Bus Owner*, (1983) 4 SCC 245: 1983 SCC (Cri) 827: AIR 1983 SC 1225: 1983 Cri LJ 1506.

Bench Strength 2. Coram: *D.A. Desai* and **O. Chinnappa Reddy**, JJ. [Date of decision: 26-8-1983]

[50] — S. 4 and Ch. XV (Ss. 200 to 203) — Scope and applicability — Offences under both IPC and TOHO — Appropriate investigating agency and procedure, held, would be those under TOHO — *Transplantation of Human Organs Act, 1994, Ss. 13 and 22*

In a situation of this nature, CBI could carry out investigations in exercise of its authorisation under Section 13(3)(*iv*) TOHO. Nobody else could do it. The officer in charge of the police station was not authorised by the appropriate Government to deal with the matter in relation to TOHO; but, CBI was authorised. The FIR disclosed not only commission of an offence under TOHO but also under IPC. In that view of the matter, the investigation of the said complaint was handed over to CBI. If a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. TOHO being a special Act the same would prevail over the provisions of CrPC. (Paras 20 to 23, 17, 26 and 27)

TOHO being a special statute, Section 4 CrPC, which ordinarily would be applicable for investigation into a cognizable offence or the other provisions, may not be applicable. Section 4 provides for investigation, inquiry, trial, etc. Section 4(2), however, specifically provides that offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, tried or otherwise dealing with such offences. (Para 22)

If a complaint petition is filed, the procedure laid down under Chapter XV (Sections 200 to 204) CrPC can be taken recourse to despite the fact that the same has been filed after full investigation and upon obtaining the remand of the accused from time to time by reason of orders passed by a competent Magistrate. (Para 35)

TOHO was enacted to provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs and for matters connected therewith or incidental thereto. TOHO is a special Act. It deals with the subjects mentioned therein viz. offences relating to removal of human organs, etc. Having regard to the importance of the subject only, enactment of the said regulatory statute was imperative. Ordinarily, any person can set the criminal law in motion. Parliament and the State Legislatures, however, keeping in view the sensitivity and/or importance of the subject, have carved out specific areas where violations of any of the provisions of a special statute like TOHO can be dealt with only by the authorities specified therein. (Paras 17, 19 and 21). *Jeewan Kumar Raut* v. *CBI*, (2009) 7 SCC 526: (2009) 3 SCC (Cri) 475: (2009) 80 AIC 243 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 7-7-2009]

[51] — Ss. 4 to 6 — Hierarchy of courts provided under the Act to prevail excluding those provided under S. 6, CrPC — *Terrorist and Disruptive Activities (Prevention) Act, 1987 — Ss. 9(1), 19(1) and 20(6)*

There is a total departure from different classes of criminal courts enumerated in S. 6 of the Code and a new hierarchy of courts is sought to be established by providing for a direct appeal to the Supreme Court from any judgment or order of a Designated Court, not being an interlocutory order, and substituting the Supreme Court for the High Court by S. 20(6) in the matter of confirmation of a death sentence passed by a Designated Court. *Usmanbhai Dawoodbhai Memon* v. *State of Gujarat*, (1988) 2 SCC 271: 1988 SCC (Cri) 318: AIR 1988 SC 922.

Bench Strength 2. Coram: **A.P. Sen** and *L.M. Sharma*, JJ. [Date of decision: 14-3-1988]

— **S. 4(1)** *See* Ss. 11(1) proviso, 4(1) & (2), 3(4)(a), 26 and 245

— **S. 4(2)** *See* Ss. 11(1) proviso, 4(1) & (2), 3(4)(a), 26 and 245

See also Ss. 29(2), 5, 4(2), 325(1) and 357

See also Ss. 167, 2(h), 4(2), 26(b) and Ch. XII (Ss. 154 to 176)

See also Ss. 167(1), 4(2), 5 and 26(b)

See also Ss. 193, 4(2), 5, 2(g) and 6(i)

[52] — S. 4(2) — Offences punishable under the Wild Life (Protection) Act, 1972 can be investigated by CBI on being empowered by Central Govt. by issuing notification under Delhi Special Police Establishment Act, 1946 — *S. 50 of the 1972 does not exclude a police officer from investigating the offences under the Act — Special procedure provided under the Act is contrary to the provisions contained in CrPC and as such the same would prevail in view of S. 4(2) CrPC — But that does not mean that rest of the provisions of CrPC are excluded — Wild Life (Protection) Act, 1972 — Ss. 50, 55, 54 and 51*

The appellant, a resident of Delhi, was arrested in connection with the offence punishable under Sections 9, 39(3), 44, 49, 50, 51, 57 and 58 of the Wild Life (Protection) Act. In exercise of the powers conferred by Section 3 of the Act, notification dated 24-1-1996 was issued by the Central Government specifying that offences punishable under Section 51 of the Act which could be investigated by Delhi Special Police Establishment. Thereafter, the State of U.P. issued a notification as required under Section 6 of the Delhi Police Establishment Act according consent to the extension of powers and jurisdiction of the members of Delhi Special Police Establishment to investigate the offences. The Central Government issued a notification dated 21-3-2000 under Section 5 read with Section 6 of the Act empowering CBI to investigate the case against the appellants under the Wild Life Act and the Indian Penal Code. The order passed by the Central Government transferring the investigation to Delhi Special Police Establishment was challenged by filing writ petition before the Allahabad High Court with the prayer that the appellant be released forthwith. The High Court rejected the petition. Before the Supreme Court it was contended that the Wild Life Act is a special law as understood under Section 5 CrPC and it contains comprehensive provisions for investigation, inquiry, search, seizure, compounding of offences, trial and punishment and, therefore, the Police Force under the Delhi Special Police Establishment Act was not empowered to investigate the case. The short question involved in this appeal was whether Central Bureau of Investigation (CBI) was authorised to investigate an offence, which is punishable under the Wild Life (Protection) Act, 1972 in view of the contention that the said Act is a self-contained code.

Dismissing the appeal,

Held :

There is no substance in the contention that Section 50 of the Wild Life Act is a complete code and, therefore, CBI would have no jurisdiction to investigate the offences under the said Act. The scheme of Section 50 of the Wild Life Act makes it abundantly clear that a police officer is also empowered to investigate the offences and search and seize the offending articles. For trial of offences, the Code of Criminal Procedure is required to be followed and for that there is no other specific provision to the contrary. The special procedure prescribed is limited to taking cognizance of the offence as well as powers are given to other officers mentioned in Section 50 for inspection, arrest, search and seizure as well as of recording statement. The power to compound offences is also conferred under Section 54. Section 51 provides for penalties which would indicate that certain offences are cognizable offences meaning thereby a police officer can arrest without warrant. The aforesaid specific provisions are contrary to the provisions contained in the Code of Criminal Procedure and that would prevail during the trial as provided under Section 4(2) CrPC. However, from this it cannot be said that operation of rest of the provisions of the Code of Criminal Procedure is excluded. (Paras 15 and 14). *Moti Lal* v. *Central Bureau of Investigation*, (2002) 4 SCC 713: 2002 SCC (Cri) 889: AIR 2002 SC 1691: 2002 All LJ 1158.

Bench Strength 2. Coram: **M.B. Shah** and *B.N. Agrawal*, JJ. [Date of decision: 9-4-2002]

Central Bureau of Investigation v. State of Rajasthan, (1996) 9 SCC 735: 1996 SCC (Cri) 1090, distinguished

Moti Lal v. Central Bureau of Investigation, 2001 Cri LJ 2086 (All), affirmed

[53] — S. 4(2) — R. 16.38 of Punjab Police Rules, 1934 cannot override provisions of Criminal Procedure Code. *State of Punjab* v. *Charan Singh*, (1981) 2 SCC 197: 1981 SCC (Cri) 407: AIR 1981 SC 1007: 1981 Cri LJ 712: (1981) 1 SLR 355.

Bench Strength 2. Coram: **O. Chinnappa Reddy** and *Baharul Islam*, JJ. [Date of decision: 20-2-1981]

[54] — Ss. 4(2) and 5 — Expression "subject to any enactment ... otherwise dealing with such offences" in S. 4(2) — Means in the absence of any contrary provision in any other law, provisions of the Code will apply — S. 5 does not nullify this effect of S. 4(2). *Gangula Ashok* v. *State of A.P.*, (2000) 2 SCC 504: 2000 SCC (Cri) 488: AIR 2000 SC 740: 2000 Cri LJ 819: (2000) 1 KLT 609.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 28-1-2000]

[55] — Ss. 4(2) and 5 — Procedure for trial under the Navy Act and not that under CrPC applies to the personnel serving in the Navy — Scope of review by High Court — *High Court's power of judicial review under Art. 226, held, is not in the nature of power of appellate authority enabling reappreciation of evidence and, on the ground of insufficiency of evidence, to alter the conclusion reached by competent authorities in court-martial proceedings — Hence, in reappreciating the evidence and reaching the contrary conclusion that the complainant's evidence was not credible enough to hold the respondent guilty under S. 354 IPC, held, High Court overstepped its jurisdiction — More so when the statement of the complainant led to the inescapable conclusion of the guilt of the respondent — Navy Act, 1957 — Ss. 77(2), 93 and 163 — Army Act, 1950 — Air Force Act, 1950 — Constitution of India — Art. 226*

The respondent was a Petty Officer (Telegraphist) in the Navy. Consequent to a complaint made by a lady *N* that her modesty had been outraged by the respondent, court-martial proceedings were initiated and in the said proceedings the respondent was found guilty of the charge under Section 354 of IPC and Section 77(2) of the Navy Act, 1957 (hereinafter referred to as "the Act") and was directed to be kept under imprisonment for the term of 24 calendar months and to be dismissed from the naval services. In a petition by the respondent under Section 163(1) of the Navy Act, the Chief of the Naval Staff reduced the term of imprisonment to 9 months but upheld the punishment of dismissal. This decision was confirmed by the Central Government. However, in a writ petition filed by the respondent, the Bombay High Court quashed the conviction and sentence on the ground of insufficiency of evidence. Allowing the appeal of the Union of India,

Held :

The defence personnel serving in the Army, Navy or Air Force when commit any offence are dealt with by the special provisions contained in the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950 and not by the normal Criminal Procedure Code. The said Navy Act is a complete code by itself and prescribes the procedure to be followed in case it is decided that an officer should be tried by a court-martial. The Act also provides sufficient safeguard by way of further appeal to the Chief of the Staff and then ultimately to the Union Government. Therefore, ordinarily there should be a finality to the findings arrived at by the competent authority in the court-martial proceedings. The High Court's power under Article 226 to judicially review such findings is for a limited purpose of finding out whether there has been infraction of any mandatory provisions of the Act prescribing the procedure which has caused gross miscarriage of justice or for finding out that whether there has been violation of the principles of natural justice which vitiated the entire proceedings or that the authority exercising the jurisdiction had not been vested with jurisdiction under the Act. The said power of judicial review cannot be a power of an appellate authority permitting the High Court to reappreciate the evidence and in coming to a conclusion that the evidence is insufficient for the conclusion arrived at by the competent authorities in court-martial proceedings. At any rate it cannot be higher than the jurisdiction of the High Court exercised under Article 227 against an order of an inferior tribunal. Therefore, it has to be held that the High Court overstepped its jurisdiction in trying to reappreciate the evidence of *N* and in coming to the conclusion that her evidence was not credible enough to give a finding of guilt against the respondent of a charge under Section 354. Moreover, on facts it has to be held that the statement of *N* leads to an inescapable conclusion that the respondent has been rightly found by the authorities in the court-martial proceedings to have committed offence under Section 354. (Para 4). *Union of India* v. *Himmat Singh Chahar*, (1999) 4 SCC 521: 1999 SCC (Cri) 596: AIR 1999 SC 1980: 1999 Cri LJ 2894: (1999) 3 LLN 421.

Bench Strength 2. Coram: **G.B. Pattanaik** and *K.T. Thomas*, JJ. [Date of decision: 12-5-1999]

[56] — Ss. 4(2) and 452(1) — Court can order confiscation of the property seized from accused's possession, while convicting the accused under S. 5, Prevention of Corruption Act, 1947

Since the Prevention of Corruption Act does not provide for confiscation or prescribe any mode by which an order of confiscation may be made, power under S. 452(1), CrPC would be available to a court trying an offence under the Act by virtue of S. 4(2), CrPC. Such a court therefore, will have jurisdiction and power to make an order of confiscation of the property seized from the accused.

Since the appellant had been convicted under S. 5(1)(*e*) precisely for the reason that he was in possession of the fixed deposit receipts and cash sums, the order of confiscation in regard to those amounts cannot be said to have not been properly passed or passed without any application of mind. *Mirza Iqbal Hussain* v. *State of U.P.*, (1982) 3 SCC 516: 1983 SCC (Cri) 111: AIR 1983 SC 60.

Bench Strength 2. Coram: *Y.V. Chandrachud, C.J.* and *O. Chinnappa Reddy*, J. [Date of decision: 10-11-1982]

[57] — Ss. 4(2) r/w 190, 203 and 204 — Trade and Merchandise Marks Act, 1958 (43 of 1958) — Ss. 89, 78, 79 — Person competent to lodge complaint — *Complaint alleging commission of offences under Ss. 78 and 79 of the Act and S. 420, Penal Code lodged by dealer and attorney of registered trade marks owner, held, competent — Magistrate cannot refuse to take cognizance of the offences and to issue process on the sole ground of incompetency of the dealer to file the complaint*

On a combined reading of Ss. 4(2) and 190, CrPC it is clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance under S. 190 and no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. But where any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute.

Section 89 does not prescribe any particular eligibility criterion on qualification for filing a complaint for contravention of Ss. 78 and 79 of the Act. Therefore, the Magistrate was in error in rejecting the complaint on the sole ground that the complainant was not entitled to file the complaint.

Even otherwise in the absence of a specific qualification, if the person complaining has a subsisting interest in the protection of the registered trade mark, his complaint cannot be rejected on the ground that he had no cause of action nor sufficient subsisting interest to file the complaint. In the present case the dealer and the constituted attorney of the owners of the registered trade marks had cause of action to file the complaint and therefore, the Magistrate erred in dismissing the complaint at the threshold. *Vishwa Mitter* v. *O.P. Poddar*, (1983) 4 SCC 701: 1984 SCC (Cri) 29: AIR 1984 SC 5.

Bench Strength 2. Coram: **D.A. Desai** and *A.N. Sen*, JJ. [Date of decision: 30-9-1983]

— S. 5 *See also* S. 1(2), Criminal Procedure Code, 1898, p. 959 in Vol. 2

— S. 5 *See* Ss. 4 and 5

See also Ss. 4 to 6

See also Ss. 4, 5 and 14

See also Ss. 4(2) and 5

See also Ss. 27 and 5

See also Ss. 29(2), 5, 4(2), 325(1) and 357

See also Ss. 145, 144 and 5 & 482

See also Ss. 167(1), 4(2), 5, 26(b)

See also Ss. 193, 4, 5 and 2(g)

See also Ss. 193, 4(2), 5, 2(g) and 6(i)

See also Ss. 321, 4 and 5

See also Ss. 428 and 5

See also Ss. 428, 5 and 475, 2(h), (g)

See also Ss. 433-A and 5

See also Ss. 433-A, 433(a) and 5

[58] — Ss. 5 and 4 — Continuance of special or local law already in force — Held, Haryana Children Act, 1974 is protected by S. 5 — *Hence an offence covered by the Act, even if committed after coming into force of the Code, would be tried under the Act and not the Code. Rohtas* v. *State of Haryana*, (1979) 4 SCC 229: 1979 SCC (Cri) 963: AIR 1979 SC 1839: 1979 Cri LJ 1365.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.S. Kailasam*, JJ. [Date of decision: 31-7-1979]

[59] — Ss. 5 and 41(1)(g) — Applicability of CrPC and S. 41(1)(g) in extradition cases — Primacy of Extradition Act, 1962, discussed — *Extradition Act, 1962, S. 3 — Primacy of Extradition Act, 1962 over CrPC, 1973*

The power is exercised by CBI or a police officer to arrest a person, although no warrant is issued in terms of Section 41(1)(*g*) CrPC. However, CBI website states that in case an action is taken under Section 41(1)(*g*), the matter must be immediately referred to the Interpol wing for onward transmission to the Government of India to take a decision or otherwise. In terms of the aforementioned provisions, sanction of the Central Government is contemplated. (Para 87)

Strictly construed in a case involving extradition, Section 41(1)(*g*) CrPC may not have any application. Section 41(1)(*g*) CrPC clearly contemplates the power of the police to arrest under "any law relating to extradition" thereby contemplating the exercise of powers subject to the provisions of the Extradition Act. Thus, the provisions of the Code of Criminal Procedure are subject to those in the Act. (Paras 88 and 89). *Bhavesh Jayanti Lakhani* v. *State of Maharashtra*, (2009) 9 SCC 551.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-8-2009]

[60] — S. 5 — Power of Assistant Commandant of CRPF to exercise powers of JM, First Class — Respondent Constable staying beyond the sanctioned period of leave — *No intimation or request for extension of leave — Trial of respondent by Assistant Commandant exercising powers of Judicial Magistrate, First Class under notification issued by the Central Govt., held, proper — Sessions Court and the High Court erred in holding that Assistant Commandant had no jurisdiction to try the matter — Central Reserve Police Force Act, 1949 — Ss. 10(m) and 16(2)*

The respondent, who was a Constable (sweeper) in the IIIrd Battalion, ITBP, Nahan, did not join duty after expiry of the leave granted to him. There was no intimation to the competent authority or request for extension of leave. Therefore, a complaint was lodged against him by the authorities concerned. The Assistant Commandant exercising powers of Judicial Magistrate, First Class in terms of Section 10(*m*) of the CRPF Act, 1949 (in short "the Act"), issued a notice to the respondent under Section 251 CrPC and after trial found him guilty and sentenced him to undergo imprisonment for three months. The respondent filed an appeal before the Sessions Judge against the said order. The Sessions Judge held that the Assistant Commandant had no jurisdiction to record conviction and impose sentence. The said judgment was questioned before the High Court by a revision petition filed by the Union of India. The High Court dismissed the said revision by holding that combined reading of Sections 11, 12 and 13 of the Code of Criminal Procedure, 1973 clearly ruled out the appointment of any person exercising powers of Judicial Magistrate, First Class in the absence of conferment of powers by the High Court. Thus, it held that the Central Government or the State Government had no power to invest any person with powers of Judicial Magistrate of any class.

The appellant State submitted that certain aspects were not considered in their proper perspective by the Sessions Judge and the High Court. These aspects were: (*i*) that Section 16(2) of the Act clearly indicates that notwithstanding anything contained in the Code, the provisions of the Act could be applied, (*ii*) that Section 4(2) CrPC permits action under any law other than IPC, (*iii*) that Section 5 CrPC refers to absence of a specific provision to the contrary in any special or local law, and (*iv*) that the Act in question was a special law which operated in a specified field.

Restoring the conviction recorded by the Assistant Commandant but reducing the sentence,

Held :

The fallacy in the reasoning of the courts below lies in their superficial and cursory nature of consideration undertaken therein, without reference to the competence and powers of Parliament to specifically and specially provide for trial and punishment of offences separately created under a special enactment of Parliament, in a manner distinct and separate from the method of trying other ordinary criminal offences under the general criminal law of the country. (Para 5)

Under Section 3(1) of the Act, CRPF is constituted to be an "armed force" maintained by the Central Government, and consequently, it would be "any other armed force of the Union" as envisaged in Entry 2 of List I of the Seventh Schedule to the Constitution of India. Entry 93 of List I enables Parliament also to provide for offences against laws with respect to any of the matters enumerated in List I. Sections 9 and 10 of the Act create by enumerating what are stated to be "more heinous offences" and "less heinous offences" respectively and many of such specially created offences for the purposes of this Act cannot constitute or amount to be offences under the ordinary criminal law of the land. To that extent they are new classes of offences created with punishments therefor, which are unknown to the ordinary criminal law in force. Section 16 of the Act provides for empowering competent authorities in the hierarchy of the force itself with powers or duties conferred or imposed on a police officer of any class or grade by any law for the time being in force and by further enacting a provision with a specific "non obstante" clause stipulating that notwithstanding anything contained in the Code, the Central Government may invest the Commandant or Assistant Commandant with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by a member of the force and punishable "under this Act" or any offence committed by a member of the force against the person or property of another member. Section 5 of the Code sufficiently protects the authorities empowered to function and exercise powers under the Act from any such challenge as are directed against them in this case. (Para 5)

Unauthorised absence of an employee staying beyond the sanctioned period of leave is not an offence in the normal course under the ordinary criminal law of the land. But, disciplined forces with the intention of enforcing discipline have made it punishable considering it as offence and have prescribed various sentences. For such particular purposes the designated officials have been conferred with magisterial powers. The Assistant

Commandant who passed the order undisputedly acted as a Judicial Magistrate in view of the powers conferred on him under the Act. The conferment of such power has not been distinctly questioned and could not have been questioned in a proceeding, appeal or a revision under the Code. (Para 6)

The inevitable conclusion is that the Assistant Commandant was clothed with necessary jurisdiction for trial of the matter. (Para 11). *State (Union of India)* v. *Ram Saran*, (2003) 12 SCC 578: AIR 2004 SC 481: (2004) 101 FLR 447.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 4-12-2003]

Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440: 1994 SCC (Cri) 785; Nilratan Sircar v. Lakshmi Narayan Ram Niwas, AIR 1965 SC 1: (1965) 1 Cri LJ 100; Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112; Kaushalya Rani v. Gopal Singh, AIR 1964 SC 260: (1964) 1 Cri LJ 152, relied on

— **S. 6** *See also* S. 6, Criminal Procedure Code, 1898, p. 962 in Vol. 2

— **S. 6** *See* Ss. 4 to 6
See also Ss. 4, 6 and 7
See also Ss. 164(1), 167, 3, 6, 20(1) and (4)

[61] — S. 6 and Chap. XII — Chief Judicial Magistrate — Position of — *Coordination, cooperation and role of police indicated*

The Chief Judicial Magistrate is head of the Magistracy in the district. Under the provisions of Chapter XII of the Code of Criminal Procedure, 1973, he exercises control and supervision over the investigating officer. He is an immediate officer on the spot at the lower rung of the administration of justice of the country to ensure that the police which is the law enforcing machinery acts according to law in investigation of crimes without indulging in excesses and causing harassment to citizens. The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. (Para 39). *Delhi Judicial Service Assn.* v. *State of Gujarat*, (1991) 4 SCC 406: AIR 1991 SC 2176.

Bench Strength 3. Coram: **K.N. Singh**, *Kuldip Singh* and *N.M. Kasliwal*, JJ. [Date of decision: 11-9-1991]

[62] — S. 6 — Purpose and role of courts in criminal trial — Judicial process — Raison d'être for existence of courts of justice — *Held, discovery, vindication and establishment of truth are main purposes for holding a fair trial which are underlying objects for existence of courts of justice* (Para 5). *NHRC* v. *State of Gujarat*, (2009) 6 SCC 767.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 1-5-2009]

[63] — S. 6 — Courts and tribunals — Essential features, functions and differences — Meaning of and difference between, stated — *CPC, 1908, Ss. 2(8) and 9 — Evidence Act, 1872, S. 3 — Constitution of India — Sch. VII List I Entries 77 to 79 & 95, List II Entry 65 & List III Entries 11-A, 46 and Sch. X Para 6(1) and Arts. 246, 50, 323-A and 323-B — Arbitration and Conciliation Act, 1996, Ss. 2(d) and 11 — Motor Vehicles Act, 1988, S. 165 — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 3 and 8 — Consumer Protection Act, 1986, Ss. 9, 10, 16 and 20*

The term "courts" refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by the State for administration of justice that is for exercise of the judicial power of the State to maintain and uphold the rights, to punish wrongs and to adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Courts refer to civil courts, criminal courts and the High Courts. Tribunals can be either private tribunals (Arbitral Tribunals), or tribunals constituted under the Constitution [Speaker or the Chairman acting under Para 6(1) of the Tenth Schedule] or tribunals authorised by the Constitution (Administrative Tribunals under Article 323-A and tribunals for other matters under Article 323-B) or statutory tribunals which are created under a statute (Motor Accidents Claims Tribunal, Debt Recovery Tribunals and Consumer Fora). Some tribunals are manned exclusively by Judicial Officers (Rent Tribunals, Motor Accidents Claims Tribunal, Labour Courts and Industrial Tribunals). Other statutory tribunals have judicial and technical members (Administrative Tribunals, TDSAT, Competition Appellate Tribunal, Consumer Fora, Cyber Appellate Tribunal, etc.). (Para 38)

Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences between courts and tribunals. They are:

(*i*) Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals. But all tribunals are not courts.

(*ii*) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an "expert" in the field to which the tribunal relates. Some highly specialised fact-finding tribunals may have only technical members, but they are rare and are exceptions.

(*iii*) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act. (Para 45). *Union of India* v. *Madras Bar Assn.*, (2010) 11 SCC 1: (2010) 156 Comp Cas 392: (2010) 3 CTC 517 (SC).

Bench Strength 5. Coram: *K.G. Balakrishnan, C.J.* and **R.V. Raveendran**, *D.K. Jain, P. Sathasivam* and *J.M. Panchal*, JJ. [Date of decision: 11-5-2010]

S.P. Sampath Kumar v. Union of India, (1987) 1 SCC 124: (1987) 2 ATC 82; Associated Cement Companies Ltd. v. P.N. Sharma, AIR 1965 SC 1595: (1965) 2 SCR 366; Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651; Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala, AIR 1961 SC 1669: (1962) 2 SCR 339; Jaswant Sugar Mills Ltd. v. Lakshmi Chand, AIR 1963 SC 677: 1963 Supp (1) SCR 242, relied on

Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson, (1892) 1 QB 431 (CA); Durga Shankar Mehta v. Raghuraj Singh, AIR 1954 SC 520: (1955) 1 SCR 267, cited

[64] — S. 6 — Jurisdiction of Special Court under 1992 Act — Transactions in securities and for matters connected therewith or incidental thereto — Discounting of bills of exchange with the ultimate purpose of transacting in shares, held, fell within the jurisdiction of Special Court — *S. 7 of 1992 Act also held, has to be interpreted widely, particularly when it commences with non obstante clause — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, S. 7*

The jurisdiction of Special Court is not confined to scams relating to securities alone but utilisation of any amount relating to transactions in securities and for matters connected therewith or incidental thereto. The jurisdiction of Special Court is an exclusive one. It exercises original jurisdiction to try offences relating to security scams. The said Act having regard to the peculiar nature of offence sought to be dealt with, should receive liberal construction. Jurisdiction of Special Court is required to be determined with regard to provisions of Section 6 of the Code of Criminal Procedure, 1973. The Act is a special Act. It contains a non obstante clause. It prevails over any other Act. (Paras 44 and 46)

Harshad Mehta was dealing in the money market and securities market. Growmore although being a public limited company, was controlled by Harshad Mehta. Both Mazda as also Growmore were dealing in the business of selling and buying of shares. M/s J.H. Mehta, was the proprietary concern of wife of Harshad Mehta. She used to execute business through her constituted attorney. General power of attorney had also been issued by the aforementioned companies in favour of the accused persons. The Harshad Mehta Group of Companies were therefore dealing in securities. The method of siphoning off of funds of UCO Bank through discounting of two bills of exchange was unlawful. Both the bills of exchange were shown to have been issued in relation to transaction in shares between M/s J.H. Mehta, Growmore and Mazda. For the purpose of arranging repayment of the amount, shares were purchased by UCO Bank through M/s V.B. Desai and Co. The offence of conspiracy to commit the offence of breach of trust, thus, related to transaction in securities. It is therefore not a case where it can be said that Special Court lacked inherent jurisdiction in trying the offence said to have been committed by the accused. (Paras 48 and 49). *Sudhir Shantilal Mehta* v. *CBI*, (2009) 8 SCC 1: (2009) 3 SCC (Cri) 646.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

Harshad S. Mehta v. State of Maharashtra, (2001) 8 SCC 257: 2001 SCC (Cri) 1447; L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd., (2004) 11 SCC 456; Solidaire India Ltd. v. Fairgrowth Financial Services Ltd., (2001) 3 SCC 71, relied on

[65] — Ss. 6 and 11 — Judicial Magistrates, held, do not have any inherent power — *Criminal Trial — Inherent power* (Para 8). *Dharmeshbhai Vasudevbhai* v. *State of Gujarat*, (2009) 6 SCC 576.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 5-5-2009]

— S. 6(i) *See* Ss. 193, 4(2), 5, 2(g) and 6(i)

— S. 7 *See* Ss. 4, 6 and 7

See also Ss. 406, 24, 2(u) and 7, 8 & 9

[66] **— Ss. 7, 14 and 406, 410 — Complaint filed before court lacking territorial jurisdiction — Pragmatic approach** *— Respondent wife filing complaint before CJM of Bankura, where she was living and mentioning own and brother's pitiable financial condition — Clear from complaint that beatings and other cruelty meted out in matrimonial home in Calcutta — Appellants filing criminal revision application before High Court challenging jurisdiction of CJM, Bankura to entertain complaint — High Court dismissing the same — Held, on facts, to meet the ends of justice, the complaint under S. 498-A, IPC should be treated as if it had been presented before appropriate court in Calcutta and had been transferred to Court of CJM, Bankura — Clarified that no opinion was being expressed on merits — CPC, 1908 — S. 24 — Penal Code, 1860 — S. 498-A*

Even if the complaint had been lodged in the appropriate court in Calcutta, the respondent could have made application for transfer of the said case to Bankura which is her usual place of residence so that she can effectively pursue the case on the basis of the complaint lodged by her. In the facts of the case, it appears that such application for transfer, if made, deserves to be allowed. Taking a pragmatic view of the matter, it is felt that the complaint should not be dismissed on the score of jurisdictional impropriety. In the special facts of the case, it is directed that the complaint under Section 498-A would be treated as if the complaint was presented to the appropriate court in Calcutta and the same has been transferred to the Court of Chief Judicial Magistrate, Bankura. Such direction is given for ends of justice and to avoid dismissal of the complaint filed in Bankura for want of jurisdiction and filing another complaint in Calcutta and then to get the same transferred to Bankura. (Para 2). *Bhudeb Chandra Karmakar* v. *State of W.B.*, (2001) 9 SCC 226: 2001 SCC (Cri) 1571.

Bench Strength **2**. Coram: *G.N. Ray* and *B.L. Hansaria*, JJ. [Date of decision: 30-7-1996]

[67] **— Ss. 7 and 9 — Allocation of cases to Special Judge — If requires consultation with High Court — Allegation that certain Special Judge was chosen to try the present case based on political vendetta — Sustainability** *— Held, Arts. 233 and 234 of the Constitution are not attracted as this is not a case where appointment of persons to be Special Judges or their postings to a particular Special Court is involved — However, expression "notwithstanding the jurisdiction of other Special Judges in the State of Punjab" in notification dated 17-11-2003 allocating cases to Special Judges was not necessary — Once a group of cases is allocated to a Special Court, consequentially other Special Courts cannot deal with them — Said expression directed to be severed — Further, Special Judges are transferred by the High Court — Hence allegation of choosing any Special Judge with oblique motive is clearly without any substance — Constitution of India — Arts. 233 and 234 — Appointment or posting of Special Judges under PC Act, 1988 — Prevention of Corruption Act, 1988 — S. 4*

Articles 233 and 234 of the Constitution are not attracted because this is not a case where appointment of persons to be Special Judges or their postings to a particular Special Court is involved. It is, however, factually conceded that the expression "notwithstanding the jurisdiction of other Special Judges in the State of Punjab" in notification dated 17-11-2003 is not necessary. Once a group of cases are allocated to a Special Court, consequentially other Special Courts cannot deal with them. Use of the aforesaid expression was really unnecessary. The said expression is considered to be severable and it is so directed. (Paras 81 and 82)

The State submitted that to avoid any fear of forum-shopping, the State is even willing to abide by the decision of the Supreme Court if the trial takes place in Chandigarh or wherever the Supreme Court directs, and to show that the State has no intention to the trial being conducted at a particular place and to prove its transparency the stand is taken. It is not considered necessary to so direct because the expression "notwithstanding the jurisdiction of other Special Judges in the State of Punjab" has already been stated to be unnecessary and would be of no consequence. That being so, the plea in that regard as raised by the appellants also fails. (Para 83). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193: AIR 2007 SC 1274: (2007) 51 AIC 623 (SC).

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

— S. 8 *See* Ss. 406, 24, 2(u) and 7, 8 & 9

— **S. 9** *See also* S. 9, Criminal Procedure Code, 1898, p. 962 in Vol. 2

— S. 9 *See* Ss. 7 and 9

See also Ss. 12, 17 and 9

See also Ss. 406, 24, 2(u) and 7, 8 & 9

[68] **— S. 9 — De facto doctrine — Judgments, decrees etc. made by a de facto judge under colour of lawful authority has the same effect as that made by a de jure judge** *— So even if the appointment of a judge is found to be invalid, held, the judgments, decrees or orders made by him*

would continue to be valid and effective — Besides, his actions cannot be impugned collaterally — Constitution of India — Arts. 233, 233-A, 226 and 21

While criminal revision and appeals were pending before the High Court, the Supreme Court quashed the appointment of the Sessions Judges, who had heard those cases, on the ground that their appointment was in violation of Art. 233 of the Constitution. Thereupon, it was urged before the High Court that the judgments rendered by those judges were void and required to be set aside. The High Court rejected the contention.

Dismissing the appeal,

Held :

A judge, de facto, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, even though his appointment is defective and may later be found to be so. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief.

There is yet another rule also based on public policy. The defective appointment of a de facto judge may be questioned directly in a proceeding to which he be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the judge except as a judge. Hence, the rule against collateral attack on validity of judicial appointments. To question a judge's appointment in an appeal against his judgment is such a collateral attack.

The de facto doctrine cannot be said to be subject to the limitation that the effect in the title of the judge to the office should not be traceable to the violation of a constitutional provision. The contravention of a constitutional provision may invalidate an appointment but the doctrine is not concerned with that. The doctrine is not a stranger to the Constitution or to the Parliament and the State Legislatures.

The 20th amendment of the Constitution is an instance where the de facto doctrine was applied by the constituent body to remove any suspicion or taint of illegality or invalidity that may be argued to have attached itself to judgments, decrees, sentences or orders passed or made by certain District Judges appointed before 1966, otherwise than in accordance with the provision of Arts. 233 and 235 of the Constitution. From the 20th amendment it cannot be necessarily inferred that, but for the amendment, the judgments, decrees etc. of the District Judges appointed otherwise than in accordance with the provisions of Art. 233 would have been void. When judicial pronouncements have already declared the law on the subject, the statutory reiteration of the law with reference to particular cases does not lead to the necessary inference that the law declared by the judicial pronouncements was not thought to apply to the particular cases but may also lead to the inference that the statute-making body was mindful of the real state of the law but was acting under the influence of excessive caution and so to silence the voices of doubting Thomases by declaring the law declared by judicial pronouncements to be applicable also to the particular cases. As a general rule the Parliament may be presumed not to make superfluous legislation. But the presumption is not a strong presumption and statutes are full of provisions introduced because *abundant cautela non nocet* (there is no harm in being cautious).

Therefore it is not possible to accept the contentions that a trial by a Sessions Judge who was appointed in violation of Art. 233 was not a trial by a Sessions Judge duly appointed to exercise jurisdiction under S. 9, Criminal Procedure Code and that the fundamental right of the appellants under Art. 21 was violated as their liberty was being taken away otherwise than in accordance with the procedure established by law. It would be a different matter if the constitution of the court itself is under challenge, but that is not the case here. *Gokaraju Rangaraju* v. *State of A.P.*, (1981) 3 SCC 132: 1981 SCC (Cri) 652: AIR 1981 SC 1473: (1981) 3 SCR 474: 1981 MLJ (Cri) 528.

Bench Strength 3. Coram: **O. Chinnappa Reddy**, *A.P. Sen* and *Baharul Islam*, JJ. [Date of decision: 15-4-1981]

[69] — Ss. 9 and 11 — Communal riots — Appointment of Presiding Judges — Post-Godhra riot cases in State of Gujarat — Matters to be considered — Directions issued for Chief Justice of Gujarat High Court to select senior judicial officers to be appointed [Para 40(*iv*)]. *NHRC* v. *State of Gujarat*, (2009) 6 SCC 767.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 1-5-2009]

[70] — Ss. 9, 13 and 18 — Fodder Scam cases — PIL — Scope of interference — Appointment of Special Judge in — Interference by Supreme Court, if warranted — Availability and scrutiny of up-to-date Annual Confidential Reports (ACRs) of judicial officer(s) concerned — *Held (per majority), Supreme Court cannot go into question of appointment of a Special Judge which is exclusively within the domain of the High Court under Arts. 233 and 235 — It is not for Supreme Court to scrutinise correctness of the decision taken by High Court, that too at the instance of third parties — If at all the petitioners had any grievance regarding appointment of any particular judicial officer, proper remedy was to approach the High Court and to bring this fact to notice of the Chief Justice — In the present case, there is no material on record to show that there was any illegality or serious infraction of any procedure or that Respondent 4 (former Chief Minister of Bihar) had any hand in appointment of the CBI (Special Judge) in question — About the conduct and integrity of the Judge concerned, nothing adverse is reported against him, though of course in some years, he has been graded as "category B" with regard to his judicial performance — These are all matters considered by the appointing Standing Committee of High Court — Hence prayer of petitioners that said Judge be replaced by another judicial officer cannot be granted — Per Kapadia, J. (dissenting), it is wrong in law for the Court to judge applicant's interest in PIL without looking at the subject-matter of his complaint — In matter of economic scams, be it security transactions or Fodder Scams or Taj Corridor, economic interest of the country is at stake — These cases involve highly complicated questions and therefore posting of the Judge plays a vital role — Choice of candidate by High Court under Arts. 233 and 235 is an administrative function and falls in the domain of public law and, therefore, that choice has to be exercised on some standard, failing which judicial review steps in — If different standards or no standards are applied, it breaks the integrity of the process and brings in discrimination and arbitrariness which violates Art. 14 and therefore attracts judicial review — The concern in present case is hence strictly with the decision-making process by which Special Judge in question was appointed and not with the merits of the allegations — The facts in the present case show that different standards were applied for the appointment of the said Special Judge as compared to two other Judges appointed at the same meeting of the Standing Committee of the High Court — Prevention of Corruption Act, 1988 — S. 3 — Constitution of India — Arts. 32, 233 and 235*

These writ petitions were filed as public interest litigation by the two petitioners who were Members of Parliament at the time of filing of the petitions. Respondents 4 and 5 were formerly Chief Ministers of the State of Bihar. It was alleged by the petitioners that they had filed writ petitions before the High Court alleging large-scale defalcation of public funds and falsification of accounts involving hundreds of crores of rupees in the Department of Animal Husbandry in the State of Bihar and pursuant to these allegations, several cases were registered by the police and investigation of these cases was later handed over to CBI. The petitioners alleged that consequent upon change of the Government at the Centre, attempts had been made to delay and interfere with the judicial process. It was alleged that the Public Prosecutors who were handling the cases were removed, and to protect the interests of Respondents 4 and 5, Rabri Devi and Lalu Prasad Yadav, respectively, a convenient prosecutor was appointed.

Respondent 5 was an accused in a case registered under the Prevention of Corruption Act, 1988. The allegation in that case was that Respondent 5 as Chief Minister of Bihar between 1990 to 1996 had acquired assets disproportionate to his known sources of income. Charge-sheet was filed in the Court of the Special Judge, CBI, Patna on 4-4-2000 under Section 13(1)(*e*) of the Prevention of Corruption Act, 1988. Respondent 4 was also charge-sheeted in the same case for abetment under Section 109 IPC read with Section 13(2) and Section 13(1)(*e*) of the Prevention of Corruption Act, 1988. This case was renumbered as Special Case No. 5 of 1998 and was pending trial in the Court of the Special Judge, CBI, Patna. The petitioners alleged that certain income tax cases of Respondents 4 and 5 were also pending before the Income Tax Appellate Tribunal (ITAT) and one D.K. Tyagi who was a member of ITAT had been hearing those cases and that Respondents 4 and 5 found it difficult to pursue the hearings before the said ITAT member and hence under their influence Mr Tyagi was sent on deputation and he was replaced by one Mr Mohanarajan who was on the verge of retirement. It was further alleged that the new member along with another member heard these cases within two weeks and orders were pronounced in favour of Respondents 4 and 5. It was also alleged that Respondent 3, namely, the Central Board of Direct Taxes did not prefer an appeal in these cases though the decision went against the Revenue. This, according to the petitioners, was to help Respondents 4 and 5 in the cases filed against them.

The petitioners also alleged that Special Case No. 5 of 1998 pending before the Special Judge, CBI was at the final stage of hearing and that the Director, CBI, presumably under pressure from the accused changed the prosecutor and appointed one Oma Shankar Singh who was only a retired Deputy Superintendent of Delhi Police and had no experience of conducting the prosecution. According to the petitioners, this was done at the fag end of the prosecution case to help the accused. The petitioners also made allegations against Respondents 1 to 3 that they were acting arbitrarily and interfering in the judicial process to benefit Respondents 4 and 5. The petitioners alleged that Respondents 4 and 5 obtained stay of proceedings of the case pending before the Special Judge from the Supreme Court, suppressing some material facts. It was alleged that Respondents 4 and 5 still wielded influence and power and, therefore, the Supreme Court should monitor the trial of the case pending before the Special Judge, CBI, at Patna.

In these writ petitions, the petitioners prayed mainly for four reliefs. The first relief prayed for was to issue an appropriate writ, order or direction monitoring the conduct of the trials relating to Fodder Scam cases' proceedings against Respondents 4 and 5 in the State of Bihar and the State of Jharkhand. The second prayer was to appoint the very same prosecutor who had been conducting the prosecution earlier and to direct the High Court to see that no prosecutor or CBI officer attached with the investigation and trial of the case was removed, harassed or victimised for discharging their duties. The petitioners also prayed that at least one inspector be provided for each Fodder case. The petitioners also prayed for cancellation of bail granted to Respondents 4 and 5. The petitioners further prayed for a direction to Respondents 1 to 3 to file an appeal against the orders passed by ITAT.

During the pendency of these writ petitions, the petitioners further alleged that the Special Judge who was trying Special Case No. 5 of 1998 involving Respondents 4 and 5, had been replaced by another Special Judge. The allegation was that one Yogender Prasad was the CBI Special Judge and he had been replaced by one Munni Lal Paswan and this according to the petitioners was deliberately done to help Respondents 4 and 5. Therefore, it was prayed that the said Special Judge be replaced by another judicial officer.

Dismissing the writ petitions and vacating all interim orders,

Held :

Per majority:

Per Balakrishnan, J.

Special Case No. 5 of 1998 has been filed against Respondents 4 and 5 alleging that they had amassed wealth disproportionate to their known sources of income while holding the post of Chief Minister of the State of Bihar. Both the petitioners are not in any way connected with this case. They are not de facto complainants in this case. They are absolutely strangers as regards the criminal cases against Respondents 4 and 5 which were pending before the Special Judge. It is for the prosecution to prove its case and Respondents 4 and 5 to deny that the allegations are not true and they did not have the disproportionate income as alleged by the prosecution. It is a criminal litigation exclusively between Respondents 4 and 5 and the State. It is also important to note that in a case of this nature nobody else has got any right to interfere especially by way of public interest litigation or else such public interest litigation would only hamper the course of justice and may cause prejudice to the accused by denying them a fair trial. This unnecessary interference in the criminal case may cause, sometimes, damage to the prosecution case also. In any view of the matter, this sort of interference in the criminal prosecution would only deny a fair trial to the accused. In this case, as early as 2004, 132 witnesses were examined on the side of the prosecution and 93 witnesses were examined on the defence side. Arguments of the prosecution were over as early as on 14-7-2004 and the defence arguments continued up to 19-7-2004. Because of the present public interest litigation, the trial could not be conducted. It is equally important to note that though the petitioners have alleged a series of irregularities, they are not supported by basic facts having solid foundation. (Paras 21 and 25)

The appointment of Shri Munni Lal Paswan as Special Judge is not challenged by the petitioners and no pleadings also made in the main writ petition. By filing a criminal miscellaneous application, and on the basis of oral arguments at the Bar the petitioners have made a series of allegations which are not borne out by any records. (Para 17)

There is no material on record to show that there was any illegality or serious infraction of any procedure in the appointment of the present CBI (Special Judge), Patna and the appointment as such cannot be challenged in a collateral proceedings and the Supreme Court cannot go into the question of appointment of a Special Judge which is exclusively within the domain of the High Court under Article 235 of the Constitution; the appointment in question having been validly made by High Court in this case. Therefore, the oral appeal of the petitioners that the present Special Judge is to be replaced by another judicial officer also cannot therefore be granted. If at all the petitioners had any grievance regarding the appointment of any particular officer, the proper remedy was to approach the High Court and to bring this fact to the notice of the Chief Justice. (Paras 17 and 26)

The entire records relating to the appointment of Shri Munni Lal Paswan as a Special Judge, CBI, Patna have been produced in this case including the confidential registers of the various officers. On perusal of these records it is found that the Standing Committee of the High Court took a decision to post Shri Munni Lal Paswan as the CBI Special Judge, Patna. Six seniormost Judges of the High Court of Patna constituted the Standing Committee of the High Court and the decision was taken in the meeting of the Committee held on 22-6-2005. (Paras 15 and 16)

The confidential reports of Shri Munni Lal Paswan from 1981 to 2003 have been produced in the Supreme Court. Of course, the confidential register of Shri Munni Lal Paswan was available only up to 2003. For some period, he was working on deputation and the inspecting Judge had not recorded the confidential registers for that period, though the confidential registers of other officers were available to the Standing Committee. The confidential register of this officer shows that it has been repeatedly recorded that this officer has maintained honesty and integrity during the period under report. About his conduct and integrity, nothing adverse is reported against him. Of course, in some of the years, this officer has been graded as "category B" with regard to his judicial performance. These are all matters considered by the Standing Committee which consists of senior Judges of the High Court. (Para 17)

Per Lakshmanan, J.

Public interest litigation is meant for the benefit of the lost and lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the court. PILs are not meant to advance the political gain and also settle scores under the guise of a public interest litigation and to fight a legal battle. PIL is totally foreign to pending criminal proceedings. (Para 58)

The petitioners are waging a political battle against Respondents 4 and 5 through the medium of public interest litigation. The venue for political battle can never be the Supreme Court by filing a writ petition under Article 32 of the Constitution. (Para 60)

In the above case, the Standing Committee has taken a decision to appoint Munni Lal Paswan and other officers after scrutinising the records, ACRs, etc. in accordance with Articles 233 and 235 of the Constitution which is the prerogative right of the Standing Committee and the High Court, and when a decision is taken it is not for the Supreme Court to scrutinise the correctness of the decision, that too at the instance of third parties. (Para 52)

The records submitted by the High Court in regard to the officers including Munni Lal Paswan have been perused. There is absolutely no adverse entry against Munni Lal Paswan and that poor record if any is not the record of integrity and no gradation has been given to officers after 1997 onwards including Paswan. The resolution of the Standing Committee of the High Court was also placed before the Full Court which also approved the same. The records would only go to show that Respondent 4 had no hand in the appointment of judges. (Paras 47, 48 and 58)

Per Kapadia, J. (dissenting)

The test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. Under this test it is necessary to consider the subject-matter to which the PIL relates. It is wrong in law for the court to judge the applicant's interest without looking at the subject-matter of his complaint. If the petitioner shows failure of public duty, the court would be in error in dismissing his PIL. The question of sufficient interest of the petitioner cannot be considered in the abstract. It must be taken together with the legal and factual context. (Paras 77 and 78)

True value of a decision lies in its propriety and not in the decision being right or wrong. In this case the concern is not with the merits of the allegations but strictly with the decision-making process in the posting of Mr Munni Lal Paswan, Special Judge, CBI, Patna. The allegations made in the petitions are not only against the accused, they are also directed against a number of functionaries. It is, therefore, made clear that this decision is only to rectify the procedure of decision-making at the High Court level so that in future such anomalies do not arise. (Paras 76, 100 and 102)

It is important to bear in mind that in the matter of economic scams, be it security transactions or Fodder Scams or Taj Corridor it is the economic interest of the country which is at stake. These cases are highly complicated in which complicated questions are involved and, therefore, posting of the Judge plays a vital role. (Para 98)

Institutional autonomy of the High Court on its administrative side under Article 233 and Article 235 is a well-known concept. It is based on public trust and confidence. Existence of the power, as a concept, is different from exercise of power. Promotions and posting of judicial officers fall within the domain of the High Court on its administrative side. At the same time it is important to note that choice of the candidate falls in the domain of public law and, therefore, that choice has to be exercised on some standard, failing which judicial review steps in. Standards of evaluation in matters of promotion and posting have to be uniformly applied otherwise arbitrariness comes in. Integrity of the evaluation process has to be maintained. If different standards or no standards are applied it breaks the integrity of the process which brings in discrimination and arbitrariness which violates Article 14 and therefore attracts judicial review. (Para 87)

In the present case it needs to be ascertained whether the standards applied to evaluate Mr J. P. Ratnesh and Mr Ram Niwas Prasad, trial Judges, appointed as Special Judges vide minutes of the meeting of the Standing Committee dated 22-6-2005, were equally applied while posting Mr Munni Lal Paswan as Special Judge, CBI, Patna (Fodder Scam cases). (Para 88)

Ishwar Chand Jain case, (1999) 4 SCC 579, emphasises the importance of the remarks given by the Inspecting Judge. The object of inspection is to assess the work performed, capability, competency besides integrity of the candidate. These gradations/categorisations given by the Inspecting Judges are required to be placed before the Full Court. There is a prescribed form in which the Confidential Reports (CRs) are recorded. That form indicates various parameters, namely, knowledge of law, whether the officer is hardworking, the rating to be given in respect of the judgments, namely, A (outstanding), A (very good), B (good) and B (satisfactory). The point to be noted is that apart from honesty and integrity there are other parameters to be fulfilled by the judicial officers and that is where the disposals, ability and all other relevant factors come in. (Paras 97 and 92)

In the present case, gradation/categorisation was done for two out of three judicial officers when they were posted and no gradation/categorisation has been done after 1990 by the Inspecting Judge vis-à-vis the judgments of Mr Munni Lal Paswan. When Mr Paswan was promoted as ADJ there was no categorisation available. While the remarks of the Inspecting Judge, in the case of Mr J.P. Ratnesh and Mr Ram Niwas Prasad were duly updated when they were placed before the Standing Committee of the High Court. (Paras 97, 90 and 95)

The consolidated statement showing the out-turn of the work done by Mr Paswan during the period 1998-2004 and 2005 refers to various parameters like disposal, remarks of PO, remark of DJ, etc. as approved by the court. These remarks have been approved by the District Judge and by the courts. These remarks are heavily weighed against Mr Paswan. It is not clear whether these remarks were ever noticed by the Committee and if not they need to be relooked at by the High Court. (Para 91)

In the circumstances, it seems that the procedure followed by the High Court in the meeting on 22-6-2005 wherein Shri Munni Lal Paswan was appointed as Special Judge did not meet the above criteria. (Para 99)

In the circumstances, a request is being made to the Chief Justice of the Patna High Court to convene an urgent meeting of Administrative Judges and complete the exercise of giving appropriate gradation/categorisation after looking at the judgments and orders delivered by the Judge concerned, Mr Paswan. It is clarified that this is just a request to the High Court and not a direction so that the evaluation standards are commonly applied to all the three candidates. (Paras 99 and 107). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength 3. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], **JJ.** [Date of decision: 21-8-2006]

Union of India v. Sushil Kumar Modi, (1998) 8 SCC 661: 1999 SCC (Cri) 84; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Ashok Kumar Pandey v. State of W.B., (2004) 3 SCC 349; T.N. Godavarman Thirumulpad (98) v. Union of India, (2006) 5 SCC 28; Dattaraj Nathuji Thaware v. State of Maharashtra, (2005) 1 SCC 590; S.P. Gupta v. Union of India, 1981 Supp SCC 87; High Court of Punjab & Haryana v. Ishwar Chand Jain, (1999) 4 SCC 579: 1999 SCC (L&S) 881, relied on

[71] — Ss. 9, 13 and 18 — Appointment of Special Judges — Proper mode and procedure for — Nature of power exercised by High Court in such appointment — Susceptibility to judicial review (per Kapadia, J.) — *Need for integrity of process, uniform application of standards and non-arbitrariness in selection of candidates — Importance of remarks made by inspecting Judge in Annual Confidential Reports (ACRs) of candidates concerned — Choice of candidate by High Court under Arts. 233 and 235 is an administrative function and falls in domain of public law and, therefore, that choice has to be exercised on some* *standard, failing which judicial review steps in — If different standards or no standards are applied it breaks the integrity of the process and brings in discrimination and arbitrariness which violates Art. 14 and therefore attracts judicial review — Prevention of Corruption Act, 1988 — S. 3 — Constitution of India — Arts. 233, 235 and 14. Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength **3**. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

High Court of Punjab & Haryana v. Ishwar Chand Jain, (1999) 4 SCC 579: 1999 SCC (L&S) 881, relied on

[72] — Ss. 9(1) and (3) — Sessions Judge — Includes Additional Sessions Judge — He has all the power and jurisdiction of the Sessions Judge to try offences enumerated under the Code. *Abdul Mannan* v. *State of W.B.*, (1996) 1 SCC 665: 1996 SCC (Cri) 197: AIR 1996 SC 905.

Bench Strength **3**. Coram: *K. Ramaswamy, Faizan Uddin* and *B.N. Kirpal*, JJ. [Date of decision: 5-12-1995]

— S. 9(3) *See* Ss. 9(1) and (3)

[73] — S. 9(6) — High Court's power to fix venue of trial inside jail premises — Circumstances warranting such course of action — Law and order problem — Expeditious trial of cases — Held (*per curiam*), are valid considerations. *Mohd. Shahabuddin* v. *State of Bihar*, (2010) 4 SCC 653.

Bench Strength **2**. Coram : **Dalveer Bhandari**[1] and **Dr. M.K. Sharma**[2], JJ. [Date of decision : 25-3-2010]

[74] — S. 9(6) — High Court's power to fix venue of trial inside jail premises — Held (*per curiam*), power can be exercised in respect of pending cases. *Mohd. Shahabuddin* v. *State of Bihar*, (2010) 4 SCC 653.

Bench Strength **2**. Coram : **Dalveer Bhandari**[1] and **Dr. M.K. Sharma**[2], JJ. [Date of decision : 25-3-2010]

[75] — S. 9(6) — Interpretation of — Precision in language used in statute — *Held (per Sharma, J.), the legislature is especially precise and careful in its choice of language — If a statutory provision is enacted by legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation possible is that such was the intention of the legislature — S. 9(6) CrPC interpreted applying this principle*

It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. (Para 179)

Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision. (Para 180). *Mohd. Shahabuddin* v. *State of Bihar*, (2010) 4 SCC 653.

Bench Strength **2**. Coram : **Dalveer Bhandari**[1] and **Dr. M.K. Sharma**[2], JJ. [Date of decision : 25-3-2010]

[76] — S. 9(6) — Nomenclature/Form — Wrong mentioning of relevant provisions — Impact if any on validity — *Held (per Sharma, J.), the order remains valid provided there is some other provision to support that order — Further held, there is a statutory presumption under S. 114 Ill. (e), Evidence Act, 1872 that official acts have been performed regularly — Bengal, Agra and Assam Civil Courts Act, 1887 (12 of 1887) — Evidence Act, 1872, S. 114 Ill. (e)*

If a notification quotes a wrong section and refers to a wrong provision, the same cannot be held to be invalid if validity of the same could be upheld on the basis of some other provision. When an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its power under any other provision or rule, and validity of such impugned order must be judged on a consideration of its substance and not its form. The principle is that act of a public servant must be ascribed to an actual existing authority under which it would have validity rather than to one under which it would be void. In such cases, the court will always rely upon Section 114 Illustration (*e*) of the Evidence Act to draw a statutory presumption that official acts are regularly performed and if satisfied that the action in question is traceable to a statutory power, the courts will uphold such State action. (Paras 206 and 208)

Although the State Government could not have exercised powers under the provisions of Sections

13 and 14(1) of the Bengal, Agra and Assam Civil Courts Act, 1887 for making available the jail premises for the purpose of holding the Sessions Court, the provisions of CrPC would be applicable under Section 9(6) thereof. (Para 209). *Mohd. Shahabuddin* v. *State of Bihar*, (2010) 4 SCC 653.

Bench Strength **2**. Coram : **Dalveer Bhandari**[1] and **Dr. M.K. Sharma**[2], JJ. [Date of decision : 25-3-2010]

N. Mani v. Sangeetha Theatre, (2004) 12 SCC 278; P. Balakotaiah v. Union of India, AIR 1958 SC 232; Lekhraj Sathramdas Lalvani v. Custodian-cum-Managing Officer, AIR 1966 SC 334: (1966) 1 SCR 120; Peerless General Finance and Investment Co. Ltd. v. RBI, (1992) 2 SCC 343; BSE Brokers' Forum v. SEBI, (2001) 3 SCC 482, relied on

[77] — S. 9(6) — Notification issued by State Government for making available jail premises for the purpose of holding the Sessions Court after notification was issued by High Court under S. 9(6) — Held (*per curiam*), valid. *Mohd. Shahabuddin* v. *State of Bihar*, (2010) 4 SCC 653.

Bench Strength **2**. Coram : **Dalveer Bhandari**[1] and **Dr. M.K. Sharma**[2], JJ. [Date of decision : 25-3-2010]

[78] — S. 9(6) — Place of sitting of Sessions Court — Notification by High Court — Delay in publishing of notification in Official Gazette and in furnishing copy to accused — Consequences if any — Need for prejudice to accused — *Held (per curiam), the said delay did not vitiate the trials against appellant, particularly when no prejudice was caused to appellant to defend himself — Moreover the said involving mixed questions of fact and law and pure questions of fact, could not be raised before the Supreme Court for the first time — Constitution of India — Article 136*

Per Dalveer Bhandari, J.:

Initially the copy of the notification was not given to the appellant but on the directions of the Supreme Court the same was made available to the appellant. So there is no surviving grievance of the appellant as far as this aspect of the matter is concerned. [Paras 143(*i*) and 132]

Per Dr. M.K. Sharma, J.:

The High Court took all necessary steps to get the notification issued and published in the Official Gazette. If however Government Press took some time to get the notification published in the Official Gazette, the High Court cannot be blamed for it, nor could the notification be declared to be void particularly when it was so published in the Official Gazette, as it is established from the records, although after some delay. (Para 199)

The issue being raised, for the first time, at the time of hearing of the case before the Supreme Court cannot be permitted to be raised for the first time the reason that the issue being whether the Notification dated 20-5-2006 was supplied to appellant and the same was published in the gazette or not, is not a pure question of law but a mixed question of law and fact. The said facts were required to be urged evidentially before the courts below. Unless such a factual foundation is available, it is not possible to decide such a mixed question of law and fact. (Para 188)

The appellant also failed to prove and had also failed to plead before the writ court that the notification issued by the High Court is void on the ground of non-publication of the same in the Official Gazette. The appellant has not even pleaded such ground in the writ petition or in the memorandum of appeal nor placed any evidence to show that any effective order which was prejudicial to him was passed in any of the criminal cases during the aforesaid period. Instead, he took part in all the proceedings without any protest and now at the time of argument is making an effort to take up such issues, which again involve questions of fact, and therefore, cannot be allowed to be raised only at this stage. (Para 200). *Mohd. Shahabuddin* v. *State of Bihar*, (2010) 4 SCC 653.

Bench Strength **2**. Coram : **Dalveer Bhandari**[1] and **Dr. M.K. Sharma**[2], JJ. [Date of decision : 25-3-2010]

Shakti Tubes Ltd. v. State of Bihar, (2009) 7 SCC 673, relied on

[79] — S. 9(6) — Place of sitting of Sessions Court — Place notified by High Court vis-à-vis place decided by Sessions Court itself — Nature of power exercised by High Court vis-à-vis power exercised by Sessions Court — Natural justice/audi alteram partem/hearing — Requirements of, if any — *Held (per curiam), High Court exercises administrative power under first limb of S. 9(6) whereas Sessions Court exercises judicial power under second limb — Sessions Court, by virtue of very language of second limb, is required to afford opportunity of hearing to parties — Held (per Bhandari, J.), power of High Court under S. 9(6), being an administrative power, is subject to test of judicial review of administrative decisions — There is no statutory right of appellant to be heard — However, common law and principles laid down in the Constitution require that even in administrative action there must be minimum standards that are to be maintained — Thus, it has to be seen whether right to fair hearing has been denied to the appellant in exercise of power by High Court under S. 9(6) even if there is no statutory requirement for it — Principles of natural justice are essential to the framework of our laws and a protection against arbitrary actions — There is every duty of courts to judicially review administra-*

tive actions — However, this is usually not to be applied blindly — High Court in view of extraordinary facts and circumstances of a particular case is empowered to change venue of a pending case/trial without hearing appellant and this would not violate appellant's fundamental rights under Arts. 14 and 21 or any other provision of the Constitution — On facts, there was no violation of principles of natural justice in shifting trials of cases of appellant from a regular court to a Special Court — Held (per Sharma, J. partly disagreeing on law but entirely concurring on facts), the legislature has consciously excluded applicability of principles of audi alteram partem in the first part of S. 9(6) and thus has omitted the requirement of hearing when High Court exercises that power — An administrative order when passed by a competent authority may not necessarily be required to be issued only after due compliance with principles of natural justice — Hence, High Court was under no requirement to follow and to comply with the rule of audi alteram partem before issuing the impugned order — Further held (per Sharma, J.), power of Sessions Court under second limb of S. 9(6) is an exception to the general rule that place of sitting should be determined by High Court — Such an interpretation flows from words "ordinarily" and "but" occurring in S. 9(6) — Sessions Court's power being an exception has to be construed strictly — Such power can be exercised only when "it will tend to the general convenience of the parties and witnesses" — Compared to this, High Court's power is much wider — On facts held (per curiam), notifications issued by High Court and State Government that all sessions trials pending against the appellant would be conducted inside jail premises, were valid

The appellant was aggrieved by Notification dated 20-5-2006 issued by Patna High Court under Section 9(6) of the Criminal Procedure Code, 1973, declaring that premises of District Jail, Siwan, would be the place of sitting of the Court of Session for trial of sessions cases pending against the appellant. The reason given in the Notification for selecting the District Jail as the venue for conducting trials against the appellant was the "expeditious trial of sessions cases". Pursuant to this Notification, the State Government also issued two notifications making available the jail premises for conducting trial against the appellant.

The appellant challenged the Notification dated 20-5-2006 inter alia on the ground that no opportunity of hearing was given to him before issuing the notification. The High Court dismissed the appellant's writ petition.

Dismissing the appeal,

Held:

Per Bhandari, J.

Since exercise of power under Section 9(6) is an administrative function, the test is whether decision of the High Court stands up to the test of judicial review of administrative decisions. Wording of Section 9(6) shows that there is no need for the High Court to give a hearing while deciding venue of trial. It is only if Sessions Court is moving the place of trial that parties have a right to a hearing. There is no statutory right for the appellant to be heard. However, common law and the principles laid down in the Constitution lay down that even in administrative action there must be minimum standards that are to be maintained. Thus, it has to be seen whether right to fair hearing has been denied to the appellant even if there is no statutory provision for it. The principles of natural justice are essential to the framework of our laws and a protection against arbitrary actions. There is every duty of the courts to judicially review administrative actions. However, this is usually not to be applied blindly. (Paras 91 to 94 and 97)

There are situations where the action of the State is prima facie void and therefore has to be set aside. If the denial of a public trial was a prima facie case of vitiation of natural justice, the court would be justified in exercising judicial review. However, when there is no prima facie violation of the principles of natural justice then one must test whether there is need for a judicial review of the orders of shifting the trials. In the present case, there is no violation of the principles of natural justice in shifting the trials of the cases of the appellant from a regular court to a Special Court. (Paras 99 to 101)

The High Court in view of the extraordinary facts and circumstances of a particular case is empowered to change the venue of a pending case/trial without hearing the appellant and this would not violate the appellant's fundamental rights under Articles 14 and 21 or any other provision of the Constitution. [Para 143(*iv*)]

The decision to hold the trials of cases of the appellant in jail was taken in pursuance to the Notification dated 20-5-2006 issued by the High Court of Patna. The State Government issued two Notifications on 7-6-2006 in pursuance to the Notification of the High Court dated 20-5-2006. It became imperative for the State to issue the said notifications because the new venue of the trial i.e. Siwan Jail was not within the control of the High Court. These three notifications, one issued by the

State Government on 7-6-2006 are valid and were issued in consonance with the provisions of law. [Paras 143(*ii*) and (*iii*)]

A large number of the appellant's supporters may create unrest in front of courtroom and much larger security would be required to protect witnesses, court officers and the appellant. The letter written by the Superintendent of Police of Siwan indicates that it is not possible to hold the appellant's trials in open court as it may affect trials of other civil and criminal cases that are going on in the same court building. There is no violation of principles of natural justice in shifting trials of cases of the appellant from a regular court to a Special Court. In the instant case apart from the appellant's 38 lawyers, the public and the press had access to the court proceedings. Siwan Jail is only one kilometre from the Siwan Court. The court proceedings were regularly reported in the press. So in the instant case no real prejudice has been caused to the appellant. [Paras 100, 109, 111, 117, 139 to 142 and 143(*v*)]

Per Sharma, J. (partly disagreeing on law but entirely concurring on facts)

The power conferred on the High Court under Section 9(6) is the power to determine the place or places where the Court of Session should ordinarily hold its sittings. The second part of Section 9(6) which immediately follows the first part opens with the word "but", thereby carving out an exception to the general rule that the venue of Court of Session should be the place notified by the High Court. That the power of Court of Session to fix the venue is an exception to the aforesaid general rule is also indicated by the use of the word "ordinarily" in the first part of Section 9(6) CrPC. The Court of Session is endowed with power to hold its sittings at any place in a Sessions Division other than that notified by the High Court. However, being an exception, CrPC specifically mandates in the second part of Section 9(6) for observance of a special procedure contemplating compliance with the rule of audi alteram partem and also for obtaining consent of parties before the Court of Session may hold its sittings at a place other than the place or places notified by the High Court. Being an exception to the general rule, the power of the Court of Session to change venue of a trial is circumscribed and can be exercised by the Court of Session only on fulfilment of the aforesaid conditions and only on the ground that such change in venue of trial will tend to the general convenience of parties and witnesses and cannot be exercised for any other purpose or on any other ground. (Paras 167 and 168)

The said power of the Sessions Court can be exercised only with reference to a "particular case" which connotes a single or specific case as opposed to a bunch or class of cases. Being an exception to the general rule, the conditions, subject to fulfilment of which power to shift venue of trial may be exercised by Court of Session, have to be strictly construed. Where conditions specified under the second part of Section 9(6) of the Code are not complied with, the Court of Session has no power to shift venue. In such a case, the power of shifting the venue continues to lie with the High Court. In the present case, essential conditions ingrained in second part of Section 9(6) are not applicable inasmuch as neither inconvenience to the parties or witnesses was ever perceived or recorded by the Court of the Additional Sessions Judge nor was the venue of trial shifted for a particular case. On the contrary, it was shifted for the entire class of cases that were pending against the appellant, by the High Court. (Paras 169 and 170)

It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. (Para 179)

Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision. (Para 180)

The power of the High Court under Section 9(6) to notify a particular place or places where the Court of Session should ordinarily hold its sitting is an administrative power unlike the power of the Court of Session under the second part of Section 9(6) which is judicial in nature. Being so, the High Court was under no obligation to observe rule of audi alteram partem. The second part of Section 9(6) expressly requires the Court of Session to afford opportunity of hearing but there is no such requirement in first part. The omission is to be construed as a conscious decision on the part of the legislature for it intended to exclude such a requirement when such power is to be exercised by the High Court. An administrative order when passed by a competent authority may not necessarily be required to be issued only after due compliance with the principles of natural justice. (Paras 173, 177 and 178)

The intention of the legislature for providing an opportunity of hearing in matters of transfer of criminal cases can be gathered from the language used in Section 9(6) wherein the legislature desired that there should be an opportunity of hearing that is so specifically stated in the language itself and where the legislature desired that there should be a power of the High Court to fix place or places of sittings of a Sessions Court for holding its trial, it has so mentioned explicitly by excluding the rules of natural justice from its ambit thereby excluding the principles of audi alteram partem. (Para 174)

On a detailed and proper interpretation of Section 9(6) CrPC there can be only one opinion that it was not necessary for the High Court to observe or comply with the rule of audi alteram partem before notifying a shift in the venue of the trial. Consequently, the High Court was under no requirement to follow and to comply with the rule of audi alteram partem before issuing the impugned Notification dated 20-5-2006. (Para 181)

Power under Section 9(6) is vested in the High Court and in exercise of the said power the High Court had issued a Notification on 20-5-2006 which was also published in the Official Gazette. The subsequent notification issued by the State of Bihar appears to be a surplusage, which was issued for making available the jail premises for the purpose of holding the Sessions Court. The competent authority as envisaged under law having issued a notification for constituting and establishing a Sessions Court within District Jail, Siwan, any further notification issued by the State Government making the jail premises available for the said purposes cannot be said to be illegal and void. (Para 203)

By issuing one of the two impugned notifications the State of Bihar, in exercise of its powers conferred under Section 11 CrPC and in consultation with the Patna High Court, was pleased to establish a Court of Judicial Magistrate, First Class inside District Jail, Siwan to hold its sitting inside the jail premises for the trial of cases pending against the appellant in the Court of the Judicial Magistrate, First Class. The impugned notification satisfies all the requirements and all the four corners as envisaged under Section 11 CrPC and, therefore, the said notification is legal and valid inasmuch as the same was issued by the competent authority and also in full compliance with the requirements and the safeguards provided in the said provisions. (Para 201)

There is no infirmity in establishing both the Special Courts i.e. the Court of the Additional District and Sessions Judge to try sessions cases pending against the appellant and the Court of the Judicial Magistrate, First Class to try the cases pending against the appellant in the Court of the Judicial Magistrate, First Class, inside the premises of District Jail, Siwan as the notification under Section 9(6) was issued in accordance with the provisions of law by the High Court of Patna and subsequent notification was also issued by the Government of Bihar in consultation with the Patna High Court. (Para 204)

Expeditious disposal of cases is also a factor and a necessary concomitant to administration of justice and hallmark of fair administration of justice. Since venue of trial of a group or a class of cases was shifted by establishing and constituting a court within District Jail, Siwan, the same cannot be said to be void or invalid in any manner. (Para 211)

The correspondence spells out why the trial of all the appellant's cases should be held at one place. The reasons given in the aforesaid communications were sufficient to arrive at a conclusion which was rightly done by the High Court to have the trial of all the appellant's cases pending against him shifted. (Para 212)

So far as the contention as to whether or not such power as envisaged under Section 9(6) CrPC could be exercised in a pending case is concerned, there is no reason as to why the said power should not be applicable even to pending cases. (Para 212). *Mohd. Shahabuddin* v. *State of Bihar*, (2010) 4 SCC 653.

Bench Strength **2**. Coram : **Dalveer Bhandari**[1] and **Dr. M.K. Sharma**[2], JJ. [Date of decision : 25-3-2010]

Kehar Singh v. State (Delhi Admn.), (1988) 3 SCC 609: 1988 SCC (Cri) 711; Sahai Singh v. Emperor, AIR 1917 Lah 311; State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364: 1996 SCC (L&S) 717; Wiseman v. Borneman, 1971 AC 297 (HL); R. v. Gaming Board for Great Britain, ex p Benaim, (1970) 2 QB 417: (1970) 2 WLR 1009: (1970) 2 All ER 528 (CA); Alfred Thangarajah Durayappah of Chundikuly v. W.J. Fernando, (1967) 2 AC 337 (CA); Sheppard v. Maxwell, 16 L Ed 2d 600: 384 US 333 (1966); Press-Enterprise Co. v. Superior Court, 92 L Ed 2d 1: 478 US 1 (1986); State of Oregon v. James Donald Jackson, 178 or App 233: 36 P 3d 500 (2001); Stephen Gary Howard v. Commonwealth of Virginia, 6 Va App 132 (1988); Adolph Dammerau v. Commonwealth of Virginia, 3 Va App 285 (1986); People v. Robert England, 83 Cal App 4th 772 (2000); Malloch v. Aberdeen Corpn., (1971) 1 WLR 1578: (1971) 2 All ER 1278 (HL); K.L. Tripathi v. SBI, (1984) 1 SCC 43: 1984 SCC (L&S) 62; George v. Secy. of State for the Environment, (1979) 77 LGR

689 (CA); R. Balakrishna Pillai v. State of Kerala, (2000) 7 SCC 129: 2000 SCC (Cri) 1293; Jankinath Sarangi v. State of Orissa, (1969) 3 SCC 392; Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764: 2005 SCC (L&S) 1020; Union of India v. Col. J.N. Sinha, (1970) 2 SCC 458; Haradhan Saha v. State of W.B., (1975) 3 SCC 198: 1974 SCC (Cri) 816; Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545; Carborundum Universal Ltd. v. CBDT, 1989 Supp (2) SCC 462; Ansal Properties & Industries Ltd. v. State of Haryana, (2009) 3 SCC 553, relied on

Scott v. Scott, 1913 AC 417: (1911-13) All ER Rep 1 (HL); ECIL v. B. Karunakar, (1993) 4 SCC 727: 1993 SCC (L&S) 1184: (1993) 25 ATC 704; A.K. Kraipak v. Union of India, (1969) 2 SCC 262, referred to

Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1: (1966) 3 SCR 744; Maneka Gandhi v. Union of India, (1978) 1 SCC 248; DTC v. Mazdoor Congress, 1991 Supp (1) SCC 600: 1991 SCC (L&S) 1213; D.K. Yadav v. J.M.A. Industries Ltd., (1993) 3 SCC 259: 1993 SCC (L&S) 723; Krishan Lal v. State of J&K, (1994) 4 SCC 422: 1994 SCC (L&S) 885: (1994) 27 ATC 590; State of Karnataka v. Kuppuswamy Gownder, (1987) 2 SCC 74: 1987 SCC (Cri) 280; Ranbir Yadav v. State of Bihar, (1995) 4 SCC 92: 1995 SCC (Cri) 728; Zahira Habibullah H. Sheikh v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999; Ranjit Singh v. Hon'ble the Chief Justice, ILR 1985 Del 388; State of W.B. v. Anwar Ali Sarkar, AIR 1952 SC 75: 1952 Cri LJ 510, cited

Durga Das Basu: Administrative Law, 6th Edn. 2004, p. 288, relied on

State of W.B. v. Anwar Ali Sarkar, AIR 1952 SC 75: 1952 Cri LJ 510, distinguished

[80] — S. 9(6) — Recoveries made before arrest — Whether admissible in evidence — "Person must be accused of an offence" and "in custody of a police officer" — Implication of — *Held, not essential that accused must be under formal arrest — In instant case, appellants were under grave suspicion suspected to be accused in kidnapping and murder; V and J had attempted to run away, while S was in process of destroying evidence, when they were apprehended, put in police custody, whereafter they made disclosure statements — Hence, such incriminating material admissible in evidence — Consequently, submission that S. 27 would be operable only after formal arrest under S. 46(1) CrPC, rejected — Evidence Act, 1872*, S. 27 (Paras 36 to 42). *Vikram Singh* v. *State of Punjab*, (2010) 3 SCC 56.

Bench Strength **2**. Coram : **H.S. Bedi** and *J.M. Panchal*, JJ. [Date of decision : 25-1-2010]

State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 1125: 1960 Cri LJ 1504, followed

Pakala Narayana Swami v. King Emperor, (1938-39) 66 IA 66: AIR 1939 PC 47, relied on

[81] — S. 9(6) — Sessions Court's power to decide place of its sitting — *Held (per Sharma, J.), is exercisable in a single or specific case as opposed to a bunch or class of cases [though the High Court's power is not so restricted. Mohd. Shahabuddin* v. *State of Bihar*, (2010) 4 SCC 653.

Bench Strength **2**. Coram : **Dalveer Bhandari**[1] and **Dr. M.K. Sharma**[2], JJ. [Date of decision : 25-3-2010]

[82] — Ss. 9(6), 194, 327 and 2(p) — High Court's order under S. 9(6) for holding sessions trial in jail premises, held, valid and legal — High Court's power to notify place or places of sitting of Sessions Court — *Nature and scope of — Whether High Court competent to fix place of sitting of Sessions Court at a place other than the ordinary place of sitting for a particular case only — High Court need not afford hearing to accused before fixing place of sitting of Sessions Court — "Open Court" in S. 327 — Meaning of — Restrictions which can be imposed by Court — Sessions Court holding trial within jail premises pursuant to order of High Court under S. 9(6), having regard to the unprecedented violent situation then prevailing, held, deemed to be an open court — Scope of High Court's power to issue 'special order' under S. 194 — High Court can allot a case to a particular Judge*

Per Oza, J.

Under S. 9(6), CrPC the High Court has the jurisdiction to specify the place or places where ordinarily a Court of Session may sit within the division. So far as any particular case is to be taken at a place other than the normal place of sitting it is only permissible under the second part of subclause with the consent of parties and that decision has to be taken by the trial court itself. Thus by the notification issued under S. 9(6) the High Court has authority only to fix the place of sitting of the Sessions Court generally. Therefore, by the notification under S. 9(6) in the present case, the High Court could be taken to have notified that Tihar Jail is also one of the places of sitting of the Sessions Court in the Sessions Division ordinarily. That means apart from the two places Tis Hazari and New Delhi, the High Court by notification also notified Tihar Jail as one of the places where ordinarily a Sessions Court could hold its sittings. In this view of the matter, there is no error if the sessions trial is held in Tihar Jail after such a notification has been issued by the High Court.

The last part of S. 194, CrPC authorises the High Court to allot the case to a particular Judge keeping in view the fact that in certain cases the Sessions Judge may not like to allot and may report to the High Court or either of the parties may move an application for transfer and under these circumstances it may become necessary for the High Court to allot a particular case to a particular Judge.

As soon as a court holds trial in a venue fixed for such trial, it is deemed to be an open court under S. 327, irrespective of the place of trial — whether it is a private house or a jail and everyone has a right to go and attend the trial.

Unless on facts it is established that what is provided in S. 327 was prevented or was not permitted, i.e. unless there is evidence or material on record to suggest that on the facts in the particular case public at large was not permitted to go or someone was prevented from attending the trial or that the trial was in camera, merely because trial was held at a particular place it could not be said to be a trial which was not open to public. In this case the Delhi High Court by notification made Tihar Jail also as one of the places where a Sessions Court could ordinarily sit and in this case therefore, the trial was held at this place. There is no material at all to suggest that anyone who wanted to attend the trial was prevented from so doing or one who wanted to go into the courtroom was not allowed to do so and in absence of any such material on actual facts all these legal arguments lose their significance. In Tihar Jail a person has to pass through two gates, he has to sign on the gate and has to have a pass or a clearance. But in the modern times especially in the context of the circumstances as they exist, it could not be said that trial in Tihar Jail ceased to be a public trial. Merely suggesting the difficulties in reaching the jail will not be enough. In fact without an appropriate order it could not be said that what is contemplated under S. 327 or under Art. 21 was not made available to the accused in this case and therefore it could not be contended that there was any prejudice at the trial.

The concept of right to open trial under Art. 21 is based on the American decisions where the concept of open trial has developed in due course of time whereas so far as India is concerned here even before the Constitution our criminal practice always contemplated a trial which is open to public. The procedure established by law within the meaning of Art. 21 is the procedure established by law as was on the day on which the Constitution was adopted. The procedure established by law even before the Constitution was enacted was provided under S. 352 of the old CrPC which corresponds to S. 327 of the new CrPC. It cannot be contended that by repealing the old CrPC the effect of the procedure could be taken away.

Per Ray, J. (concurring)

The High Court can fix a place other than the court where the sittings are ordinarily held if the High Court so notifies for the ends of justice. However, the use of the word "ordinarily" by itself signifies that the High Court in exercise of its powers under S. 9(6) may order the holding of court in a place other than the court where sittings are ordinarily held if the High Court thinks it expedient to do so and for other valid reasons such as security of the accused as well as of the witnesses and also of the court. The order of the High Court notifying the trial of a particular case in a place other than the court is not a judicial order but an administrative order. In this case because of the surcharged atmosphere and for reasons of security, the High Court ordered that the trial be held in Tihar Jail. Therefore, in view of S. 327, CrPC it cannot be said that the trial is not an open trial because of its having been held in Tihar Jail as there is nothing to show that the public or the friends and relations of the accused were prevented from having access to the place of trial provided the space of the court could accommodate them. Though public trial or trial in open court is the rule yet in cases where the ends of justice would be defeated if the trial is held in public, as it is in the present case, the court has got inherent jurisdiction to hold trial in camera. Therefore, the holding of trial in jail cannot be said to be illegal and bad and the entire trial cannot be questioned as vitiated if the High Court thinks it expedient to hold the trial in jail.

Per Shetty, J. (concurring)

Sub-section (6) of S. 9, CrPC can be divided into two parts. The first part provides power to the High Court to notify the place or places for the Court of Session to hold its sittings for disposal of cases. The second part deals with the power of the Court of Session in any particular case to hold its sittings at a place not notified by the High Court. The first part providing power to High Court is an administrative power, intended to further administration of justice. The second part relating to the power of the Sessions Court is a judicial power of the Court intended to avoid hardship to the parties and witnesses in a particular case. One is independent of and unconnected with the other. The judicial power of the Court of Session is of limited operation, the exercise of which is conditioned by mutual consent of the parties in the first place. Secondly, the exercise of that power has to be narrowly tailored to the convenience of all concerned. It cannot be made use of for any other purpose. This limited judicial power of the Court of Session should not be put across to curtail the vast administrative power of the High Court. Therefore, the argument that the first part of S. 9(6) should be read along with the second part thereof has, in the context, no place.

The words "place or places" used in S. 9(6) apparently indicate that there could be more than one place for the sitting of the Court of Session. The different places may be notified by different notifications. There may be a general notification as well as a special notification. The general notification may specify the place for the class of cases where Court of Session shall sit for disposal. The special notification may specify the same place or a different place in respect of a particular case.

The High Court while appointing under S. 9(4), CrPC a Sessions Judge of one division to sit at such place or places in another division for disposal of cases, need not direct him to sit only at the ordinary place of sittings of the Court of Session. There is no such constraint in S. 9(4). The High Court may also issue a separate notification under S. 9(6) specifying the place or places where that Sessions Judge should sit for disposal of cases.

Section 194 provides power to the High Court to make a special order directing an Additional or Assistant Sessions Judge of the same division to try certain specified cases or a particular case. If the High Court thinks that the Additional or Assistant Sessions Judge should hold the court at a specified place, a separate notification could be issued under S. 9(6).

It is unnecessary to hear the accused or anybody else before exercising the power under S. 9(6). Such a hearing, however, is required to be given by the Court of Session if it wants to change the normal place of sitting, in any particular case, for the general convenience of parties and witnesses.

The right of an accused to have a public trial in our country has been expressly provided in the Code. No right similar to the Sixth Amendment to the U.S. Constitution has been guaranteed to the accused under our Constitution.

The argument that jail can never be regarded as a proper place for a public trial is too general. Jail is not a prohibited place for trial of criminal cases. Nor the jail trial can be regarded as an illegitimate trial. There can be trial in jail premises for reasons of security to the parties, witnesses and for other valid reasons. The enquiry or trial, however, must be conducted in open court.

The main part of sub-section (1) of S. 327, CrPC embodies the principle of public trial. It significantly uses the words "open court". It means that all justice shall be done openly and the courts shall be open to public. It means that the accused is entitled to a public trial and the public may claim access to the trial. There should not even be an impression that it is a secret trial. The judicial process should be thrown open to the public at every stage. The Presiding Judge must have full control of the court house. The accused must have all facilities to have a fair trial and all safeguards to avoid prejudice. But the public trial does not mean that every person shall be allowed to attend the court. Nor the courtroom shall be large enough to accommodate all persons. The court may restrict the public access for valid reasons depending upon the particular case and situation. The public trial is an orderly trial. The Presiding Officer may, therefore, remove any person from the court premises if his conduct is undesirable. If exigencies of a situation require, the person desiring to attend the trial may be asked to obtain a pass from the authorised person. Such visitors may be even asked to disclose their names and sign registers. There may be also security checks. These and other like restrictions will not impair the right of the accused or that of the public. They are essential to ensure fairness of the proceedings and safety to all concerned. The assassination of Smt. Indira Gandhi had provoked widespread violence threatening the security of the State and the maintenance of law and order. In the circumstances then prevailing the decision of the High Court to direct that the trial of the case should take place in Tihar Jail is justified. *Kehar Singh* v. *State (Delhi Admn.)*, (1988) 3 SCC 609: 1988 SCC (Cri) 711: AIR 1988 SC 1883.

Bench Strength **3**. Coram: **G.L. Oza**[1], **B.C. Ray**[2] and **K. Jagannatha Shetty**[3], JJ. [Date of decision: 3-8-1988]

Sahai Singh v. Emperor, AIR 1971 Lah 311: 18 Cri LJ 852; Prasanta Kumar Mukherjee v. State, AIR 1952 Cal 91 and Kailash Nath Agarwal v. Emperor, AIR 1947 All 436: 1947 All LJ 253: 48 Cri LJ 868, approved

— S. 10(3) *See* Ss. 306, 307 and 10(3)

— S. 11 *See* Ss. 6 and 11

See also Ss. 9 and 11

[83] — S. 11 — Courts of Judicial Magistrates — Establishing of Court of Judicial Magistrate, First Class inside jail premises for conducting trials against appellant — *Held (per curiam), notification issued by State Government in consultation with High Court, was valid. Mohd. Shahabuddin* v. *State of Bihar*, (2010) 4 SCC 653.

Bench Strength **2**. Coram : **Dalveer Bhandari**[1] and **Dr. M.K. Sharma**[2], JJ. [Date of decision : 25-3-2010]

[84] — Ss. 11, 12, 13, 190, 129 and 151 — Smuggling — Powers of BSF to take pre-emptive action — Proper exercise of — Adverse remarks and enquiry ordered by SDJM before whom suspected smuggler produced — Propriety — *Respondent 1 arrested near Indo-Bangladesh border with 22 quintals of sugar, without any documents, by BSF personnel — He, together with the seized articles handed over to the police, who produced him before the SDJM — SDJM while directing his release immediately, inter alia,* *observing that on the direction of BSF personnel, the police forwarded the accused for no good reason; carrying of sugar was not a penal offence and BSF had no authority to seize sugar on the public road and the police should not have taken any person from BSF without being satisfied that any offence was committed — He, further, by the impugned order directing enquiry — Held, observations made by the SDJM were inappropriate since the trial was still pending and all these matters were to be decided therein — Hence, while barring enquiry, directions issued to complete the trial expeditiously, which was pending for seven years* (Paras 3 and 7). *Commandant, 68 Bn. BSF, Gakulnagar* v. *Arjun Das*, (2006) 12 SCC 129: (2007) 1 SCC (Cri) 566: (2006) 47 AIC 950 (SC).

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 16-10-2006]

[85] — Ss. 11, 13, 14, 18, 177 to 181, 190 and Ch. XXXI — Special Courts — Transfer of a pending case to a court designated to try CID cases — Further cognizance taken by Designated Court, earlier cognizance having been taken by court trying regular police cases — Implication — *Whether two separate cases involving two charge-sheets — Held, the transfer cannot be held to be a case where two charge-sheets were filed*

It is also not a case where two charge-sheets were filed before two different courts. The court designated to deal with the matters wherein investigation had been carried out by CID, is located at Chittoor. It was in the aforementioned situation that the Sessions Judge transferred the case pending in the Tirupati Court to the Designated Court at Chittoor. Cognizance of further offence had also been taken by the Chittoor Court. (Para 17). *State of A.P.* v. *A.S. Peter*, (2008) 2 SCC 383: (2008) 1 SCC (Cri) 427: AIR 2008 SC 1052.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-12-2007]

[86] — S. 11(1) — Notification establishing Court of Judicial Magistrate — Necessity of consultation with High Court — *Criminal cases relating to demolition of disputed structure viz. Ram Janam Bhumi/Babri Masjid — Two cases (Crime Nos. 197 and 198 of 1992) registered, first one against unnamed kar sevaks and second one against eight persons besides others — State Government in consultation with High Court established Court of Special Judicial Magistrate, First Class at Raebareilly to try cases relating to Crime No. 198 — Notification under S. 11(1) issued by Government in consultation with High Court establishing Special Court of Judicial Magistrate, First Class for the area comprising the entire State with place of sitting at Lucknow to try, inquire and commit to Court of Session cases relating to Crime No. 197 — No mention made therein as regards Crime No. 198 — Subsequently, amendment notification issued by Government without consultation with High Court transferring Crime No. 198 from Raebareilly Court to Addl. CJM, Lucknow (Special Court) — Accordingly, Magistrate at Raebareilly directed transfer of records concerned to Addl. CJM, Lucknow — Addl. CJM, Lucknow then framed charges in respect of Crime No. 197 as well as Crime No. 198 — Accused persons filed revision before High Court — Single Judge of High Court set aside the order of Addl. CJM, Lucknow insofar as it related to Crime No. 198 covered by the amendment notification on ground of want of consultation with High Court but observed that the mistake could be cured by issuing a fresh notification in consultation with High Court — Order of Single Judge of High Court challenged before Supreme Court in SLPs — Supreme Court dismissed the SLPs — Present review petition filed before Supreme Court raising limited question whether the Single Judge was justified in holding that amendment notification was invalid for want of consultation with High Court — Held, there is no error apparent on the face of the record, nor do the facts and circumstances warrant Supreme Court's interference with its earlier order — Review petition is without merit — Though Single Judge of High Court observed that the mistake in issuing the amendment notification could be rectified, it is for the State Government to take appropriate steps in the matter, if it so desires — Constitution of India — Art. 137. Mohd. Aslam* v. *State of U.P.*, (2007) 12 SCC 667: AIR 2007 SC 1901: (2007) 4 All LJ 319: 2007 Cri LJ 3200.

Bench Strength **3**. Coram: **K.G. Balakrishnan**, **C.J.** and *G.P. Mathur* and *R.V. Raveendran*, JJ. [Date of decision: 22-3-2007]

[87] — Ss. 11(1) proviso, 4(1) & (2), 3(4)(a), 26 and 245 — Special Court (Economic Offences) created by a notification for trial of offences relating to twelve Acts including the Imports and Exports (Control) Act, 1947 — Jurisdiction of, to try the offences under IPC — *Prosecution under Ss. 420, 467, 468, 471, 120-B IPC and S. 5, Imports and Exports (Control) Act — Having regard to the relevant provisions contained in CrPC as well as the language of the notification, held, the said Court had jurisdiction to try the offences under IPC — On facts, High Court erred in referring to the provisions of special statutes like PC Act, EC Act and TADA Act while drawing the conclusion* *that in absence of any specific provision conferring power upon the Special Court (Economic Offences) to try the offences under IPC, the said Court had no jurisdiction to try the said offences — Imports and Exports (Control) Act, 1947 — S. 5*

Sub-section (1) of Section 4 CrPC lays down that all offences under IPC shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the said Code. Sub-section (2) of the same section lays down that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The Imports and Exports (Control) Act, 1947 does not make any provision for regulating the manner of trying of offences under the said Act and, therefore, they have to be inquired into, tried and otherwise dealt with according to the provisions of CrPC. (Para 5)

Further, in view of specific provision contained in clause (*a*) of sub-section (4) of Section 3 CrPC, it is only a Judicial Magistrate who can try an offence under the Imports and Exports (Control) Act, 1947 and under Section 26 CrPC such a Magistrate has also the jurisdiction to try those offences under IPC, which the respondents are alleged to have committed. (Para 5)

That apart, the source of power for the State Government to issue a notification for creation of a Special Court is proviso to sub-section (1) of Section 11 CrPC and this provision nowhere says that upon issuance of such a notification the Judicial Magistrate concerned would be divested of the power and jurisdiction which he otherwise had under CrPC. The Judicial Magistrate, First Class, who by virtue of the notification became a Special Court (Economic Offences) was not divested of the jurisdiction which he otherwise possessed under Section 26 CrPC. Further, the language of the notification also does not show that powers or jurisdiction of a Judicial Magistrate, who is to perform the functions of a Special Court (Economic Offences) to try the offences under the Acts mentioned in the schedule are being affected or curtailed in any manner. (Para 6)

The High Court has referred to Section 5 of the Prevention of Corruption Act, Section 12-AA of the Essential Commodities Act and Section 9 of the Terrorist and Disruptive Activities (Prevention) Act, and on the basis of these provisions, it has held that in the absence of any specific provision conferring power upon the Special Court (Economic Offences) to try the offences under IPC the said Special Court would not have the jurisdiction to try the offences under IPC. The aforesaid reasoning of the High Court is wholly fallacious. The enactments referred to above by the High Court are special statutes which themselves created the offences, made specific provision for appointment of a Special Judge or a Designated Court for trial of offences, laid down their powers and also made specific provisions regarding procedure which was to be followed by such courts. Such is not the position here. The State Government has merely exercised power under proviso to sub-section (1) of Section 11 CrPC for creation of a Special Court. The Acts mentioned in the schedule to the notification issued by the State Government do not themselves provide for creation of any Special Court nor do they lay down the procedure for trial of the offences therein. The only effect of the notification was that instead of the trials being held in the courts of various Judicial Magistrates posted in Bangalore Metropolitan Area and in the district of Bangalore, they were all to be tried by one court. (Para 7)

Thus, the view taken by the High Court is wholly unsustainable in law and must be set aside. (Para 12). *Dy. Chief Controller of Imports & Exports* v. *Roshanlal Agarwal*, (2003) 4 SCC 139: 2003 SCC (Cri) 788: AIR 2003 SC 1900: 2003 Cri LJ 1698: (2003) 155 ELT 216.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 5-3-2003]

— **S. 12** *See also* S. 10, Criminal Procedure Code, 1898, pp. 962 et seq. in Vol. 2

— **S. 12** *See also* Ss. 11, 12, 13, 190, 129 and 151

[88] — S. 12 — A person covered by the definition of District Judge under Art. 236(a), Constitution of India can be classified in the category of Chief Judicial Magistrate or Additional Chief Judicial Magistrate under relevant rules — *Punjab Superior Judicial Service Rules, 1963. M.L. Sharma* v. *Union of India*, 1992 Supp (2) SCC 430: 1992 SCC (L&S) 946.

Bench Strength **3**. Coram: *Ranganath Misra, C.J.* and *Kuldip Singh* and *S. Mohan*, JJ. [Date of decision: 9-10-1991]

[89] — Ss. 12, 17 and 9 — Equation of posts — Chief Metropolitan Magistrate — *Post of, held, has to be equated with, and placed in, the cadre of Civil Judge (Senior Division) and not in the cadre of District Judge*

Justice Shetty Commission's recommendation that Chief Metropolitan Magistrates should be in the cadre of District Judges, is neither proper nor practical. The appeals from orders passed by the Chief Metropolitan Magistrates under the provisions of CrPC are required to be heard by the Additional Sessions Judge or the Sessions Judge. If both the Additional Sessions Judge and the Chief Metropolitan Magistrate belong to the same cadre, it will be paradoxical that any appeal from one officer in the cadre should go to another officer in the same cadre. If they belong to the same cadre then it would be possible that a junior officer would be acting as an Additional Sessions Judge while a senior may be holding the post of the Chief Metropolitan Magistrate. It cannot be that against the orders passed by the senior officer it is the junior officer who hears the appeal. In respect of the posts of the Chief Judicial Magistrates, Justice Shetty Commission has rightly recommended that they should be filled from amongst Civil Judges (Senior Division). Considering the nature and duties of the Chief Judicial Magistrates and the Chief Metropolitan Magistrates, the only difference being their location, the posts of Chief Judicial Magistrate and Chief Metropolitan Magistrate have to be equated and they have to be placed in the cadre of Civil Judge (Senior Division). (Para 31). *All India Judges' Assn. (III)* v. *Union of India*, (2002) 4 SCC 247: 2002 SCC (L&S) 508: AIR 2002 SC 1752: (2002) 3 SLR 271: (2002) 93 FLR 628.

Bench Strength 3. Coram: **B.N. Kirpal**, *G.B. Pattanaik* and *V.N. Khare*, JJ. [Date of decision: 21-3-2002]

Clarified in All India Judges Assn. v. Union of India, (2004) 13 SCC 572

— **S. 13** *See also* S. 14, Criminal Procedure Code, 1898, p. 964 in Vol. 2

— **S. 13** *See* Ss. 9, 13 and 18

See also Ss. 11, 12, 13, 190, 129 and 151

See also Ss. 11, 13, 14, 18, 177 to 181, 190 and Ch. XXXI

[90] — Ss. 13(1) and 18(1) — Appointment of Special Judicial Magistrates and Special Metropolitan Magistrates for speedy disposal of cases — *Pendency of a large number of petty cases in criminal courts all over the country resulting in prolonged detention of undertrials — Rape victims detained in protective homes with a view to ensure their presence in the court without being tampered by the accused — State Governments directed to address letters of request to their High Courts for appointment of Special Judicial Magistrates/Special Metropolitan Magistrates — However, the High Court must be extremely careful in conferment of power and should do so based on the qualification and experience of each appointee — Withdrawal of petty cases with a view to reduce the burden on regular courts is improper — Category of cases under IPC which can be considered to be disposed of by Special Judicial Magistrates/Special Metropolitan Magistrates indicated*

There can be little doubt that when the calendars of criminal courts (magistracy) in most of the States, barring a few geographically small States, are clogged and as a result, trial of cases is delayed, there is no justification for not setting a part of the machinery envisioned by the Code into motion. The basic idea in providing for the appointment of Judicial Magistrates, 2nd Class, is to ensure that petty cases do not occupy the time of the regular magisterial courts.

Retired judicial officers, officers of the Registry of District Courts and High Courts, as well as other government servants who have the specified experience and qualification, can be requested to accept appointments as part of social service and they may be paid a fee to meet their out-of-pocket expenses and honorarium. The High Courts will find any number of public-spirited, retired persons available to extend a helping hand to the criminal justice system in the country. The High Court must be extremely careful in the conferment of power and should do so based on the qualification and experience of each appointee.

In certain States, large numbers of such petty cases were withdrawn with a view towards reducing the burden on the regular courts. Unless a machinery is set up to ensure that such cases will not pile up once again after the system is put on an even keel by the withdrawal of such cases, such a measure will not serve any purpose but will, instead, send a wrong signal to the offenders that they can commit such infractions with impunity as nothing will happen to them, and ultimately the cases would be withdrawn. But, if an adequate machinery of the type envisioned by Sections 13 and 18 of the Code is placed in position to ensure that cases do not pile up in future and then the cases are withdrawn with a view to placing the system on an even keel, it will achieve the desired objective to bring about discipline in society and eradicate crime.

The Supreme Court issued the following directions:

(1) The notices against the States of Nagaland, Mizoram, Jammu and Kashmir and Sikkim and the Union Territories of Daman, Diu and Dadra and Nagar Haveli are hereby discharged.

(2) Out of the remaining States, those who have not addressed letters of request to their High Courts for appointment of Special Judicial Magistrates/ Special Metropolitan Magistrates, are directed to do so within a month's time so that petty cases may be dealt with by them relieving the regular Judicial Magistrates/Metropolitan Magistrates of such petty cases to enable them to deal with more serious cases.

(3) The High Courts of all such States, on receipt of the letter of request, shall determine the total number of such Special Magistrates required to deal with the pendency of petty cases and take immediate steps to appoint them.

(4) In cases where the High Court(s) has already received such a letter and has initiated action to appoint such Special Magistrates, it will, within one month, determine the total number of such Special Magistrates needed to dispose of the pendency of petty cases and ensure appointments at an early date, and

(5) The High Courts will also ensure that after the regular Magistrates are relieved of petty cases, they would dispose of a larger number of more serious cases so that the offenders are brought to book at an early date and the innocent are not unnecessarily vexed for long spells. *Kadra Pahadiya* v. *State of Bihar*, (1997) 4 SCC 287: 1997 SCC (Cri) 553: AIR 1997 SC 3750: 1997 Cri LJ 2232.

Bench Strength **2**. Coram: **A.M. Ahmadi, C.J.** and *B.N. Kirpal*, J. [Date of decision: 19-3-1997]

[91] — Ss. 13(1) and 18(1) — Constitutionality of — *Held, not violative of Art. 14 on ground that they confine appointment of Special Judicial Magistrate/Special Metropolitan Magistrate to persons holding any post under the Govt. — Words "who holds or has held any post under the Govt." do not exclude appointment of members of subordinate judiciary as Special Judicial Magistrate/Special Metropolitan Magistrate — Choice of appointment under these two provisions is left to the sole discretion of the High Court which shall specify the qualifications and experience of the appointees — Constitution of India — Article 14*

Sections 13(1) and 18(1) confer power on the High Court to make the appointments and confer such of the powers as it deems proper from the whole bundle of powers conferrable by or under the Code on a Judicial Magistrate of the First or Second Class or conferrable on a Metropolitan Magistrate as the case may be. The choice of power to be conferred on the appointees under these two provisions is left to the sole discretion of the High Court. The proviso to each sub-section makes it clear that the appointee must possess such qualification and experience in relation to legal affairs as the High Court may by rules specify. Thirdly, the words "who holds or has held any post under the Government" do not necessarily exclude judicial officers belonging to the subordinate judiciary of a State/Union Territory. The sub-sections merely enable the High Court to appoint persons, other than judicial officers, who hold or have held any post under the Government and who possess the qualification and experience in relation to legal affairs as may be specified by the High Court. Parliament has taken care to leave the question of specifying the requirements for appointment to the High Court. There is, therefore, no warrant for placing a narrow construction on the words "who holds or has held any post under the Government" to confine them to appointments of government servants, present or past only, and to exclude members belonging to the subordinate Judicial Services. Special provision in the nature of an enabling provision had to be made because without such a provision, appointment of government servants, past or present, could not have been possible. Care has also been taken to ensure that the appointments are made of persons who have the necessary qualification and experience in relation to legal affairs which the High Court considers necessary for the exercise of power that may be conferred on the appointee. Furthermore, the duration of appointment has been restricted to one year at a time which would give the High Court an opportunity to observe the work of the appointee to enable it to decide whether or not to extend the appointment for a further period, if the workload justifies such continuance.

The idea underlying the provision for the appointment of Special Judicial Magistrates/Special Metropolitan Magistrates under Sections 13(1) and 18(1) respectively, is to relieve the regular courts of the burden of trying those cases which could be disposed of by such Magistrates. Parliament has advisedly left the decision as to the choice of power to be conferred on such Magistrates with the High Court. Once a request is received from the Central/State Government by the High Court, the ball is entirely in the High Court, and it is the High Court and the High Court alone which has to decide on the number of appointments to be made, the choice of personnel to be entrusted with such power, and the extent of power to be conferred on such persons. It is the High Court which has to specify the qualification and/or experience that would be required for the discharging of duties by such Magistrates. The period for which such appoint ments may be made must not exceed one year at a time, which shows that these are not appointments by way of regular entry into service, and are meant to be short-duration appointments to reduce the burden of pendency in regular courts. The appointees should view the call as a social obligation and not employment; indeed, as a social service to society. That is the spirit of Sections 13 and 18 and every appointee must take the call in that spirit and not expect payment as if they are in the service of the State/Union Territory concerned. That is the reason why the said two provisions expect persons who have retired or are about to retire from government service to be appointed to help clear the pendency. *Kadra Pahadiya* v. *State of Bihar*, (1997) 4 SCC 287: 1997 SCC (Cri) 553: AIR 1997 SC 3750: 1997 Cri LJ 2232.

Bench Strength **2**. Coram: **A.M. Ahmadi, C.J.** and *B.N. Kirpal*, J. [Date of decision: 19-3-1997]

M. Narayanaswamy v. State of T.N., 1984 Cri LJ 1583 (Mad), overruled

— S. 14 *See* Ss. 4, 5 and 14

See also Ss. 7, 14 and 406, 410

See also Ss. 11, 13, 14, 18, 177 to 181, 190 and Ch. XXXI

— S. 17 *See* Ss. 12, 17 and 9

— S. 18 *See* Ss. 9, 13 and 18

See also Ss. 11, 13, 14, 18, 177 to 181, 190 and Ch. XXXI

— S. 18(1) *See* Ss. 13(1) and 18(1)

— S. 20 *See also* Ss. 21, 20 and 107

[92] — S. 20 — ADM — Object of appointment of and distinction from DM — *Held, two authorities cannot be equated — Distinction also clear from fact that object of appointing ADM is to assist DM* (Paras 11 and 12). *State of Karnataka* v. *Dr. Praveen Bhai Thogadia*, (2004) 4 SCC 684: 2004 SCC (Cri) 1387: AIR 2004 SC 2081: (2004) 2 KLT 342: 2004 Cri LJ 1825.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 31-3-2004]

[93] — S. 20 — Term "District Magistrate" occurring in R. 4 of the 1977 U.P. Rules — Scope — *Additional District Magistrate, held, not covered — Definition of the said term in S. 2(14) of the Act, held, not applicable to R. 4 — U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 (U.P. Act 32 of 1961) — Ss. 29, 237, 16 and 2(14) — Officer competent to hold enquiry against Adhyaksha or Upadhyaksha — Who is — U.P. Kshettra Panchayats and Zila Panchayats (Removal of Pramukhs, Up-Pramukhs, Adhyakshas and Upadhyakshas) Enquiry Rules, 1977, R. 4*

The draftsman has clearly used in Rule 4 the term "District Magistrate" as distinct from the term "Additional District Magistrate". The definition of District Magistrate in clause (14) of Section 2 of the Act is not applicable if there be something repugnant in the subject or context. The very use of "Additional District Magistrate" and "District Magistrate" in the same Rule, consisting of one sentence, clearly suggests that the two terms are used in two different meanings. The High Court was right in holding that an inquiry against a Pramukh or Up-Pramukh could be held by an officer not below the rank of an Additional District Magistrate while as against Adhyaksha or Upadhyaksha the enquiry should be held by the District Magistrate. (Para 7). *State of U.P.* v. *Janki Devi Pal*, (2003) 3 SCC 117: AIR 2003 SC 1825: 2003 All LJ 921.

Bench Strength **2**. Coram: *R.C. Lahoti* and *Arun Kumar*, JJ. [Date of decision: 13-2-2003]

[94] — Ss. 20 and 21 — Appointment of Magistrates under — Directions for — Solid Waste Disposal — Cleaning up Delhi — Time-bound directions issued — *After expressing unhappiness over the high levels of pollution in Delhi, over the lack of accountability at all levels of the municipal authorities concerned, and over the inaction of respondent authorities in connection with the fourteen directions issued in* Dr. B.L. Wadehra *v.* Union of India *(1996) 2 SCC 594, the Supreme Court issuing time-bound orders, in addition to and not in derogation of those passed in Wadehra's case, that provisions of DMC Act, 1957, NDMC Act, 1994 and Cantonments Act, 1924 relating to sanitation, public health, and prohibition of accumulation of rubbish be scrupulously complied with; that charges and costs be levied for littering; that disposal of solid waste be ensured through scientific methods; that sites for landfills and compost plants be identified and handed over free of cost within four weeks from date of judgment; that fresh encroachments or unauthorised occupation of public land be prevented; that sanitation in existing slums be improved; that Magistrates be appointed under Ss. 20 and/or 21 CrPC to ensure compliance with DMC Act and NDMC Act and to try offences relating to littering, nuisance, sanitation and public health — Till scheme framed by authorities, Rs 50 fine directed to be imposed for littering — All authorities concerned to file compliance reports within 8 weeks — Management of Municipal Solid Waste (Management and Handling) Rules, 1991 — Delhi Municipal Corporation Act, 1957 (66 of 1957) — Ss. 42, 239-258, 350-364 and 397 — New Delhi Municipal Council Act, 1994 (44 of 1994) —*

Ss. 11, 171-194, 261-280, 298-299, 308-309, 386-388 and 390 — Cantonments Act, 1924 (2 of 1924) — Ss. 118, 128-130, 130-A, 131-134 and 178 — Environment (Protection) Act, 1986 — S. 25. Almitra H. Patel v. *Union of India*, (2000) 2 SCC 679: AIR 2000 SC 1256.

Bench Strength **3**. Coram: **B.N. Kirpal**, *M.B. Shah* and *D.P. Mohapatra*, JJ. [Date of decision: 15-2-2000]

[95] — Ss. 20 and 144 — ADM passing orders under S. 144, whether on facts empowered to act in such manner — *By virtue of notifications dt. 27-3-1974 and 6-7-1974, officers appointed as Executive Magistrates and to be ADMs — Held, therefore empowered to act under S. 144 CrPC — Onus of proof in case of challenge to authority of officer acting under S. 144 — Held, on person challenging authority, though administration not precluded from showing valid conferral of authority*

The scheme of Section 20 leaves no manner of doubt that the District Magistrate and the ADM are two different and distinct authorities. But under Section 20(2) of the Code the latter may exercise all or any of the powers of a District Magistrate though the two authorities cannot be equated and the Additional District Magistrate cannot be called the District Magistrate. The distinction is also clear from the fact that the object of appointing ADM is to relieve the District Magistrate of some of his duties. (Para 12)

From the materials placed on record it is noted that on 27-3-1974 the Government of Karnataka had appointed w.e.f. 1-4-1974, the Special Deputy Commissioner of a district and the Headquarters Assistant to the Deputy Commissioner of a district who are appointed as Executive Magistrates in government notification dated 27-3-1974 to be Additional District Magistrates in such districts. The notification is numbered HD 10 PCR 74 dated 27-3-1974. The notification dated 27-3-1974 (Notification No. III) was issued vide SO No. 539 in exercise of powers conferred under sub-section (2) of Section 20 and was in supersession of government notification No. HD PCR 65 dated 4-5-1968 and Notification No. HD 33 PCR 73 dated 6-12-1973. The High Court was of the view that in a notification dated 9-7-1974 there was no reference to the notification dated 27-3-1974 by which the Executive Magistrates were vested with power under Section 144, who are appointed under the notification dated 27-5-1974 and which is altogether a different notification and not relatable to the notification dated 27-3-1974. (Para 14)

It was for the respondent who was questioning the authority of the ADM before the High Court to place the materials to substantiate his claim, though nothing precluded the authority also from placing the relevant proceedings, if there had been any such. Since the respondent whose duty it was, did not produce the notification, if at all, adverse inference should have been drawn against him. From the mere non-production alone, the conclusion should not have been arrived at that the ADM had no power to pass the order. The confusion arose because of certain inaccuracies in the dates. (Para 15)

The ADM who passed the order in this case was appointed under the notification dated 27-3-1974. The copies of correct notifications have been placed on record by learned counsel for the appellant State. On consideration thereof, the inevitable conclusion which follows is that the ADM had jurisdiction by virtue of his being appointed as ADM. This position is crystal clear from reading the notifications dated 27-3-1974 and 6-7-1974. The conclusions to the contrary arrived at by the High Court cannot be sustained. (Paras 14 and 15). *State of Karnataka* v. *Praveen Bhai Thogadia (Dr.)*, (2004) 4 SCC 684: 2004 SCC (Cri) 1387: AIR 2004 SC 2081: (2004) 2 KLT 342: 2004 Cri LJ 1825.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 31-3-2004]

— S. 20(1) *See also* Ss. 164(1), 167, 3, 6, 20(1) and (4)

[96] — Ss. 20(1), (2) and (5) — Executive Magistrate — State Government has first to appoint a person as Executive Magistrate and then only he can be appointed as Addl. DM or DM — *Words "as many persons" in sub-s. (1) include Commissioner of Police and as such State Govt. can appoint a Commissioner of Police in a metropolitan area as an Executive Magistrate — Reading sub-ss. (1), (2) and (3) in conjunction, held, State Govt. has power to appoint the Commissioner of Police of Brihan Mumbai, which is a metropolitan area, as an Executive Magistrate and further appoint him as an Addl. DM, who shall have powers of a DM for the purposes of Ss. 18 and 20 of Immoral Traffic (Prevention) Act — Immoral Traffic (Prevention) Act, 1956 — Ss. 18 and 20*

When an expression is capable of more than one meaning, the court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions. (Para 23). *A.N. Roy* v. *Suresh Sham Singh*, (2006) 5 SCC 745: (2006) 3 SCC (Cri) 75: AIR 2006 SC 2677.

Bench Strength **2**. Coram: **H.K. Sema** and *A.K. Mathur*, JJ. [Date of decision: 4-7-2006]

Anwar Hasan Khan v. Mohd. Shafi, (2001) 8 SCC 540, relied on

— S. 20(2) *See* Ss. 20(1), (2) and (5)

— S. 20(4) *See* Ss. 164(1), 167, 3, 6, 20(1) and (4)

— S. 20(5) *See* Ss. 20(1), (2) and (5)

— S. 21 *See also* S. 12, Criminal Procedure Code, 1898, p. 964 in Vol. 2

— S. 21 *See also* Ss. 20 and 21

[97] — S. 21 — Nature — Two parts of the provision stated

Section 21 may be conveniently divided into two parts. Part I provides power to the State Government to appoint Executive Magistrates to be known as the Special Executive Magistrates and also sets out the terms of such appointment. Part II speaks of the nature of the power to be conferred on the Special Executive Magistrates. It refers only to the powers conferrable on the Executive Magistrate under the Code but not the powers conferred on them by the Code. The power to appoint under part I of S. 21 is not dependent upon or coupled with the power to be conferred under part II of the section. The appointment of Special Executive Magistrates is one thing and conferment of power on them is another. Each is independent of the other. Part II of the section speaks of additional powers to be conferred depending upon the nature of the particular function to be performed. It has nothing to do with the power located under part I of the section. (Paras 15 and 17). *State of Maharashtra* v. *Mohd. Salim Khan*, (1991) 1 SCC 550: 1991 SCC (Cri) 253: (1991) 1 Crimes 120.

Bench Strength 3. Coram: *K.N. Singh*, **K. Jagannatha Shetty** and *Kuldip Singh*, JJ. [Date of decision: 22-11-1990]

[98] — S. 21 — Purpose of appointment of Special Executive Magistrates

The purpose of empowering the State Government to appoint Special Executive Magistrates was evidently to meet the special needs of a particular area or to perform particular functions in a given area. Such appointments without adequate powers would be futile and the legislation without providing such powers would be pointless. It can be assumed that the Parliament does not indulge in pointless legislation and it has not done so in S. 21. (Para 16). *State of Maharashtra* v. *Mohd. Salim Khan*, (1991) 1 SCC 550: 1991 SCC (Cri) 253: (1991) 1 Crimes 120.

Bench Strength 3. Coram: *K.N. Singh*, **K. Jagannatha Shetty** and *Kuldip Singh*, JJ. [Date of decision: 22-11-1990]

[99] — Ss. 21, 20 and 107 — Special Executive Magistrates — Held, are nevertheless Executive Magistrates and entitled to exercise powers conferred by the Code — *Unnecessary to confer powers under S. 107 on them — Hence quashing of proceedings before a Special Executive Magistrate by High Court under S. 482 on ground of no locus standi improper*

The Maharashtra Government by notification dated April 11, 1974 appointed all Assistant Commissioners of Police in the metropolitan area of Greater Bombay as Special Executive Magistrates. By another notification dated October 20, 1976 the government conferred on them the powers of an Executive Magistrate under S. 107 of the Code. Respondent 7 lodged a complaint against a group of persons-respondents 1 to 6 before the Senior Inspector of Police, Mahim Police Station — appellant 2. The complaint was investigated and proceedings under S. 107 of the Code were initiated before the Special Executive Magistrate appellant 3. But the Bombay High Court quashed the proceedings at the instance of respondents 1 to 6 taking the view that the Special Executive Magistrate is not entitled to exercise the powers of an Executive Magistrate and cannot also be conferred with the powers of an Executive Magistrate under S. 107 of the Code. Allowing the appeal of the State Government,

Held :

The Special Executive Magistrates are also Executive Magistrates. They are given a different appellation perhaps to distinguish them from the category of other Magistrates appointed under S. 20. Their area of operation may be limited and the terms of appointment may be different. But nevertheless basically they remain as Executive Magistrates and they do not cease to be so by being called with different designation. Since they are appointed as Executive Magistrates, they are entitled to exercise the powers conferred by the Code much the same way as other Executive Magistrates and it was therefore, unnecessary for the State Government to have conferred the powers under S. 107 on the Special Executive Magistrates. (Paras 16 and 19)

Though there is a broad division between the powers conferred and powers conferrable by or under the Code on the Executive Magistrate, and there was need to use the term 'conferred' or 'conferrable' in Ss. 13 and 18, but the language of S. 21 as analysed earlier is quite different. Since the Special Executive Magistrates are appointed as Executive Magistrates, the draftsman seems to have purposely avoided to use the term "conferred" in the latter part of S. 21. (Paras 15 and 18). *State of Maharashtra* v. *Mohd. Salim Khan*, (1991) 1 SCC 550: 1991 SCC (Cri) 253: (1991) 1 Crimes 120.

Bench Strength 3. Coram: *K.N. Singh*, **K. Jagannatha Shetty** and *Kuldip Singh*, JJ. [Date of decision: 22-11-1990]

— **S. 24** *See also* S. 492, Criminal Procedure Code, 1898, p. 1268 in Vol. 2

— **S. 24** *See* Ss. 25 and 24

See also Ss. 170, 169, 173, 2(h), 24 and 482

See also Ss. 170, 173, 36 and 24

See also Ss. 301, 302 and 225 & 24

See also Ss. 302, 24 and 25

See also Ss. 309, 311 and 24, 25

See also Ss. 321, 301 and 24

See also Ss. 406, 24, 2(u) and 7, 8 & 9

See also Ss. 406 and 386(1), 24 and 225

See also Ss. 406, 432(7), 385(1), 225, 2(u), 24 and 378

See also Ss. 482 and 24

See also Ss. 482, 311, 391, 173(8), 216 and 24

[100] — S. 24 — Public Prosecutor — Nature of post of — *Held, Public Prosecutor is not part of the investigating agency but an independent statutory authority. Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 4 SCC 602: 1994 SCC (Cri) 1087: AIR 1994 SC 2623.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 12-7-1994]

[101] — S. 24 — Role of Public Prosecutor — Scope — *Held (per curiam), the same is restricted to conducting or withdrawal of any prosecution, appeal or other proceedings in court — It does not include the field of investigation*

A Public Prosecutor is appointed, as indicated in Section 24 CrPC, for conducting any prosecution, appeal or other proceedings in the court. He has also the power to withdraw any case from the prosecution with the consent of the court. He is the officer of the court. Thus the Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not the scheme of CrPC for supporting or sponsoring any combined operation between the investigating officer and the Public Prosecutor for filing the report in the court. (Para 29). *M.C. Mehta (Taj Corridor scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264: AIR 2007 SC 1087: (2007) 53 AIC 192 (SC).

Bench Strength 3. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

R. Sarala v. T.S. Velu, (2000) 4 SCC 459: 2000 SCC (Cri) 823, followed

[102] — S. 24 — Public Prosecutor — Role of — *Held, Public Prosecutor is an officer of court — He has to act objectively and not according to dictates of State Government* (Para 50). *Amarinder Singh* v. *Parkash Singh Badal*, (2009) 6 SCC 260.

Bench Strength 3. Coram: *K.G. Balakrishnan, C.J.* and **P. Sathasivam** and *J.M. Panchal*, JJ. [Date of decision: 14-5-2009]

[103] — S. 24 — Status and role of Public Prosecutor

The Public Prosecutor is a statutory office of high regard. He does not represent the investigating agencies, but the State. He has wider set of duties than to merely ensure that accused is punished, the duties of ensuring fair play in proceedings, all relevant facts are brought before court in order for determination of truth and justice for all parties including the victims. These duties do not allow the Prosecutor to be lax in any of his duties as against the accused. The court must also ensure that Prosecutor is doing his duties to utmost level of efficiency and fair play. (Paras 185 to 188). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength 2. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

Shiv Kumar v. Hukam Chand, (1999) 7 SCC 467: 1999 SCC (Cri) 1277; Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602: 1994 SCC (Cri) 1087; Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999, relied on

Ram Chander v. State of Haryana, (1981) 3 SCC 191: 1981 SCC (Cri) 683, referred to

Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595, cited

[104] — S. 24 — State counsel — Responsibility of — 'Sharp practice' and unfairness cannot be inferred merely on his adopting a partisan approach due to pressure or zeal — *If order is obtained from court legally by stating correct facts no mala fides can be imputed to him. State of Maharashtra* v. *Budhikota Subbarao (Dr.)*, (1993) 3 SCC 71: 1993 SCC (Cri) 597.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and **R.M. Sahai**, JJ. [Date of decision: 16-3-1993]

[105] — S. 24 — "Consultation" with District Judge — Interpretation of — *Held, High Court erred in directing that instead of making of the recommendation by District Judge alone the recommendation should be made by a collegium of five members headed by him — Reliance on* Special Reference No. 1 of 1998, Re, *(1998) 7 SCC 739 for taking that view, held misplaced — Appointment of DGC, held, could not be equated with appointments of Supreme Court/High Court Judges — Further held, High Court's power under Art. 226 is not on a par with Supreme Court's power under Art. 142 —*

High Court could not direct formulation of a new legal principle or a new procedure contrary to, or inconsistent with, a statutory provision — However, the consultation with District Judge must be an effective one — He should in turn take his colleagues into confidence — State Government must give primacy to his opinion — (U.P. Government) Legal Remembrancer's Manual, Para 7.03

The appointment of District Government Counsel cannot be equated with the appointments of the High Court and the Supreme Court Judges. A distinction must be made between professional engagement and a holder of high public office. Various doctrines and the provisions of the Constitution which impelled the Supreme Court in *Special Reference case*, (1998) 7 SCC 739 to give meaning of "consultation" as "concurrence" and wherein the Chief Justice of India will have a primacy, cannot be held to be applicable in the matter of consultation between the District Magistrate and the District Judge for the purpose of preparation of a panel of the District Government Counsel. (Para 55)

However, the consultation with the District Judge must be an effective one. The District Judge in turn should take his colleagues into confidence so that only meritorious and competent persons who can maintain the standard of public office can be found out. While making appointments of District Government Counsel, therefore, the State should give primacy to the opinion of the District Judge. Such a course of action would demonstrate fairness and reasonableness of action and, furthermore, to a large extent the action of the State would not be dubbed as politically motivated or otherwise arbitrary. (Paras 56 and 87). *State of U.P.* v. *Johri Mal*, (2004) 4 SCC 714: AIR 2004 SC 3800: (2004) 3 SLR 734: (2004) 19 AIC 69 (SC): (2004) 3 LLN 13.

Bench Strength 3. Coram: *V.N. Khare, C.J.* and *Brijesh Kumar* and **S.B. Sinha**, JJ. [Date of decision: 21-4-2004]

Special Reference No. 1 of 1998, Re, (1998) 7 SCC 739; Supreme Court Advocates-on-Record Assn. v. Union of India, (1993) 4 SCC 441, distinguished

State of H.P. v. A Parent of a Student of Medical College, (1985) 3 SCC 169; Asif Hameed v. State of J&K, 1989 Supp (2) SCC 364; Guruvayoor Devaswom Managing Committee v. C.K. Rajan, (2003) 7 SCC 546, relied on

[106] — Ss. 24, 2(u) and 378(1) and (2) — Public Prosecutor — Appointment of Special Public Prosecutors — Power of, when can be exercised and by whom — Appeal from order of acquittal — Central Public Prosecutor vis-à-vis State Public Prosecutor — Powers of — *Held, Central Government or State Government may appoint a Special Public Prosecutor — Under S. 378(1) State Government may direct its Public Prosecutor to file an appeal from an order of acquittal — Under S. 378(2) Central Government may direct its Public Prosecutor to file appeal from an order of acquittal — One has no control over the other* (Paras 46 and 47). *Lalu Prasad Yadav* v. *State of Bihar*, (2010) 5 SCC 1.

Bench Strength 3. Coram : *K.G. Balakrishnan, C.J.* and **R.M. Lodha** and *Dr. B.S. Chauhan*, JJ. [Date of decision : 1-4-2010]

[107] — Ss. 24 and 25 — Communal riot cases in the State of Gujarat — Post-Godhra riot cases — Fairness in trial — Importance of interests of victim — Necessity of establishing, to dispel apprehension of victims — Appointment of impartial Public Prosecutors — *Held, victim is an inseparable stakeholder in adjudicating process — It is essential to establish that Public Prosecutor is conducting prosecution fairly and in proper manner to instil confidence in victims — Directions issued to the State of Gujarat to appoint Public Prosecutors in each of the cases in consultation with SIT — Opinion of SIT to be binding on State Government — Experienced lawyers familiar with conduct of criminal trials to be appointed as Public Prosecutors — Chairman of SIT also permitted to seek change of Public Prosecutor during currency of trial if deficiency in performance noticed — Advocate General of State to take appropriate action in light of SIT's recommendation — SIT also permitted to nominate officers of SIT to assist Public Prosecutor in course of trial — Constitution of India — Arts. 21 and 14 — United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Resolution 40/34 of 29-11-1985), Arts. 4, 5 and 6* [Paras 19, 20, 31, 32 and 40(*v*) & (*vi*)]. *NHRC* v. *State of Gujarat*, (2009) 6 SCC 767.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 1-5-2009]

[108] — Ss. 24 and 157 — Reasons for protraction of criminal cases, highlighted — Urgent need for fast-tracking and deciding in a fixed time-frame, criminal cases relating to offences against State, corruption, dowry death, domestic violence, sexual assault, financial fraud and cyber crimes, emphasised — Requirement of immediate and urgent steps for amending procedural and other laws to achieve aforesaid objectives, noticed — Observed, a strong and efficient criminal justice system is a guarantee to rule of law and vibrant civil society

The investigators hardly have professional orientation; they do not have modern tools. On many occasions impartial investigation suffers because of political interference. The criminal trials are protracted because of non-appearance of official witnesses on time and the non-availability of the facilities for recording evidence by videoconferencing. The Public Prosecutors have their limitations; the defence lawyers do not make themselves available and the court would be routinely informed about their preoccupation with other matters; the courts remain overburdened with the briefs listed on the day and they do not have adequate infrastructure. The adjournments thus become routine; the casualty is justice. It is imperative that the criminal cases relating to offences against the State, corruption, dowry death, domestic violence, sexual assault, financial fraud and cyber crimes are fast-tracked and decided in a fixed time-frame, preferably of three years including the appeal provisions. It is high time that immediate and urgent steps are taken in amending the procedural and other laws to achieve the above objectives. It is to be remembered that a strong and efficient criminal justice system is a guarantee to the rule of law and vibrant civil society. (Para 37). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Bench Strength 2. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

[109] — Ss. 24, 25 and 320 — Appointment of Public Prosecutor/District Government Counsel — Nature of — *Held, is a professional engagement and not an appointment to a civil post — Such appointment is governed by CrPC and/or executive instructions framed by the State Government and does not attract the proviso to Art. 309 — It is a tenure appointment and the incumbent continues to retain the character of legal practitioner for all intents and purposes — That persons so appointed discharge public functions and possess certain statutory powers, held, does not change the said position — Further held, the duty of District Government Counsel/Public Prosecutor involves an element of public interest but in engaging him a concept of public office does not come into play — But, the position of an Assistant Public Prosecutor is different — Unlike a Public Prosecutor or Additional Public Prosecutor, he is an employee of the State and holds a civil post and his appointment is governed by service rules framed by the State Government — However, the choice of the Government in the matter of appointment of counsel is to a limited extent subject to the provisions of Art. 14 — Constitution of India — Art. 309 proviso — Nature of appointment of — (U.P. Government) Legal Remembrancer's Manual, Paras 7.01 to 7.08 and Ch. XXI*

The Legal Remembrancer's Manual clearly states that appointment of a Public Prosecutor or a District Counsel would be professional in nature. It was rightly conceded that the holder of the office of the Public Prosecutor does not hold a civil post. By holding a post of District Counsel or the Public Prosecutor, neither a status is conferred on the incumbent. (Para 37)

Unlike a Public Prosecutor or Additional Public Prosecutor, Assistant Public Prosecutors are employees of the State. They hold civil posts. They are answerable for their conduct to higher statutory authority. Their appointment is governed by the service rules framed by the respective State Governments. (Para 38)

The appointment of Public Prosecutors, on the other hand, is governed by CrPC and/or the executive instructions framed by the State governing the terms of their appointment. The proviso to Article 309 is not applicable in their case. Their appointment is a tenure appointment. Public Prosecutors, furthermore, retain the character of legal practitioners for all intent and purport. They, of course, discharge public functions and certain statutory powers are also conferred upon them but the same would not mean that their conditions of appointment are governed by any statute or statutory rule. (Para 39)

So long as in appointing a counsel the procedures laid down under CrPC are followed and a reasonable or fair procedure is adopted, the court will normally not interfere with the decision. The nature of the office held by a lawyer vis-à-vis the State being in the nature of professional engagements, the courts are normally chary to overturn any decision unless an exceptional case is made out. The question as to whether the State is satisfied with the performance of its counsel or not is primarily a matter between it and the counsel. The Code of Criminal Procedure does not speak of renewal or extension of tenure. The extension of tenure of Public Prosecutor or the District Counsel should not be compared with the right of renewal under a licence or permit granted under a statute. The incumbent has no legal enforceable right as such. The action of the State in not renewing the tenure can be subjected to judicial scrutiny inter alia on the ground that the same was arbitrary. The courts normally would not delve into the records with a view to ascertain as to what impelled the State not to renew the tenure of a Public Prosecutor or a District Counsel. The jurisdiction of the courts in a case of this nature would be to invoke the doctrine of *"Wednesbury unreasonableness"*. (Para 40). *State of U.P.* v. *Johri Mal*, (2004) 4 SCC 714: AIR 2004 SC 3800: (2004) 3 SLR 734: (2004) 19 AIC 69 (SC): (2004) 3 LLN 13.

Bench Strength **3**. Coram: *V.N. Khare, C.J.* and *Brijesh Kumar* and **S.B. Sinha**, JJ. [Date of decision: 21-4-2004]

Samarendra Das v. State of W.B., (2004) 2 SCC 274: 2004 SCC (L&S) 402, relied on

Om Kumar v. Union of India, (2001) 2 SCC 386: 2001 SCC (L&S) 1039, followed

[110] — S. 24 — Public Prosecutor/Addl. Public Prosecutor — Renewal of term of — *Procedure same as that for fresh appointment — Procedure provided under Legal Remembrancer Manual supplemental to S. 24 — Consultation of DM with D&SJ for preparing a panel must be real and effective — D&SJ has to express his opinion on merits and conduct of the persons recommended for appointment or extension of the period — DM has to apply his mind and consider suitability of persons recommended by D&SJ, from administrative point of view — Though there is no right to extension of the term, judicial review is open on ground of infirmity in decision-making process because of non-affording of fair treatment and non-compliance with the procedure — While D&SJ strongly recommending appellants for renewal of their term as Assistant District Govt. Counsel (Criminal) (deemed as Addl. PPs), DM not recommending their names by making some general comment against them (that their reputation, professional work, behaviour and conduct was not found in accordance with public interest) without preparing any panel and on that basis extension of term refused by State Govt. — Held, DM failed to perform his statutory duty and hence DM directed to perform the same afresh — (U.P. Government) Legal Remembrancer's Manual, Ch. VI, Paras 7.06 & 7.08. Harpal Singh Chauhan* v. *State of U.P.*, (1993) 3 SCC 552: 1993 SCC (Cri) 938: AIR 1993 SC 2436: 1993 Cri LJ 3140: (1993) 4 SLR 639: (1993) 3 SLJ 128.

Bench Strength **2**. Coram: *Kuldip Singh* and **N.P. Singh**, JJ. [Date of decision: 15-6-1993]

[111] — S. 24 — Appointment of Public Prosecutor — Submission of biodata pursuant to notice for such appointment if amounts to soliciting briefs within the meaning of R. 36, Bar Council of India Rules — *Answer in the negative given by A.P. High Court in* B. Rajeswar Reddy case, *(2001) 6 An LT 104 (FB) impliedly approved — Bar Council of India Rules, R. 36 — Public Prosecutor* (Paras 79 to 81). *State of U.P.* v. *Johri Mal*, (2004) 4 SCC 714: AIR 2004 SC 3800: (2004) 3 SLR 734: (2004) 19 AIC 69 (SC): (2004) 3 LLN 13.

Bench Strength **3**. Coram: *V.N. Khare, C.J.* and *Brijesh Kumar* and **S.B. Sinha**, JJ. [Date of decision: 21-4-2004]

B. Rajeswar Reddy v. K. Narasimhachari, (2001) 6 An LT 104 (FB), impliedly approved

[112] — S. 24 — Nature of appointment of District Government Counsel — *Held, his appointment is only a professional engagement and not an appointment to a post in government service which continues till the age of superannuation — Hence, contention that he is entitled to automatic renewal of his term up to the age of superannuation, rejected — (U.P. Government) Legal Remembrancer's Manual, Paras 7.06(1) & (2), 7.08 and 7.13 (Paras 4 and 5). State of U.P.* v. *Ramesh Chandra Sharma*, (1995) 6 SCC 527: 1996 SCC (L&S) 46: (1995) 31 ATC 750: AIR 1996 SC 864.

Bench Strength **2**. Coram: **J.S. Verma** and *K. Venkataswami*, JJ. [Date of decision: 16-10-1995]

Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212: 1991 SCC (L&S) 742, followed

Harpal Singh Chauhan v. State of U.P., (1993) 3 SCC 552: 1993 SCC (Cri) 938, distinguished

[113] — S. 24 — District Government Counsel — Arbitrary refusal to renew term of — Circumstances rendering grant of relief nonetheless inappropriate — *Government's refusal to renew the term of the erstwhile District Government Counsel although found arbitrary, in view of the submission on their behalf that they were keen only to vindicate their honour and not to seek the consequential relief, consideration of the question of grant of relief, held, unnecessary — Moreover, in view of non-impleadment of the persons appointed in their place grant of any further relief in the instant case, held, inappropriate — Constitution of India — Arts. 136 and 14. State of U.P.* v. *Ramesh Chandra Sharma*, (1995) 6 SCC 527: 1996 SCC (L&S) 46: (1995) 31 ATC 750: AIR 1996 SC 864.

Bench Strength **2**. Coram: **J.S. Verma** and *K. Venkataswami*, JJ. [Date of decision: 16-10-1995]

[114] — Ss. 24, 25 and 321 — District Government Counsel — 'Office' or 'post' of — Nature — Public Element — Arbitrary State action affecting person holding — *Not purely contractual but public element is attached to it — Hence in* *case of arbitrary, unreasonable or irrational State action viz. termination of appointment of DGC without any reason, Art. 14 is attracted — Advocates — (U.P. Government) Legal Remembrancer's Manual, Ch. VII, Paras 7.06 to 7.09 — Constitution of India — Art. 14*

The provisions of the L.R. Manual clearly show that the Government Counsel in the districts are treated as Law Officers of the State who are holders of an 'office' or 'post'. By 'office' is meant the right and duty to exercise an employment or a position of authority and trust to which certain duties are attached; and an engagement of DGC satisfies that test. The appointment of DGC by the State Government is not merely a professional engagement like that between a private client and his lawyer nor is it purely contractual. A public element is attached to the 'office' or 'post'. There is an element of continuity of the appointment unless the appointee is found to be unsuitable either by his own work, conduct or age or in comparison to any more suitable candidate available at the place of appointment. Suitability of the appointee being the prime criterion for any such appointment, appointment of the best amongst those available is the object sought to be achieved by these provisions, which, even otherwise, should be the paramount consideration in discharge of this governmental function aimed at promoting public interest. All Government Counsel are paid remuneration out of the public exchequer. Further having regard to Ss. 24, 25 and 321, CrPC the function of Public Prosecutor of withdrawal of prosecution relates to a public purpose entrusting him with the responsibility of so acting only in the interest of administration of justice. In the case of Public Prosecutors, this additional public element flowing from statutory provisions in the Code of Criminal Procedure, invest the Public Prosecutors with the attribute of holder of a public office which cannot be whittled down by the assertion that their engagement is purely professional between a client and his lawyer with no public element attaching to it. Clause (3) of Para 7.06 of the L.R. Manual must be understood to mean that the appointment of a District Government Counsel is not to be equated with appointment to a post under the government in the strict sense, which does not necessarily mean that it results in denuding the office of its public character. There is thus a clear public element attaching to the 'office' or 'post' of Government Counsel at the district level. This is sufficient to attract Art. 14 and bring the question of validity of the impugned circular within the scope of judicial review. (Paras 12 to 17)

The scope of judicial review permissible in the present case, does not require any elaborate consideration since even the minimum permitted scope of judicial review on the ground of arbitrariness or unreasonableness or irrationality, once Art. 14 is attracted, is sufficient to invalidate the impugned circular. (Paras 18 and 20). *Shrilekha Vidyarthi (Kumari)* v. *State of U.P.*, (1991) 1 SCC 212: 1991 SCC (L&S) 742: AIR 1991 SC 537.

Bench Strength 2. Coram: **J.S. Verma** and *R.M. Sahai*, JJ. [Date of decision: 20-9-1990]

[115] — S. 24 — Withdrawal from prosecution — *Although corruption cases against some influential public servants ought not to be withdrawn at the instance of the Home Department without any basis whatsoever, but in terms of the doctrine of forum convenience High Court cannot itself usurp the function of inquiring as to who were involved in such withdrawal — Court should rather forward the same to appropriate institutions available for such inquiries — This is a matter of propriety rather than convenience — In any event, time factor also has a definite role to play in the event the matter is to be considered by the High Court itself* (Para 10). *State of Gujarat* v. *K.V. Joseph*, (2001) 2 SCC 156: 2001 SCC (Cri) 300: (2001) 2 Guj LR 1675.

Bench Strength 2. Coram: *U.C. Banerjee* and *K.G. Balakrishnan*, JJ. [Date of decision: 9-11-2000]

[116] — Ss. 24, 25 and 321 — Withdrawal of prosecution — Power of Public Prosecutor, must be exercised in the interest of administration of justice and relates to a public purpose — *Public prosecutor is thus a holder of public office*

In the case of Public Prosecutors also known as District Government Counsel (Criminal), there can be no doubt about the statutory element attaching to such appointments by virtue of these provisions in the Code of Criminal Procedure, 1973. In this context, S. 21 of the Code of Criminal Procedure, 1973, is also significant.

The power of the Public Prosecutor in charge of the case under S. 321 is derived from statute and the guiding consideration for it, must be the interest of administration of justice. There can be no doubt that this function of the Public Prosecutor relates to a public purpose entrusting him with the responsibility of so acting only in the interest of administration of justice. In the case of Public Prosecutors, this additional public element flowing from statutory provisions in the Code of Criminal Procedure, undoubtedly, invest the Public Prosecutors with the attribute of holder of a public office which cannot be whittled down by the assertion that their engagement is purely professional between a client and his lawyer with no public element attaching to it. (Para 14). *Shrilekha Vidyarthi (Kumari)* v. *State of U.P.*, (1991) 1 SCC 212: 1991 SCC (L&S) 742: AIR 1991 SC 537.

Bench Strength 2. Coram: **J.S. Verma** and *R.M. Sahai*, JJ. [Date of decision: 20-9-1990]

[117] — S. 24 — Amendment of, by U.P. Act 18 of 1991 — Propriety — Amendment of S. 24(1) and omission of Ss. 24(4), (5) & (6), held, irrational — *Making of necessary provisions in (U.P. Government) Legal Remembrancer's Manual, held, does not make up the deficiency caused by said amendments — Hope expressed that the provision for consultation with High Court would be restored or at least acted upon despite deletion* (Paras 86, 21, 42 and 87). *State of U.P.* v. *Johri Mal*, (2004) 4 SCC 714: AIR 2004 SC 3800: (2004) 3 SLR 734: (2004) 19 AIC 69 (SC): (2004) 3 LLN 13.

Bench Strength 3. Coram: *V.N. Khare*, *C.J.* and *Brijesh Kumar* and **S.B. Sinha**, JJ. [Date of decision: 21-4-2004]

[118] — S. 24 — Central Agency — Assignment of sensitive cases like those under Customs Act and Gold (Control) Act by Union of India — *Caveat by Supreme Court — Such cases should be assigned only to counsel having experience and ability in that branch of law to defend their cases so that justice might not suffer and economy of the country might not be put in jeopardy — Constitution of India — Arts. 134 and 136 — Customs Act, 1962 — Ss. 130-E & 135 — Gold (Control) Act, 1968 — Ss. 85(1)(a) and 86. K.I. Pavunny* v. *Asstt. Collector (HQ), Central Excise Collectorate*, (1997) 3 SCC 721: 1997 SCC (Cri) 444: (1997) 1 KLT 489.

Bench Strength 3. Coram: **K. Ramaswamy**, *S. Saghir Ahmad* and *G.B. Pattanaik*, JJ. [Date of decision: 3-2-1997]

[119] — Ss. 24, 225 and 321 — Private complainant also deemed to be a public prosecutor under S. 8(3), Criminal Law (Amendment) Act, 1952

Being conscious of the position that a private complaint may be filed before a Special Judge who may take cognizance of the offences on such a complaint, the Legislature enacted a deeming fiction under S. 8(3) which is confined to the limits of its requirement in that the person conducting a prosecution before a Special Judge is to be deemed to be a public prosecutor. As such that a public prosecutor may abuse his office is not determinative as to who should be a public prosecutor. The arguments that a public prosecutor is appointed under the CrPC by the Central or State Government and that a private complainant who chooses to conduct his case and thereby enjoys the status of a deemed public prosecutor may initiate some frivolous prosecution and then withdraw it on receiving unlawful gratification, are unwarranted. *A.R. Antulay* v. *Ramdas Sriniwas Nayak*, (1984) 2 SCC 500: 1984 SCC (Cri) 277: AIR 1984 SC 718: 1984 Cri LJ 647: 1984 Bom LR 228.

Bench Strength 5. Coram: **D.A. Desai**, *R.S. Pathak*, *O. Chinnappa Reddy*, *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

[120] — Ss. 24 and 24-A — Parties — Prayer for direction to re-engage original Public Prosecutor — Allegations made against Public Prosecutor, etc. of impropriety — Need for impleadment of — *Held (per Lakshmanan, J.), since none of these parties were made parties before Supreme Court, allegations against them cannot be looked into at all — CPC, 1908, Or. 1 R. 9 — Constitution of India — Art. 32*

Further, certain allegations have been made against the Public Prosecutors, etc. None of them were made parties before the Supreme Court. Therefore, the allegations made against them are one-sided and cannot be looked into at all. It cannot also be said that all these authorities have acted in a mala fide manner. (Para 57). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength 3. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

[121] — Ss. 24 and 25 — Provisions in CrPC and in U.P. Legal Remembrancer's Manual regarding appointment of Public Prosecutor — Nature of — *The former, held, are statutory in nature while the Manual is merely a compilation of executive orders and not "law" within the meaning of Art. 13 — (U.P. Government) Legal Remembrancer's Manual, Paras 7.01 to 7.08 and Ch. XXI — District Government Counsel (Criminal) — Administrative Law — Administrative instructions/circular/orders/guidelines — (U.P. Government) Legal Remembrancer's Manual — Nature of — Constitution of India — Art. 13* (Paras 21 and 86). *State of U.P.* v. *Johri Mal*, (2004) 4 SCC 714: AIR 2004 SC 3800: (2004) 3 SLR 734: (2004) 19 AIC 69 (SC): (2004) 3 LLN 13.

Bench Strength 3. Coram: *V.N. Khare*, *C.J.* and *Brijesh Kumar* and **S.B. Sinha**, JJ. [Date of decision: 21-4-2004]

B. Rajeswar Reddy v. K. Narasimhachari, (2001) 6 An LT 104 (FB), impliedly approved

[122] — **Ss. 24 and 25 — Infructuous petition — District Government Counsel (Criminal)** — *Refusal by State Government to renew the term of, despite recommendations both by District Officer and District Judge in their favour — Whether arbitrary and violative of Art. 14 — High Court's decision, answering in the affirmative, having remained stayed for long five years, held, the petition became infructuous and, therefore, liable to be dismissed without examining the merits of the matter — However, the writ petitioners were at liberty to apply for appointment as Public Prosecutors/Additional Public Prosecutors as and when vacancy arose — Constitution of India — Arts. 226, 32 and 14* (Para 9). *State of U.P.* v. *Netra Pal Singh*, (2004) 4 SCC 748: 2004 SCC (L&S) 680: AIR 2004 SC 3513: (2004) 102 FLR 177: 2004 All LJ 2151: (2004) 3 LLN 59: (2004) 5 SLR 364.

Bench Strength 3. Coram: *V.N. Khare, C.J.* and **S.B. Sinha** and *S.H. Kapadia*, JJ. [Date of decision: 21-4-2004]

[123] — **Ss. 24 and 25 — Appointment of a prosecutor, alleged to be inimically disposed towards the accused — Whether prejudices the accused** — *Held (i) where the prosecutor had not given any evidence; (ii) where his personal opinion had no place in the decision-making process of the court; and (iii) the manner in which he presented the case was always subject to judicial scrutiny, no prejudice would be caused to the accused, even when the prosecutor presented his case with vehemence and a touch of vengeance — However, such a practice not approved and advised to be resorted to, only for good reasons — In such cases, further held, the prosecution would be at liberty to recuse himself* (Para 7). *Varada Rama Mohana Rao* v. *State of A.P.*, (2004) 4 SCC 427: 2004 SCC (Cri) 1289.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 25-3-2004]

[124] — **Ss. 24 and 25-A — Fodder Scam cases — Appointment/change of Public Prosecutor — Interference by Supreme Court** — *Held (per majority), appointment of advocates, Public Prosecutors, etc. is the prerogative of the Government in power and the court has no role to play — In the present case, if at all petitioners had any grievance regarding removal of the Public Prosecutor, they should have submitted the same before the Special Judge or the High Court — On facts, contention of petitioners that the prosecutor was purposely changed to give benefit to Respondents 4 and 5 is not correct and is not borne out by the material on record — However, CBI would be at liberty to make use of the services of the earlier prosecutor — Constitution of India — Art. 32*

Per Balakrishnan, J.

The petitioners in the writ petitions have prayed to re-engage the same prosecutor who was handling the case in the trial court from the very beginning of the trial. From the averments made in the counter-affidavit, it is clear that the earlier Prosecutor Shri Ansari had completed the cases and examined all the witnesses for the prosecution as well as for the defence and he had also submitted his entire arguments to the Special Judge. Therefore, the contention of the petitioners that the prosecutor was purposely changed to give benefit to Respondents 4 and 5 is not correct. There is no allegation to prove that Respondents 4 and 5 had in any way interfered with the appointment of the Public Prosecutor. The petitioners could not produce any documents to show that the allegations made in the original petitions were true. If at all the petitioners had any grievance regarding the removal of the Public Prosecutor, they should have submitted their grievance before the Special Judge or before the High Court. The earlier prosecutor had already been deployed to conduct some other case and there is no necessity to give any direction to CBI. However, CBI would be at liberty to make use of the services of the earlier Prosecutor Shri Ansari. (Paras 20, 25 and 26)

Per Lakshmanan, J.

The appointment of lawyers is the prerogative of the Government and the prosecuting agency. The petitioners are trying to find fault with every attempt with every step taken. In cases like this delay is inevitable. Appointment of advocates, Public Prosecutors, etc. is the prerogative of the Government in power and the court has no role to play. (Paras 50 and 51)

The records would only go to show that Respondent 4 had no hand in the change of the prosecutor. (Para 58). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength 3. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

[125] — **Ss. 24 and 25 — Appointment of Special Public Prosecutor — Scope of judicial review — Decisions taken at various levels upon a petition by relatives of a victim** — *Held, said appointment does not in any way cause prejudice to the accused — Power of judicial review is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the suprema lex to other organs of the State — A mere wrong decision will not be sufficient to attract the power — While exercising power the court is*

more concerned with the decision-making process than the merit of the decision itself — Supervisory jurisdiction conferred upon a court is limited to see that the authority concerned functions within its limits of its authority and that its decisions do not occasion miscarriage of justice — Constitution of India — Art. 226 (Paras 5 to 7). *State of Maharashtra* v. *Prakash Prahlad Patil*, (2009) 12 SCC 159: (2009) 80 AIC 60 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 16-4-2009]

[126] — Ss. 24 and 225 — Appointment of Public Prosecutor — Complainant when may suggest names for — *Allegations of bias against entire criminal justice machinery in State concerned and transfer of trial sought outside the said State — Public Accountability and Vigilance — Appointment of Public Prosecutor — Alleged bias in State machinery — Relief*

Late Prof. H.S. Sabharwal was a professor in Government College, Ujjain, M.P. He was brutally beaten up by certain persons for taking a rigid stand in the college union elections. Though the assaults were made in the presence of several police officials, media persons and members of the public, it was alleged that an attempt had been made to create the impression that his death was as a result of an accident. Initially, first information report was lodged and after investigation charge-sheet was filed and charges had been framed against several persons who were Respondents 2 to 7 in the transfer petition. The trial commenced in the Court of Sessions Judge, Ujjain. During examination of several witnesses who were stated to be eyewitnesses, such witnesses resiled from the statements made during investigation. There were even three police witnesses who also resiled from their earlier statements.

Grievance of the petitioner was that the witnesses had been coerced, threatened and ultimately justice was a casualty. That the role of the investigating officer gave ample scope to doubt impartiality and the sincerity of the investigating agency. Similar was the position of the Public Prosecutor. It was also highlighted that the trial court also did not make a serious effort to see that justice was done. In this connection it was pointed out that Public Prosecutor did not cross-examine the persons who had resiled from their statements made during investigation. This according to the petitioner also showed that the trial court did not act as was required under law.

The State of M.P. and the respondent-accused persons conceded before the Supreme Court that in the larger interest of justice and transparency they had no objection to the case being transferred to some other State.

Disposing of the transfer petition in the terms below,

Held :

In light of the concessions of the State of M.P. and the accused, without examining the correctness of the allegations made, it is directed that the case concerned pending in the Court of Sessions Judge, Ujjain be transferred to the Court of Sessions Judge, Nagpur, Maharashtra. It shall be open to the Sessions Judge to either deal with the case himself or to allot it to an appropriate court. The trial will commence from the stage at which it was when the order of stay was passed by the Supreme Court. The petitioner who is the son of the deceased in the peculiar facts of the case is permitted to suggest two names to function as Public Prosecutor. Similarly, two names shall be given by the respondent State. It shall be for the Sessions Judge, Nagpur to appoint a Public Prosecutor from the names to be suggested. The fees and other expenses of the Public Prosecutor shall be borne by the State of M.P. It shall be open to the Public Prosecutor to be appointed to seek recall of any witness already examined in terms of Section 311 CrPC. This shall be in addition to the three police witnesses who had resiled from their statements. (Para 6). *Himanshu Singh Sabharwal* v. *State of M.P.*, (2008) 3 SCC 602: (2008) 2 SCC (Cri) 106: AIR 2008 SC 1943.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 12-3-2008]

Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999, relied on

[127] — Ss. 24 and 225 — Public Prosecutor — Role and Duties of — Duty of court in case of dereliction of duty by prosecuting agency

Though a Public Prosecutor is not supposed to be a persecutor, yet the minimum that was required to be done, to fairly present the case of the prosecution, was not done. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts should not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness. (Paras 71, 56 and 43)

In the present case, the Public Prosecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the court. (Para 68). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

[128] — Ss. 24 and 301 — Public Prosecutor should not appear on behalf of accused. *Sunil Kumar Pal* v. *Phota Sk.*, (1984) 4 SCC 533: 1985 SCC (Cri) 18: AIR 1984 SC 1591.

Bench Strength 2. Coram: **P.N. Bhagwati** and *V. Balakrishna Eradi*, JJ. [Date of decision: 13-8-1984]

[129] — S. 24 — Prosecutor — Professional standards and ethics and to maintained — Persons that an advocate seized of a matter to maintain distance from — Witnesses — *Familiarity cultivated by Appellant 2, Special Public Prosecutor with one of the prosecution witnesses, deprecated and finding of professional misconduct recorded therefor — Advocates Act, 1961, S. 35*

As far as Special Public Prosecutor *IU* (Appellant 2) is concerned, there is not the slightest doubt that the exchange between *K* (the prosecution witness concerned) and *IU* captured in the sting operation and placed on record, far crosses the limits of proper professional conduct of a prosecutor (especially engaged to conduct a sensational trial) and a designated Senior Advocate of long standing. The only common factor between them was the BMW case in which one was the prosecutor and the other was a prosecution witness, later dropped from the list of witnesses. A lawyer, howsoever affable and sociable by disposition, if he has the slightest respect for professional ethics, would not allow himself such a degree of familiarity with the witness of a criminal trial that he might be prosecuting and would not indulge with him in the kind of exchange as admittedly took place between *IU* and *K*. The video of the sting recordings leaves no room for doubt that *IU* was freely discussing the proceeding of BMW case with *K* and was not at all averse to another meeting with him; rather he was looking forward to it. The High Court's finding that the conduct of *IU* was inappropriate for a lawyer in general and a prosecutor in particular is fully endorsed. However, there is a wide gap between professional misconduct and criminal contempt of court. (Paras 191 to 197)

As noticed above, the High Court, for arriving at the finding that there was a high degree of familiarity among *IU*, *K* and *R* has repeatedly used the transcripts of the meetings between *K* and *R*. It is indeed true that in the exchanges between *K* and *R* there are many references to *IU*. That may give rise to a strong suspicion, of a common connection between the three. But having regard to the charge of criminal contempt any suspicion howsoever strong cannot take the place of proof and it is not wholly prudent to rely upon the exchanges between *K* and *R* to record a finding against *IU*. (Paras 209, 199, 201, 204, 205 and 176 to 178). *R.K. Anand* v. *Delhi High Court*, (2009) 8 SCC 106: (2009) 161 DLT 130.

Bench Strength 3. Coram: *B.N. Agrawal*, *G.S. Singhvi* and **Aftab Alam**, JJ. [Date of decision: 29-7-2009]

[130] — Ss. 24 and 321 — Public Prosecutor — Nature of the office and functions of

Per Bhagwati, C.J. and Oza, J.

The Public Prosecutor is the counsel for the Government for conducting prosecution on behalf of the State Government or the Central Government, as the case may be. He is an officer and like every advocate practising before court, he also owes an obligation to the court to be fair and just; he must not introduce any personal interest in the prosecution nor must he be anxious to secure conviction at any cost. He must present the case on behalf of the prosecution fairly and objectively. He is bound to assist the court with his fairly considered view and the fair exercise of his judgment.

Per Venkataramiah, J.

A Public Prosecutor is not a persecutor. He is the representative not of an ordinary party to a controversy, but of sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such he is in a peculiar and very definite sense the servant of the land the twofold aim of which is that guilt shall not escape or innocent suffer. He should prosecute with earnestness and vigour. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate one to bring about a just one.

The judgment of a Public Prosecutor under S. 321 cannot be lightly interfered with unless the court comes to the conclusion that he has not applied his mind or that his decision is not bona fide.

Per Khalid and Natarajan, JJ.

The Public Prosecutor should normally be credited with fairness in exercise of his power under S. 321, when there is no attack against him of having acted in an improper manner. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

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[131] — S. 24 and S. 2(u) — Public Prosecutor — Role and function of — Stated (Para 16). *Jayendra Saraswati Swamigal (3)* v. *State of T.N.*, (2008) 10 SCC 180: AIR 2008 SC 2997: (2008) 3 KLT 669: 2008 Cri LJ 3877.

Bench Strength 3. Coram: **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *M.K. Sharma*, JJ. [Date of decision: 22-7-2008]

[132] — Ss. 24(1), 2(u) and 378 — State Government notification appointing Advocate General as Public Prosecutor under S. 24 — *Advocate General issuing notification under S. 24 r/w S. 2 (u) authorising Deputy Government Advocate to act, plead and argue in all matters covered by the Code — Held, Deputy Advocate General being so authorised is thus a Public Prosecutor having full competence to present an application under S. 378. State of Rajasthan* v. *Manbhar*, (1981) 2 SCC 525: 1981 SCC (Cri) 531.

Bench Strength 2. Coram: **A.D. Koshal** and *Baharul Islam*, JJ. [Date of decision: 12-3-1981]

[133] — S. 24(3) — Held, does not apply to renewal of appointment of a Public Prosecutor (Para 4). *State of U.P.* v. *Ramesh Chandra Sharma*, (1995) 6 SCC 527: 1996 SCC (L&S) 46: (1995) 31 ATC 750: AIR 1996 SC 864.

Bench Strength 2. Coram: **J.S. Verma** and *K. Venkataswami*, JJ. [Date of decision: 16-10-1995]

[134] — Ss. 24(6) and (9) (as amended in 1978) — Appointment of Public Prosecutors — 'Regular cadre of prosecuting officers' in sub-s. (6) — *Means cadre having post of Public Prosecutor at the highest level — Where Assistant Public Prosecutors are members of regular government service having their separate cadre whereas Public Prosecutors and Additional Public Prosecutors are appointed on contract basis for a fixed period and thus their posts are tenure posts, held, State Government not bound to appoint Public Prosecutors and Additional Public Prosecutors only from the cadre of Assistant Public Prosecutors — Sub-s. (6) to be read in the light of sub-s. (9) — Kerala Government Law Officer (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978, R. 5*

The expression "regular cadre of Prosecuting Officers" comprised a service with Assistant Public Prosecutor at the lowest level and Public Prosecutors at the top. In case a regular cadre of Prosecuting Officers does not go up to Public Prosecutor at the top, the State Government cannot be considered as bound to appoint Public Prosecutor or Additional Public Prosecutor only from among the persons constituting such cadre under the Code of Criminal Procedure for conducting cases in the Sessions Court. This is clear on a combined reading of sub-sections (6) and (9) of S. 24. In sub-section (9) the expression "Prosecuting Officers" has been used as taking in any persons holding the post of Public Prosecutor, Assistant Public Prosecutor or any other Prosecuting Officer by whatever name called. Sub-section (6) independently can grant no benefit to the Prosecuting Officers unless the clause of deeming fiction contained in sub-section (9) makes them eligible for appointment as a Public Prosecutor or Additional Public Prosecutor. It was not the intention of the legislature while enacting sub-section (6) that even if in a State there exists only a cadre of Prosecuting Inspectors or Assistant Public Prosecutors, the State Government would be bound to appoint Public Prosecutor and Additional Public Prosecutor only from among such cadre under sub-section (6). The basic intention was to appoint Public Prosecutors and Additional Public Prosecutors from the advocates having at least seven years' practice. It lies within the competence of the State Government to keep the posts of Public Prosecutor and Additional Public Prosecutor as tenure posts for some period based on contract and not to make such posts as regular or permanent under any service rule. In such case till the posts are tenure posts, to be filled on contract basis for some period, the Assistant Public Prosecutors who are members of a regular service cannot claim any right to be appointed on such posts under sub-section (6). They are however, eligible to be considered with any advocate of seven years' standing if willing to join such post on tenure basis by the District Magistrate in consultation with the Sessions Judge. It is not possible to accept the contention that Assistant Public Prosecutors can be appointed on such tenure posts on deputation and may return to their parent service after completion of the period of such tenure posts. The State of U.P. in its counter has clearly brought out the distinction in these two kinds of posts in the manner and terms of their appointment, discharge of duties, emoluments etc. The Assistant Public Prosecutors have avenues of promotion in their own cadre and no argument can be advanced in interpreting sub-section (6) on this basis. *K.J. John, Asstt. Public Prosecutor* v. *State of Kerala*, (1990) 4 SCC 191: 1990 SCC (Cri) 565: AIR 1990 SC 1902: 1990 ALJ 611: (1990) 3 SLJ 32: (1990) 2 KLT 651.

Bench Strength 2. Coram: *M.H. Kania* and **N.M. Kasliwal**, JJ. [Date of decision: 12-7-1990]

[135] — S. 24(6) proviso — Applicability

The proviso to sub-section (6) of S. 24 would not apply in the normal circumstances and would only be attracted where in the opinion of the State Government no suitable person is available in such regular cadre of Prosecuting Officers for appointment as Public Prosecutor or Additional Public Prosecutor. *K.J. John, Asstt. Public Prosecutor* v. *State of Kerala*, (1990) 4 SCC 191: 1990 SCC (Cri) 565: AIR 1990 SC 1902: 1990 ALJ 611: (1990) 3 SLJ 32: (1990) 2 KLT 651.

Bench Strength 2. Coram: *M.H. Kania* and **N.M. Kasliwal**, JJ. [Date of decision: 12-7-1990]

— S. 24(8) *See* Ss. 321 & 24(8)

See also Ss. 377(2), 24(8) and 401

[136] — Ss. 24(8) and 25(1) — Appointment of an advocate as Special Public Prosecutor — Cannot be made on mere asking of private complainant — *Request of the private complainant for such appointment must be examined by Legal Remembrancer on the basis of guidelines prescribed or to be prescribed and decision taken accordingly — Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984, Ch. III — R. 22, held, ultra vires — (Maharashtra) Rules for the Conduct of the Legal Affairs of the Government, 1984*

The request for appointment of a Special Public Prosecutor should be properly examined by the Remembrancer of Legal Affairs on the basis of guidelines prescribed or to be prescribed and only when he is satisfied that the case deserves the support of a Public Prosecutor or a Special Public Prosecutor that such a person should be appointed to be in charge of the case. There may be instances where a case instituted on a private complaint is really a public cause. In such a case the prosecution though initiated by a private individual is really one which should be taken over by the State. There may also be cases of private complainants where for various other reasons it would be appropriate for the State to support the prosecution by appointing a Public Prosecutor or a Special Public Prosecutor to look after the case. Similarly there may be cases where a powerful complainant may have begun a proceeding to victimize his opponent. If in such a case the State concedes to the request for appointment of a Special Public Prosecutor there will be travesty of justice. Therefore, it would not be appropriate to accept the position that whenever an application is made it should be allowed and a Special Public Prosecutor should be appointed. The primacy given to the Public Prosecutor under the scheme of the Code has a social purpose and the same would be lost if the procedure adopted by R. 22 of Maharashtra Rules is accepted.

The Remembrancer of Legal Affairs should also scrutinise requests of private complainants for making payments to the Special Public Prosecutors by them and decide in which cases such request should be accepted, keeping in view the prescribed guidelines and the facts of such case.

Thus R. 22 of the Maharashtra Rules is bad and the State Government should properly modify the same keeping in view the above conclusions. *Mukul Dalal* v. *Union of India*, (1988) 3 SCC 144: 1988 SCC (Cri) 566.

Bench Strength 3. Coram: *R.S. Pathak, C.J.* and **Ranganath Misra** and *B.C. Ray*, JJ. [Date of decision: 4-5-1988]

[137] — Ss. 24(8) and 25(1) — Remuneration of Special Public Prosecutor appointed on the request of a private complainant — *Whether should be paid by the State or the private complainant — To be decided by Legal Remembrancer on the basis of guidelines prescribed or to be prescribed — Normally the remuneration to be paid by State*

Ordinarily, the Special Public Prosecutor should be paid out of the State funds even when he appears in support of a private complainant but there may be some special case where the Special Public Prosecutor's remuneration may be collected from the private source, such as where the prosecutor is a public sector undertaking, a bank whether nationalised or not, an educational institution and the like. The rate of fees should be prescribed and the private complainant should be called upon to deposit the fees either with the Remembrancer of Legal Affairs or a prescribed State agency from where the fees would be drawn by the Special Public Prosecutor. To leave the private complainant to pay the Special Public Prosecutor would indeed not be appropriate. *Mukul Dalal* v. *Union of India*, (1988) 3 SCC 144: 1988 SCC (Cri) 566.

Bench Strength 3. Coram: *R.S. Pathak, C.J.* and **Ranganath Misra** and *B.C. Ray*, JJ. [Date of decision: 4-5-1988]

P.G. Narayanankutty v. State of Kerala, (1982) 2 Cri LJ 2085 (Ker), approved

[138] — Ss. 24(8) and 406 — Appointment of Special Prosecutors — When can be exercised and by whom — Transfer of case — *Held, power of appointment of Special Prosecutors can be exercised by the Central Government and the State Government for the purpose of any case or class of cases, having requisite qualification — Such powers can also be exercised by the State Government of the transferee court where the sessions case is* *pending* (Para 14). *Jayendra Saraswati Swamigal (3)* v. *State of T.N.*, (2008) 10 SCC 180: AIR 2008 SC 2997: (2008) 3 KLT 669: 2008 Cri LJ 3877.

Bench Strength 3. Coram: **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *M.K. Sharma*, JJ. [Date of decision: 22-7-2008]

Jayendra Saraswathy Swamigal (2) v. State of T.N., (2005) 8 SCC 771: (2006) 1 SCC (Cri) 1, followed

— S. 24(9) *See* Ss. 24(6) and (9) (as amended in 1978)

— S. 24-A *See* Ss. 24 and 24-A

— S. 25 *See* Ss. 24 and 25

See also Ss. 24, 25 and 320

See also Ss. 24, 25 and 321

See also Ss. 302, 24 and 25

See also Ss. 309, 311 and 24, 25

[139] — Ss. 25 and 24 — Public Prosecutor/District Government Counsel — Right of existing incumbent to renewal/extension of his tenure — *Appointment of Public Prosecutor or District Government Counsel is in the nature of a professional engagement, governed by provisions of CrPC and relevant executive instructions and does not amount to appointment to a civil post and does not attract the proviso to Art. 309 — Making of such appointment is by following the procedure contained in CrPC and adopting a reasonable or fair procedure, held, hence normally not subject to judicial review — The question of State's satisfaction or otherwise with the performance of its counsel is a matter between it and the counsel — An incumbent has no legal enforceable right for renewal or extension of his tenure — Denial of such renewal although is subject to judicial scrutiny, inter alia, on the ground of arbitrariness or malice, held, the court would not examine as to what impelled the State not to renew the incumbent's tenure — Jurisdiction of the court in such cases would be to invoke the doctrine of Wednesbury unreasonableness — State's action held, can be subjected to review only when it falls in the realm of public law — The position can be determined in each case having regard to the nature of and extent of the authority vested in the State and it is not possible to generalise the nature of actions falling under public law remedy or private law field nor is it desirable to enumerate such actions — Power of judicial review, held, is not intended to assume a supervisory role — Limitations on the power of judicial review restated — Situations in which and extent to which the court of judicial review can reappreciate the findings of fact, restated — Further held, (U.P. Government) Legal Remembrancer's Manual is not "law" under Art. 13 and is not covered even by Art. 166(3) — However, in making such appointments the State has to act fairly and reasonably and normally must follow the principles contained in the said Manual — Hence, where District Officer opined that the term of the existing DGC (Crl) should not be extended as he lacked effective control over ADGCs for "taking steps" and District Judge agreed therewith, non-renewal of his tenure by the State, held, not wholly without jurisdiction and not calling for interference under Art. 226 — Certain specific guidelines laid down to enable appointment of competent lawyers — State's decision not to renew the tenure of existing Public Prosecutor — Scope of judicial review of such decision — (U.P. Government) Legal Remembrancer's Manual, Paras 7.01 to 7.08 and Ch. XXI — Provisions in, for appointment and renewal of the term of District Government Counsel — Nature and binding effect of — Held, they are executive instructions and neither "law" within Art. 13 nor covered by Art. 166(3) — However, normally the State would be bound to follow the principles laid down therein — Constitution of India — Arts. 226, 13 and 166(3) — Judicial review under Art. 226*

The respondent herein was appointed as DGC (Crl) at Meerut on 7-1-1993. That post is deemed to be that of Public Prosecutor within the meaning of Section 24 CrPC. His term was renewed on 12-3-1996 and he was again appointed in the same capacity on 17-9-1997 for one year. However, subsequent thereto, despite his request, his term was not renewed and on 18-9-1998 he was relieved from the charge of the said post. On 17-9-1998 the vacancy was notified. The respondent then filed a writ petition before the Allahabad High Court challenging the said order dated 18-9-1998 on the ground that as the District Magistrate and the District Judge had found his conduct and work satisfactory and had recommended for renewal of his term, the renewal ought to have been granted as a matter of course. The High Court held that there was no good or cogent reason for rejecting the recommendation of the District Judge. Therefore, it directed the State Government to renew the respondent's term as DGC (Crl). Referring to *Special Reference No. 1 of 1998, Re*, (1998) 7 SCC 739, the High Court further opined that the District Judge should not make the recommendation alone but should constitute a five-member collegium headed by himself, for that purpose. Although the State pointed out that the respondent's case was not recommended by the District Judge or the District

Magistrate, the High Court directed the question of renewal of the respondent's term to be considered afresh by the collegium. The State then filed the instant appeals.

The appellant State contended: (*i*) the High Court proceeded on a wrong premise that the recommendations for renewal of the respondent's term as DGC (Crl) had been made by the District Magistrate, (*ii*) since the appointment of Public Prosecutors was governed by the provisions of CrPC and renewal thereof, by the U.P. Legal Remembrancer's Manual, the High Court erred in directing the constitution of a collegium, and (*iii*) professional engagement of a lawyer could not be equated with the appointment in a civil post as there existed a relationship of client and lawyer between the State and the Public Prosecutor. On the other hand, the respondent submitted that the High Court felt the need to constitute a collegium as the action on the part of the State in appointment and/or renewal of the DGCs was found to be arbitrary. The respondent added that the Public Prosecutors looked after the prosecution work and thus the office was public in nature.

Allowing the appeals,

Held :

Although the Legal Remembrancer's Manual provides for renewal but it contains executive instructions which even do not meet the requirements of Section 166(3). The Legal Remembrancer's Manual is not law within the meaning of Article 13. (Para 42)

The State, however, while appointing a counsel must take into account the following fundamental principles so that good and competent lawyers are appointed: (*i*) good administration of justice; (*ii*) to fulfil its duty to uphold the rule of law; (*iii*) its accountability to the public; and (*iv*) expenditure from the taxpayers' money. No appointment of Public Prosecutors or District Counsel should be made either for pursuing a political purpose or for giving some undue advantage to a section of the people. Retention of its counsel by the State must be weighed on the scale of public interest. The State should replace an efficient, honest and competent lawyer, inter alia, when it is in a position to appoint a more competent lawyer. In such an event, even a good performance by a lawyer may not be of much importance. (Paras 43 and 44)

However, malice in law can also be a ground for judicial review. (Para 45)

The Code of Criminal Procedure does not provide for renewal or extension of a term. Evidently, the legislature thought it fit to leave such matters at the discretion of the State. However, even in the matter of extension or renewal of the term of Public Prosecutors, the State is required to act fairly and reasonably. The State normally would be bound to follow the principles laid down in the Legal Remembrancer's Manual. (Para 46)

A Public Prosecutor is not only required to show his professional competence but is also required to discharge certain administrative functions. In the present case, the District Officer was of the opinion that in a district like Meerut the term of the appointment should not be extended as he had no effective control over the other ADGCs for "taking steps". The approach of the District Officer cannot be said to be wholly irrational. Moreover, the District Judge also agreed thereto. The action on the part of the State, therefore, cannot be said to be wholly without jurisdiction requiring interference by the High Court in exercise of its power of judicial review. (Para 51)

The District Government Counsel appointed for conducting civil as also criminal cases hold offices of great importance. They are not only officers of the court but also the representatives of the State. (Para 71)

Public Prosecutors have greater responsibility. They are required to perform statutory duties independently having regard to various provisions contained in CrPC and in particular Section 320 thereof. (Para 72)

The District Government Counsel represent the State. They, thus, represent the interest of the general public before a court of law. The holders of the post have a public duty to perform. Public element is, thus, involved therein. In the matter of engagement of a District Government Counsel, however, a concept of public office does not come into play. The choice is that of the Government and none can claim a right to be appointed because it is a position of great trust and confidence. Article 14, however, will be attracted to a limited extent as the functionaries named in CrPC are public functionaries. They also have a public duty to perform. If the State fails to discharge its public duty or acts in defiance, deviation and departure of the principles of law, the court may interfere. The court may also interfere when the legal policy laid down by the Government for the purpose of such appointments is departed from or mandatory provisions of law are not complied with. Judicial review can also be resorted to, if a holder of a public office is sought to be removed for reasons dehors the statute. (Paras 74 and 75)

The appointment to the post of Districl Government Counsel must not be a political one. The

Manual states that political activity by the District Government Counsel shall be a disqualification to hold the post. (Para 76)

The State, therefore, is not expected to rescind the appointments with the change in the Government. The existing panel of the District Government Counsel may not be disturbed and a fresh panel come into being, only because a new party has taken over charge of the Government. (Para 78)

The power under Article 226 is not on a par with the constitutional jurisdiction conferred upon the Supreme Court under Article 142. The High Court has no jurisdiction to direct formulation of a new legal principle or a new procedure which would be contrary to and inconsistent with a statutory provision like the Code of Criminal Procedure. (Para 57). *State of U.P.* v. *Johri Mal*, (2004) 4 SCC 714: AIR 2004 SC 3800: (2004) 3 SLR 734: (2004) 19 AIC 69 (SC): (2004) 3 LLN 13.

Bench Strength 3. Coram: *V.N. Khare, C.J.* and *Brijesh Kumar* and **S.B. Sinha**, JJ. [Date of decision: 21-4-2004]

Union of India v. Naveen Jindal, (2004) 2 SCC 510, relied on

Kumari Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212: 1991 SCC (L&S) 742; Mukul Dalal v. Union of India, (1988) 3 SCC 144: 1988 SCC (Cri) 566; Mundrika Prasad Singh v. State of Bihar, (1979) 4 SCC 701, considered

[140] — Ss. 25 and 24 — Separation of prosecution agency from investigation agency — Police prosecutors functioning under the control of Inspector General of Police appointed as Assistant Public Prosecutors by a notification under S. 25 issued by the State Government — *Held, such Assistant Public Prosecutors could not be allowed to continue as personnel of Police Department and to continue to function under the control of the head of Police Department — State Govt. directed to constitute a separate cadre of Assistant Public Prosecutors by creating a separate Prosecution Department making its head directly responsible to the Govt. — A Police Prosecutor is not eligible for being appointed as Assistant Public Prosecutor — However, since that question not raised before Supreme Court and the appointments of Police Prosecutors as Assistant Public Prosecutors were made about 21 years back, the Supreme Court did not express its view on that question — Service Law — Bombay Police Manual, Rules 32 and 60*

When Assistant Public Prosecutors are appointed under Section 25 of the Code for conducting prosecutions in courts of Magistrates in a district fairly and impartially, separating them from the police officers of the Police Department and freeing them from the administrative or disciplinary control of officers of the Police Department, are the inevitable consequential actions required to be taken by the State Government which appoints such Assistant Public Prosecutors, inasmuch as, taking of such actions are statutory obligations impliedly imposed upon it under sub-section (3) thereof. When such consequential actions are taken by the State Government in respect of large number of persons appointed as Assistant Public Prosecutors, it becomes necessary for putting them on a separate cadre of Assistant Public Prosecutors and creating a separate Prosecution Department as suggested by the Law Commission in its Report making those Assistant Public Prosecutors subject to control of their superiors in the hierarchy in matters of administration and discipline, with the head of such Prosecution Department being made directly responsible to the State Government in respect of conduct of prosecutions by the Assistant Public Prosecutors of his department. (Para 12)

In the present case the notification dated 1-4-1974 issued by the Government of Maharashtra under Section 25 of the Code merely appoints the appellants and others, as mentioned in Schedule to the notification, the Police Prosecutors of the Police Department as Assistant Public Prosecutors without freeing such Assistant Public Prosecutors from the administrative and disciplinary control of the Police Department to which they belonged earlier, and without creating a separate department of prosecution for them with the head of that department or departments being made directly responsible to the Government, the Government of Maharashtra has failed to discharge its statutory obligation impliedly imposed upon it in that regard under sub-section (3) of Section 25 of the Code. The Govt. of Maharashtra could not have allowed the Assistant Public Prosecutors appointed thereunder to continue as personnel of its Police Department and to continue to function under the control of the head of Police Department, the Inspector General of Police. (Para 12)

The Govt. of Maharashtra is directed to constitute a separate cadre of Assistant Public Prosecutors either on district-wise basis or on State-wise basis, by creating a separate Prosecution Department for them and making the head to be appointed for such department directly responsible to the State Government for their discipline and the conduct of all prosecutions by them before the Magistrates' courts and further free such Prosecutors fully from the administrative and disciplinary control of the Police Department or its officers, if they still continue to be under such control. (Para 15)

No doubt, when the scheme of the provision in Section 25 of the Code as also the scheme contained in Section 24 of the Code are seen, a police prosecutor cannot even become eligible for being appointed as Assistant Public Prosecutor on regular basis, but that question has since not been raised before the Supreme Court and further since the appointments of the appellants and other similarly situated Police Prosecutors as Assistant Public Prosecutors are made under the notification issued as far back as in the year 1974, the Supreme Court did not express its view on that question. (Para 14). *S.B. Shahane* v. *State of Maharashtra*, 1995 Supp (3) SCC 37: (1995) 30 ATC 519: 1995 SCC (Cri) 787: AIR 1995 SC 1628.

Bench Strength **2**. Coram: *Kuldip Singh* and **N. Venkatachala**, JJ. [Date of decision: 21-4-1995]

[141] — S. 25 — Appointment as Law Officer/Assistant Public Prosecutor — Nature of office — Holding "office of profit" under the State Government — Three requirements of, restated — *Appointment as Law Officer/Assistant Public Prosecutor, even though provisional, under R. 5(4) of Orissa Law Officers Rules, 1971 read with S. 25, CrPC, held, satisfies all of the said three requirements — Hence, amounts to holding of an office of profit under the State Government — Consequently, a person so appointed, held, not eligible to stand for election of member or Chairman of Panchayat Samiti, and, if elected, would cease to be a member and a fortiori to be Chairman — Orissa Law Officers Rules, 1971, R. 5(4) — Constitution of India — Arts. 102, 191 & 58(2) — Orissa Panchayat Samiti Act, 1959 (7 of 1960) — S. 45(1)(i)*

The appellant, an advocate, was appointed as an Assistant Public Prosecutor provisionally under Rule 5(4) of the Orissa Law Officers Rules, 1971 read with Section 25 of CrPC, 1973 to conduct criminal cases. He was entitled to a daily fee of Rs 100 subject to restrictions under the Rules. While so, he as well as Respondent 4 were elected as members of different Panchayat Samitis. Thereafter both of them contested the election to the post of Chairman of the Panchayat Samiti, whereof the appellant was a member. The appellant was declared elected as Chairman. Having lost in the contest, Respondent 4 moved an application before the District Judge under Section 45-B of the Orissa Panchayat Samiti Act, 1959 on the ground that as Assistant Public Prosecutor, the appellant was holding an "office of profit" under the Government, so he was not eligible to be either a member or the Chairman of the Panchayat Samiti. The District Judge decided against the appellant and the High Court confirmed that decision. Before the Supreme Court, the appellant contended that: (*i*) his appointment as Public Prosecutor being provisional, he was not holding an office of profit; and (*ii*) after the election of the appellant was over only an election petition under Section 44-A but not a petition under Section 45-B of the Act was the remedy of Respondent 4. Dismissing the appeal,

Held :

The expression "office of profit" only means an office which yields income or profit. The term "office" or "employment" means one subsisting, permanent, substantive position which had an existence independent from the person who filled it, which went on and was filled in succession by successive holders.

In order to prove the incurring of disqualification under Section 45(1)(*i*) of the Act it must be shown that (*i*) there was a permanent office of Assistant Public Prosecutor; (*ii*) income or profit accrued from that office, and (*iii*) the appellant held that office. Admittedly, permanency is attached to the post of Assistant Public Prosecutor and appointment to that office is regulated by the Rules which deal with the remuneration of the Law Officers. It is immaterial that the appellant did not in fact receive any fee. Requirements (*i*) and (*ii*) are, therefore, satisfied. The appointment of the appellant as a Law Officer/Assistant Public Prosecutor under the Rules would satisfy the third requirement as well.

The appellant's contention that his appointment being a stopgap arrangement, he could not be said to be holding an office of profit is devoid of merit. To fulfil the requirements of the said expression it must be shown that permanency is attached to the office and not to the term for which a person holds it. It has, therefore, to be held that the appellant was holding an office of profit on the relevant date and was not eligible to stand for election of member or Chairman of the Panchayat Samiti and in view of Section 45(1)(*i*) he shall cease to be a member a fortiori to be the Chairman of the Samiti. *Rabindra Kumar Nayak* v. *Collector, Mayurbhanj, Orissa*, (1999) 2 SCC 627: AIR 1999 SC 1120: (1999) 2 LLN 625: (1999) 2 SLR 13.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.S.M. Quadri**, JJ. [Date of decision: 19-2-1999]

Kanta Kathuria v. Manak Chand Surana, (1969) 3 SCC 268, followed

Madhukar G.E. Pankakar v. Jaswant Chobbildas Rajani, (1977) 1 SCC 70: AIR 1976 SC 2283, considered

— S. 25(1) *See also* Ss. 24(8) and 25(1)

[142] — S. 25(1) — "Civil post" — Scope — Post of Assistant Public Prosecutor appointed in Magistrate's court by Governor of the State, held, covered — *Therefore, his dispute against termination of his services, held, fell within the jurisdiction, powers and authority of the State Administrative Tribunal — High Court had no jurisdiction to entertain, try and dispose of his writ petition challenging termination of his service — Hence, Division Bench of High Court rightly transferred the same to State Administrative Tribunal — Contention that APP was covered by the exception in S. 2(c), AT Act, rejected — Further held, the termination order passed under R. 6, W.B. Services (Appointment, Probation and Confirmation) Rules, 1979 on payment of notice pay also indicated that the post of APP was a civil post — Assistant Public Prosecutor — Nature of his post and judicial forum competent to decide a dispute regarding termination of his service — W.B. Assistant Public Prosecutors (Qualifications, Method of Recruitment and Conditions of Service) Rules, 1974, Rr. 3 and 4 — W.B. Services (Appointment, Probation and Confirmation) Rules, 1979, R. 6 — W.B. Service Rules, 1971, R. 34-B(2) — W.B. Administrative Tribunal (Procedure) Rules, 1994 — Constitution of India — Arts. 323-A(1) & 226 — Administrative Tribunals Act, 1985 — Ss. 15, 4(2) and 2(c)*

On 9-4-1975, exercising his powers under Section 25(1), CrPC, the Governor of West Bengal, appointed the petitioner herein to act as an Assistant Public Prosecutor. He took charge and completed the probation period. As per Rule 4(*d*) of the Assistant Public Prosecutors (Qualifications, Method of Recruitment and Conditions of Service) Rules, 1974, on 31-3-1978 he was appointed as Assistant Public Prosecutor in the Court of the Judicial Magistrate at Malda. However, his services were terminated by the Governor's order dated 22-9-1979 which was communicated to him along with a cheque for the amount of one month's salary in lieu of notice as required under Rule 34-B(2) of the West Bengal Service Rules, 1971. A Single Judge of the Calcutta High Court allowed his writ petition and set aside the termination order. But a Division Bench of the High Court held that the Single Judge had no jurisdiction to entertain, try and hear the writ petition after coming into force of the Administrative Tribunals Act, 1985 and, consequently, the Division Bench transferred the matter to the State Administrative Tribunal for disposal. The petitioner then filed the instant SLP. The petitioner contended that as Assistant Public Prosecutor was an officer of the Court of the Judicial Magistrate which was a court subordinate to the Calcutta High Court and, therefore, the petitioner came within the ambit of the exception in Section 2(*c*) of the AT Act, the High Court had the jurisdiction to consider the matter and it erred in transferring his writ petition to the State Administrative Tribunal. The question thus arising for determination was whether the post of APP was a civil post under Section 15, AT Act.

Answering in the affirmative and dismissing the SLP,

Held :

Rules 3 and Rule 4 of the West Bengal Assistant Public Prosecutors (Qualifications, Method of Recruitment and Conditions of Service) Rules, 1974 indicate that the post of Assistant Public Prosecutor is a civil post, and consequently, all service matters concerning such posts shall fall within the jurisdiction, powers and authority of the State Administrative Tribunal under Section 15 of the AT Act. Further, the order of termination passed in the present matter also indicates that the services of the petitioner came to be terminated as Assistant Public Prosecutor, Malda under Rule 6 of the West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979 on payment of one month's salary in lieu of notice. This also indicates that the post of Assistant Public Prosecutor was a civil post under the State in terms of Section 15(1) of the Administrative Tribunals Act, 1985. Moreover, the West Bengal Administrative Tribunal has been established under Section 4(2) of the Administrative Tribunals Act, 1985, which is also indicated by the West Bengal Administrative Tribunal (Procedure) Rules, 1994. Hence, the present dispute regarding termination of service of Assistant Public Prosecutor came within the jurisdiction, powers and authority of the Tribunal under Section 15 of the AT Act. (Paras 6 and 5)

Moreover, the petitioner held his employment under the State Government of West Bengal. Therefore, in view of Article 323-A(1) of the Constitution, the Single Judge of the High Court had no jurisdiction to entertain, try and dispose of this matter under Article 226 of the Constitution. Hence, the Division Bench of the High Court was right in transferring the matter to the State Administrative Tribunal. (Paras 7 and 5). *Samarendra Das, Advocate* v. *State of W.B.*, (2004) 2 SCC 274: 2004 SCC (L&S) 402: (2004) 1 LLN 523: (2004) 2 CHN 76: (2004) 100 FLR 849: (2004) 2 SLR 56.

Bench Strength 2. Coram: *V.N. Khare, C.J.* and **S.H. Kapadia**, J. [Date of decision: 16-1-2004]

— **S. 25-A** *See also* Ss. 24 and 25-A

[143] — S. 25-A — Separation of prosecuting agency from investigating agency — Desirability of — *Background for insertion of S. 25-A by amendment in 2006 of CrPC, 1973 for establishment of separate prosecution agency brought out — Law in Commonwealth countries compared* (Paras 23 to 30). *NHRC* v. *State of Gujarat*, (2009) 6 SCC 767.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 1-5-2009]

Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999, relied on

— Ch. III (Ss. 26 to 35) *See* Ss. 228 & 240 and Ch. III (Ss. 26 to 35)

— S. 26 *See also* Ss. 28 & 29, Criminal Procedure Code, 1898, pp. 965 et seq. in Vol. 2

— S. 26 *See* Ss. 11(1) proviso, 4(1) & (2), 3(4)(a), 26 and 245
See also Ss. 209 and 26 and Sch. I
See also Ss. 209, 193, 26 and 306
See also Ss. 228, 227 and 26

[144] — S. 26 — Specific powers have been conferred by hierarchy of courts to deal with the matter as it seems just and proper — *Therefore, powers have to be exercised in accordance with law — Even discretionary power has to be exercised in consonance with the known principles of law*

The criminal jurisprudence of the country proceeds on the basis that a person is innocent and the burden rests on the prosecution to prove beyond all reasonable doubts as regards the guilt of the accused persons. It is with this background that the Code of Criminal Procedure has conferred on to the hierarchy of the courts specific powers to deal with the matter as it seems just and proper. The words "just and proper" used herein do not however, mean and imply an arbitrary exercise of power — powers are circumscribed and have to be exercised in accordance with the provisions of law and not dehors the same. Even discretionary powers shall have to be exercised in a manner and in consonance with the known principles of law and not otherwise. (Para 13). *Dwarka Dass* v. *State of Haryana*, (2003) 1 SCC 204: 2003 SCC (Cri) 264: AIR 2003 SC 185.

Bench Strength 2. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 13-11-2002]

— S. 26(a)(ii) *See* Ss. 374(2) and 26(a)(ii)
See also Ss. 408(1), 406, 407, 228(1), 227 and 26(a)(ii)

[145] — Ss. 26(a)(ii) & (iii) and Sch. I — Bar under, on Court Martial's jurisdiction to try the offence of rape, held, not applicable to the offence of attempting to commit rape — *Provisions of Sch. I to CrPC in respect of Ss. 511 and 376 IPC could not be invoked to reach a different conclusion as the question of Court Martial's jurisdiction to try an offence has to be adjudged from the provisions of the Army Act itself and not with reference to CrPC — Penal Code, 1860 — Ss. 376 and 511 — Army Act, 1950 — S. 70* (Para 2). *Madan Lal* v. *Union of India*, (2002) 10 SCC 185.

Bench Strength 2. Coram: *G.B. Pattanaik* and *N. Santosh Hegde*, JJ. [Date of decision: 21-9-1999]

State v. Jaikaran Singh, AIR 1955 NUC 1721 (All), overruled

— S. 26(a)(iii) *See* Ss. 26(a)(ii) & (iii) and Sch. I

— S. 26(b) *See* Ss. 167, 2(h), 4(2), 26(b) and Ch. XII (Ss. 154 to 176)
See also Ss. 167(1), 4(2), 5, 26(b)

— S. 27 *See also* CRIMINAL LAW — 'Juvenile Justice and Children's Acts' in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn.

[146] — S. 27 — Accused below 16 years convicted and sentenced under S. 302, IPC — Whether entitled to the benefits of Haryana Children Act, 1974 (Haryana Act 14 of 1974) — *Held, clause "any offence not punishable with death or imprisonment for life" in S. 27, Criminal Procedure Code will override the non obstante clause in S. 65(1) of the Act, the Central legislation (Criminal Procedure Code) having been enforced subsequent to the State Act and hence applicability of the Act in case of trial of the child convicted under S. 302, IPC would be barred by S. 27, Criminal Procedure Code*

[But since *Rohtas* v. *State of Haryana*, (1979) 4 SCC 229: 1979 SCC (Cri) 963, which held that by virtue of S. 65(1) the State Act would apply to a child notwithstanding the fact that he was accused of an offence punishable with death or imprisonment for life, had not been decided from the above angle, the Court advised that the case be referred to a larger Bench in order to resolve the conflict.]. *Raghbir* v. *State of Haryana*, (1981) 3 SCC 170: 1981 SCC (Cri) 667.

Bench Strength 2. Coram: **A.D. Koshal** and *Baharul Islam*, JJ. [Date of decision: 17-3-1981]

[147] — Ss. 27 and 5 — Haryana Children Act, 1974 — Ss. 21 and 65(1) — Held that that even though the Code came into force after the Haryana Act, it would not have overriding effect — *Benefit of the Haryana Act therefore available to a delinquent child accused under S. 302, IPC — Held further that there is no inconsistency or repugnancy between the provisions of the Code and the State Act in terms of Art. 254(1) of the Constitution — S. 27,* *Criminal Procedure Code only an enabling provision and not a "specific provision to the contrary" within S. 5, Criminal Procedure Code — Children Act, 1960 — S. 20. Raghbir* v. *State of Haryana*, (1981) 4 SCC 210: 1981 SCC (Cri) 818: AIR 1981 SC 2037: 1981 Cri LJ 1497.

Bench Strength 3. Coram: *O. Chinnappa Reddy, A.P. Sen* and **Baharul Islam**, JJ. [Date of decision: 8-9-1981]

— S. 28 *See* Ss. 30, 28 and 29

See also Ss. 357, 29(2) to (4) and 28

See also CRIMINAL TRIAL — 'Sentence', in Vol. 3

See also under PENAL CODE, 1860 — 'S. 302 — Murder Trial'

[148] — Ss. 28 and 29 — Imposition of "appropriate sentence" — Emphasising need of, object of law as well as duty and role of courts in this regard, stated — Awarding inadequate sentence — Effect of, on justice system and society, explained — Relevant considerations while determining sentence — *Held, sentence should be proportionate to gravity of crime — Corrective machinery or deterrent approach to be adopted depending upon factual matrix — No formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment — Due consideration should be given to facts and circumstances of case, having regard to various factors including nature of offence and manner in which it was executed or committed, motive for the crime, conduct of accused, nature of weapons used and all other attendant circumstances — Aggravating and mitigating circumstances should be delicately balanced — Rights not only of criminals but also of victims of crime and society at large to be kept in view*

The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. (Para 7)

Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. (Para 8)

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread. (Para 9)

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction, drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences. (Para 10)

After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. No formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of the crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished. (Para 11)

The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. (Para 12)

It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance. (Para 13). *Shailesh Jasvantbhai* v. *State of Gujarat*, (2006) 2 SCC 359: (2006) 1 SCC (Cri) 499: (2006) 2 Guj LR 1428: 2006 Cri LJ 1132.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-1-2006]

Sevaka Perumal v. State of T.N., (1991) 3 SCC 471: 1991 SCC (Cri) 724; Dennis Councle McGautha v. State of California, 402 US 183: 28 L Ed 2d 711 (1971); Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358; Ravji v. State of Rajasthan, (1996) 2 SCC 175: 1996 SCC (Cri) 225; State of M.P. v. Ghanshyam Singh, (2003) 8 SCC 13: 2003 SCC (Cri) 1935; Surjit Singh v. Nahara Ram, (2004) 6 SCC 513: 2004 SCC (Cri) 1801; State of M.P. v. Munna Choubey, (2005) 2 SCC 710: 2005 SCC (Cri) 559, relied on

[149] — Ss. 28 and 29 — Relevant considerations — Duty of courts to award "appropriate sentence" — Need to avoid lenient/sympathetic approach on account of mere lapse of time — *Held, courts should impose appropriate punishment befitting the crime — They should impose such sentence which reflects the conscience of the society — Sentencing process must be stern where it should be — While considering imposition of appropriate sentence, courts must keep in view not only the rights of victim of crime but also the rights of society at large — Any liberal attitude by imposition of meagre sentences or taking too sympathetic view on account of mere lapse of time, held, will be counterproductive in long run and against the interest of society — In present case, A-1 was the main accused involved in brutal murder of nine persons — Hence, order passed against him by TADA Court imposing sentence of life imprisonment with the condition that it shall not be of less than 20 years, held, was proper — Not liable to be modified — Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 5* (Paras 99 to 102). *Ahmed Hussein Vali Mohammed Saiyed* v. *State of Gujarat*, (2009) 7 SCC 254: (2009) 3 SCC (Cri) 368: (2009) 79 AIC 229 (SC).

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and **P. Sathasivam** and *J.M. Panchal*, JJ. [Date of decision: 12-5-2009]

[150] — Ss. 28 and 29 — Imposition of "appropriate sentence" — *Emphasising the need of, object of law as well as duty and role of courts in this regard, stated — Awarding inadequate sentence — Effect of, on justice system and society, explained — Principle of proportionality — Extent of adherence to, while determination of sentences in practice, discussed — Relevant factors to be taken into account while determining proper sentence, restated — Further, need of balancing the aggravating and mitigating circumstances of the case, expressed — On facts, two years' custodial sentence under S. 304 Pt. I IPC, held, was not proper — Hence, enhanced to six years. State of M.P.* v. *Ghanshyam Singh*, (2003) 8 SCC 13: 2003 SCC (Cri) 1935: AIR 2003 SC 3191.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 11-9-2003]

State of Punjab v. Bira Singh, 1995 Supp (3) SCC 708: 1995 SCC (Cri) 1152; Pashora Singh v. State of Punjab, 1993 Supp (2) SCC 33: 1993 SCC (Cri) 387; Dilbag Singh v. State of Punjab, (1979) 2 SCC 103: 1979 SCC (Cri) 376, not followed

Mahesh v. State of M.P., (1987) 3 SCC 80: 1987 SCC (Cri) 379; Jashubha Bharatsinh Gohil v. State of Gujarat, (1994) 4 SCC 353: 1994 SCC (Cri) 1193; Sevaka Perumal v. State of T.N., (1991) 3 SCC 471: 1991 SCC (Cri) 724; Dennis Councle McGautha v. State of California, 402 US 183: 28 L Ed 2d 711 (1971); Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358; Ravji v. State of Rajasthan, (1996) 2 SCC 175: 1996 SCC (Cri) 225, relied on

[151] — Ss. 28 and 29 — Imposition of "appropriate sentence" — Emphasising the need of, and reiterating the object of law as well as duty and role of courts in this regard, held, sentence should be proportionate to the gravity of offence *— It should reflect the conscience of the society — Awarding inadequate sentence — Effect of, on justice system and society, explained — No formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment — Due consideration should be given to the facts and circumstances of the case — Relevant factors to be taken into account while determining proper sentence, restated — Aggravating and mitigating factors should be delicately balanced — Penology — Sentencing — Principle of proportionality — Applicability. State of M.P.* v. *Babbu Barkare*, (2005) 5 SCC 413: 2005 SCC (Cri) 1335: AIR 2005 SC 2846: 2005 Cri LJ 3117.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-5-2005]

Mahesh v. State of M.P., (1987) 3 SCC 80: 1987 SCC (Cri) 379; Sevaka Perumal v. State of T.N., (1991) 3 SCC 471: 1991 SCC (Cri) 724; Jashubha Bharatsinh Gohil v. State of Gujarat, (1994) 4 SCC 353: 1994 SCC (Cri) 1193; Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358; Ravji v. State of Rajasthan, (1996) 2 SCC 175: 1996 SCC (Cri) 225; Dennis Councle McGautha v. State of California, 402 US 183: 28 L Ed 2d 711 (1971); State of M.P. v. Ghanshyam Singh, (2003) 8 SCC 13: 2003 SCC (Cri) 1935, relied on

[**Ed.**: *See* in this regard (2005) 8 SCC 1 and 8.]

[152] — Ss. 28 and 29 — Health and old age as factors — Alteration of sentence to period already undergone i.e. 70 days — Relief of — Entitlement to — Forgery case *— Girl **B** securing admission on basis of forged marksheets — Sentence of 3 months and 6 months passed against **B** and her father **F** respectively by High Court — **B**, a housewife, having no job/source of income of her own — She was a heart patient and had undergone two open heart surgeries — **F**, a retired Engineer of 81 years, was also a heart patient and having no income other than his pension — Incident occurred a quarter of century back — Considering peculiar facts of the case and an earlier order of Supreme Court, held, sentence could be reduced to period already undergone by **B** and **F** i.e. 70 days — However, fine imposed by courts below would remain unaltered — Penal Code, 1860 — Ss. 420, 421, 466, 468, 471, 465 and 120-B* (Paras 7, 8 and 10). *Beena Philipose* v. *State of Kerala*, (2006) 7 SCC 414: (2006) 3 SCC (Cri) 288.

Bench Strength 2. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 4-9-2006]

[153] — Ss. 28 and 29 — Leniency in sentence — Conviction of police personnel in serious offences — Leniency in sentence in such cases, held, not proper *— In these cases, the court will be justified in imposing a deterrent sentence so that it may serve as a warning to others and may restore to some extent the diminishing faith of the public in the police force — Accused police personnel attempting to commit robbery and with that in view committing house trespass in the dead of night armed with firearms — Considering that accused could not commit any other offence as police party promptly arrived at the spot and the fact that accused had been on bail for the last more than six years, High Court reducing the sentence of four years' RI imposed by trial court to period already undergone — Held, High Court was not justified in doing so — Reduction of sentence set aside — Sentence by trial court restored — Penology — Sentencing — Deterrent sentence — Imposition of, held, will be justified in cases of involvement of police personnel in serious offences like under Ss. 458 and 393 IPC — Penal Code, 1860 — Ss. 458 and 393 — CrPC, 1973 — Ss. 28 and 29* (Paras 6 to 8). *Ajmer Singh* v. *State of Punjab*, (2005) 6 SCC 633: 2005 SCC (Cri) 1481.

Bench Strength 2. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 22-7-2005]

[154] — Ss. 28 and 29 — Lesser sentence merely on the ground of long pendency of matter — Held, is not justified

The appellant State contended that considering the gravity of the offences and the brutal manner of attacks, the custodial sentence of two years awarded to the respondent under Section 304 Pt. I IPC, was too meagre. But the accused-respondent submitted that in view of the fact that the occurrence took place in 1981, the sentence awarded was just and proper. He contended that after a period of two decades it would be unreasonable and inequitable to send him back to custody, particularly when he had deposited the fine which was also imposed on him.

Rejecting the contention of the accused,

Held :

Long pendency of a matter by itself could not justify lesser sentence. Taking note of the purpose for which a sentence is imposed, it cannot be laid down as a rule of universal application that a long passage of time in all cases would justify minimal sentence. (Para 10). *State of M.P.* v. *Ghanshyam Singh*, (2003) 8 SCC 13: 2003 SCC (Cri) 1935: AIR 2003 SC 3191.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 11-9-2003]

State of Punjab v. Bira Singh, 1995 Supp (3) SCC 708: 1995 SCC (Cri) 1152; Pashora Singh v. State of Punjab, 1993 Supp (2) SCC 33: 1993 SCC (Cri) 387; Dilbag Singh v. State of Punjab, (1979) 2 SCC 103: 1979 SCC (Cri) 376, not followed

Mahesh v. State of M.P., (1987) 3 SCC 80: 1987 SCC (Cri) 379; Jashubha Bharatsinh Gohil v. State of Gujarat, (1994) 4 SCC 353: 1994 SCC (Cri) 1193; Sevaka Perumal v. State of T.N., (1991) 3 SCC 471: 1991 SCC (Cri) 724; Dennis Councle McGautha v. State of California, 402 US 183: 28 L Ed 2d 711 (1971); Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358; Ravji v. State of Rajasthan, (1996) 2 SCC 175: 1996 SCC (Cri) 225, relied on

[155] — Ss. 28 and 29 — Reduction of sentence — Based on meaningless considerations — *Held, not justified — "Discretion" in determination of quantum of punishment is required to be exercised judiciously and judicially — Court must also keep in view rights of the victim of the crime and society at large — Penology — Sentencing — Exercise of judicial discretion while determination of sentence — Mode of*

The law regulates social interests and arbitrates conflicting claims and demands. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on the factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, and all other attending circumstances are relevant facts which would enter into the area of consideration. After giving due consideration to the facts and circumstances of each case, for deciding a just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. The discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished. The court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. (Paras 8, 12 and 15). *Union of India* v. *Kuldeep Singh*, (2004) 2 SCC 590: 2004 SCC (Cri) 597: AIR 2004 SC 827: 2004 Cri LJ 836.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-12-2003]

Dennis Councle McGautha v. State of California, 402 US 183: 28 L Ed 2d 711 (1971); Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358, relied on

[156] — Ss. 28 and 29 — Reduction of sentence to period already undergone — Duty of court in case of — *Held, the court should categorically notice and state the period actually undergone by the accused* (Para 10). *Ajmer Singh* v. *State of Punjab*, (2005) 6 SCC 633: 2005 SCC (Cri) 1481.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 22-7-2005]

[157] — Ss. 28 and 29 — Reduction of sentence to period already undergone, by High Court — Propriety — Relevant aspects — Non-consideration of — *Offences under Ss. 307, 324 and 114 IPC — Accused also involved in nine other cases — During pendency of trial, bail granted to one of the accused was cancelled for breach of conditions imposed by the court for grant of bail — These aspects not considered by High Court while reducing sentence — High Court proceeded on factually erroneous premises without keeping in view the correct principles relating to punishment — In view of the above, held, High Court's judgment not sustainable — Matter remitted to High Court for a fresh hearing on question of sentence — Penal Code, 1860 — Ss. 307, 324 and 114* (Paras 14 and 15). *Shailesh Jasvantbhai* v. *State of Gujarat*, (2006) 2 SCC 359: (2006) 1 SCC (Cri) 499: (2006) 2 Guj LR 1428: 2006 Cri LJ 1132.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-1-2006]

[158] — Ss. 28 and 29 — Accused on bail for the last more than six years — High Court reducing sentence on ground of — Propriety — *Held, mere fact that a person is on bail for some time does not mitigate the offence — In view of the facts of the case, High Court's order reducing sentence to period already undergone not sustainable* (Paras 7 and 8). *Ajmer Singh* v. *State of Punjab*, (2005) 6 SCC 633: 2005 SCC (Cri) 1481.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 22-7-2005]

[159] — Ss. 28 and 29 — Sentence should be commensurate with gravity of offence — Relevant factors to be taken into account while determining proper sentence — *Held, no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment — Due consideration should be given to facts and circumstances of case, having regard to various factors including nature of offence and manner in which it was executed or committed, motive for the crime, conduct of accused and all other attendant circumstances — Aggravating and mitigating factors should be delicately balanced — Discretion in determination of quantum of punishment is required to be exercised judiciously and judicially — Extent of adherence to principle of proportionality, while sentences were determined in actual practice, discussed — On facts, reduction of sentence of imprisonment of seven years' RI imposed by trial court under S. 376(1), to period already undergone (three years and six months in case of one of the co-accused, and two months in case of the other) by High Court, held, not proper — Sentence imposed by trial court restored — Penal Code, 1860 — Ss. 375 and 376* (Paras 11 to 13, 19 and 20). *State of M.P.* v. *Munna Choubey*, (2005) 2 SCC 710: 2005 SCC (Cri) 559: AIR 2005 SC 682: 2005 Cri LJ 913.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 24-1-2005]

[160] — Ss. 28 and 29 — Sentence should be commensurate with gravity of offence — Relevant factors to be taken into account while determining proper sentence — *Held, no formula of a foolproof nature is possible that would provide a reasonable criterion in determining just and appropriate punishment — Due consideration should be given to facts and circumstances of case, having regard to various factors including nature of offence and manner in which it was executed or committed, motive for the crime, conduct of accused and all other attendant circumstances — On facts, High Court's reduction of sentences of 5 and 4 years' RI respectively under Ss. 307 and 330 IPC to period already undergone (six months and 23 days) on grounds that appellants were illiterate persons belonging to lower income group and were only 23 years' old at time of commission of offence, held, not proper — Anguish expressed at High Court's casual and mechanical manner of disposal of question of sentence, without application of mind, oblivious to consequences of awarding inappropriate sentences — However, matter not disposed of finally and remitted to High Court instead, since it had not considered certain other alleged mitigating factors put forward by respondents*

Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. (Para 6)

After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. No formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circum- stances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished. (Para 7). *State of M.P.* v. *Saleem*, (2005) 5 SCC 554: 2005 SCC (Cri) 1329: 2005 Cri LJ 3435.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-7-2005]

Sevaka Perumal v. State of T.N., (1991) 3 SCC 471: 1991 SCC (Cri) 724; Dennis Councle McGautha v. State of California, 402 US 183: 28 L Ed 2d 711 (1971); State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28: 1983 SCC (Cri) 320; Girija Shankar v. State of U.P., (2004) 3 SCC 793: 2004 SCC (Cri) 863; R. Prakash v. State of Karnataka, (2004) 9 SCC 27: 2004 SCC (Cri) 1408; Sarju Prasad v. State of Bihar, AIR 1965 SC 843: (1965) 1 Cri LJ 766, relied on

[**Ed.**: *See also Adu Ram* v. *Mukna*, (2005) 10 SCC 597]

[161] — Ss. 28 and 29 — Sentence — Deterrent theory — Sentence should be proportionate to the gravity of the offence — *Nature of sentence should depend upon facts and circumstances of each case, having regard to factors such as nature of the offence, manner in which it was committed or executed, motive for the crime, conduct of the accused and all other attendant circumstances —*

Aggravating and mitigating factors should be properly balanced — Object of sentence being to protect the society and to deter the criminal, social impact of the crime and effect of the sentence on the social order are relevant considerations — Court must also keep in view rights of the victim of the crime and society at large — Sentence should reflect conscience of the society — That reformative and preventive theories of punishment can result in injustice pointed out — Penology

Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences relating to narcotic drugs or psychotropic substances which have great impact not only on the health fabric but also on the social order and public interest, cannot be lost sight of and per se requires exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time or personal inconveniences in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. (Paras 14 and 13)

Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. (Para 10)

The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and should "respond to the society's cry for justice against the criminal". Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. (Paras 16 and 9). *Union of India* v. *Kuldeep Singh*, (2004) 2 SCC 590: 2004 SCC (Cri) 597: AIR 2004 SC 827: 2004 Cri LJ 836.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-12-2003]

Sevaka Perumal v. State of T.N., (1991) 3 SCC 471: 1991 SCC (Cri) 724: AIR 1991 SC 1463; Ravji v. State of Rajasthan, (1996) 2 SCC 175: 1996 SCC (Cri) 225, relied on

[162] — Ss. 28 & 29 and 235(2) — Imposition of "just and appropriate sentence" — Need and object of, and duty of courts in this regard emphasised — Imposition of inadequate sentence — Effect of, on society and justice-delivery system explained — Relevant factors to be taken into account while imposing proper sentence, restated — *Undue sympathy to be avoided and need for balancing aggravating and mitigating circumstances expressed* (Paras 5 to 9). *State of U.P.* v. *Shri Kishan*, (2005) 10 SCC 420: 2005 SCC (Cri) 1568: AIR 2005 SC 1250: 2005 Cri LJ 333.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 30-11-2004]

State of M.P. v. Ghanshyam Singh, (2003) 8 SCC 13: 2003 SCC (Cri) 1935; Sevaka Perumal v. State of T.N., (1991) 3 SCC 471: 1991 SCC (Cri) 724; Dennis Councle McGautha v. State of California, 402 US 183: 28 L Ed 2d 711 (1971), relied on

[163] — Ss. 28 & 29 and 235(2) — Sentence should be commensurate with gravity of offence — Relevant factors to be taken into account while determining proper sentence — *Held, no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment — Due consideration should be given to facts and circumstances of case, having regard to various factors including nature of offence and manner in which it was executed or committed, motive for the crime, conduct of accused and all other attendant circumstances — Aggravating and mitigating factors should be delicately balanced — Discretion in determination of quantum of punishment is required to be exercised* *judiciously and judicially — Extent of adherence to principle of proportionality, while sentences were determined in actual practice, discussed — On facts, three years' custodial sentence under S. 304 Pt. I IPC imposed by High Court, held, not proper — Found that case fell under S. 304 Pt. II and not S. 304 Pt. I — Even so, on facts and circumstances of case, custodial sentence enhanced to six years — Further held, had it been a case falling under S. 304 Pt. I, sentence would have been even more*

The law regulates social interests, arbitrates conflicting claims and demands. Ensuring security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentences. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting society. In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process should be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attendant circumstances are relevant facts which would enter into the area of consideration. For instance, a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organised crime or mass murder of innocent people would call for imposition of the death sentence as a deterrent. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. (Paras 11 and 12)

Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread. (Para 13)

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. No formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished. (Paras 14, 15 and 17). *Adu Ram* v. *Mukna*, (2005) 10 SCC 597: 2005 SCC (Cri) 1635: AIR 2004 SC 5064: 2004 Cri LJ 4674.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 8-10-2004]

Mahesh v. *State of M.P., (1987) 3 SCC 80: 1987 SCC (Cri) 379; Sevaka Perumal v. State of T.N., (1991) 3 SCC 471: 1991 SCC (Cri) 724; Dennis Councle McGautha v. State of California, 402 US 183: 28 L Ed 2d 711 (1971), relied on*

[**Ed.**: *See also* (2002) 3 SCC 76, paras 26 to 28, (2002) 6 SCC 81, para 54, (2002) 7 SCC 691, paras 23 to 25, (2003) 8 SCC 13, paras 11 to 15 and 17, (2003) 8 SCC 224, paras 36 to 38, (2003) 8 SCC 461, para 41, (2004) 1 SCC 475, paras 6 and 10 to 13, (2004) 2 SCC 338, paras 19 to 21, (2004) 2 SCC 590, paras 8, 9, 10, 12 to 16, (2004) 6 SCC 513, paras 5 to 7 and (2004) 9 SCC 37, paras 23 to 25]

[164] — **Ss. 28 & 29 and 235(2) — Sentence — Delay in trial/proceedings — Effect** — *Accused charged with causing homicidal death — Trial court convicting accused under S. 304 Pt. II and awarding sentence of 7 years' RI — In appeal against sentence before High Court it was submitted that since the alleged occurrence had taken place in 1988, a lenient view be taken in view of long lapse of time — High Court by an unreasoned and non-speaking order reducing the custodial sentence to the period already undergone but imposing a fine of Rs 15,000 without, however, indicating what period of custody the accused had already suffered — Held, High Court erred in doing so — It would be appropriate for the High Court to rehear the appeal on the question of sentence keeping in view the ratio in* Ghanshyam Singh case — Penal Code, 1860 — S. 304 Pt. II (Paras 3 and 11). *State of U.P.* v. *Shri Kishan*, (2005) 10 SCC 420: 2005 SCC (Cri) 1568: AIR 2005 SC 1250: 2005 Cri LJ 333.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 30-11-2004]

State of M.P. v. *Ghanshyam Singh, (2003) 8 SCC 13: 2003 SCC (Cri) 1935, followed*

[165] — **Ss. 28 & 29 and 354(3) — Death sentence — Importance of principle of proportion between crime and punishment stressed and highlighted** — *Discretion in determination of quantum of punishment, held, is required to be exercised judiciously and judicially — Extent of adherence to principle of proportionality, while sentences were determined in actual practice based on other considerations, discussed — On facts, imposition of death sentence by trial court for rape and murder of minor less than six years old, held, fell in the rarest of rare category — Death sentence confirmed — Penal Code, 1860 — Ss. 302 and 376(2)*

The principle of proportion between crime and punishment is a principle of just deserts that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment not be disproportionately great, which is a corollary of just deserts, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. Anything less than a penalty of greatest severity for any serious crime is thought to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences. (Paras 28 to 30). *State of U.P.* v. *Satish*, (2005) 3 SCC 114: 2005 SCC (Cri) 642: AIR 2005 SC 1000: 2005 Cri LJ 1428.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 8-2-2005]

[166] — **S. 28 — Maximum prescribed sentence imposed by trial court under NDPS Act, 1985 — Factors for reduction of** — *Reduction of, by High Court considering age of accused's father, his family problems and accused being not a "habitual offender", held, not justified — Having regard to the disastrous effect of the seized contraband (880 litres of Acitic N Hydride from which 300 kg of heroin could have been extracted), held, the above considerations for reducing the sentence were meaningless — High*

Court failed to exercise its discretion judiciously and judicially — None of the reasons were either relevant or reasonable — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 9-A/25-A and Ss. 9-A/25-A r/w S. 29

The accused-appellant was convicted by the trial court under Sections 9-A/25-A and Sections 9-A/25-A read with Section 29 of the NDPS Act. The said court imposed sentence of 10 years' RI in respect of each of the convictions and a fine of Rs 1,00,000 on each ground with default stipulation of one year. In appeal before the High Court, it was contended that this was not a case where the maximum sentence should have been awarded. It was pointed out that the father of the accused was a person of 85 years of age and the mother had expired four months earlier and there was no other earning member in that family. The High Court noticed the factual position and held that the conviction had been rightly made but taking note of the fact that there was no evidence to show that the accused was a habitual offender, the sentence was reduced to the period of custody undergone which was taken to be 6 1/2 years, and the fine was also reduced to Rs 25,000 on each count. The reduction in sentence was assailed before the Supreme Court by filing the instant appeal.

Allowing the appeal,

Held :

When the volume of contraband articles is taken note of, it is sufficient for a conclusion that the quantity of finished product out of it which would have been extracted would have been nearly 300 kilograms of heroin, and the accused would have got about forty kilograms as admitted by him. The disastrous effect (of this quantity of heroin) would be mind-boggling. The High Court seems to have been swayed by the age of the accused's father, his family problems and more importantly, he being not a "habitual offender". Such considerations are really meaningless when one considers the fact that the accused was in possession of contrabands which would have destroyed the health and mental equilibrium of thousands of people. The Court was not dealing with an accused charged with commission of any minor offence where he being not a habitual offender may have some relevance. But it is really inconsequential for a drug-trafficker and smuggler. The reasons given by the High Court to reduce the sentence have no foundation. (Para 25)

The High Court seems to have wholly misdirected itself not only as to the seriousness of the offences but also with reference to the relevant consideration which should weigh with the Court in exercising its discretion. (Para 18)

The discretion does not appear to have been judiciously and judicially exercised by the High Court in this case. (Para 25). *Union of India* v. *Kuldeep Singh*, (2004) 2 SCC 590: 2004 SCC (Cri) 597: AIR 2004 SC 827: 2004 Cri LJ 836.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-12-2003]

— S. 29 *See* Ss. 28 and 29

See also Ss. 28 & 29 and 235(2)

See also Ss. 30, 28 and 29

See also Ss. 357 and 29

— S. 29(2) *See* Ss. 357 and 29(2)

See also Ss. 357, 29(2) to (4) and 28

See also Ss. 357(3), 386 second proviso and 29(2)

[167] — Ss. 29(2), 5, 4(2), 325(1) and 357 — Sentence — Judicial Magistrate of the First Class has no jurisdiction to impose a sentence of fine exceeding Rs 5000 in view of limitation prescribed in S. 29(2) CrPC — *Non obstante clause contained in S. 142 is confined to the three aspects mentioned in cls. (a), (b) and (c) thereof and is not intended to expand the power of the Magistrate to impose fine beyond the limit provided in S. 29(2) CrPC — S. 142 does not confer "any special jurisdiction or power" within the meaning of S. 5 CrPC so as to claim non-applicability of provisions of CrPC including S. 29(2) thereof — If Magistrate of the First Class wants to impose a more severe sentence of fine then he can follow the procedure prescribed under S. 325(1) CrPC or if he considers it fit that the complainant should be compensated with his loss, he should follow the provisions of S. 357 CrPC under which no limit is prescribed — On facts, fine of Rs 83,000 changed to compensation while maintaining the sentence — Negotiable Instruments Act, 1881 — Ss. 138 and 142*

A Judicial Magistrate of the First Class, after convicting an accused of the offence under Section 138 of the Negotiable Instruments Act sentenced him to imprisonment for six months and a fine of Rs 83,000. The conviction and sentence were confirmed by the Sessions Judge in appeal and the revision filed by the convicted person was dismissed by the High Court. Before the Supreme

Court the question was confined to whether a Judicial Magistrate of the First Class could have imposed a sentence of fine beyond Rs 5000 in view of the limitation contained in Section 29(2) of the Code of Criminal Procedure. Disposing of the appeal,

Held :

The non obstante clause contained in Section 142 of the Negotiable Instruments Act is intended to operate in respect of three aspects specified in clauses (*a*), (*b*) and (*c*) thereof and nothing more. The first is this: Under the Code, a Magistrate can take cognizance of an offence either upon receiving a complaint, or upon a police report, or upon receiving information from any person, or upon his own knowledge except in the cases differently indicated in Chapter XIV of the Code. But Section 142 of the NI Act says that insofar as the offence under Section 138 is concerned no court shall take cognizance except upon a complaint made by the payee or the holder in due course of the cheque. The second is this: Under the Code a complaint could be made at any time subject to the provisions of Chapter XXXVI. But so far as the offence under Section 138 of the NI Act is concerned such complaint shall be made within one month of the cause of action. The third is this: Under Article 511 of the First Schedule of the Code, if the offence is punishable with imprisonment for less than 3 years or with fine only under any enactment (other than the Indian Penal Code) such offence can be tried by any Magistrate. Normally Section 138 of the NI Act which is punishable with a maximum sentence of imprisonment for one year would have fallen within the scope of the said Article. But Section 142 of the NI Act says that for the offence under Section 138, no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try the said offence. Thus, the non obstante limb provided in Section 142 of the NI Act is not intended to expand the powers of a Magistrate of the First Class beyond what is fixed in Chapter III of the Code. Section 29, which falls within Chapter III of the Code, contains a limit for a Magistrate of the First Class in the matter of imposing a sentence i.e. if the sentence is imprisonment it shall not exceed 3 years and if the sentence is fine (even if it is part of the sentence) it shall not exceed Rs 5000. (Paras 6 to 8)

Section 4(2) CrPC, is in a way cognate to the saving provision of Section 5. Non-application of the Code on "any special jurisdiction or power conferred by any other law for the time being in force" as provided under Section 5 is limited to the area where such special jurisdiction or power is conferred. Section 142 of the NI Act has not conferred any "special jurisdiction or power" on a Judicial Magistrate of the First Class. That section has only excluded the powers of other Magistrates from trying the offence under Section 138 of the NI Act. (Paras 10 and 11)

The method usually adopted by Parliament for conferring special jurisdiction or powers on Magistrates of the First Class in the matter of awarding sentences, obviating the limitation stipulated in Section 29(2) of the Code can be illustratively seen in Section 12 of the Essential Commodities Act or Section 36 of the Drugs and Cosmetics Act or Section 21 of the Prevention of Food Adulteration Act. In the absence of any such provision in the NI Act it is not possible to read any special power into it as having conferred on a Magistrate of the First Class in the matter of imposition of sentence. (Paras 12 and 14)

If a Magistrate of the First Class thinks that the fact-situation in a particular case warrants imposition of a sentence more severe than the limit fixed under Section 29 of the Code, the legislature has taken care of such a situation also under Section 325(1) CrPC. Even that apart, a Magistrate who thinks it fit that the complainant must be compensated with his loss he can resort to the course indicated in Section 357 of the Code. He can, after imposing a term of imprisonment, award compensation to the complainant for which no limit is prescribed in Section 357 of the Code. (Paras 15, 17 and 18)

While retaining the sentence of imprisonment of six months, the fine portion is deleted from the sentence and the appellant is directed to pay compensation of Rs 83,000 to the respondent complainant. The said amount shall be deposited with the trial court within six months failing which the trial court shall resort to the steps permitted by law to realise it from the appellant. (Para 19). *Pankajbhai Nagjibhai Patel* v. *State of Gujarat*, (2001) 2 SCC 595: 2001 SCC (Cri) 369: AIR 2001 SC 567: (2001) 104 Comp Cas 418: (2001) 1 KLT 517.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 12-1-2001]

A.Y. Prabhakar v. Naresh Kumar N. Shah, 1994 MLJ (Cri) 91: (1995) 83 Comp Cas 191 (Mad); K.P. Sahadevan v. T.K. Sreedharan, 1996 Cri LJ 1223: (1996) 1 KLT 40 (Ker), overruled

K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510: 1999 SCC (Cri) 1284, relied on

— S. 29(3) *See* Ss. 357, 29(2) to (4) and 28

— S. 29(4) *See* Ss. 357, 29(2) to (4) and 28

— S. 30 *See also* S. 33, Criminal Procedure Code, 1898, p. 966 in Vol. 2

[168] — **S. 30 — Imprisonment in default of payment of fine — Cautious use of** — *Held, it is not only the power, but the duty of the court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine — Penal Code, 1860 — S. 64* (Para 31). *Shantilal* v. *State of M.P.*, (2007) 11 SCC 243: (2008) 1 SCC (Cri) 1: (2007) 59 AIC 103 (SC).

Bench Strength 2. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 8-10-2007]

[169] — **S. 30 — Imprisonment in default of payment of fine — Nature of — Sentence and penalty, distinguished** — *Held, the term of imprisonment in default of payment of fine is not a sentence — It is a penalty which a person incurs on account of non-payment of fine — Sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole, either in appeal or revision or in other appropriate judicial proceedings or "otherwise" — A term of imprisonment ordered in default of payment of fine stands on a different footing — A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount — He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount — Penal Code, 1860 — Ss. 64 and 53* (Para 31). *Shantilal* v. *State of M.P.*, (2007) 11 SCC 243: (2008) 1 SCC (Cri) 1: (2007) 59 AIC 103 (SC).

Bench Strength 2. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 8-10-2007]

[170] — **S. 30 — Award of imprisonment in default of payment of fine — Existence of power even not explicitly conferred** — *Held, S. 25 makes it explicitly clear that Ss. 63 to 70 IPC and provisions of CrPC relating to award of imprisonment in default of payment of fine would apply to all cases wherein fines have been imposed on an offender unless "the Act, regulation, rule or bye-law contains an express provision to the contrary" — Therefore, on facts, held, contention of appellant that in absence of specific provision to order imprisonment in default of payment of fine in a statute, a court of law has no power to order imprisonment of an offender who fails to pay fine and such action would be illegal or without authority of law, cannot be upheld — So in absence of a provision to the contrary, that no order of imprisonment can be passed in default of payment of fine, held, such power is explicit and can always be exercised by a court subject to the relevant provisions of IPC and CrPC — Penal Code, 1860 — Ss. 63 to 70 — General Clauses Act, 1897 — S. 25* (Para 30). *Shantilal* v. *State of M.P.*, (2007) 11 SCC 243: (2008) 1 SCC (Cri) 1: (2007) 59 AIC 103 (SC).

Bench Strength 2. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 8-10-2007]

Bashiruddin Ashraf v. State of Bihar, AIR 1957 SC 645: 1957 SCR 1032, relied on

Queen-Empress v. Yakoob Sahib, ILR (1899) 22 Mad 238; Sukhdeo Singh v. Calcutta Corpn., AIR 1953 Cal 41, approved

[171] — **S. 30 — Imprisonment in default of payment of fine — Reduction in period of imprisonment in default of payment of fine — When warranted — Considerations involved — Present case is under NDPS Act** — *S. 18 provides penalty for certain offences in relation to opium poppy and opium — Minimum fine contemplated under said provision is rupees one lakh — Here, appellant was ordered to undergo substantive sentence of ten years' RI, which is the minimum and also to pay fine of rupees one lakh with default stipulation of three years' RI — Maximum sentence imposable on appellant is twenty years — S. 30(1)(b) CrPC authorises court to award imprisonment in default of payment of fine up to one-fourth term of imprisonment which the court is competent to inflict as punishment for the offence — However, on facts, considering the circumstances of appellant-accused, that he was very poor, was merely a carrier, has to maintain his family, it was his first offence, because of his poverty, he could not pay the heavy amount of fine (rupees one lakh) and if he is ordered to remain in jail even after the period of substantive sentence is over only because of his inability to pay fine, serious prejudice will be caused not only to him, but also to his family members who are innocent, held, though an amount of payment of fine of rupees one lakh which is minimum as specified in S. 18, NDPS Act, cannot be reduced in view of legislative mandate, ends of justice would be met if that part of direction is retained, but ordered that in default of payment of fine, the appellant shall undergo RI for six months instead of three years*

as ordered by trial court and confirmed by High Court — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 18 — Penal Code, 1860 — Ss. 65 & 66 (Paras 39 and 40). *Shantilal* v. *State of M.P.*, (2007) 11 SCC 243: (2008) 1 SCC (Cri) 1: (2007) 59 AIC 103 (SC).

Bench Strength 2. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 8-10-2007]

[172] — S. 30 — Conviction under S. 18, NDPS Act, 1985 — Imprisonment in default of payment of fine — Tenability of — Question whether a court of law can order a convict imprisonment in default of payment of fine, in absence of any express power — *Here, S. 18, NDPS Act, merely provides for imposition of sentence and payment of fine — Held, even in absence of specific provision in the Act empowering a court to order imprisonment in default of payment of fine, such power is implicit and is possessed by a court administering criminal justice — In this regard, Ss. 63 to 70 IPC are relevant which deal with imposition of fine and imprisonment in default of payment of fine — S. 30 CrPC prescribes maximum period for which a court may award imprisonment in default of payment of fine — To the issue whether the statutory provisions would apply to special laws, here NDPS Act, where there is no express power in a court to order imprisonment in default of payment of fine, held, the law is well settled that such an order can be passed by a competent court of law having power to impose fine as one of the punishments — Penal Code, 1860 — Ss. 63 to 70 — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 8 r/w S. 18 (prior to 2001)*

If a person commits any offence under IPC, he can be punished and when such offence is punishable with substantive sentence and fine, or substantive sentence or fine, or fine only, in default of payment of fine, he can be ordered to undergo imprisonment. Section 30 CrPC prescribes maximum period for which a court may award imprisonment in default of payment of fine. (Paras 18 to 23)

But more important issue is whether the above statutory provisions would apply to special laws and offences committed by a person not covered by IPC. In the present case, the concern is regarding provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 which is a special law. There is no express power in a court to order imprisonment in default of payment of fine. But the law is well settled and it has been held since more than a century that such an order can be passed by a competent court of law having power to impose fine as one of the punishments. (Para 24). *Shantilal* v. *State of M.P.*, (2007) 11 SCC 243: (2008) 1 SCC (Cri) 1: (2007) 59 AIC 103 (SC).

Bench Strength 2. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 8-10-2007]

Bashiruddin Ashraf v. State of Bihar, AIR 1957 SC 645: 1957 SCR 1032, relied on

Queen-Empress v. Yakoob Sahib, ILR (1899) 22 Mad 238; Sukhdeo Singh v. Calcutta Corpn., AIR 1953 Cal 41, approved

[173] — Ss. 30, 28 and 29 — Conviction under S. 138, NI Act, 1881 — Imposition of fine — Sentence of imprisonment on failure to pay — Propriety — *Direction that in case the accused failed to pay any of the amounts of fine, he would undergo simple imprisonment for a period of three months on each count, held, was proper — There was nothing to show why a distinction should be made in case a fine is not paid in relation to offences under IPC vis-à-vis offence under S. 138 — Negotiable Instruments Act, 1881 — S. 138* (Para 4). *Joseph Moolayil* v. *V.A. Chachko*, (2006) 9 SCC 165: (2006) 2 SCC (Cri) 352.

Bench Strength 2. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 23-11-2005]

— S. 31 *See also* S. 35, Criminal Procedure Code, 1898, p. 967 in Vol. 2

— S. 31 *See also* Ss. 427, 31 and 482

[174] — S. 31 — Sentence in cases of conviction of several offences at one trial — *"Punishments when consisting of imprisonment to commence the one after the expiration of the other" — "Imprisonment" in the context, held, includes life imprisonment — Words and phrases — "Imprisonment"*

The term "imprisonment" is not defined under the Code of Criminal Procedure. Section 31 of the Code falls under Chapter III of the Code which deals with power of courts. Section 28 of the Code empowers the High Court to pass any sentence authorised by law. Similarly, the Sessions Judge and Additional Sessions Judge may pass any sentence authorised by law, except the sentence of death which shall be subject to confirmation by the High Court. Therefore, the term "imprisonment" would include the sentence of imprisonment for life. (Para 76). *Kamalanantha* v. *State of T.N.*, (2005) 5 SCC 194: 2005 SCC (Cri) 1121: AIR 2005 SC 2132.

Bench Strength 2. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 5-4-2005]

[175] — S. 31 — Several offences — Power to pass several sentences in respect of — *Held (per curiam), each of the terms of imprisonment imposed has to be within power of court and term of imprisonment is not rendered illegal or beyond power of court merely because total term of imprisonment in case of consecutive sentences is in excess of the punishment within competency of court* (Para 47). *K. Prabhakaran* v. *P. Jayarajan*, (2005) 1 SCC 754: 2005 SCC (Cri) 451: AIR 2005 SC 688: (2005) 1 KLT 510.

Bench Strength 5. Coram: **R.C. Lahoti, C.J.**[1] and *Shivaraj V. Patil*[1], **K.G. Balakrishnan**[2], *B.N. Srikrishna*[1] and *G.P. Mathur*[1], JJ. [Date of decision: 11-1-2005]

Shibu Soren v. Dayanand Sahay, (2001) 7 SCC 425, relied on

[176] — S. 31 — Direction for sentence to run concurrently or consecutively — Criteria for — Held (per K.G. Balakrishnan, J.), there are no statutory or judicial guidelines therefor — *Further held (per curiam), in certain cases, if the person convicted is a habitual offender and has been found guilty on various counts and it is suspected that he would be a menace if let loose in society, then direction for consecutive running of sentences should be given*

Per K.G. Balakrishnan, J. (dissenting)

The direction for the sentence to run concurrently or consecutively is a direction as to the mode in which the sentence is to be executed. That does not affect the nature of the sentence. It is also important to note that in the Code of Criminal Procedure, there are no guidelines or specific provisions to suggest under what circumstances the various sentences of imprisonment shall be directed to run concurrently or consecutively. There are no judicial decisions by superior courts laying down the guidelines as to what should be the criteria for directing the convict to undergo imprisonment on various counts concurrently or consecutively. In certain cases, if the person convicted is a habitual offender and he had been found guilty of offences on various counts and it is suspected that he would be a menace if he is let loose on the society, then the court would direct that such person shall undergo the imprisonment consecutively. (Para 69). *K. Prabhakaran* v. *P. Jayarajan*, (2005) 1 SCC 754: 2005 SCC (Cri) 451: AIR 2005 SC 688: (2005) 1 KLT 510.

Bench Strength 5. Coram: **R.C. Lahoti, C.J.**[1] and *Shivaraj V. Patil*[1], **K.G. Balakrishnan**[2], *B.N. Srikrishna*[1] and *G.P. Mathur*[1], JJ. [Date of decision: 11-1-2005]

[177] — S. 31 — Direction for sentence to run concurrently or consecutively — Nature and effect of — *Held (per K.G. Balakrishnan, J.), said direction is a direction as to mode in which sentence is to be executed — That does not affect the nature of the sentence* (Para 69). *K. Prabhakaran* v. *P. Jayarajan*, (2005) 1 SCC 754: 2005 SCC (Cri) 451: AIR 2005 SC 688: (2005) 1 KLT 510.

Bench Strength 5. Coram: **R.C. Lahoti, C.J.**[1] and *Shivaraj V. Patil*[1], **K.G. Balakrishnan**[2], *B.N. Srikrishna*[1] and *G.P. Mathur*[1], JJ. [Date of decision: 11-1-2005]

[178] — S. 31 and proviso — Several offences — Power to pass several sentences in respect of — *Appellant prosecuted for kidnapping and murdering two boys aged 10 to 12 years — Trial court finding that there was no evidence to show that victims had been killed by the appellant or that they were kidnapped for obtaining ransom or for murdering them — However, two letters demanding ransom were proved to be written by him, and hence he was convicted under Ss. 364 and 365 IPC by the trial court and sentenced as under: — "Under S. 364 IPC: RI for 10 years — Under S. 364 IPC: RI for 10 years — Under S. 365 IPC: RI for 4 years — Under S. 365 IPC: RI for 4 years — Under S. 120-B IPC: RI for 5 years — Under S. 120-B IPC: RI for 5 years — Under S. 201 IPC: RI for 2 years" — High Court in appeal maintaining the conviction and directing the sentence under S. 364 to run consecutively, while for other offences it was to be concurrent i.e. total period of 20 years' RI imposed — Appellant already in jail for more than 12 years, while the maximum sentence that could be imposed was 14 years — Held, provisos appended to S. 31 clearly mandate that the accused could not have been sentenced to imprisonment for a period longer than fourteen years — Trial court as well as the High Court committed a serious illegality in passing the impugned judgment — Appellant sentenced to the period already undergone — Penal Code, 1860 — Ss. 364 & 365* (Paras 2, 3, 6 to 12). *Chatar Singh* v. *State of M.P.*, (2006) 12 SCC 37: (2007) 2 SCC (Cri) 370: AIR 2007 SC 319: (2007) 49 AIC 725 (SC): 2007 Cri LJ 796.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

Kamalanantha v. State of T.N., (2005) 5 SCC 194: 2005 SCC (Cri) 1121; Zulfiwar Ali v. State of U.P., 1986 All LJ 1177: (1986) 3 Crimes 199, relied on

K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754: 2005 SCC (Cri) 451, distinguished (partly)

— S. 32 *See also* S. 39, Criminal Procedure Code, 1898, p. 967 in Vol. 2

[179] — S. 32 — "Specially empowered" — Meaning of — Word specially if refers to the mode of empowerment or its purpose — Heydon's rule — Applicability — *Immoral Traffic (Prevention) Act, 1956 — S. 2(c)*

The State Government notification ran as follows:

In exercise of the powers conferred by S. 2(*c*) of the Suppression of Immoral Traffic in Women and Girls Act, 1956, the Government of Bombay hereby empowers all the Judicial Magistrates of the First Class to exercise jurisdiction under the said Act, except under Ss. 12(1), 18(1) 19, 20(1) and (3) of the Act.

The question was whether this notification had the effect of making every Judicial Magistrate of the First Class in the State within the area of his respective jurisdiction, a Magistrate competent to try any offence under Ss. 3, 4, 5, 6, 7 or 8 of the Act.

Held :

(*i*) Where the language of a statutory provision is susceptible of two interpretations, the one which promotes the objects of the provision, comports best with its purpose and preserve its smooth working, should be chosen in preference to the other which introduces inconvenience and uncertainty in the working of the system. This rule will apply in full force where the provision confers ample discretion on the Government for a specific purpose to enable it to bring about an effective result.

(*ii*) Therefore the word "specially" is an adverb to the verb "empowered" and not an adjective to the noun "Magistrate" and this word means "specifically" or "for a particular purpose". The word "specially" connotes that it is the empowerment which is special and not the person. Thus considered, special empowerment does not necessarily involve selection of individuals by name or ex officio from the Magistrates of the First Class. Hence the State Government is within its competence to confer powers under S. 2(*c*) of the Act on some or all law, and the Magistrate or Magistrates on whom powers are so conferred will be "specially empowered" within the meaning of S. 2(*c*). *State of Gujarat* v. *Chaturbhuj Maganlal*, (1976) 3 SCC 54: 1976 SCC (Cri) 359: AIR 1976 SC 1697: 1976 MLJ (Cri) 496: 1976 Cri LJ 1367: (1976) 17 GLR 828.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *N.L. Untwalia*, JJ. [Date of decision: 7-4-1976]

M.M. Vijayan v. State, AIR 1953 TC 402: ILR 53 TC 514: 54 Cri LJ 1613; State v. Judhabir Chetri, AIR 1953 Ass 35: 1953 Cri LJ 395 (FB); State of Mysore v. Kashambi, 1963 2 Cri LJ 226; Ashaq Hussain Khan v. S. D. O., AIR 1965 Pat 446 and C. V. Madhava Mannadiar v. District Collector, AIR 1970 Ker 50: ILR (1969) 1 Ker 371: 1970 Cri LJ 344, approved

Sindhi Lohana Chaithram v. State of Gujarat, (1967) 3 SCR 351: AIR 1967 SC 1532: 1967 Cri LJ 1396 and Abdul Hussein Tayabali v. State of Gujarat, (1968) 1 SCR 597: AIR 1968 SC 432, followed

Mohd, Qasin v. Emperor, AIR 1918 Mad 1159: 1917 MWN 560; Emperor v. Udho Chandumal, AIR 1943 Sind 107: ILT 43 Kar 20: 44 Cri LJ 502; Polubha Vajubha v. Tapu Ruda, AIR 1956 Sau 73: 1956 Cri LJ 1231 and Sabuddin Sheikh Mansur v. J. S. Thakkar, ILR 1968 Guj 4, ***overruled***

— Ch. IV-A (S. 36) *See* Chs. XII (Ss. 154 to 176), IV-A (S. 36), V to VII (Ss. 41 to 105)

— S. 36 *See also* S. 551, Criminal Procedure Code, 1898, p. 1302 in Vol. 2

— S. 36 *See* Ss. 154(3) & 36, 156(3), 200 and 482

See also Ss. 156(3) and 36

See also Ss. 170, 173, 36 and 24

See also Ss. 173(8) and 36

See also Ss. 173(8), 36 and 156

[180] — S. 36 — Does not deal with competence of police officer to conduct investigation — *S. 5-A of Prevention of Corruption Act, 1947 overrides S. 36 of the Code*

Section 36 of the CrPC is not attracted. Firstly, in view of the non obstante clause occurring in the beginning of S. 5-A of the Prevention of Corruption Act the provisions with regard to investigation of an offence punishable under S. 5 of the Act are to prevail over any provision to the contrary. Secondly, S. 36, CrPC only purports to confer on police officers superior in rank to an officer in charge of police station, the same powers throughout the local area to which they are appointed as may be exercised by such officer within the limits of his station. It does not contain a provision similar to Regulation 486(I)(3) that investigation shall be made by a police officer higher in rank than the officer charged. *State of U.P.* v. *Surinder Pal Singh*, (1989) 2 SCC 470: (1989) 10 ATC 442: 1989 SCC (Cri) 402: AIR 1989 SC 811: 1989 Cri LJ 998.

Bench Strength **2**. Coram: *E.S. Venkataramiah* and **N.D. Ojha**, JJ. [Date of decision: 31-1-1989]

[181] — Chs. IV (Ss. 36 to 40) and V (Ss. 41 to 60) — Power of police to investigate and arrest — Whether extends to authorised officers under TOHO — Application, scope and implications of S. 22 — TOHO vis-à-vis CrPC — Whether authorised officer has power to arrest and investigate as per provisions of Chs. IV and V CrPC — *Held, doubtful — Parliament directed to take appropriate steps to suitably amend the law*

— Situations in other special statutes like Customs Act and NDPS Act and their implications, contemplated — Transplantation of Human Organs Act, 1994, Ss. 22, 18, 19 and 20

It is doubtful as to whether in the event of authorisation of an officer of the Department to carry out investigation on a complaint made by a third party, he would be entitled to arrest the accused and carry on investigation as if he is a police officer. CBI having specially been empowered both under the 1946 Act as also under CrPC to carry out investigation and file a charge-sheet is precluded from doing so only by reason of Section 22 TOHO. It is hoped that Parliament would take appropriate measures to suitably amend the law in the near future. (Para 37)

In some decisions where some special statutory authorities like the authorities under the Customs Act have been granted all the powers of the investigating officer under a special statute like the NDPS Act, but, it has been held that they cannot file charge-sheet and to that extent they would not be police officers. (Para 36). *Jeewan Kumar Raut* v. *CBI*, (2009) 7 SCC 526: (2009) 3 SCC (Cri) 475: (2009) 80 AIC 243 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 7-7-2009]

Ramesh Chandra Mehta v. State of W.B., AIR 1970 SC 940; Raj Kumar Karwal v. Union of India, (1990) 2 SCC 409: 1990 SCC (Cri) 330, relied on

[182] — Ss. 36, 173(8) and (3) — Territorial jurisdiction of police officers superior in rank to officer in charge of a police station — Power to direct further investigation — *Superior police officer in exercise of powers under S. 36 can direct further investigation — CID being a part of the investigating authorities of the State can be entrusted with further investigation by Additional Director General of Police, reaffirmed*

Section 36 of the Criminal Procedure Code, 1973 empowers a police officer, superior in rank to an officer in charge of a police station, to exercise the same powers throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his police station. It is not correct to contend that the investigation was taken up by a different agency. CID is a part of the investigating authorities of the State. It was, therefore, permissible for the higher authority to carry out or direct further investigation in the matter. (Paras 11, 12 and 18)

It was not a case where investigation was carried out in relation to a separate conspiracy. As allegations had been made against the officer of a local police station in regard to the mode and manner in which investigation was carried out, a further investigation was directed. (Para 17). *State of A.P.* v. *A.S. Peter*, (2008) 2 SCC 383: (2008) 1 SCC (Cri) 427: AIR 2008 SC 1052.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-12-2007]

[183] — S. 36 — Scope of applicability — Investigation into corruption charges against State Government Minister and officers — Whether excluded from the jurisdiction of CBI officers — *FIR lodged by the State Vigilance Department against several persons including Appellant 1 (ex-Minister) for alleged commission of offences under Ss. 420, 467, 468, 120-B IPC and Ss. 13(1)(d), (e) and 13(2) of Prevention of Corruption Act in relation to appointment and selection of panchayat secretaries — State Government issued notification under S. 6 of Delhi Special Police Establishment Act, 1946 referring the case to CBI — CBI thereafter registered a second FIR on 26-6-2003 considering the nature and extent of crime — Held, when S. 36 CrPC uses the words "in rank", it should be given a purposive construction — Although S. 36 appears to limit jurisdiction to State police, in the context of the power of the State vis-à-vis the provisions of the Delhi Special Police Establishment Act, 1946, the same deserves a wider application — Hence validity of investigation made by CBI, upheld — As investigations were complete, CBI permitted to file charge-sheet before the appropriate court — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), Ss. 5, 6, 6-A and 2 — Jurisdiction of officers under, not restricted by S. 36 CrPC — Penal Code, 1860, Ss. 420, 467, 468 and 120-B — Prevention of Corruption Act, 1988, Ss. 13(1)(d), (e) and 13(2)*

On 14-6-2002, an FIR was lodged by the State Vigilance Department against several persons including Appellant 1 (ex-Minister, Rural Development and Panchayats), for alleged commission of offences under Sections 420, 467, 468, 120-B IPC and Sections 13(1)(*d*), (*e*) and 13(2) of the Prevention of Corruption Act in terms of recommendations of the Financial Commissioner, Rural Development and Panchayat Department giving an enquiry report to set aside the selection of panchayat secretaries due to involvement of favouritism and corruption in the selection process. In a writ petition filed with regard to the selection process the High Court changed the writ from private interest litigation to public interest litigation. A charge-sheet was filed against Appellant 1. Appellants 2 and 3 were shown as the witnesses in the said report. Despite the same a statement was made before the High Court on behalf of the State on 1-11-2002 that the investigation was proposed to be handed over to CBI. Initially, CBI was reluctant to take up investigation on the ground of lack of manpower and infrastructure and the State Government delayed in issuing a notification under Section 6 of the Delhi Special Police Establishment Act, 1946 (the Act). However, with the intervention of the High Court (by order dated 30-4-2003), the State Government, on 2-5-2003, issued the Section 6 notification. In view of the said notification the High Court (by order dated 7-5-2003) directed the Director, CBI to take up the investigation by requesting the Central Government for more funds and manpower as per requirement. CBI, thereafter, informed the High Court on 13-8-2003 that a special team had been sent for a meaningful investigation in respect of the allegations, and the same had proceeded to a considerable length. CBI thereafter registered a second FIR on 26-6-2003. The appellants filed applications for recalling of the orders dated 30-4-2003 and 7-5-2003 of the High Court. By reason of the impugned judgment dated 4-10-2005, the said applications were dismissed.

Dismissing the appeal,

Held:

Contention raised that the investigating officer appointed by CBI would not be a superior officer in rank to the police officer of the State Government in terms of Section 36 CrPC is not applicable to the facts of the present case. The Delhi Special Police Establishment Act, 1946 (the Act) is a special statute by which CBI was constituted and given jurisdiction. The law and order, however, being a State subject, CBI derives jurisdiction only when a consent therefor is given. The reference for CBI investigation may be given by the following: (*a*) Prime Minister of India (*b*) Cabinet Ministers of the Government of India/Chief Ministers of the State Governments or their equivalent (*c*) State Governments (*d*) Supreme Court/High Courts. (Paras 70 and 66)

In terms of Section 3 of the Police Act, 1861, the State has the ultimate say in the matter of superintendence of investigation. Section 36 CrPC must be read harmoniously with Section 3 of the Police Act, 1861. Therefore, when Section 36 CrPC uses the words "in rank", it should be given a purposive construction. Although a plain reading of the aforementioned provision appears to be containing three ingredients, namely, (*i*) the investigation must be carried out by an officer-in-charge; (*ii*) which may be supervised by an officer superior in rank; and (*iii*) in respect of a local area to which they are appointed, but in the context of the power of the State vis-à-vis the provisions of the Act, the same deserves a wider application. (Para 27)

If the State has the ultimate supervisory jurisdiction over an investigation for an offence and if it intends to hand over a further investigation even after filing of the charge-sheet, it may do so. The State as in terms of the provisions of CrPC and the Act exercises two different and distinct jurisdictions. The power of supervision over investigation vested in the State in terms of Section 3 of the Police Act, 1861 is absolute. The said power of the State is wholly unrestricted by Section 36 of the Act or otherwise. As a logical corollary if while making preliminary inquiry pursuant to the notification issued by the State in terms of Section 6 of the Act, CBI comes to know of commission of other and further offence involving a larger conspiracy which required prosecution against a large number of persons who had not been proceeded against at all by the local police officers, even lodging of second FIR would not be a bar. (Paras 62 and 71)

An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter. The State for achieving the said object at any point of time may consider handing over of investigation to any other agency including a Central agency which has acquired specialisation in such cases. (Para 28)

As the investigations are complete, CBI is allowed to file charge-sheet before a court having appropriate jurisdiction. (Para 76). *Nirmal Singh Kahlon* v. *State of Punjab*, (2009) 1 SCC 441.
Bench Strength **2**. Coram: **S.B. Sinha** and *Aftab Alam*, JJ.
[Date of decision: 22-10-2008]

— Ch. IV-B (Ss. 37 to 40)

[184] — Ss. 37, 41, 129 to 131 and 144 — Duty of police to protect life and property — Non-performance of, disapproved — *Inaction of police during burning of bus in public agitation against a court verdict where girl students were trapped (three of them dying and 20 getting injured)* —

When others helped in bringing out trapped girl students police not lending a helping hand — Said inaction of police, disapproved

Observed :

It may be noted that that this crime occurred right in the middle of a busy city. Innocent girls trapped in a burning bus were shouting for help and only the male students from their University came to their rescue and succeeded in saving some of them. There were large number of people including the shopkeepers, media persons and on-duty police personnel, present at the place of the "Rasta Roko Andolan", which was very close to the place of the occurrence of the crime, and none of them considered it proper to help in their rescue. Even if the common man fails to respond to the call of his conscience, the police should not have remained inactive. The so-called administration did not bother to find out why the police did not intervene and assist in the rescue of the girl students. It is clear that the so-called protectors of the society stood there and witnessed such a heinous crime being committed and allowed the burning of the bus and roasting of the innocent children without being reprimanded for failing in their duty. If the common citizens and public officials present at the scene of the crime had done their duty, the death of three innocent young girls could have been prevented. (Paras 98 and 99). *C. Muniappan* v. *State of T.N.*, (2010) 9 SCC 567: (2010) 5 CTC 794 (SC).

Bench Strength 2. Coram: *G.S. Singhvi* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 30-8-2010]

— S. 39 *See also* Ss. 222 and 39

[185] — S. 39 — Obligation to furnish information under S. 14, POTA — Provision for, held, intra vires Arts. 14, 19, 20(3) and 21 — *Further held, neither can a lawyer claim a right over professional communication beyond what is permitted under S. 126, Evidence Act nor is there any law permitting a newspaper or a journalist to withhold relevant information from courts, nor can withholding of such information be traced to the right to privacy, which itself is not an absolute right — Constitution of India — Arts. 21, 19, 20(3) and 14 — Evidence Act, 1872 — S. 126 — Press Council Act, 1978 — S. 15(2) — Prevention of Terrorism Act, 2002 — S. 14*

It was submitted inter alia that Section 14 was violative of Articles 14, 19, 20(3) and 21 inasmuch as it gave unbridled powers to the investigating officer to compel any person to furnish information, including even lawyers or journalists who were bound by their professional ethics to keep the information given by their clients as privileged communication;

Dismissing the petitions,

Held :

Section 39 of the Code of Criminal Procedure, 1973 casts a duty upon every person to furnish information regarding offences. Criminal justice system cannot function without the cooperation of people. Rather it is the duty of everybody to assist the State in detection of the crime and bringing criminals to justice. Withholding such information cannot be traced to right to privacy, which itself is not an absolute right. (Para 37)

Section 14 confers power to the investigating officer to ask for furnishing information that will be useful for or relevant to the purpose of the Act. Furthermore, such information could be asked only after obtaining a written approval from an officer not below the rank of a Superintendent of Police. Such power to the investigating officers is quite necessary in the detection of terrorist activities or terrorists. (Para 37)

It is settled position of law that a journalist or lawyer does not have a sacrosanct right to withhold information regarding crime under the guise of professional ethics. A lawyer cannot claim a right over professional communication beyond what is permitted under Section 126 of the Evidence Act. There is also no law that permits a newspaper or a journalist to withhold relevant information from courts though they have been given such power by virtue of Section 15(2) of the Press Council Act, 1978 as against the Press Council. Of course the investigating officers will be circumspect and cautious in requiring them to disclose information. In the process of obtaining information, if any right of a citizen is violated, nothing prevents him from resorting to other legal remedies. (Para 38). *People's Union for Civil Liberties* v. *Union of India*, (2004) 9 SCC 580: AIR 2004 SC 456.

Bench Strength 2. Coram: **S. Rajendra Babu** and *G.P. Mathur*, JJ. [Date of decision: 16-12-2003]

Sanjay Dutt v. State (II), (1994) 5 SCC 410: 1994 SCC (Cri) 1433, followed

Sharda v. Dharmpal, (2003) 4 SCC 493; State of Gujarat v. Anirudhsing, (1997) 6 SCC 514: 1997 SCC (Cri) 946; M.S.M. Sharma v. Sri Krishna Sinha, AIR 1959 SC 395: 1959 Supp (1) SCR 806; Sewakram Sobhani v. R.K. Karanjia, (1981) 3 SCC 208: 1981 SCC (Cri) 698; Arnold v. King Emperor, (1913-14) 41 IA 149: 15 Cri LJ 309; British Steel Corpn. v. Granada Television, (1981) 1 All ER 417: 1981 AC 1096: (1980) 3 WLR 774; Branzburg v. Hayes, 408 US 665: 33 L Ed 2d 626 (1972), relied on

[186] — S. 39 — Duty to give information — *Duty of citizen to assist and cooperate with the investigation agency to unearth the real offender and appear before the court to unfold the prosecution case as given in his statement — Witnesses turning hostile due to deterioration in law and order situation and* *principle of self-preservation — Need to amend CrPC in this regard stressed — Role and conduct of high-ranking officials and respectable citizens present at the scene of crime in not assisting the prosecution strongly deprecated*

Every criminal trial is a voyage in quest of truth for public justice to punish the guilty and restore peace, stability and order in the society. Every citizen who has knowledge of the commission of cognizable offence has a duty to lay information before the police and cooperate with the investigating officer who is enjoined to collect the evidence and if necessary summon the witnesses to give evidence. He is further enjoined to adopt scientific and all fair means to unearth the real offender, lay the charge-sheet before the court competent to take cognizance of the offence. The charge-sheet needs to contain the facts constituting the offence/s charged. The accused is entitled to a fair trial. Every citizen who assists the investigation is further duty-bound to appear before the Court of Session or competent criminal court, tender his ocular evidence as a dutiful and truthful citizen to unfold the prosecution case as given in his statement. Any betrayal in that behalf is a step to destabilise social peace, order and progress.

It is the salutary duty of every witness who has the knowledge of the commission of crime, to assist the State in giving evidence; unfortunately for various reasons, in particular deterioration in law and order situation and the principle of self-preservation, many a witness turn hostile and in some instances even direct witnesses are being liquidated before they are examined by the Court. In such circumstances, it is high time that the Law Commission looks into the matter. The Law Commission has recommended to the Central Government to make necessary amendments to the CrPC and this aspect of the matter should also be looked into and proper principles evolved in this behalf. *State of Gujarat* v. *Anirudhsing*, (1997) 6 SCC 514: 1997 SCC (Cri) 946: AIR 1997 SC 2780: 1997 Cri LJ 3397.

Bench Strength 2. Coram: *K. Ramaswamy* and *D.P. Wadhwa*, JJ. [Date of decision: 10-7-1997]

[187] — Ss. 39, 156(1), 161(1), 161(2), 313(3) and 315(1) proviso (b) — Citizens' cooperation in criminal investigation vis-à-vis right against self-incrimination — *Right guaranteed by Art. 20(3) against self-incrimination, held, has overriding effect — Provisions contained in Ss. 39, 156(1) and 161(1) CrPC are subject to right against self-incrimination — No adverse inference can be drawn against an accused who chooses to remain silent — Constitution of India — Article 20(3)* (Paras 90 and 91). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength 3. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision : 5-5-2010]

[188] — Ss. 40, 162 and 164 — Extra-judicial confession — When admissible — Recorded by Village Administrative Officer, a Village Headman, held, admissible — *R. 72 of Criminal Rules of Practice and Orders, 1931 of Madras High Court, absolutely prohibiting Village Magistrates from recording any confession or statement of an accused after commencement of police investigation, has become redundant since a Village Headman cannot be treated as a Village Magistrate under CrPC, 1973 — Scope of power and function of Village Headman stated — Madras High Court Criminal Rules of Practice and Orders, 1931, R. 72 — Madras Village Police Regulations, 1816 — Regn. 10 — Madras Village Police Regulations, 1821 — Regn. 6 — CrPC, 1898 — S. 528(6) — Evidence Act, 1872 — S. 24*

A Village Administrative Officer may have a power to report an offence committed within the jurisdiction of the police station where he is posted but the same would not make him a person in authority. Even under certain circumstances, Section 40 of the Code of Criminal Procedure enjoins a duty upon every officer employed in connection with the affairs of a village and every person residing in a village to communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer any information which he may possess respecting the matters enumerated therein. Sub-section (2)(*iii*) of Section 40 defines "officers employed in connection with the affairs of a village" to mean a member of the Panchayat of the village and includes the Headman and every officer or other person appointed to perform any function connected with the administration of the village. The Madras High Court in some decisions held that a Village Munsif was a Magistrate within the meaning of the Code of Criminal Procedure whereupon Section 26 of the Evidence Act was amended by adding an explanation that the Magistrate does not include the head of the village discharging magisterial functions in the Presidency of Fort St. George or elsewhere unless such Headman is a Magistrate under the provisions of the Criminal Procedure Code, 1882. The only provision where such a power may be traced to was Section 528(6) of the Criminal Procedure Code, 1898 which provides that the "head of a village under the Madras Village Police Regulations, 1816 or the Madras Village Police Regulations, 1821 is a Magistrate for the purposes of this section". But this provision has not been retained by the 1973 Code. The 1973 Code was brought about to give effect to the constitutional mandate to separate the judiciary from the executive. The entire control and supervision of the Magistrates in terms of the 1973 Code now vests in the Sessions Judge and the High Court. Transfer of criminal cases is now dealt in Chapter 31 of the 1973 Code. (Paras 30, 25 and 34)

Rule 72 of the Criminal Rules of Practice and Orders, 1931 provides "Village Magistrates are absolutely prohibited from reducing or writing any confession or statement whatever made by an accused person after the police investigation has begun." The said rule has lost all its significance in view of the fact that now under the Code of Criminal Procedure or any other statute or statutory regulations, the Village Headman is not a Village Magistrate. The post of a Village Magistrate since 1973 does not exist. The Village Administrative Officer, it has not been shown, has been conferred with any power of a Magistrate by reason of the provisions of the Code of Criminal Procedure or otherwise. It has also not been shown that he exercises any judicial or quasi-judicial function. Indisputably, he has no role to play in the matter of an investigation in a criminal case. The Village Magistrates evidently, under the new Code of Criminal Procedure, are not empowered to record any confession or statement either in terms of Section 162 or Section 164 of the Code of Criminal Procedure. For all intent and purport, therefore, Rule 72 of the Criminal Rules of Practice has become redundant and nugatory, logical corollary whereof would be that there does not exist any embargo for an accused person to make an extra-judicial confession before a Village Administrative Officer. There is thus no reason as to why such an extra-judicial confession could not be made before a Village Administrative Officer. (Paras 35 to 40)

With a view to exclude the admissibility of the confession made before a person, he must be a police officer. A Village Administrative Officer does not answer the description. While carrying out his duty to inform the police or the Magistrate in terms of Section 40 of the Code, the Village Headman does not act as a public servant removable only by or with the sanction of the local government nor does he act in his capacity as Magistrate. (Para 40)

Therefore, in this case the extra-judicial confession by the appellant before the Village Administrative Officer was not inadmissible and, thus, could be relied upon. (Para 41). *Sivakumar* v. *State*, (2006) 1 SCC 714: (2006) 1 SCC (Cri) 470: AIR 2006 SC 653: (2006) 37 AIC 70 (SC): 2006 Cri LJ 536.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

Raja v. State, (1995) 2 LW (Cri) 513, overruled

Pregada Balanagu v. Krosuru Kotayya, AIR 1937 Mad 578: 38 Cri LJ 950; Lakshmanan, Re, (1971) 1 MLJ 242, approved

— Ch. V (Ss. 41 to 60) *See* S. 436 and Ch. V (Ss. 41 to 60)

See also Chs. XII (Ss. 154 to 176), IV-A (S. 36), V to VII (Ss. 41 to 105)

[189] — Ch. V (Ss. 41 to 60) — Nature and scope — Held, deals with safeguards required to be followed by police to protect interests of arrested person — Part of the guarantee to live with dignity enshrined in Art. 21 — Police atrocities/Custodial violence or deaths — Implications of — Guarantees against — Reasons for increase in instances of, assuming "alarming proportions" — Dignity — *Right to live with — Held, life or personal liberty includes a right to live with human dignity — There is an inbuilt guarantee against torture or assault by the State or its functionaries — Arts. 20(3) and 22 and Ch. V CrPC, 1973 and even Art. 5 of the Universal Declaration of Human Rights, 1948 further manifest the protection extended to every citizen in this regard and the guarantees held out for making life meaningful and not a mere animal existence — Torture, assault and death in custody raise serious questions about the credibility of the rule of law and administration of the criminal justice system — Increase in instances of custodial violence/torture attributed to misuse of police machinery by those at the helm of affairs to settle personal scores — State of affairs bemoaned, that concern shown and anguish expressed by Supreme Court in this regard in many cases had fallen on deaf ears and the situation was not showing any noticeable change — Constitution of India — Arts. 21, 20 and 22*

The sacred and cherished right of personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. There is an inbuilt guarantee against torture or assault by the State or its functionaries. Chapter V of the Code of Criminal Procedure, 1973 (for short "the Code") deals with the powers of arrest of persons and the safeguards required to be followed by the police to protect the interest of the arrested person. Articles 20(3) and 22 of the Constitution further manifest the constitutional protection extended to every citizen and the guarantees held out for making life meaningful and not a mere animal existence. It is, therefore, difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanising torture, assault and death in custody, which have assumed alarming proportions, raise serious questions about the credibility of the rule of law and administration of the criminal justice system. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures. The Supreme Court has in a large number of cases expressed concern at the atrocities perpetuated by the protectors of the law. (Para 4)

Custodial violence, torture and abuse of police power are not peculiar to this country, but are widespread. It has been the concern of the international community because the problem is universal and the challenge is almost global. Despite the pious declaration contained in Article 5 of the Universal Declaration of Human Rights, 1948 the crime continues unabated, though every civilised nation shows its concern and makes efforts for its eradication. If it is assuming alarming proportions nowadays, all around, it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples' rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviours of citizens' rights. (Paras 2 and 3)

The diabolic recurrence of police torture results in a terrible scare in the minds of common citizens, that their lives and liberty are under a new and unwarranted peril because the guardians of the law destroy human rights by custodial violence and torture, invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State, whose paramount duty is to protect citizens and not to commit gruesome offences against them, in reality perpetrate them. The concern shown and anguish expressed by the Supreme Court in this regard in many cases seems to have fallen on deaf ears and the situation does not seem to be showing any noticeable change. (Para 5). *Munshi Singh Gautam* v. *State of M.P.*, (2005) 9 SCC 631: 2005 SCC (Cri) 1269: AIR 2005 SC 402: 2005 Cri LJ 320.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-11-2004]

Gauri Shanker Sharma v. State of U.P., 1990 Supp SCC 656: 1991 SCC (Cri) 67; Bhagwan Singh v. State of Punjab, (1992) 3 SCC 249: 1992 SCC (Cri) 629; Nilabati Behera v. State of Orissa, (1993) 2 SCC 746: 1993 SCC (Cri) 527; Pratul Kumar Sinha v. State of Bihar, 1994 Supp (3) SCC 100: 1994 SCC (Cri) 1666; Kewal Pati v. State of U.P., (1995) 3 SCC 600: 1995 SCC (Cri) 556; Inder Singh v. State of Punjab, (1995) 3 SCC 702: 1995 SCC (Cri) 586: 1995 SCC (L&S) 857: (1995) 30 ATC 122; State of M.P. v. Shyamsunder Trivedi, (1995) 4 SCC 262: 1995 SCC (Cri) 715; D.K. Basu v. State of W.B., (1997) 1 SCC 416: 1997 SCC (Cri) 92, relied on

[190] — Ch. V (Ss. 41 to 60) — Directions issued in *D.K. Basu* v. *State of W.B.*, (1997) 1 SCC 416 and *Joginder Kumar* v. *State of U.P.*, (1994) 4 SCC 260 — Violation of — *Plea raised in respect of — Held on facts, not established — Contempt of Courts Act, 1971, S. 2(b)*

Petitioner 1 (Smt Rajkumari) was a leader of CITU. She was arrested on the ground that she was leading a mob of workers and was inciting them to show their strength by beating the employers or anyone who came in their way and to teach them a lesson by destroying their property. In the instant writ petitions and contempt petitions, it was contended that the respondents (police officials) did not comply with the directions issued by the Supreme Court in *D.K. Basu* v. *State of W.B.* and *Joginder Kumar* v. *State of U.P.* as (*i*) the police personnel who came to arrest her, did not bear any name tags with designation, (*ii*) no memo of arrest was prepared at the time of her arrest, (*iii*) the provisions of Section 50 CrPC were not complied with, (*iv*) she was not informed of her right that she was entitled to meet her lawyer during interrogation, and (*v*) there was no necessity to arrest her during the middle of the night.

Held :

Petitioner 1 was produced in the Court of Magistrate on the same day of her arrest. She applied for bail before the Magistrate concerned. She did not state anything nor did she make any grievance before the said Magistrate regarding non-compliance with the directions issued in the aforesaid two cases, though her bail application was drafted and filed by a lawyer. If the plea taken now in the writ petitions was correct, in normal course grievance regarding the same should have been made on that very day when she was produced before the Magistrate especially when the legal aid and advice of a counsel was available to her. (Para 13)

The affidavits filed by the respondents (police officials) show that the name plate showing their name and designation was affixed on the uniform of all the police personnel; that it was lady Constable *S*, who had formally arrested Petitioner 1; that the grounds of arrest were disclosed not only to her but also to her son and husband; that her family members including her son and husband, some relations and friends were throughout present at the police station and that she was sent to the Court of the Magistrate concerned at 9.15 a.m. It is averred that an arrest memo was prepared at the time of her arrest and she was asked to sign the same but she refused to do so. It is further averred that the police personnel who arrested her informed that she would be released on bail in case she furnished bail bonds but she declined to do so. A copy of the arrest memo has also been placed on record. Apart from her own affidavit, Petitioner 1 has not filed affidavit of any other person to show that the version given by the respondents is not correct. She could have easily filed affidavits of her son and husband, but she has chosen not to do so. On the material which is available on record, it is not possible to hold that the directions issued in *Joginder Kumar* and *D.K. Basu cases* were flouted or were not complied with by the respondents. (Para 14). *Rajkumari* v. *SHO, NOIDA*, (2003) 11 SCC 500: 2004 SCC (Cri) 196: AIR 2003 SC 4693.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 19-9-2003]

[191] — Ch. V (Ss. 41 to 60) — Arrest — Allegation of police partiality and suppression of material facts regarding custodial death — Need of evidence and proof, stressed

The petitioner lodged an FIR for the custodial death of his son. The police alleged that the deceased who had been arrested for the theft of some mobile phone committed suicide inside the lockup. Allegedly attempts by the petitioner to have an impartial post-mortem of the body of the deceased were thwarted by the police who was insisting on the theory of the suicide by hanging with the help of a shirt. It was alleged that the external injuries all over the body of the deceased were not explained and in fact the post-mortem report itself was not accurate as compared with the photographs. The petitioner and his other family members gave a statement setting out the facts.

Pursuant to notice issued in this case, the State filed its response that an FIR had been registered and certain police officials had been charged for commission of offences punishable under Sections 330, 342 and 306 IPC. Sanction for prosecution had been given and the charge-sheet had been filed. The accused persons had surrendered before the CJM and their bail applications had been rejected. Cognizance of the aforesaid offences had been taken. It was submitted that the police after investigation had not found any evidence of murder and, therefore, the charge-sheet had been filed accordingly. Counsel for the petitioner submitted that it was a clear case of custodial torture and death and by giving a colour of Section 306 IPC, an attempt was being made to protect the erring police officials. It was also stated that the compensation should be paid.

Disposing of the petition in the terms below,

Held :

No compensation can be granted in the absence of any adjudication on the issue as to whether there was custodial death. In view of the fact that sanction for prosecution had been granted, charge-sheet had been filed and cognizance had been taken, no further direction at present is necessary. If at any point of time, evidence surfaces before the court concerned to show that some other offences appear to have been committed, necessary orders can be passed. (Paras 14 and 15). *Dalbir Singh* v. *State of U.P.*, (2009) 11 SCC 376: (2009) 3 SCC (Cri) 1388: AIR 2009 SC 1674: 2009 Cri LJ 1543: (2009) 75 AIC 115 (SC): (2009) 2 All LJ 661: (2009) 1 APLJ 110 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 3-2-2009]

Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble, (2003) 7 SCC 749, relied on

[192] — Ch. V (Ss. 41 to 60) — Police atrocities — *Alarming increase in cases of torture, assault and death in police custody and non-availability of direct evidence in such cases normally, noticed with concern — Further noticed, exaggerated adherence to and insistence of proof beyond every reasonable doubt by the prosecution and sometimes by the courts in such cases often results in miscarriage of justice — Custodial torture, held, violates the basic rights of citizens — Therefore, the courts advised to deal with such cases in a realistic manner and with the sensitivity they deserve so that the truth may be found and the guilty may not escape — Moreover, the Government and the Legislature directed to give serious thought to the recommendation in Law Commission's 113th Report to amend the Evidence Act to provide that injury received by a person during police custody may be presumed to have been caused by the police officer having the custody of that person during that period — However, it should be carefully examined whether the allegations of custodial violence are genuine or false and designed to gain undeserved benefit — Evidence Act, 1872, Ss. 101 and 114 — Penal Code, 1860, Ss. 330 and 331 — Universal Declaration of Human Rights, 1948, Art. 5 — Constitution of India — Arts. 21, 20(3) and 22* (Paras 1 to 8). *Shakila Abdul Gafar Khan* v. *Vasant Raghunath Dhoble*, (2003) 7 SCC 749: 2003 SCC (Cri) 1918: AIR 2003 SC 4567.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-9-2003]

— S. 41 *See* Ss. 46 and 41

See also Ss. 157 & 155 and 41 to 44 & 46 and Ss. 437 to 439

See also Ss. 167, 41, 44 and 46

See also Ss. 438 and 41

See also Ss. 438, 437 & 438 and 2(h), 155 to 157 and 41 to 44 & 46

See also Ss. 438, 437 & 439 and 41 to 44 & 46

[193] — S. 41 — Arrest — Discretionary power of investigating agency — Scope — Judicial interference — *Discretion should not be exercised mechanically but should be exercised cautiously and with circumspection having regard to the nature of the offence alleged and the type of person accused of having committed a cognizable offence — But when investigating officer, having regard to facts and circumstances, considered arrest of certain persons in a case unnecessary, held, High Court under Art. 226 had no jurisdiction to direct the State to arrest those persons even though the case was still at the stage of investigation as that would amount to unjustified interference with the investigation — Merely because anticipatory bail applications of those persons had been rejected, that itself is not a ground for directing their immediate arrest — Constitution of India — Arts. 21 and 226*

Maharashtra Antibiotics and Pharma- ceuticals Ltd. (MAPL), a joint venture of the Govt. of India and the State of Maharashtra, was declared to be a sick industry by BIFR on 14-1-1997. A complaint was lodged by the Provident Fund Commissioner against the Directors of MAPL alleging offences under Sections 406 and 409/34 IPC. Some of the accused persons moved the High Court for grant of anticipatory bail under Section 438 CrPC. Those petitions were rejected by the High Court against which no appeal had been preferred. A writ petition in public interest was filed before the High Court by the Maharashtra Antibiotics and Pharmaceutical Employees Association and others raising a grievance that though the Provident Fund Commissioner had lodged a complaint against several directors of MAPL the investigation made no progress on account of the fact that the Directors are government servants and enjoy considerable influence. On 10-1-2002 the High Court passed the first impugned order observing that as despite the fact that the applications for grant of anticipatory bail had been rejected by the High Court by a reasoned order, the accused had not been arrested, the only course open to the State was to cause their arrest and prosecute them. The Court, therefore, directed the State to cause the arrest of the accused and produce them before it. On the next date i.e. 11-1-2002 an application filed on behalf of Respondents 1 and 2 in the writ petition for modification of the order dated 10-1-2002 came up for hearing before the Court in which certain additional facts were sought to be brought to the notice of the Court, namely, that the complainant himself had written to the investigating officer that the Chairman of MAPL and a part-time Director were appointed by the Government of India and as such they were not concerned with the day-to-day working of the establishment and therefore the complaint should be restricted to other accused persons excluding these two. The High Court was surprised as to how such a letter could be issued to the investigating officer, because the question as to whether they were concerned with the day-to-day affairs of the Company was a matter which had to be considered by the Court taking cognizance of the offence. Some other submissions were also urged on the basis of Section 41-A of the State Financial Corporations Act but the same were also rejected. Lastly, it was urged before the High Court that the investigating officer had taken an opinion from the Assistant Director and Public Prosecutor, Nagpur who was of the view that the matter deserved to be treated as 'C' summary as no funds had been found to be misappropriated. The High Court observed that this could not be the reason for not proceeding further in the matter particularly in view of the observations made by the Court in the order rejecting the applications for grant of anticipatory bail. The application for modification was accordingly dismissed. The order directing arrest of the appellants herein was appealed against before the Supreme Court and the Supreme Court by an order dated 14-1-2002 passed an interim order staying the directions of the High Court to arrest the appellants. The High Court noticed the order passed by the Supreme Court and by its order dated 16-1-2002 it directed the respondent State to take necessary steps in the matter subject to interim order passed by the Supreme Court. In this connection it observed: "Our anxiety is to see that the State expeditiously conclude the investigation in the case and file a charge-sheet. We may again remind the State of the order passed by this Court while rejecting the pre-arrest bail application on 7-9-2001 and should not show any laxity in the investigation." The High Court's orders dated 10-1-2002, 11-1-2002 and 16-1-2002 were impugned before the Supreme Court.

Allowing the appeals,

Held :

Section 41 gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. The power has to be exercised with caution and circumspection. In the instant case the appellants had not been arrested. It appears that the result of the investigation showed that no amount had been defalcated. The court is here not concerned with the correctness of the conclusion that the investigating officer may have reached. What is, however, significant is that the investigating officer did not consider it necessary, having regard to all the facts and circumstances of the case, to arrest the accused. In such a case there was no justification for the High Court to direct the State to arrest the appellants against whom the first information report was lodged, as it amounted to unjustified interference in the investigation of the case. (Paras 14 and 15)

The mere fact that the bail applications of some of the appellants had been rejected is no ground for directing their immediate arrest. In the very nature of things, a person may move the court on mere apprehension that he may be arrested. The court may or may not grant anticipatory bail depending upon the facts and circumstances of the case and the material placed before the court. There may, however, be cases where the application for grant of anticipatory bail may be rejected and ultimately, after investigation, the said person may not be put up for trial as no material is disclosed against him in the course of investigation. The High Court proceeded on the assumption that since petitions for anticipatory bail had been rejected, there was no option open for the State but to arrest those persons. This assumption is erroneous. A person whose petition for grant of anticipatory bail has been rejected may or may not be arrested by the investigating officer depending upon the facts and circumstances of the case, nature of the offence, the background of the accused, the facts disclosed in the course of investigation and other relevant considerations. Therefore, the order dated 10-1-2002, insofar as it directs the arrest of the appellants, must be set aside. (Paras 15 to 16)

It is for the investigating agency to submit a report to the Magistrate after full and complete investigation. The investigating agency may submit a report finding the allegations substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But while it is open to the High Court, in appropriate cases, to give directions for prompt investigation etc. the High Court cannot direct the investigating agency to submit a report that is in accord with its views as that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the investigating agency. Even in a case where a report is submitted by the investigating agency finding that no case is made out for prosecution, it is open to the Magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct the investigating agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation. (Para 17)

In the instant case the investigation is in progress. It is the statutory duty of the investigating agency to fully investigate the matter and then submit a report to the Magistrate concerned. The Magistrate will thereafter proceed to pass appropriate order in accordance with law. It was not appropriate for the High Court in these circumstances to issue a direction that the case should not only be investigated, but a charge-sheet must be submitted. The High Court exceeded its jurisdiction in making this direction which deserves to be set aside. (Paras 17 and 18)

In the circumstances, therefore, the direction contained in the order of the High Court dated 10-1-2002 directing the arrest of the appellants is set aside. The direction made by the High Court directing the investigating agency to submit a charge-sheet is also set aside. However, the investigating agency must promptly take all necessary steps, conclude the investigation and submit its report to the Magistrate concerned. It is open to the investigating agency to submit such report as it considers appropriate, having regard to the facts and circumstances of the case and result of the investigation. After such a final report is submitted by the investigating agency, the Magistrate concerned will proceed to deal with the matter further in accordance with law without being influenced by any observation made by the High Court in the impugned orders. (Para 19). *M.C. Abraham* v. *State of Maharashtra*, (2003) 2 SCC 649: 2003 SCC (Cri) 628.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 20-12-2002]

State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; King Emperor v. Khwaja Nazir Ahmad, (1944) 71 IA 203: AIR 1945 PC 18; S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: 1968 Cri LJ 97, relied on

[194] — Ss. 41, 105-B, 157 and 166-B — Interpol notices — Binding effect, if any — Mode of effectuation

An Interpol red corner notice by itself cannot be the basis of arrest or transfer of an Indian citizen to a foreign jurisdiction, though issue of red corner notice has several consequences like (*i*) the requesting country may make a deportation request, (*ii*) law enforcement agency in India is required to take follow-up action with regard to arrest of fugitive criminal, (*iii*) information emanating from red corner notice is required to be distributed all over Interpol website, (*iv*) requesting Embassy can request Central Bureau of Investigation (CBI) to carry out its instructions for surveillance, arrest and detention, (*v*) requesting Embassy can even contact Indian police directly, (*vi*) extradition proceedings may follow. Keeping in view the constitution of Interpol and various resolutions passed by CBI, red corner notice per se does not give it a status of warrant of arrest, it is merely a request of issuing authority to keep surveillance on him, and provisionally or finally to arrest the wanted person for extradition. (Paras 35 to 38 and 96)

The notices issued by Interpol are not considered as administrative decisions on individual cases with transnational effect. They are not construed as an "*international administrative act*". They lack a character of regulation. They do not constitute an international arrest warrant and they are not in any other form binding the individuals concerned legally. (Para 63)

In fact, Interpol's "red notices" often function as de facto international arrest warrants and countries issue warrants immediately upon receipt of such a notice. However, they do so with the understanding that a request for extradition with supporting evidence will follow the red notice, without delay. The suspect must then go through the standard extradition process. The bottom line is that "warrants to arrest suspects must have legal authority in the jurisdiction where the suspect is found" and Interpol red notices do not have such authority. They are primarily a means of facilitating communication between police agencies and the success of the Interpol system still depends entirely upon voluntary cooperation. (Para 64)

A number of States recognise the red notices as an official request for the arrest of a person. However, such a request does not require the action of national police authorities and does not provide a legal basis thereto. It is for the State concerned to take a decision in regard to (red corner) notices, keeping in view the municipal law of the country concerned. Recognition of request as the basis for an arrest operates as an internationalisation or transnationalisation of a foreign administrative decision. Formal admissible procedure by Interpol cannot be the single cause of internationalisation. It is just a precondition for recognition by other States. (Paras 64, 65, 48 and 112))

Municipal laws of a country reign supreme in matters of extradition. It is for the State concerned to take decision in regard to red corner and yellow corner notices, keeping in view municipal laws of the country. It is wrong to say that red corner notice issued by Interpol should not be tinkered with. When a person complains of a violation of his fundamental rights, he is entitled to judicial review. (Para 112)

In the present case, no request has been received by Government of India for appellant's extradition. The Extradition Act, 1962 cannot be bypassed in red corner cases concerning Indian citizens. Extradition Treaty is also subject to provisions of the said 1962 Act. Besides, appellant being an Indian citizen, is entitled to protection of fundamental rights. A person cannot be arrested without authority of law. Arrest of a person must therefore be affected in terms of provisions of the said 1962 Act. A person wanted for an offence in a foreign jurisdiction may be arrested on fulfilment of two conditions, namely, (*i*) offence should be recognised by Indian law also, and (*ii*) person concerned must be liable to be arrested in India, either under any law relating to extradition or otherwise. (Paras 39 to 41, 112 and 113)

Hence, further action in terms of the red corner notice has not been and could not be taken against the appellant, in the instant case. (Para 108). *Bhavesh Jayanti Lakhani* v. *State of Maharashtra*, (2009) 9 SCC 551.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-8-2009]

[195] — Ss. 41, 157, 105-B and 166-B — Arrest of (international) fugitive criminal — Condition for arrest — *Held, arrest can be made at the instance of Central Government only when request to this effect is received from foreign country and not otherwise — Appellant husband involved in civil dispute with his erstwhile wife regarding custody of minor child — USA court granting custody to wife and issuing arrest warrant on account of husband's failure to entrust child to wife — However, no request received from USA Government for appellant's arrest — Held, appellant could not be arrested in these circumstances — Extradition Treaties — Treaty between India and USA dt. 14-9-1999 — Arts. 1, 9, 12 and 21 — Extradition Act, 1962, Ss. 4, 6, 15, 16, 34-B and 2(c). Bhavesh Jayanti Lakhani* v. *State of Maharashtra*, (2009) 9 SCC 551.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-8-2009]

[196] — Ss. 41, 157, 105-B and 166-B — Arrest based only on Interpol red corner notice — Permissibility — Procedure for arrest under the Extradition Act — Apprehension of a fugitive criminal against whom red corner notice has been issued by Interpol — Liability to be arrested in India based thereon — *Held, arrest in India is not automatic in case of red corner notice — Fugitive criminal can be apprehended only according to provisions of 1962 Act — This is because an Indian citizen is entitled to protection of fundamental rights and therefore he can be apprehended only according to procedure established by law — Extradition treaty, where entered into by India with another country, is subject to provisions of the 1962 Act — Implications of red corner notice also explained — Constitution of India — Arts. 21, 14 and 19 — Extradition Act, 1962, Ss. 6, 14, 15, 16, 17, 34-B, 2(d) and 2(f). Bhavesh Jayanti Lakhani* v. *State of Maharashtra*, (2009) 9 SCC 551.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-8-2009]

[197] — Ss. 41 to 44 & 46 and 155 and 157, 2(h) — Arrest — Usual reasons for making — *Role in investigation against person arrested — Discussed* (Para 19). *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303: 2005 SCC (Cri) 933: AIR 2005 SC 1057: (2005) 117 DLT 686: (2005) 2 Mah LJ 259: 2005 Cri LJ 1706.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 21-2-2005]

[198] — Ss. 41, 105-B and 157 — "Apprehend" — Interpretation and scope — *Held, "apprehend" means seizing or taking hold of a man, the act of arresting or seizing under the process of law — Power to apprehend includes power to investigate — Extradition Act, 1962, Ss. 6, 15, 16 and 34-B* (Para 78). *Bhavesh Jayanti Lakhani* v. *State of Maharashtra*, (2009) 9 SCC 551.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-8-2009]

[199] — S. 41 — Arrest — Giving prior notice of, to the person who is to be arrested — Imposition of condition of, by court — Propriety — *Direction by High Court to not arrest the first respondent in any crime, except after written notice to him, held, could not be passed — Hence, said direction set aside* (Para 7). *State of Maharashtra* v. *Mohd. Rashid*, (2005) 7 SCC 56: 2005 SCC (Cri) 1598.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *G.P. Mathur*, JJ. [Date of decision: 18-7-2005]

[200] — S. 41 — Guidelines laid down by Supreme Court to be followed by State Governments as well as High Courts while arresting Judicial Officers — *Judicial Officers should not visit any police station except in connection with official and judicial duties and with prior intimation to District and Sessions Judge*

It is hoped that the State Government will take effective measures to avoid reoccurrence of any such instance as happened in Nadiad where the CJM was trapped, arrested, handcuffed and then paraded. The State Government should further take immediate steps for the review and revision of the Police Regulations in the light of the findings recorded by the Commission. However, the following guidelines are laid down which should be followed in case of arrest and detention of a Judicial Officer:

(*A*) A Judicial Officer should be arrested for any offence under intimation to District Judge or the High Court as the case may be.

(*B*) In case of necessity for immediate arrest of a Judicial Officer only a technical or formal arrest may be effected.

(*C*) The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.

(*D*) The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District and Sessions Judge of the concerned district, if available.

(*E*) Immediate facilities shall be provided to the Judicial Officer for communication with his family members, legal advisers and Judicial Officers, including the District and Sessions Judge.

(*F*) No statement of a Judicial Officer who is under arrest be recorded nor any panchnama be drawn up nor any medical tests be conducted except in the presence of the Legal Adviser of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

(*G*) Ordinarily there should be no handcuffing of a Judicial Officer.

The above guidelines are not exhaustive but these are minimum safeguards which must be observed in case of arrest of a Judicial Officer. These guidelines should be implemented by the State Government as well as by the High Courts. (Paras 54, 55 and 56)

Further, no Judicial Officer should visit a Police Station on his own except in connection with his official and judicial duties and functions. If it is necessary for a Judicial Officer or a Subordinate Judicial Officer to visit the Police Station in connection with his official duties, he must do so with prior intimation of his visit to the District and Sessions Judge. (Para 57). *Delhi Judicial Service Assn.* v. *State of Gujarat*, (1991) 4 SCC 406: AIR 1991 SC 2176.

Bench Strength 3. Coram: **K.N. Singh**, *Kuldip Singh* and *N.M. Kasliwal*, JJ. [Date of decision: 11-9-1991]

[201] — Ss. 41, 151, 2(c), 156 and 157(1) — Duty of police officer to arrest a person in cognizable offence — Nature of — Whether mandatory — *Per Markandey Katju, J., a police officer is not bound to arrest even in case of a cognizable offence — When a police officer should arrest and when not is clarified in* Joginder Kumar case, *(1994) 4 SCC 260 — Interpretation of Statutes — Subsidiary rules — Mandatory or directory — Use of word "may" — Constitution of India — Arts. 21 & 22(1)*

Section 2(*c*) CrPC defines a cognizable offence as an offence in which a police officer *may* arrest without warrant. Similarly Section 41 CrPC states that a police officer *may* arrest a person involved in a cognizable offence. The use of the word "may" shows that a police officer is not bound to arrest even in a case of a cognizable offence. Again in Section 157(1) CrPC it is mentioned that a police officer shall investigate a case relating to a cognizable offence, and *if necessary* take measures for the arrest of the offender. This again makes it clear that arrest is not a must in every case of a cognizable offence. When a police officer should arrest and when not is clarified in *Joginder Kumar case*, (1994) 4 SCC 260. (Paras 43 and 44). *Som Mittal* v. *Govt. of Karnataka*, (2008) 3 SCC 753: (2008) 1 SCC (L&S) 895: (2008) 2 SCC (Cri) 73: AIR 2008 SC 1126: (2008) 2 LLN 690: 2008 Cri LJ 1610.

Bench Strength 2. Coram: **H.K. Sema**[1] and **Markandey Katju**[2], JJ. [Date of decision: 29-1-2008]

[202] — Ss. 41, 151, 156 and 157(1) — Arrest of a person — Exercise of power by police — Satisfaction of police officer about necessity and justification of such arrest on the basis of some investigation — Requirement of, laid down in *Joginder Kumar case*, (1994) 4 SCC 260 — Non-implementation of, by police — *Direction issued to strictly comply with the judgment made in* Joginder Kumar case *[per Markandey Katju, J.] — Constitution of India — Arts. 21 & 22(1) — Non-compliance with procedure for arrest*

Despite the categorical judgment of the Supreme Court made in *Joginder Kumar case*, (1994) 4 SCC 260 it appears that the police is not at all implementing it. What invariably happens is that whenever an FIR of a cognizable offence is lodged the police immediately goes to arrest the accused person. This is clear violation of the aforesaid judgment of the Supreme Court. Therefore, a strict compliance with the said judgment is directed herein. (Paras 42 and 60). *Som Mittal* v. *Govt. of Karnataka*, (2008) 3 SCC 753: (2008) 1 SCC (L&S) 895: (2008) 2 SCC (Cri) 73: AIR 2008 SC 1126: (2008) 2 LLN 690: 2008 Cri LJ 1610.

Bench Strength 2. Coram: **H.K. Sema**[1] and **Markandey Katju**[2], JJ. [Date of decision: 29-1-2008]

[203] — S. 41 — Protection against compulsion of self-incrimination — Scope — Person merely accosted by police, if covered — *Contention that once police accosted the respondent, who was suspected of possessing contraband opium, he must be deemed to be under arrest and therefore any confession made by him could not be used against him, held, unsustainable — Merely because respondent was questioned by police on suspicion, it could not be said that he was under arrest — There was nothing on record to suggest that respondent was compelled to make a confession — Plea that compelling a person to be searched amounts to confession could not be accepted — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 8/18 — Constitution of India — Art. 20(3)* (Para 11). *State of Rajasthan* v. *Daulat Ram*, (2005) 7 SCC 36: 2005 SCC (Cri) 1594: 2005 Cri LJ 4117.

Bench Strength 2. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 23-8-2005]

[204] — Ss. 41, 151, 157 and 172 — Arrest of a person — Arrestee has right to have his friend, relative or some other known person informed about his arrest — *Police officer must make an entry in his diary about the person who was so informed — Magistrate must be satisfied about compliance with these requirements in all cases of arrest — Constitution of India — Arts. 21 and 22(1)*

The right of the arrested person to have someone informed, upon request and to consult privately with a lawyer was recognised by S. 56(1) of the Police and Criminal Evidence Act, 1984 in England. These rights are inherent in Arts. 21 and 22(1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, the following requirements are issued:

1. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.

2. The police officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Arts. 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons found in the various police manuals. These requirements are not exhaustive. The Directors General of Police of all the States in India shall issue necessary instructions requiring due observance of these requirements. In addition, departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest. *Joginder Kumar* v. *State of U.P.*, (1994) 4 SCC 260: 1994 SCC (Cri) 1172: AIR 1994 SC 1349: (1994) 2 BLJR 975: (1994) 1 KLT 919: (1994) 2 Crimes 106: 1994 Cri LJ 1981.

Bench Strength 3. Coram: *M.N. Venkatachaliah, C.J.* and *S. Mohan* and *Dr. A.S. Anand*, JJ. [Date of decision: 25-4-1994]

Applied in Ahmed Noormohmed Bhatti v. State of Gujarat, (2005) 3 SCC 647

[205] — Ss. 41, 151, 157 and 172 — Arrest of a person — Exercise of power by police — *Should not be merely on suspicion about the person's complicity in the crime — Police officer must be satisfied about necessity and justification of such arrest on the basis of some investigation — Reasons for arrest must be recorded by police officer in his diary — Arrest should normally be avoided except in cases of heinous crime — Constitution of India — Arts. 21 and 22(1)*

No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the station without permission would do. *Joginder Kumar* v. *State of U.P.*, (1994) 4 SCC 260: 1994 SCC (Cri) 1172: AIR 1994 SC 1349: (1994) 2 BLJR 975: (1994) 1 KLT 919: (1994) 2 Crimes 106: 1994 Cri LJ 1981.

Bench Strength 3. Coram: *M.N. Venkatachaliah, C.J.* and *S. Mohan* and *Dr. A.S. Anand*, JJ. [Date of decision: 25-4-1994]

See also Ahmed Noormohmed Bhatti v. State of Gujarat, (2005) 3 SCC 647

[206] — Ss. 41 and 154 — Arrest of petitioner — Scope of interference under Art. 32 — *Stay in respect of, and prohibition regarding filing of proceedings against petitioner by CBI except by the leave of the Court — Order made by Supreme Court on 21-2-2005 [*Sanjiv Kumar *v.* Om Prakash

Chautala, *(2005) 5 SCC 526] in relation to, vacated — However, directed that petitioner shall not be arrested or called for interrogation except after apprising the Director, CBI — Further directed that no harassment shall be caused to him and any action taken against him shall be promptly brought to the notice of the competent court having jurisdiction over the case — Constitution of India — Art. 32* [Para 13(3)]. *Sanjiv Kumar* v. *Om Prakash Chautala*, (2005) 5 SCC 510: AIR 2005 SC 2571.

Bench Strength 3. Coram: **R.C. Lahoti, C.J.** and *D.M. Dharmadhikari* and *G.P. Mathur*, JJ. [Date of decision: 13-5-2005]

— S. 41(1)(a) *See* Ss. 154 and 41(1)(a) & (g)

[207] — S. 41(1)(a) — Gunshots fired by police to dispel attempts to accused-respondents to rescue their friend from illegal custody of police — *Firing sufficient to cause reasonable apprehension in the minds of respondents of death or grievous injury — Subsequent act of the respondents to inflict fatal injuries to deceased-informer accompanying the police party when the deceased tried to prevent the respondents from snatching the gun from the police, held on facts, done in exercise of their right of private defence — Penal Code, 1860 — Ss. 97 and 99. State of U.P.* v. *Niyamat*, (1987) 3 SCC 434: 1987 SCC (Cri) 565: AIR 1987 SC 1652: 1987 Cri LJ 1881.

Bench Strength 2. Coram: *V. Khalid* and **G.L. Oza, JJ.** [Date of decision: 14-4-1987]

— S. 41(1)(g) *See* Ss. 154 and 41(1)(a) & (g)

— S. 42 *See* Ss. 41 to 44 & 46 and 155 and 157, 2(h)

See also Ss. 157 & 155 and 41 to 44 & 46 and Ss. 437 to 439

See also Ss. 438, 437 & 438 and 2(h), 155 to 157 and 41 to 44 & 46

See also Ss. 438, 437 & 439 and 41 to 44 & 46

[208] — S. 42 — Condition precedent for exercise of power of police officer to arrest, held, justifiability thereof — Mere availability of the power, not sufficient — *Constitution of India — Arts. 22 and 21*

The court must bear in mind that at times the applicant would approach the court for grant of anticipatory bail on mere apprehension of being arrested on accusation of having committed a non-bailable offence. In fact, the investigating agency concerned may not otherwise arrest that applicant who has applied for anticipatory bail but just because he makes an application before the court and gets the relief from the court for a limited period and thereafter he has to surrender before the trial court and only thereafter his bail application can be considered and the life of anticipatory bail comes to an end. This may lead to disastrous and unfortunate consequences. The applicant who may not have otherwise lost his liberty loses it because he chose to file application of anticipatory bail on mere apprehension of being arrested on accusation of having committed a non-bailable offence. No arrest should be made because it is lawful for the police officer to do so. The existence of power to arrest is one thing and the justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. (Para 103). *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, followed

Hyman v. Rose, 1912 AC 623, 631, cited

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198; K.L. Verma v. State, (1998) 9 SCC 348: 1998 SCC (Cri) 1031; Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933; Sunita Devi v. State of Bihar, (2005) 1 SCC 608: 2005 SCC (Cri) 435; Naresh Kumar Yadav v. Ravindra Kumar, (2008) 1 SCC 632: (2008) 1 SCC (Cri) 277, held, per incuriam

— S. 43 *See* Ss. 41 to 44 & 46 and 155 and 157, 2(h)

See also Ss. 157 & 155 and 41 to 44 & 46 and Ss. 437 to 439

See also Ss. 438, 437 and 2(h), 155 to 157 and 41 to 44 & 46

See also Ss. 438, 437 & 439 and 41 to 44 & 46

— S. 44 *See* Ss. 41 to 44 & 46 and 155 and 157, 2(h)

See also Ss. 157 & 155 and 41 to 44 & 46 and Ss. 437 to 439

See also Ss. 167, 41, 44 and 46

See also Ss. 438, 437 and 2(h), 155 to 157 and 41 to 44 & 46

See also Ss. 438, 437 & 439 and 41 to 44 & 46

> **— S. 46** *See also* S. 46, Criminal Procedure Code, 1898, pp. 967 et seq. in Vol. 2

— S. 46 *See* Ss. 41 to 44 & 46 and 155 and 157, 2(h)

See also Ss. 157 & 155 and 41 to 44 & 46 and Ss. 437 to 439

See also Ss. 167, 41, 44 and 46

See also Ss. 438, 437 and 2(h), 155 to 157 and 41 to 44 & 46

See also Ss. 438, 437 & 439 and 41 to 44 & 46

[209] — S. 46 — A person can be deemed to have surrendered to the police when he offers to give information leading to discovery under S. 27, Evidence Act, 1872

When a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him, he may appropriately be deemed so have surrendered himself to the police. The broad foundation of this rule is stated to be that S. 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient. *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565: 1980 SCC (Cri) 465: AIR 1980 SC 1632: 1980 Cri LJ 1125.

Bench Strength **5**. Coram: **Y.V. Chandrachud, C.J.** and *P.N. Bhagwati, N.L. Untwalia, R.S. Pathak* and *O. Chinnappa Reddy*, JJ. [Date of decision: 9-4-1980]

[210] — Ss. 46 and 49 — Handcuffing of under trial prisoners by escorts while taking them from the jail to court and back — Constitutionality — Test for determining — *Held, permissible only in very exceptional situations — Onus on the authority imposing the handcuffs to justify the action — Authority should record reasons and act on clear materials and produce them before the trial Court for obtaining judicial approval — Once disapproved by court, handcuffing would be illegal — Constitution of India — Arts. 21, 14 & 19*

Per Krishna Iyer and Chinnappa Reddy, JJ.

To handcuff is to hoop harshly and to punish humiliatingly. It is necessarily implicit in Arts. 14 and 19 that when there is no compulsive need to fetter a person's limbs, it is sadistic, capricious, despotic and demoralising to humble a man by manacling him. The minimal freedom of movement, which even a detainee is entitled to under Art. 19, cannot be cut down by application of handcuffs.

To be consistent with Arts. 14 and 19 handcuffs must be the last refuge as there are other ways for ensuring security. No prisoner shall be handcuffed or fettered routinely or merely for the convenience of the custodian or escort. Functional compulsions of security must reach that dismal degree where no alternative will work except manacles. There must be material, sufficiently stringent, to satisfy a reasonable mind that there is clear and present danger of escape of the prisoner who is being transported by breaking out of the police control and further that by adding to the escort party or other strategy, he cannot be kept under control. The onus of proof in this regard is on him who puts the person under irons.

The belief that the prisoner is likely to break out of custody or play the vanishing trick must be based on antecedents which must be recorded and proneness to violence must be authentic. Vague surmises or general averments that the undertrial is a crook or desperado, rowdy or maniac cannot suffice. Even orders of superiors are no valid justification as constitutional rights cannot be kept in suspense by superior orders, unless there is material in that regard.

Even where in extreme circumstances, handcuffs have to be put on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. Not only that, as that can be a mechanical process mindlessly made, the escorting officer, whenever he handcuffs a prisoner produced in court, must show the reasons so recorded to the Presiding Judge and get his approval. The judicial officer before whom the prisoner is produced has to interrogate the prisoner, as a rule, whether he has been subjected to handcuffs or other 'irons' treatment and, if he has been the official concerned shall be asked to explain the action forthwith. Otherwise, there is no control over possible arbitrariness in applying handcuffs and fetters. And once the court directs that handcuffs shall be off, no escorting authority can overrule judicial direction. This is implicit in Art. 21.

Merely because a person is charged with grave or serious offences the inference of escape proneness or desperate character does not follow and therefore, on that premise alone he cannot be handcuffed. Therefore, the provisions under cls. *(a)*, *(b)* and *(c)* of para 26.22(1) of the Punjab Police Rules for routinely handcuffing an undertrial who is accused of a non-bailable offence punishable with more than 3 years' imprisonment or an offence punishable under Ss. 148 or 226, Indian Penal Code or an offence as to bring the case under S. 75, Indian Penal Code violative of Arts. 14, 19 and 21. Clauses *(d)*, *(e)* and *(f)* of para 26.22(1) also hover perilously near unconstitutionality unless read down. Who is a 'desperate character' within clause *(d)* or why the prisoner should be tortured because others will demonstrate or attempt to rescue as contemplated in cls. *(e)* and *(f)* is not clear.

Another aspect of the matter is that all prisoners should not be placed on the same footing unless there is a rational classification based upon health, age, academic or occupational needs or like legitimate ground and not irrelevant factors like wealth, political importance, social status and other criteria which are a hangover of the hierarchical social structure hostile to the constitutional ethos. It is arbitrary and irrational to classify prisoners, for the purposes of handcuffs, into 'better' class and 'ordinary' class. No one shall be fettered in any form based on superior class differentia, as the law treats them equally. Therefore, paragraphs 26.21-A and 26.22 of the Punjab Police Rules insofar as they put the ordinary Indian beneath the better class breed are untenable and arbitrary.

Per Pathak, J. (concurring)

If a police officer is vested with the power to restrain a person by handcuffing him or otherwise there is a simultaneous restraint by the law on the police officer as to the exercise of that power. An arbitrary exercise of that power infringes the fundamental rights of the person in custody and a malicious use of that power can bring S. 220, Indian Penal Code into play.

Sections 46 and 49, Criminal Procedure Code define the parameters of the power envisaged by the Code, in the matter of arrest and S. 49 of the Code, in particular, foreshadows the central principle controlling the power to impose restraint on the person of prisoner while in continued custody. Consistent with the fundamental rights of such person the restraint can be imposed, if at all, to a degree no greater than is necessary for preventing his escape. To prevent his escape is the object of imposing the restraint, and that object defines at once the bounds of that power.

The authority responsible for the prisoner's custody, should consider the case of each prisoner individually and decide whether the prisoner is a person who having regard to his circumstances, general conduct, behaviour and character will attempt to escape or disturb the peace by becoming violent. That is the basic criterion, and all provisions relating to the imposition of restraint must be guided by it. In the ultimate analysis it is that guiding principle which must determine in each individual case whether a restraint should be imposed and to what degree.

Whether handcuffs or other restraint should be imposed on a prisoner is primarily a matter for the decision of the authority responsible for his custody and not of any other. It is a judgment to be exercised with reference to each individual case. The matter is one where the circumstances may change from one moment to another, and inevitably in some cases it may fall to the decision of the escorting authority midway to decide on imposing a restraint on the prisoner. Any prior decision of external authority cannot be reasonably imposed on the exercise of that power. However, one sector of supervisory jurisdiction could appropriately lie with the court trying the accused, and it would be desirable for the custodial authority to inform that court of the circumstances in which, and the justification for imposing a restraint on the body of the accused. It should be for the court concerned to work out the modalities of the procedure requisite for the purpose of enforcing such control. *Prem Shankar Shukla* v. *Delhi Admn.*, (1980) 3 SCC 526: 1980 SCC (Cri) 815: AIR 1980 SC 1535: 1980 Cri LJ 930.

Bench Strength **3**. Coram: **V.R. Krishna Iyer**[1], **R.S. Pathak**[2] and *O. Chinnappa Reddy*[1], JJ. [Date of decision: 29-4-1980]

[211] — Ss. 46 and 49 — Handcuffing of undertrials and convicts and putting them under fetters not permissible — *Violation of directions issued by the Supreme Court in* Prem Shankar Shukla case *and* Sunil Batra case *would attract the provisions of Contempt of Courts Act apart from other penal consequences — Magistrate may grant permission to handcuff the prisoner in very rare cases — Relevant considerations for handcuffing or putting the prisoners under fetters inside or outside the jail — If the police officer, who arrests a person without warrant, is satisfied, on the basis of guidelines given by the Supreme Court, that it is necessary to handcuff such a person he may do so till he is taken to the police station and thereafter produced before the Magistrate — Directions issued — Constitution of India — Arts. 21, 14 and 19*

Handcuffs or other fetters shall not be forced on a prisoner — convicted or undertrial — while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back. (Para 16)

The law declared in *Prem Shankar Shukla case* and *Sunil Batra case* and the directions issued by the Supreme Court are binding on all concerned and any violation or circumvention shall attract the provisions of the Contempt of Courts Act apart from other penal consequences under law. Judicial notice is taken of the fact that the police and the jail authorities are even now using handcuffs and other fetters indiscriminately and without any justification. This Court has categorically held that the relevant considerations for putting a prisoner in fetters are the character, antecedents and propensities of the prisoner. The peculiar and special characteristics of each individual prisoner have to be taken into consideration. The nature or length of sentence or the number of convictions or the gruesome character of the crime the prisoner is alleged to have committed are not by themselves relevant consideration. (Paras 3, 14 and 9)

The police and the jail authorities are under a public duty to prevent the escape of prisoners and provide them with safe custody but at the same time the rights of the prisoners guaranteed to them under Articles 14, 19 and 21 of the Constitution of India cannot be infracted. The authorities are justified in taking suitable measures, legally permissible, to safeguard the custody of the prisoners, but the use of fetters purely at the whims or subjective discretion of the authorities is not permissible. (Para 13)

Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner. (Para 17)

In all the cases where a person arrested by police, is produced before the Magistrate and remand — judicial or non-judicial — is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand. (Para 18)

When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested. (Para 19)

Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate. (Para 20). *Citizens for Democracy* v. *State of Assam*, (1995) 3 SCC 743: 1995 SCC (Cri) 600: AIR 1996 SC 2193.

Bench Strength 2. Coram: **Kuldip Singh** and *N. Venkatachala*, JJ. [Date of decision: 1-5-1995]

Prem Shankar Shukla v. Delhi Admn., (1980) 3 SCC 526: 1980 SCC (Cri) 815; Sunil Batra v. Delhi Admn., (1978) 4 SCC 494: 1979 SCC (Cri) 155, followed

[212] — Ss. 46 and 41 — Arrest of a woman — Presence of a female constable — Necessity of — Said arrest after sunset and before sunrise — Permissibility of — *High Court preventing the police officers from arresting a woman without the presence of a female constable and also prohibiting her arrest after sunset and before sunrise under any circumstances — Held, a strict compliance with High Court's direction would cause practical difficulties to the investigating agency and might even give room for evading the process of law by unscrupulous accused — Hence Supreme Court modifying the said direction by permitting the said arrest at any time of the day or night even without the presence of a female constable if the arresting officer is reasonably satisfied that such presence of a female constable is not available or possible and/or the delay in arrest would impede the course of investigation — Reasons for such arrest to be recorded by the arresting officer either before or immediately after the arrest*

The mandate issued by the High Court prevents the police from arresting a lady without the presence of a lady constable. The said direction also prohibits the arrest of a lady after sunset and before sunrise under any circumstances. We do agree with the object behind the direction issued by the High Court, but a strict compliance with the said direction, in a given circumstance, would cause practical difficulties to the investigating agency and might even give room for evading the process of law by unscrupulous accused. While it is necessary to protect the female sought to be arrested by the police from police misdeeds, it may not be always possible and practical to have the presence of a lady constable when the necessity for such arrest arises, therefore, this direction issued requires some modification without disturbing the object behind the same. The object will be served if a direction is issued to the arresting authority that while arresting a female person, all efforts should be made to keep a lady constable present but in the circumstances where the arresting officer is reasonably satisfied that such presence of a lady constable is not available or possible and/or the delay in arresting caused by securing the presence of a lady constable would impede the course of investigation, such arresting officer for reasons to be recorded either before the arrest or immediately after the arrest be permitted to arrest a female person for lawful reasons at any time of the day or night depending on the circumstances of the case even without the presence of a lady constable. (Para 9). *State of Maharashtra* v. *Christian Community Welfare Council of India*, (2003) 8 SCC 546.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 15-10-2003]

[213] — Ss. 46 and 41 — Arrest of a woman — Time of arrest — If on facts was between sunset and sunrise — *Petitioner R stating that she was arrested at 1.30 a.m. — Respondents (police officials) filed four affidavits stating that R was arrested at 5.30 a.m. — Except petitioner's affidavit and rejoinder-affidavit, no other affidavit or corroborating material to support her version — In view of these conflicting affidavits and no independent or corroborative material having been filed on behalf of the petitioners, held, it was not possible to hold that R had been arrested at 1.30 a.m. or that the version given by respondents was not correct — Further held, in case IO came to conclusion that R had committed cognizable offences, he was perfectly within his right to arrest her and no exception could be taken to such a course of action* (Para 12). *Rajkumari* v. *SHO, NOIDA*, (2003) 11 SCC 500: 2004 SCC (Cri) 196: AIR 2003 SC 4693.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 19-9-2003]

[214] — Ss. 46 and 41 — Arrest of a woman between sunset and sunrise — *Prayer made in writ petitions that a general direction may be issued to the respondents (police officials) to stop arresting women between sunset and sunrise except in grave offences like murder — No submission made by petitioners in respect thereof — That apart, present one, held, not a fit case where some general directions may be issued in this regard* (Para 15). *Rajkumari* v. *SHO, NOIDA*, (2003) 11 SCC 500: 2004 SCC (Cri) 196: AIR 2003 SC 4693.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 19-9-2003]

— S. 46(1) *See* Ss. 438, 439 and 46(1)

See also Ss. 439 and 46(1) & (2)

— S. 46(2) *See* Ss. 439 and 46(1) & (2)

— S. 49 *See* Ss. 46 and 49

— S. 49(2)(b) *See* S. 167(2) r/w S. 49(2)(b)

[215] — Ss. 50, 57 and 167 — Conform to the right to life and personal liberty enshrined in Art. 21 and the safeguards ingrained in Art. 22 of the Constitution — *Constitution of India, Arts. 21 & 22. Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260: 1993 SCC (Cri) 1171: AIR 1993 SC 1082: 1993 Cri LJ 859.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 17-12-1992]

— S. 51 *See also* Ss. 51 and 52, Criminal Procedure Code, 1898, p. 968 in Vol. 2

— S. 51 *See also* Ss. 100 and 51

[216] — S. 51 — Search of arrested person — Personal search memo not mentioning that the accused was wearing a kirpan at the time of arrest — *Existence of kirpan on person of accused proved by Munshi, District Jail — Held, trial court not justified in making inference that the kirpan was supplied to the accused when he was on his way to the jail* (Para 10). *Balwant Singh* v. *State of Punjab*, (1995) 3 SCC 214: 1995 SCC (Cri) 432: AIR 1995 SC 1785.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 1-3-1995]

[217] — S. 51 — Capsules containing sachets of contraband concealed by accused persons in their body cavities — Purging of, in a hospital — Recovery of 41 sachets from respondent *H* — Doubt in respect of — *The appropriate person who could have spoken about the purging by H was the sweeper of the hospital who collected the sachets — Non-examination of — Further, the resident doctor to whom sachets given after cleaning every time the same were purged, also not examined — Sachets purged by H not kept separately from those similarly purged by other accused persons — Serious doubt as to the identity of the sachets actually purged by H — Hence, said recovery from H, held, not established beyond all reasonable doubt — Acquittal by High Court upheld — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 8(c)/21, 28, 23 and 50*

There were nine accused persons who were intercepted at the airport by the NCB officers. All these nine persons were brought to the hospital and subjected to radiological test and were suspected of having concealed certain foreign substance in their body cavity. All these accused persons were kept in the hospital because it was thought that they would in due course of time, purge foreign substance from their bodies. Arrangements were made by the hospital authorities in regard to each of these accused persons to facilitate them to purge the foreign substance from their body cavities. Each of the accused persons was provided with a toilet pan and every time the accused persons purged the sachets, they were collected, cleaned by the sweeper of the hospital and handed over to the resident doctor. The sachets purged by each of these accused persons were collected, sealed and sent for chemical examination. The Chemical Examiner found that the capsules contained diacetylmorphine i.e. heroin. The trial court convicted all the accused persons including the respondent herein. But the High Court, in appeal, disagreed with the trial court and set aside the conviction and sentence imposed on the accused persons. Since the other accused apart from the respondent herein, had left the country, the instant appeal was confined only to the respondent who could not go out of the country for various reasons.

Dismissing the appeal filed by the State,

Held :

The High Court has rightly held that the prosecution has failed to establish that the 41 sachets recovered by it are really the ones which were allegedly purged by this respondent. (Para 7)

It is evident from the evidence of PW 3 (doctor of the hospital) that neither was he personally present when these sachets were recovered after they were purged by the accused concerned nor when the sachets after collection and cleaning, were handed over to the resident doctor, therefore, this witness is not competent to say that the 41 sachets collected from the respondent are the very same sachets which he had purged and not those which the other accused might have purged. The appropriate person who could have spoken about this fact of purging by the respondent, was the sweeper who collected the said sachets. He has not been examined by the prosecution. Further, the resident doctor to whom these sachets were given after cleaning every time the same were purged, was also not examined. That apart, there is no material to show that as and when these sachets were purged, they were kept separately from the other sachets which were also similarly purged by other accused persons. Therefore, there is a serious doubt as to the identity of the sachets actually purged by the respondent. (Para 7)

Further, the so-called inventory maintained by the hospital is not signed or attested by any of the officials of the hospital nor has any person who really maintained the said inventory been examined in this regard. Even the panch witness PW 4, who had signed the panchnama for the recovery of the alleged sachets from the respondent, has not fully supported the prosecution case. (Para 7)

Thus, the prosecution has not established beyond reasonable doubt that the sachets which were collected on various dates between 16-3-1994 and 20-3-1994, as a matter of fact, were purged by the respondent and not by anybody else. (Para 7). *Narcotics Control Bureau* v. *Abdullah Hussain Juma*, (2003) 7 SCC 245: 2003 SCC (Cri) 1608: AIR 2003 SC 4216.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 30-7-2003]

[218] — Ss. 51 and 102 — Recovery, seizure and deposit of seized contraband in maalkhana disputed by the accused — *Uncertainty as to when and by whom the entries in the arrest memo regarding the seizure of Rs 27,000 from the accused were made, when the said seizure was denied by the IO at the time of judgment changing his earlier statement — Held, the accused cannot be made to suffer for the said failure of prosecution — On facts, case not proved beyond all reasonable doubt — Conviction of accused based on the sole testimony of IO, set aside — Contradictory statement of IO about seizure of Rs 27,000 from accused — Benefit of, given to accused — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 8 r/w S. 15 and S. 42*

Appellant *B*, a truck driver, was tried and convicted for the offence under Section 8 r/w S. 15 NDPS Act. The conviction was based on the sole testimony of the IO. There was a controversy regarding the seizure of amount of Rs 27,000 by the IO from *B* as the IO in his cross-examination had accepted the seizure of the said amount, but subsequently at the time of judgment he denied the said fact. There were also discrepancies in the entries made in arrest memo regarding the seizure of the said amount as the time of the said entries and the person responsible for making them was not certain. The appellant, before the Supreme Court, disputed the recovery of contraband on the ground that there were serious discrepancies in its recovery, seizure and deposit in the maalkhana.

Allowing the appeal,

Held :

There is statement of PW 4, a constable, that when he along with PW 1, a hostile prosecution witness, reached the spot where the truck was apprehended, PW 3, the IO, had already conducted the search of the truck. (Para 5)

The explanation of the police official who made the entries in the Maalkhana register was that he forgot to make an entry of the seized material in the said register and made the same after 5 days of the incident. The entry could be made at its appropriate place and under the correct date on which it was actually made and any delay in making the same could be explained. Entries as made by interpolation in the instant case cannot be permitted. (Para 5)

The said police official also deposed that since no cash was deposited, he did not make any entry for receipt of Rs 27,000 connected with the crime. The appellant cannot be made to suffer for the prosecution's failure to prove as to when and by whom the entries in arrest memo regarding the said amount were made. (Paras 5 and 7)

The question of applicability of Section 35 of the Act will not arise in the present case when the recovery itself is doubtful. (Para 8). *Bahadur Singh* v. *State of M.P.*, (2002) 1 SCC 606: 2002 SCC (Cri) 172: AIR 2002 SC 289: (2002) 142 ELT 281: 2002 Cri LJ 579: (2002) 1 CHN (Supp) 34.

Bench Strength **2**. Coram: *U.C. Banerjee* and **Y.K. Sabharwal**, JJ. [Date of decision: 4-12-2001]

[219] — Ss. 51, 94 and 100 — Search and Seizure — Data on electronic device — Laptops of assessee's auditor seized — Department claiming requirement of access to electronic data pertaining to assessee for proper assessment — *Held, two laptops be desealed — Data therein be examined by DG, National Informatics Centre or his nominee in presence of representatives of IT Department and assessee — All data on laptops directed to be made available for inspection by the Department to verify whether it pertains to assessee — Supreme Court identifying only specific entities/clients whose data the Department may copy — Respondents also directed to provide authenticated hard copies of data pertaining to assessee to Department — Department permitted to inspect data contained relating to 46 parties — However, such data not to be copied in any form — Any of such files/folders connected with assessee group required by assessing officer, to be pointed out in writing to respondent — Respondent may either consent to or challenge such claim by appropriate proceedings — Appeal disposed of — However, question of law sought to be raised in appeal kept open — IT Act, 1961, S. 132(1)(ii-b) — Evidence Act, 1872, Ss. 34, 3 "Evidence" (2), 17, 22-A, 39, 65-B — Information Technology Act, 2000, S. 11. Deptt. of Income Tax (Investigation)* v. *S.R. Batliboi & Co.*, (2009) 17 SCC 767.

Bench Strength **2**. Coram: *D.K. Jain* and *H.L. Dattu*, JJ. [Date of decision: 17-8-2009]

[220] — S. 51 — Search — Requirement under S. 50, NDPS Act, 1985 on the part of the officer conducting the search to inform the accused of his right to choose to be searched in the presence of a Gazetted Officer or a Magistrate, held, mandatory — *Prosecution must prove that the accused was made aware of this right but he did not choose to be searched before a Gazetted Officer or a Magistrate — If no evidence to this effect given court must assume that the accused was not informed of his right and must find that the possession of the illicit articles was not established — Presumption of regularity of official act as contemplated under S. 114 Ill. (e), Evidence Act cannot be relied upon — Protection given to the accused under S. 50 cannot be disregarded on the technicality that this point was not raised in the trial court — Investigating officers directed to take care to comply with the requirement of S. 50 — On facts, conviction under Ss. 65 and 66 of the Bombay Prohibition Act, 1949 for which no separate punishment has been awarded by the High Court is also not sustainable — Evidence Act, 1872 — S. 114 Ill. (e) — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 50, 54 and 20*

Having regard to the grave consequences that may entail the possession of illicit articles under the NDPS Act, namely, the shifting of the onus to the accused and the severe punishment to which he becomes liable, the Legislature has enacted the safeguard contained in Section 50. To obviate any doubt as to the possession by the accused of illicit articles under the NDPS Act, the accused is authorised to require the search for such possession to be conducted in the presence of a Gazetted Officer or a Magistrate. The provisions in this behalf are mandatory and the language thereof obliges the officer concerned to inform the person to be searched of his right to demand that the search be conducted in the presence of a Gazetted Officer or a Magistrate. (Para 6)

When evidence of the search is given, all that transpired in its connection must be stated. Very relevant in this behalf is the testimony of the officer conducting the search that he had informed the person to be searched that he was entitled to demand that the search be carried out in the presence of a Gazetted Officer or a Magistrate and that the person had not chosen to so demand. If no evidence to this effect is given the court must assume that the person to be searched was not informed of the protection the law gave him and must find that the possession of illicit articles under the NDPS Act was not established. (Para 7)

It cannot be said that in cases under the NDPS Act it is the duty of the court to raise a presumption, when the officer concerned has not deposed that he had followed the procedure mandated by Section 50, that he had in fact done so. When the officer concerned has not deposed that he had followed the procedure mandated by Section 50, the court is duty-bound to conclude that the accused had not had the benefit of the protection that Section 50 affords; that, therefore, his possession of articles which are illicit under the NDPS Act is not established; that the precondition for his having satisfactorily accounted for such possession has not been met; and to acquit the accused. (Para 8)

It is necessary that courts dealing with offences under the NDPS Act should be very careful to see that it is established to their satisfaction that the accused has been informed by the officer concerned that he had a right to choose to be searched before a Gazetted Officer or a Magistrate. The accused must be made aware of this right or protection granted by the statute and unless cogent evidence is produced to show that he was made aware of such right or protection, there would be no question of presuming that the requirements of Section 50 were complied with. Instructions in this behalf need to be issued so that investigation officers take care to comply with the statutory requirement and drug-pedlars do not go scot-free due to non-compliance thereof. Such instructions would be of great value in the effort to curb drug trafficking. At the same time, those accused of possessing drugs should, however heinous their offence may appear to be, have the safeguard that the law prescribes. (Para 10). *Saiyad Mohd. Saiyad Umar Saiyad* v. *State of Gujarat*, (1995) 3 SCC 610: 1995 SCC (Cri) 564: (1995) 78 ELT 649: (1995) 2 GCD 197: 1995 Cri LJ 2662.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and **S.P. Bharucha** and *G.T. Nanavati*, JJ. [Date of decision: 3-4-1995]

State of Punjab v. Balbir Singh, (1994) 3 SCC 299, followed

— S. 51(2) *See also* S. 52, Criminal Procedure Code, 1898, p. 968 in Vol. 2

[221] — S. 51(2) — Search of female — Applicability of provisions of CrPC — Search must be conducted by a female — Procedure indicated — *Failure to observe the requirements not only affects the credibility of the prosecution case but also is violative of basic right of a female to be treated with decency and proper dignity — Constitution of India — Art. 21 — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 50(4) and 51*

While conducting search and seizure, in addition to the safeguards provided under the Code of Criminal Procedure, the safeguards provided under the NDPS Act are also required to be followed. Section 50(4) of the NDPS Act lays down that no female shall be searched by anyone excepting a female. This provision is similar to the one contained in Section 52 of CrPC, 1898 and Section 51(2) of CrPC, 1973 relating to search of females. Section 51(2) of CrPC, 1973 lays down that whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency. The empowered officer must, therefore, act in the manner provided by Section 50(4) of the NDPS Act read with Section 51(2) of CrPC, 1973 whenever it is found necessary to cause a female to be searched. The document prepared by the investigating officer at the spot must invariably disclose that the search was conducted in the aforesaid manner and the name of the female official who carried out the personal search of the female concerned should also be disclosed. The personal search memo of the female concerned should indicate compliance with the aforesaid provisions. Failure to do so may not only affect the credibility of the prosecution case but may also be found as violative of the basic right of a female to be treated with decency and proper dignity. (Para 13). *State of Punjab* v. *Baldev Singh*, (1999) 6 SCC 172: 1999 SCC (Cri) 1080: AIR 1999 SC 2378: 1999 Cri LJ 3672.

Bench Strength **5**. Coram: **Dr. A.S. Anand, C.J.** and *S.B. Majmudar, Sujata V. Manohar, K. Venkataswami* and *V.N. Khare*, JJ. [Date of decision: 21-7-1999]

[222] — S. 52 — Conviction under S. 5, TADA — Validity of — Discrepancy about the recovery of revolver used in crime — *A, who committed the murder, saying that the revolver was given to appellant V — According to prosecution, PW 20 along with other police officers including PW 9 recovered a polythene bag containing bloodstained clothes and a revolver from the possession of V — Further, PW 9 stating that the bag contained only two pieces of cloth and the revolver was a separate article — Accepting the evidence of PW 20, the author of recovery, held, there was reasonable doubt as to whether V had only a polythene bag without knowing the contents therein — Hence, he was liable to be set at liberty forthwith — Evidence Act, 1872 — Ss. 3 and 27 — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 5* (Para 16). *Vijay Pal Singh* v. *State (NCT of Delhi)*, (2001) 10 SCC 45: AIR 2001 SC 2405.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 1-2-2001]

[223] — S. 52 — Investigation — Failure of investigating officer to smell the firearms at the time of recovery to confirm if freshly used can assume importance when serious doubt regarding the use of the firearms and the fact of arrest of accused and recovery of firearms present. *Nachhattar Singh* v. *State of Punjab*, (1976) 1 SCC 750: 1976 SCC (Cri) 182: AIR 1976 SC 951: 1976 Cri LJ 691.

Bench Strength **3**. Coram: *P.N. Bhagwati, P.K. Goswami* and **N.L. Untwalia**, JJ. [Date of decision: 9-12-1975]

[224] — S. 53 — Aspects — Direction for DNA test — When can be given — Approach/Duty of courts — Paternity of a child — *DNA test being an extremely delicate and sensitive aspect, a direction for said test, held, can be given if a strong prima facie case and an eminent need is made out for such a course — Cautious and judicious approach prescribed, considering that such infringement on right to privacy may not only be prejudicial to rights of the parties but may have devastating effect on the child — Evidence Act, 1872, S. 112 — Constitution of India — Arts. 21 and 19(1)(a)*

Two questions arise for consideration—first, the extent of power of the State Commission for Women constituted under Section 3 of the Orissa State Commission for Women Act, 1993 and then, as to whether the High Court was justified in issuing a suo motu direction for deoxyribonucleic acid (DNA) test of the child and the appellant who, according to the mother of the child, was its father suo motu.

Allowing the appeal,

Held :

The order of the High Court directing DNA test is not sustainable. Instead of correcting the void order of the State Commission directing DNA test, the High Court exceeded its jurisdiction in passing the impugned order. (Paras 24 and 13)

When a matrimonial dispute between the parties was pending in the court of competent jurisdiction, all aspects concerning matrimonial dispute raised by the parties should be adjudicated and determined by the matrimonial court. Should an issue arise before the matrimonial court concerning the paternity of the child, obviously that court will be competent to pass an appropriate order at the relevant time in accordance with law. (Para 24)

DNA test in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of "eminent need" whether it is not possible for the court to reach the truth without use of such test. The result of a genuine DNA test may not be enough to escape from the conclusiveness of Section 112. When there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA test is eminently needed. (Paras 22 and 19)

In a matter where paternity of a child is in issue before the court, the use of DNA test is an extremely delicate and sensitive aspect. One view is that when modern science gives the means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the court must be reluctant in the use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception. Any order for DNA test can be given by the court only if a strong prima facie case is made out for such a course. (Paras 21 and 23)

The order of the High Court directing DNA test, is, therefore, set aside. Respondent 2 wife, however would not be precluded from claiming maintenance or any other order of financial support against the appellant in appropriate proceedings from the court of competent jurisdiction or in the petition filed by the appellant before the District Judge. Obviously the appellant husband would be at liberty to contest the claim of Respondent 2 on all available grounds and the court concerned would consider and determine such claim in accordance with law on its own merits. (Paras 25 and 26)

The State Commission constituted under the Orissa State Commission for Women Act, 1993 has no authority, competence or power to order DNA test. The State Commission is broadly assigned to take up studies on issues of economic, educational and health care that may help in overall development of the women of the State; gather statistics concerning offences against women; probe into the complaints relating to atrocities on women, deprivation of women of their rights in respect of minimum wages, basic health, maternity rights, etc. and upon ascertainment of facts take up the matter with the authorities concerned for remedial measures; help women in distress as a friend, philosopher and guide in enforcement of their legal rights. However, no power or authority has been given to the State Commission to adjudicate or determine the rights of the parties. (Paras 24, 10 and 9). *Bhabani Prasad Jena* v. *Orissa State Commission for Women*, (2010) 8 SCC 633.

Bench Strength **2**. Coram : *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision : 3-8-2010]

Banarsi Dass v. Teeku Dutta, (2005) 4 SCC 449, followed

Goutam Kundu v. State of W.B., (1993) 3 SCC 418: 1993 SCC (Cri) 928; Sharda v. Dharmpal, (2003) 4 SCC 493, relied on and clarified

Ramkanya Bai v. Bharatram, (2010) 1 SCC 85, relied on

Rayden's Law and Practice in Divorce and Family Matters (1983), Vol. I, p. 1054, referred to

[225] — S. 53 — Medical examination of arrestee — *High Court laying down certain requirements in respect of, and directing the State to issue necessary instructions to police officials for compliance therewith — In view of the law settled by the Supreme Court in* D.K. Basu case *regarding the said matter, held, the above directions issued by the High Court would be substituted by the requirement laid down in sub-paras (7) and (8) of para 35 of the judgment in* Basu case — *Constitution of India — Art. 21* (Paras 5 to 7). *State of Maharashtra* v. *Christian Community Welfare Council of India*, (2003) 8 SCC 546.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 15-10-2003]

D.K. Basu v. State of W.B., (1997) 1 SCC 416: 1997 SCC (Cri) 92, followed

[226] — Ss. 53, 53-A and 54 — Scope — Validity of narcoanalysis, polygraph and BEAP tests — Wider perspective of personal liberty, held, is required to cover situations not specifically covered by Art. 20(3) — *Undesirable effects of these tests in certain situations are not taken care of by Art. 20(3) and therefore validity of these tests is to be examined from wider perspective of personal liberty under Art. 21, which includes right to mental privacy, right against cruel, inhuman and degrading treatment and right to fair trial — Mere fact that use of reasonable force in exercise of police power and taking of samples of bodily substances (like hair, blood, etc.) is permissible in law, does not necessarily mean that narcoanalysis, polygraph and BEAP tests should also be permitted without examining their effect on test subject's rights under Art. 21 — Constitution of India — Arts. 21 and 20(3)*

Article 20(3) is not applicable when a person gives his/her informed consent to undergo any of the impugned tests. Right against self-incrimination does not protect persons who may be compelled to undergo tests in the course of administrative proceedings or any other proceedings which may result in civil liability. It is also conceivable that a person who is forced to undergo these tests may not subsequently face criminal charges. In this context, Article 20(3) will not apply in situations where test results could become the basis of non-penal consequences for the subject such as custodial abuse, police surveillance and harassment among others. In order to account for these possibilities, it has to be examined whether involuntary administration of any of these tests is compatible with constitutional guarantee of substantive due process. The standard of substantive due process is the threshold for examining validity of all categories of governmental action that tend to infringe upon the idea of personal liberty as understood in the context of Article 21. (Paras 190 and 191)

Since administering impugned tests entails physical confinement of the subject, it is important to consider whether they can be read into an existing statutory provision. This is so because any form of restraint on personal liberty, howsoever slight it may be, must have a basis in law. (Para 192)

There are several ways in which involuntary administration of either of the impugned tests could be viewed as a restraint on personal liberty. The most obvious indicator of restraint is the use of physical force to ensure that an unwilling person is confined to premises where tests are to be conducted. Furthermore, drug-induced revelations or substantive inferences drawn from measurement of subject's physiological responses can be described as an intrusion into subject's mental privacy. A person could make an incriminating statement on being threatened with prospective administration of any of these techniques. Conversely, a person who has been forcibly subjected to these techniques could be confronted with the results in a subsequent interrogation, thereby eliciting incriminating statements. (Para 193)

A person who undergoes the said tests is subsequently exposed to harmful consequences, though not of a penal nature. There may be situations where contents of test results could prompt investigators to engage in custodial abuse, surveillance or undue harassment. There are instances where investigating agencies have leaked video recordings of narcoanalysis interviews to media organisations. This is an especially worrisome practice since public distribution of these recordings can expose the subject to undue social stigma and specific risks. It may even encourage acts of vigilantism in addition to a trial by media. (Para 194)

Law provides for some restrictions on personal liberty in routine exercise of police powers. CrPC incorporates an elaborate scheme prescribing the powers of arrest, detention, interrogation, search and seizure. A fundamental premise of criminal justice system is that the police and judiciary are empowered to exercise a reasonable degree of coercive powers. The provision that enables courts to order a person who is under arrest to undergo a medical examination also provides for use of force as is reasonably necessary for this purpose. Notion of personal liberty does not grant rights in absolute sense and validity of restrictions placed on the same needs to be evaluated on the basis of criterion such as fairness, non-arbitrariness and reasonableness. (Para 195)

An analogy has been drawn between the pin-prick of a needle for extracting a blood sample and intravenous administration of drugs such as sodium pentothal (in narcoanalysis). Even though extracted sample of blood is purely physical evidence as opposed to narcoanalysis interview where the test subject offers testimonial responses, the comparison can be sustained to examine whether puncturing the skin with a needle or an injection is an unreasonable restraint on personal liberty. (Para 196)

Compelled extraction of blood samples in the course of a medical examination does not amount to conduct that shocks the conscience. Use of force as may be reasonably necessary is mandated by law and hence it meets the threshold of procedure established by law. There are two crucial considerations that are relevant in the present case. Firstly, restrictions placed on personal liberty in the course of administering impugned techniques are not limited to physical confinement and extraction of bodily substances. All the three techniques in question also involve testimonial responses. Secondly, most of the cases cited in this regard were decided in accordance with the threshold of procedure established by law for restraining personal liberty. However, in this case broader standard of reasonableness has to be used to evaluate validity of techniques in question. This wider inquiry calls for deciding whether they are compatible with various judicially recognised dimensions of personal liberty such as the right to privacy, right against cruel, inhuman or degrading treatment and the right to fair trial. (Para 203). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength 3. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision : 5-5-2010]

Rochin v. California, 96 L Ed 183: 342 US 165 (1951); Breithaupt v. Abram, 1 L Ed 2d 448: 352 US 432 (1956), relied on

State of Maharashtra v. Sheshappa Dudhappa Tambade, AIR 1964 Bom 253; Jamshed v. State of U.P., 1976 Cri LJ 1680 (All); Ananth Kumar Naik v. State of A.P., 1977 Cri LJ 1797 (AP); Anil Anantrao Lokhande v. State of Maharashtra, 1981 Cri LJ 125 (Bom), approved

Brown v. Mississippi, 80 L Ed 682: 297 US 278 (1935), referred to

[227] — S. 53 Expln. (a) — Compulsory medical examination — Use of reasonable force — Permissibility

Medical examination of an arrested person can be directed during the course of an investigation either at the instance of the investigating officer or arrested person himself. It is also within the powers of a court to direct such a medical examination on its own. Medical examination can also be directed in respect of a person who has been released from custody on bail as well as a person who has been granted anticipatory bail. Section 53 which contemplates use of "force as is reasonably necessary" for conducting a medical examination implies that once a court has directed medical examination of a particular person it is within the powers of investigators and examiners to resort to a reasonable degree of physical force for conducting the same. (Para 166). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength 3. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision : 5-5-2010]

[228] — S. 53 Expln. (a) — Doctor-patient privilege — Exceptions — Use of medical knowledge in criminal investigation — *Held, is permissible within certain limits — Testimonial acts such as results of psychiatric examination cannot however be used in evidence without subject's informed consent — U.N. Principles of Medical Ethics, 1982 — Principle 4*

The Court does not have expertise to mould the specifics of professional ethics for medical profession. Furthermore, involvement of doctors in the course of investigation in criminal cases has long been recognised as an exception to physician-patient privilege. In the Indian context, statutory provisions for directing a medical examination are an example of the same. Fields such as forensic toxicology have become important in criminal justice systems all over the world and doctors are frequently called on to examine bodily substances such as samples of blood, hair, semen, saliva, sweat, sputum and fingernail clippings as well as marks, wounds and other physical characteristics. A reasonable limitation on the forensic uses of medical expertise is the fact that testimonial acts such as results of a psychiatric examination cannot be used as evidence without the subject's informed consent. (Para 178). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength 3. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision : 5-5-2010]

[229] — S. 53 Expln. (a) — DNA profile and DNA sample — Difference between — Explained — Uses of DNA profile also indicated

DNA profiling technique has been expressly included among various forms of medical examination in amended Explanation to Section 53 CrPC. DNA profile is different from a DNA sample which can be obtained from bodily substances. A DNA profile is a record created on the basis of DNA samples made available to forensic experts. Creating and maintaining DNA profiles of offenders and suspects are useful practices since newly obtained DNA samples can be readily matched with existing profiles that are already in the possession of law-enforcement agencies. Matching of DNA samples is emerging as a vital tool for linking suspects to specific criminal acts. (Para 220). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength 3. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision : 5-5-2010]

[230] — S. 53 Expln. (a) [as substituted by 2005 Amendment] — Tests which can be conducted on accused — Whether narcoanalysis, polygraph and BEAP tests covered by general expression "such other tests" occurring in Expln. (a) — *Held, general expression, which comes after specific tests enumerated in Expln. (a), has to be interpreted by applying principle of* ***ejusdem generis*** *— Specific tests include examination of bodily substances and therefore general expression cannot be construed to include tests which reveal testimonial responses — Besides, Parliament while amending Expln. (a) in 2005 was presumed to be aware of latest techniques yet did not include narcoanalysis, polygraph and BEAP tests — These tests are therefore not covered by expression "such other tests"*

The phrase "and such other tests" [which appears in the Explanation to Sections 53, 53-A and 54 CrPC] should be read so as to confine its meaning to include only those tests which involve the examination of physical evidence. Rule of *ejusdem generis* applies in this case. Explanation to Sections 53, 53-A and 54 CrPC does not enumerate certain other forms of medical examination that involve testimonial acts, such as psychiatric examination among others. This demonstrates that amendment to this provision was informed by a rational distinction between examination of physical substances and testimonial acts. (Para 169)

While it is most likely that Parliament was well aware of impugned techniques at the time of the 2005 Amendment to CrPC and deliberately chose not to enumerate them, the Court cannot arrive at a conclusive finding on this issue. While it is open to courts to examine legislative history of a statutory provision, it is not proper for the Court to try and conclusively ascertain the legislative intent. Such an inquiry is impractical since the Court does not have access to all the materials which would have been considered by Parliament. (Para 170)

There are some clear obstructions to the dynamic interpretation of amended Explanation to Sections 53, 53-A and 54 CrPC. Firstly, the general words in question i.e. "and such other tests" should ordinarily be read to include tests which are in the same genus as the other forms of medical examination that have been specified. Since all the explicit references are to examination of bodily substances, it cannot be readily construed that the said phrase includes the impugned tests because the latter seem to involve testimonial responses. Secondly, compulsory administration of the impugned techniques is not the only means for ensuring an expeditious investigation. Furthermore, there is also a safe presumption that Parliament was well aware of existence of impugned techniques but deliberately chose not to enumerate them. The impugned tests i.e. narcoanalysis technique, polygraph examination and BEAP test cannot be read into the provisions for "medical examination" under the Code of Criminal Procedure, 1973. It is however to be noted that even though impugned techniques have not been expressly enumerated in CrPC there is no statutory prohibition against them either. It is a case of silence in the law. In circumstances where an individual consents to undergo these tests, there is no dilution of Article 20(3). (Paras 172 and 173). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength 3. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision : 5-5-2010]

Thogorani v. State of Orissa, 2004 Cri LJ 4003 (Ori), approved

Bhondar v. Emperor, AIR 1931 Cal 601; Deomam Shamji Patel v. State of Maharashtra, AIR 1959 Bom 284, referred to

Sharda v. Dharmpal, (2003) 4 SCC 493; Mahipal Maderna v. State of Rajasthan, 1971 Cri LJ 1405 (Raj); Jamshed v. State of U.P., 1976 Cri LJ 1680 (All), discussed

Royal College of Nursing of the United Kingdom v. Deptt. of Health and Social Security, 1981 AC 800: (1981) 2 WLR 279: (1981) 1 All ER 545 (HL); Senior Electric Inspector v. Laxminarayan Chopra, AIR 1962 SC 159; Sharda v. Dharmpal, (2003) 4 SCC 493, relied on

[231] — Ss. 53 and 54 — Application under Ss. 13(1)(iii), 12(1)(b) and 5(ii)(b), HMA, 1955 for divorce — Court's direction in such a case to the respondent to undergo medical examination, held, not violative of right to personal liberty under Art. 21 — *Provisions in other Central Acts enabling subjecting the accused to medical or other tests noticed — Such power however, to be exercised only on applicant putting up a prima facie case — Motor Vehicles Act, 1988 — Ss. 185, 202, 203 and 204 — Identification of Prisoners Act, 1920 — S. 3 — Penal Code, 1860 — Ss. 269 and 270 — Hindu Marriage Act, 1955 — Ss. 13(1)(iii), 12(1)(b) and 5(ii)(b)*

The right to privacy has been developed by the Supreme Court over a period of time. With the expansive interpretation of the phrase "personal liberty", this right has been read into Article 21. (Paras 54 and 56)

But the right to privacy in terms of Article 21 of the Constitution is not an absolute right. If there were a conflict between fundamental rights of two parties, that right which advances public morality would prevail. (Paras 57 and 59)

Certain laws have been enacted by the Indian Parliament where the accused may be subjected to certain medical or other tests. By way of example, one may refer to Sections 185, 202, 203, 204 of the Motor Vehicles Act, Sections 53 and 54 CrPC and Section 3 of the Identification of Prisoners Act, 1920. Reference in this connection may also be made to Sections 269 and 270 IPC. Constitutionality of these laws, if challenge is thrown, may be upheld. (Para 62)

In all such matrimonial cases where divorce is sought, say on the ground of impotency, schizophrenia etc. normally without medical examination, it would be difficult to arrive at a conclusion as to whether the allegation is correct or not. In order to substantiate such allegation, the petitioner would always insist on medical examination. If the respondent avoids such medical examination on the ground that it violates his/her right to privacy or for that matter right to personal liberty as enshrined under Article 21, then it may in most of such cases become impossible to arrive at a conclusion. It may render the very grounds on which divorce is permissible nugatory. Therefore, when there is no right to privacy specifically conferred by Article 21 and with the extensive interpretation of the phrase "personal liberty" this right has been read into Article 21, it cannot be treated as an absolute right. What is emphasized is that some limitations on this right have to be imposed and particularly where two competing interests clash. In matters of the said nature where the legislature has conferred a right upon his spouse to seek divorce on such grounds, it would be the right of that spouse which comes in conflict with the so-called right to privacy of the respondent. Thus the court has to reconcile these competing interests by balancing the interests involved. (Para 76)

If for arriving at the satisfaction of the court and to protect the right of a party to the lis who may otherwise be found to be incapable of protecting his own interest, the court passes an appropriate order, the question of such action being violative of Article 21 would not arise. The court having regard to Article 21 must also see to it that the right of a person to defend himself must be adequately protected. (Para 77)

However, a court shall not order a roving inquiry. It must have sufficient materials before it to enable it to exercise its discretion. Exercise of such discretion would be subject to the supervisory jurisdiction of the High Court in terms of Section 115 CPC and/or Article 227. Abuse of the discretionary power at the hands of a court is not expected. The court must arrive at a finding that the applicant has established a strong prima facie case before passing such an order. (Para 78)

If despite an order passed by the court, a person refuses to submit himself to such medical examination, a strong case for drawing an adverse inference would be made out. Section 114 of the Evidence Act also enables a court to draw an adverse inference if the party does not produce the relevant evidences in his power and possession. (Para 79)

So viewed, the implicit power of a court to direct medical examination of a party to a matrimonial litigation in a case of this nature cannot be held to be violative of one's right of privacy. (Para 80)

To sum up, our conclusions are:

1. A matrimonial court has the power to order a person to undergo medical test.

2. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21.

3. However, the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him. (Para 81). *Sharda* v. *Dharmpal*, (2003) 4 SCC 493: AIR 2003 SC 3450: (2003) 2 KLT 243.

Bench Strength 3. Coram: *V.N. Khare, C.J.* and **S.B. Sinha** and *Dr. AR. Lakshmanan*, JJ. [Date of decision: 28-3-2003]

Gobind v. State of M.P., (1975) 2 SCC 148: 1975 SCC (Cri) 468; 'X' v. Hospital 'Z', (1998) 8 SCC 296; 'X' v. Hospital 'Z', (2003) 1 SCC 500; R (on the application of S) v. Chief Constable of South Yorkshire, (2003) 1 All ER 148 (CA); Armando Schmerber v. State of California, 384 US 757: 16 L Ed 2d 908 (1966); Paul H. Breithaupt v. Morris Abram, 352 US 432: 1 L Ed 2d 448 (1957); State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808: (1961) 2 Cri LJ 856; State (Delhi Admn.) v. Gulzari Lal Tandon, (1979) 3 SCC 316: 1979 SCC (Cri) 526; Matthew R., Re, 113 Mo App 701, 715, 688 A 2d 955, 961; Zuniga v. Pierce, 714 F 2d 632 (1983); Laznovsky v. Laznovsky, 74.5 A 2d 1054 (Md Ct App 2000), relied on

M. Vijaya v. Chairman and Managing Director, Singareni Collieries Co. Ltd., AIR 2001 AP 502 (FB), impliedly approved

Charles Joseph Kastigar v. United States, 32 L Ed 2d 212: 406 US 441 (1972), considered

[232] — Ss. 53-A and 53 — Blood samples — Loss of blood during period when blood was taken from accused's body and handed over to CCMB, Hyderabad — Whether loss created doubt about genuineness of blood samples — *On facts held, loss was due to leakage from vials wherein blood was stored and therefore loss was satisfactorily explained — 20 ml blood taken from appellant's body for DNA profiling and transferred into four vials, each containing 5 ml — Vials were also sealed and signed by hospital doctor under whose supervision blood samples were taken — However, by the time four vials were received in CCMB, Hyderabad, only 3 ml found in each vial (total 12 ml) and therefore there was loss of 8 ml blood — Before handing over vials to CCMB, blood was stored in a refrigerator in government hospital and therefore there was no possibility of evaporation of blood — Argument raised on behalf of appellant that blood samples were tampered with — Expert who conducted DNA profiling in CCMB deposing that some leakage was found in vials and traces of blood appeared on the material with which vials were sealed — Held, loss of blood satisfactorily explained — Tests conducted on blood samples could not therefore be doubted on this count*

PW Dr. N.S. Kalra who was the Head of the Biochemistry Department of Ram Manohar Lohia Hospital at the relevant time deposed that by letter Ext. 34/A a request had been made to the hospital to take blood samples of the appellant in two vials totalling 20 ml. Ms Godawari, a Laboratory Assistant, was accordingly directed to take the blood samples in two 10 ml syringes whereafter the blood was transferred to 4 vials each containing 5 ml which were duly sealed and tape applied over them which was signed by Dr. Kalra, Dr. S.K. Gupta and DSP Ohri and a memo, Ext. PW-34/B to that effect was prepared. He further deposed that the said vials had been kept in a refrigerator under his supervision and were taken by CBI officers on 31-1-1996 from him and that while the vials remained in his custody, they were not tampered with in any manner. He also testified that whenever blood was kept in a refrigerator, as in the present case, there was little possibility of evaporation if the rubber cork was air tight and in cross-examination he deposed that the watery constituent of blood would not evaporate in the cool atmosphere of a refrigerator. (Para 60)

It has been argued on behalf of accused that though CBI had requested for two samples of 10 ml each yet the 20 ml blood had been divided into four vials, and that when the samples had been opened in the laboratory at Hyderabad, only 12 ml blood in all had been recovered from the four vials. No suspicion can be raised with regard to the sanctity of the samples. (Para 61)

It has come in the evidence of Dr. Lalji Singh from CCMB, Hyderabad that 12 ml of blood said to be that of the appellant in four sterile vials containing about 3 ml each had been received through Inspector Ranbir Shekhawat along with other items. He further explained in cross-examination that if the blood samples were kept in a refrigerator and handed over to the Inspector on 31st January and received in the laboratory the next day, it was not likely that 2 ml out of each of the four vials would evaporate although some blood could have evaporated. He further stated that there appeared to be some leakage in the vials as traces of blood appeared to be in the material with which the vials had been sealed although this fact did not find mention in his report. The blood samples were in the custody of the hospital till they were received by Inspector Shekhawat for the first time on 31-1-1996 and he had left for Hyderabad the same day and handed over the samples and other items to the laboratory on 1-2-1996. (Para 62)

There is no reason to accept the very broad and defamatory statement of the trial court that Dr. N.S. Kalra was a convenient witness for the prosecution as there is no basis for this finding. On the other hand, there is ample evidence to suggest that the blood samples had been kept in the hospital in a proper way and handed over to Inspector Shekhawat who had taken them to CCMB, Hyderabad and that the explanation tendered by Dr. Lalji Singh and Dr. G.V. Rao as to why the quantity of blood may have been reduced, merits acceptance. The High Court was, therefore, justified in holding that the trial court's conclusions on the question of the retention and dispatch of the swabs and slides and the clothes of the deceased and the blood samples were faulty, and based on a perverse assessment of the evidence. (Para 64). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, **JJ.** [Date of decision: 6-10-2010]

[233] — Ss. 53-A and 53 — DNA test — Expert opinion on DNA profiling — Held, court cannot substitute its own opinion for that of an expert, especially in case of complex subject like DNA profiling — *Further held, opinion of two experts from Centre for Cellular & Molecular Biology (CCMB), Hyderabad could not be rejected by trial court by relying on text books, particularly when questions raised by trial court were not put to experts during their deposition — DNA report must be accepted as scientifically accurate and an exact science — Penal Code, 1860 — Ss. 375, 376 and 302 — Evidence Act, 1872, Ss. 45 and 46*

The court cannot substitute its own opinion for that of an expert, more particularly in a science such as DNA profiling which is a recent development. Dr. Lalji Singh in his examination-in-chief deposed that he had been involved with the DNA technology ever since the year 1974 and he had returned to India from the UK in 1987 and joined CCMB, Hyderabad and had developed indigenous methods and techniques for DNA fingerprinting which were now being used in this country. The expertise and experience of Dr. Lalji Singh in his field has been recognised by the Supreme Court in *Kamalanantha case*, (2005) 5 SCC 194. CW 1 Dr. G.V. Rao was a scientist of equal repute and he had in fact conducted the tests under the supervision of Dr. Lalji Singh. It was not even disputed before the Supreme Court during the course of arguments that these two scientists were persons of eminence and that the laboratory in question was also held in the highest esteem in India. (Paras 65 and 66)

The statements of Dr. Lalji Singh and Dr. G.V. Rao reveal that the samples had been tested as per the procedure developed by the laboratory, that the samples were sufficient for the purposes of comparison and that there was no possibility of the samples having been contaminated or tampered with. The two scientists gave very comprehensive statements supported by documents that DNA of the semen stains on the swabs and slides and the underwear of the deceased and the blood samples of the appellant was from a single source and that source was the appellant. (Para 67)

Not a single question was put to PW Dr. Lalji Singh as to the accuracy of the methodology or the procedure followed for DNA profiling. The trial court has referred to a large number of textbooks and has given adverse findings on the accuracy of the tests carried out in the present case. These conclusions cannot be accepted as the court has substituted its own opinion ignoring the complexity of the issue on a highly technical subject, more particularly as the questions raised by the trial court had not been put to the expert witnesses. It would be a dangerous doctrine to lay down that the report of an expert witness could be brushed aside by making reference to some text on that subject without such text being put to the expert. The court cannot usurp the function of an expert. (Para 68)

The trial court was not justified in rejecting the DNA report, as nothing adverse could be pointed out against the two experts who had submitted it. The DNA report must be accepted as scientifically accurate and an exact science. In arriving at its conclusions, the trial court was also influenced by the fact that the semen swabs and slides and the blood samples of the appellant had not been kept in proper custody and had been tampered with. The trial court was in error on this score. (Para 71). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

Kamalanantha v. State of T.N., (2005) 5 SCC 194: 2005 SCC (Cri) 1121, referred to

Bhagwan Das v. State of Rajasthan, AIR 1957 SC 589: 1957 Cri LJ 889; Gambhir v. State of Maharashtra, (1982) 2 SCC 351: 1982 SCC (Cri) 431; Kamti Devi v. Poshi Ram, (2001) 5 SCC 311: 2001 SCC (Cri) 892, relied on

— S. 54 *See also* Ss. 53 and 54

[234] — S. 54 — Right of arrested person to inform the court about torture or assault (Para 27). *Shakila Abdul Gafar Khan* v. *Vasant Raghunath Dhoble*, (2003) 7 SCC 749: 2003 SCC (Cri) 1918: AIR 2003 SC 4567.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-9-2003]

— S. 56 *See* Ss. 57 and 56

See also Ss. 167, 56 and 57

[235] — Ss. 56, 57, 167 — MLA deliberately prevented from attending session of Legislative Assembly by arresting and illegally detaining him in police custody — *Held, Arts. 21 and 22(2) violated — Mala fide conduct of police officers and casual and irresponsible attitude of Magistrate and Sub-Judge or their collusion with police in passing orders of police remand against the MLA strongly condemned — Constitution of India — Arts. 21 and 22(2). Bhim Singh* v. *State of J&K*, (1985) 4 SCC 677: 1986 SCC (Cri) 47: AIR 1986 SC 494.

Bench Strength **2**. Coram: **O. Chinnappa Reddy** and *V. Khalid*, JJ. [Date of decision: 22-11-1985]

[236] — Ss. 56 and 173 — Extension of powers and jurisdiction of members of Delhi Special Police Establishment — Recording reasons for, not necessary — *State Government's notification granting consent under S. 6 and the Central Govt.'s notification extending the powers and jurisdiction of the Delhi Special Police Establishment to the* *whole of that State in connection with the investigation of a particular case, held, need not mention reasons therefor — Such reasons can be shown independently — On facts held, investigation had been entrusted to the CBI as the investigation by the local police was not satisfactory — Penal Code, 1860 — Ss. 457, 436, 427 and 201 — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946) — Ss. 5 and 6*

The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. Nor is there any provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons are required to be recorded on the face of the notification. The reasons can be shown independently. If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police was not satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate, Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification extending the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar for investigation of offences under Sections 457, 436, 427/120-B and 201 IPC and Section 4 of the Prevention of Damage to Public Property Act, 1984 registered at Dhanbad Police Station, Dhansar, Bihar in their case No. 159 dated 9-3-1993 and any other offences, attempts, abetment and conspiracy in relation to or in connection with the said offence committed in the course of the same transactions or arising out of the same fact or facts in relation to the said case. As a result, the CBI be directed to further investigate the offences registered under the said FIR with the consent of the State Government and in accordance with law. Under Section 173(8) of the CrPC 1973 also, there is an analogous provision for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate. *CBI* v. *Rajesh Gandhi*, (1996) 11 SCC 253: 1997 SCC (Cri) 88: AIR 1997 SC 93.

Bench Strength 2. Coram: *A.M. Ahmadi, C.J.* and **Sujata V. Manohar**, J. [Date of decision: 7-10-1996]

(1996) 2 BLJ 54, reversed

— **S. 57** *See also* S. 61, Criminal Procedure Code, 1898, p. 968 in Vol. 2

— **S. 57** *See* Ss. 50, 57 and 167

See also Ss. 56, 57, 167

See also Ss. 167, 56 and 57

See also Ss. 167(1), 57 and 167(2)

See also Ss. 167(2), 57, 437 and 439

See also Ss. 167(2) proviso, 437(5), 439(2), 57 and 173

See also Ss. 167(2), proviso (a)(i)&(ii), 57 and 309

See also Ss. 433-A & 57

[237] — S. 57 — Requirement to produce arrested person before Judicial Magistrate within 24 hours of the arrest must be scrupulously observed — *Constitution of India — Art. 21*

The provision inhibiting detention without remand is a very healthy provision which enables the magistrates to keep check over the police investigation and it is necessary that the magistrates should try to enforce this requirement and where it is found to be disobeyed, come down heavily upon the police. *Khatri (II)* v. *State of Bihar*, (1981) 1 SCC 627: 1981 SCC (Cri) 228: AIR 1981 SC 928 (Order dt.

Bench Strength 2. Coram: **P.N. Bhagwati** and *A.P. Sen*, JJ. [Date of decision: 19-12-1980]

[238] — Ss. 57 and 56 — Wrongful confinement by police personnel — One *V*, who was arrested on direction of A-1 (officer-in-charge of police station) on 19-10-1988 at 9.30 a.m., died by hanging himself in police station on 20-10-1988 at about 5.30 p.m. — *V not produced before nearest Magistrate within 24 hours of his arrest, as required by CrPC — Held, the accused police personnel (including A-1) were guilty of offence under S. 348 IPC — Contention that duty to produce the accused before the nearest Magistrate was of IO and not of A-1, rejected — Penal Code, 1860 — S. 348* (Para 10). *Sanganagouda A. Veeranagouda* v. *State of Karnataka*, (2005) 12 SCC 468.

Bench Strength 2. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 29-9-2005]

[239] — Ss. 57 and 165 — Arrest and seizure — Whether accused had been released from police custody — Burden of proof on prosecution in case of denial by accused — *Independent witnesses should be produced*

Per Oza, J.

In all matters where the police want that the story should be believed they always get an independent witness of the locality so that the evidence may lend support to what is alleged by the police officers. More so, as in this case when the prosecution story regarding release of the accused after his earlier arrest and his abscondence were not proved. In such a controversial situation the presence of an independent witness from the public, if not of the locality, would have lent some support to the case of the prosecution. There was no evidence as to how he appeared at the scene of arrest viz. a bus-stand. If the police officers had gone with prior information to arrest the absconding accused who was involved in such a crime, they could have taken an independent witness with them. The police also did not think it necessary to have an independent witness even for the seizure memo, when particularly some important piece of evidence was recovered from his possession. The plea that nobody was available or none was prepared to be a witness in this matter is unsustainable as it is unthinkable at a public place and that too at the bus-stand. It is very difficult to believe that no citizen in this Capital came forward to be a witness for seizure memo. The arrest of the accused in the circumstances appears to be only a show and not an arrest in actuality.

If the release of this accused after his arrest is not established and his abscondence is not proved, then the story of his rearrest with the recovery of the articles loses all its significance.

Per Shetty, J.

Courts do not interfere with the discretion of the police in matters of arrest, search and release of persons suspected in criminal cases. But the courts do insist that it should be done according to law. If the prosecution say that the accused was released from custody and the accused denies it, it will be for the prosecution to place material on record in support of the version. In the present case there was no record indicating release of the accused (Balbir Singh) from police custody (in Yamuna Velodrome). The explanation that the place of custody being not a police station, registers were not maintained to account for the incoming and outgoing suspects, was hardly an explanation where life and death questions are involved.

[**Ed.**: Ray, J. concurred with the above views of Oza, J. and Shetty, J.]. *Kehar Singh* v. *State (Delhi Admn.)*, (1988) 3 SCC 609: 1988 SCC (Cri) 711: AIR 1988 SC 1883.

Bench Strength **3**. Coram: **G.L. Oza**[1], **B.C. Ray**[2] and **K. Jagannatha Shetty**[3], JJ. [Date of decision: 3-8-1988]

— Ch. VI *See* Chs. XII (Ss. 154 to 176), IV-A (S. 36), V to VII (Ss. 41 to 105)

[240] — S. 61 — Documents to be supplied — Allegation that summons issued under S. 108(1) of Customs Act not supplied to the detenu despite demand — *In view of positive case of the State that no summons had been issued and the detenu had only been orally directed to attend the office of the authorities concerned, held, no summons was in existence and therefore, detenu suffered no prejudice — COFEPOSA Act, 1974 — S. 3(1)*. *Poonam Lata* v. *M.L. Wadhawan*, (1987) 4 SCC 48: 1987 SCC (Cri) 685: AIR 1987 SC 2098: 1987 Cri LJ 1924: (1987) 14 ECC 17.

Bench Strength **2**. Coram: *A.P. Sen* and **Ranganath Misra**, JJ. [Date of decision: 7-8-1987]

[241] — S. 61 — Applicable to issuance of summons under S. 108(1) of Customs Act. *Poonam Lata* v. *M.L. Wadhawan*, (1987) 4 SCC 48: 1987 SCC (Cri) 685: AIR 1987 SC 2098: 1987 Cri LJ 1924: (1987) 14 ECC 17.

Bench Strength **2**. Coram: *A.P. Sen* and **Ranganath Misra**, JJ. [Date of decision: 7-8-1987]

— S. 67 *See* Ss. 227, 228, 67 and 407

— S. 70 *See also* S. 75, Criminal Procedure Code, 1898, p. 968 in Vol. 2

— S. 70 *See* Ss. 204, 70, 72, 73, 78 and 79
See also Ss. 204, 201-203 and 70
See also Ss. 438, 70 and 82

[242] — S. 70 — Warrant of detention, held, must specify the age of the detenu — Otherwise, the warrant can be refused to be honoured by the jail authorities — *Particularly in Delhi, decision should be taken by the jail authorities on the basis of the age so indicated, to place the detenu in Tihar Jail or juvenile jail — Juvenile Justice Act, 1986 — Ss. 2(e), 2(h) and 10 — Children Act, 1960 — Ss. 2(e), 2(j) and 10 — Prisoners Act, 1900 — Ss. 15 and 16*. *Sanjay Suri* v. *Delhi Admn.*, 1988 Supp SCC 160: 1988 SCC (Cri) 248: AIR 1988 SC 414: 1988 Cri LJ 705.

Bench Strength **2**. Coram: **Ranganath Misra** and *M.M. Dutt*, JJ. [Date of decision: 9-12-1987]

[243] — Ss. 70 and 201 to 204 — Prosecution of medical practitioners — *Reiterated, indiscriminate prosecution of medical professionals for criminal medical negligence is counterproductive and does no service or good to society — Penal Code, 1860, S. 304-A — Medical negligence* (Para 49). *Ins. Malhotra* v. *Dr. A. Kriplani*, (2009) 4 SCC 705.

Bench Strength **2**. Coram: **L.S. Panta** and *B. Sudershan Reddy*, JJ. [Date of decision: 24-3-2009]

Jacob Mathew v. State of Punjab, (2005) 6 SCC 1: 2005 SCC (Cri) 1369, followed

— S. 72 *See* Ss. 204, 70, 72, 73, 78 and 79

— S. 73 *See also* S. 78, Criminal Procedure Code, 1898, p. 969 in Vol. 2

— S. 73 *See also* Ss. 204, 70, 72, 73, 78 and 79

[244] — Ss. 73, 167, 204, 82, 83 and 155 — Magistrate has power to issue a warrant under S. 73 during investigation also — Such power can be exercised by him for appearance of the accused before the court only and not before the police in aid of investigation — On such production the court can authorise his detention in police custody only after exercise of his judicial discretion and not on the mere asking of the police — *Terrorist and Disruptive Activities (Prevention) Act, 1987 — Ss. 8(3) and 20*

Section 73 is of general application. In course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non-bailable offence and is evading arrest. A Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise *judicial* discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167(3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him, it cannot be said that warrant of arrest under Section 73 of the Code could be issued by the courts solely for the production of the accused before the police in aid of investigation. (Para 24). *State* v. *Dawood Ibrahim Kaskar*, (2000) 10 SCC 438: 1997 SCC (Cri) 636: AIR 1997 SC 2494.

Bench Strength **3**. Coram: **M.K. Mukherjee**, *G.T. Nanavati* and *B.N. Kirpal*, JJ. [Date of decision: 7-5-1997]

Mohd. Ahmed Yasin Mansuri v. State of Maharashtra, 1994 Cri LJ 1854 (Bom), overruled

[245] — Ss. 76, 57, 79 and 80 — Transit warrant — Timely judicial custody — Valid duration of police custody — *Held, IO is bound to keep the custody till the end of the period specified in the transit warrant* (Para 56). *Mohd. Amin* v. *CBI*, (2008) 15 SCC 49: (2009) 3 SCC (Cri) 693: (2009) 73 AIC 139 (SC).

Bench Strength **2**. Coram: *B.N. Agrawal* and **G.S. Singhvi**, JJ. [Date of decision: 18-11-2008]

— S. 78 *See* Ss. 204, 70, 72, 73, 78 and 79

— S. 79 *See* Ss. 204, 70, 72, 73, 78 and 79

— S. 81 *See* Ss. 436, 2, 81 and Sch. I

See also Ss. 482, 436 and 81

— S. 82 *See also* S. 87, Criminal Procedure Code, 1898, p. 969 in Vol. 2

— S. 82 *See* Ss. 73, 167, 204, 82, 83 and 155

See also Ss. 438, 70 and 82

[246] — Ss. 82, 83 and 85 — Nature and scope — Held, provisions contained in S. 82 were enacted to secure the presence of the accused — Once the said purpose is achieved, the attachment of property shall be withdrawn — *Even the property which was attached should be restored — Provisions of CrPC do not warrant sale of the property despite the fact that the absconding accused had surrendered and obtained bail — Once he surrenders before the court and the standing warrants are cancelled, he is no longer an absconder — Purpose of attaching the property comes to an end — It is to be released subject to the provisions of CrPC — Securing the attendance of an absconding accused is a matter between the State and the accused — Complainant should not ordinarily derive any benefit therefrom — If the property is to be sold it vests with the State subject to any order passed under S. 85 — It cannot be a subject-matter of execution of a decree, far less for executing the decree of a third party, who has no right, title or interest thereon — Therefore, order pertaining auction-sale of properties of Appellant 1 was wrong — CPC, 1908, Or. 21 Rr. 64 and 66* (Paras 32 and 33). *Vimlaben Ajitbhai Patel* v. *Vatslaben Ashokbhai Patel*, (2008) 4 SCC 649: AIR 2008 SC 2675.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 14-3-2008]

[247] — S. 82 — Proclamation under — Effective duration/valid period — *Held, continues till the offender is arrested — Once the offender is arrested, the proclamation ceases to operate*

Once a person is arrested and/or is otherwise capable of being brought to court, a proclamation declaring accused as an absconder under Section 82 CrPC ceases to have any effect. It is not a law that once a proclaimed offender shall all along be treated to be so. If he had a right to take part in the trial, the trial court was duty-bound to provide for the same. In any event, in the present case the Designated Judge did not rely on the proclamation issued under Section 82 in February 1993. (Para 43). *Jayendra Vishnu Thakur* v. *State of Maharashtra*, (2009) 7 SCC 104.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

[248] — S. 82 — Accused called at police station several times after the incident and he always remaining available to the police — *No evidence adduced by prosecution to hold that soon after the date of the offence the accused was found missing from his residence or the place of his employment and was not available, though searched, at the place or places where normally he ought to have been — Held, finding that the accused was absconding was unwarranted — Evidence Act, 1872 — Ss. 8 and 114 Ill. (i)* (Para 23). *Subhash Chand* v. *State of Rajasthan*, (2002) 1 SCC 702: 2002 SCC (Cri) 256.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 16-10-2001]

[249] — Ss. 82 and 83 — Abscondence as a circumstance — *Absconding of accused, held, leads to no decisive implication, nevertheless it has utility to form a link to concatenate the full chain — Evidence Act, 1872 — S. 8. Manish Dixit* v. *State of Rajasthan*, (2001) 1 SCC 596: 2001 SCC (Cri) 235: AIR 2001 SC 93: 2001 Cri LJ 133.

Bench Strength 2. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 18-10-2000]

[250] — Ss. 82 and 83 — Relevance of abscondence — Murder of a popular and powerful trade union leader — Strong allegations that the industrialists in the area had been instrumental in causing his death — *Under such circumstances, if any of the accused industrialists had absconded from the place of their business at the relevant time it could not be said to be a factor to prove their guilt — Evidence Act, 1872 — S. 8* (Para 17). *State of M.P.* v. *Paltan Mallah*, (2005) 3 SCC 169: 2005 SCC (Cri) 674: AIR 2005 SC 733: 2005 Cri LJ 918.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 20-1-2005]

— **S. 83** *See* Ss. 73, 167, 204, 82, 83 and 155

See also Ss. 82 and 83

See also Ss. 82, 83 and 85

[251] — S. 83 — Attachment of property — Effect, if any, on right as a tenant — *Held, right as a tenant could not be affected by reason of any order of attachment — Order of attachment of a property has nothing to do with the right of tenancy — Terms and conditions of tenancy, being governed by statute, the tenant cannot be evicted except in accordance with law — CPC, 1908, Or. 21 R. 54 — Transfer of Property Act, 1882 — Ss. 105 and 111*

The Metropolitan Magistrate had, in his order wrongly asked the District Magistrate to put the said properties on auction-sale stating them to be belonging to the appellants and their son. The Mamlatdar appears to have exceeded his jurisdiction in trying to evict the 1st respondent. His right as a tenant could not have been affected by reason of any order of attachment. An order of attachment of a property has nothing to do with the right of tenancy. The terms and conditions of tenancy, being governed by statute, the tenant cannot be evicted except in accordance with law. It is a matter of grave concern that an independent right was also sought to be interfered with at the instance of *S*. (Para 33). *Vimlaben Ajitbhai Patel* v. *Vatslaben Ashokbhai Patel*, (2008) 4 SCC 649: AIR 2008 SC 2675.

Bench Strength 2. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 14-3-2008]

[252] — S. 84 — Applicability — Persons who may bring claim for attachment under and purpose for which claim may be brought — *Held, on facts, right to object in terms of S. 84 could not have been invoked by S, wife, as she had no independent claim over the property — Said provision also could not have been invoked for the purpose of execution of a decree* (Para 34). *Vimlaben Ajitbhai Patel* v. *Vatslaben Ashokbhai Patel*, (2008) 4 SCC 649: AIR 2008 SC 2675.

Bench Strength 2. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 14-3-2008]

— **S. 85** *See* Ss. 82, 83 and 85

— **S. 87** *See* Ss. 204 and 87

— Ch. VII (Ss. 91 to 105) *See* S. 4 and Chapters VII, XIII & XXXIV

See also Chs. XII (Ss. 154 to 176), IV-A (S. 36), V to VII (Ss. 41 to 105)

— S. 91 *See also* S. 94, Criminal Procedure Code, 1898, pp. 969 et seq. in Vol. 2

— S. 91 *See* Ss. 161, 162, 91, 172 and 207

See also Ss. 227 & 228, 239 & 240, 91 and 482

See also Ss. 397, 401, 91, 311 and 200

See also Ss. 397(2), 401, 91 and 311

[253] — S. 91 — Production of document or other thing — Court's power to issue summons for — Scope — *Held, a police officer may move the court for summoning and production of a document at any of the stages mentioned in the section but the accused can seek such order only at the stage of defence — No right conferred on the accused to produce document in his possession to prove his defence at the stage of framing of charge — Further held, necessity and desirability of the document is to be examined considering the stage when such a prayer is made and the party who makes it, whether police or accused*

Section 91 CrPC does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 CrPC, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. (Para 25). *State of Orissa* v. *Debendra Nath Padhi*, (2005) 1 SCC 568: 2005 SCC (Cri) 415: AIR 2005 SC 359: (2005) 1 KLT 80: (2005) 99 Cut LT 348.

Bench Strength 3. Coram: **Y.K. Sabharwal**, *D.M. Dharmadhikari* and *Tarun Chatterjee*, JJ. [Date of decision: 29-11-2004]

Om Parkash Sharma v. CBI, (2000) 5 SCC 679: 2000 SCC (Cri) 1014, relied on

[254] — S. 91 — Production of documents "necessary or desirable" — Court's power to issue summons for — Scope — *When can it be exercised — Depends upon facts of each case — Court has a wide discretion in the matter — It is only in case where the discretion is exercised neither judiciously nor judicially and there is gross or improper failure to exercise the discretion which is demonstrably unreasonable, that the superior court would interfere — On facts held, Supreme Court's interference with rejection of accused's application under S. 91 for summoning certain documents for CBI not called for*

The appellant made an application under Section 91 CrPC for summoning and production of certain documents which were stated to be required to show that the appellant had not shown any favour to persons commonly known as *Jain brothers* or to any person for that matter in the course of discharge of his duties while working as DIG, CBI, and that the present action against the appellant was vitiated on account of mala fides on the part of CBI, who was alleged to bear animus against the appellant. The Special Judge held that none of the documents sought to be summoned would help to show that the case of the prosecution was improbable or unworthy of even a trial and that summoning them at that stage of the proceedings was meant by the appellant to delay the proceedings initiated by CBI. The High Court held that the exercise of discretion by the trial court in disallowing the claim was neither unjust nor unreasonable nor improper and that the order was neither illegal nor vitiated by any infirmity, so as to call for interference, in exercise of the revisional jurisdiction of the High Court. Before the Supreme Court the appellant reiterated his stand taken in courts below and invited the Court's decision in *Satish Mehra* v. *Delhi Admn.*, (1996) 9 SCC 766 laying emphasis on the fact that the very learned Judge in the High Court had taken a different view in such matters, in the decision reported in *Ashok Kaushik* v. *State*, (1999) 49 DRJ 202. The respondents not only contended that the decisions relied upon for the appellants would not justify the claim of the appellant in this case, at this stage, but also invited, extensively the Supreme Court's attention to the exercise undertaken by the courts below to find out the relevance, desirability and necessity of those documents as well as the need for issuing any such directions as claimed at that stage and that consequently there was no justification whatsoever, to interfere at the present stage of the proceedings. Dismissing the appeal,

Held :

The powers conferred under Section 91 are enabling in nature aimed at arming the court or any officer in charge of a police station concerned to enforce and to ensure the production of any document or other things "necessary or desirable" for the purposes of any investigation, inquiry, trial or other proceeding under the Code, by issuing a summons or a written order to those in possession of such material. The language of Section 91 would, no doubt, indicate the width of the powers to be unlimited but the inbuilt limitation inherent therein takes its colour and shape from the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object. The question, at the present stage of the proceedings before the trial court would be to address itself to find whether there is sufficient ground for proceeding to the next stage against the accused. If the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to even look into the materials so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time. It is trite law that the standard of proof normally adhered to at the final stage is not to be insisted upon at the stage where the consideration is to be confined to find out a prima facie case and decide whether it is necessary to proceed to the next stage of framing the charges and making the accused to stand trial for the same. The Supreme Court has already cautioned against undertaking a roving inquiry into the pros and cons of the case by weighing the evidence or collecting materials, as if during the course or after trial. Ultimately, this would always depend upon the facts of each case and it would be difficult to lay down a rule of universal application and for all times. The fact that in one case the court thought fit to exercise such powers is no compelling circumstance to do so in all and every case before it, as a matter of course and for the mere asking. The court concerned must be allowed a large latitude in the matter of exercise of discretion and unless in a given case the court was found to have conducted itself in so demonstrably an unreasonable manner unbecoming of a judicial authority, the court superior to that court cannot intervene very lightly or in a routine fashion to interpose or impose itself even at that stage. The reason being, at that stage, the question is one of mere proprieties involved in the exercise of judicial discretion by the court and not of any rights concretised in favour of the accused. (Para 6)

Therefore, it is to be only seen as to whether the trial court has judiciously and judicially exercised its discretion. The trial court as also the High Court, seem to have properly applied their minds by going into the nature of the documents sought to be summoned, their bearing and relevance for the nature of consideration to be made at that stage of the proceedings before the Special Judge as well as the necessity and desirability whereof. The consideration so made by the courts below in rejecting the claim of the appellant, could not be held to be either condemnable or constitute any gross or improper failure to exercise their jurisdiction and consequently, it does not call for any interference by the Supreme Court. (Para 7). *Om Parkash Sharma* v. *CBI*, (2000) 5 SCC 679: 2000 SCC (Cri) 1014: AIR 2000 SC 2335: 2000 Cri LJ 3478.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **Doraiswamy Raju**, JJ. [Date of decision: 24-4-2000]

Satish Mehra v. Delhi Admn., (1996) 9 SCC 766: 1996 SCC (Cri) 1104; Ashok Kaushik v. State, (1999) 49 DRJ 202, distinguished

Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4: 1979 SCC (Cri) 609, relied on

[**Ed.**: Held in *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 page 581, para 27 that: "But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at the stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19."]

[255] — S. 91 — Order for production of documents — Application for recall of its order, by High Court — Disposal of, only on the basis of statement of counsel when not justified — *Appli-*

cation filed by prosecution under S. 91 CrPC for summons to produce FIR lodged by appellant — Application disposed of by order of SDJM — Order challenged before High Court — Matter closed by High Court observing that counsel for State and accused submitted before it that FIR already stood cancelled and that in any case, the documents were available in court which could be examined but counsel for State stated that State was no more interested in taking documents from court — Application for recall of the order of High Court filed on ground that there was no order cancelling FIR — High Court dismissed the application — Held, in absence of any order cancelling FIR, dismissal of the application on ground that FIR had been cancelled on the basis of statement of counsel cannot be maintained — Counsel for the State directed to place before High Court a copy of the order purporting to cancel FIR within four weeks, failing which High Court shall hear the matter afresh. Vasudev v. *Parvinder Kumar,* (2008) 17 SCC 77.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-8-2008]

[256] — Ss. 91, 165 and 166 — Right to privacy of the person — Right to freedom from unreasonable search and seizure — Scope — Confidentiality of bank documents, telephone calls and correspondence — *Held, State cannot have unrestricted access to inspect and seize or make roving inquiries into all bank records relating to a person, without any reliable information before it prior to such inspection — Documents or copies of documents of the customer which are in the bank must continue to remain confidential vis-à-vis the person, even if they are no longer at the customer's house and have been voluntarily sent to a bank — Search, taking of notes or extracts or seizure of the said documents would amount to a breach of confidentiality and be violative of privacy rights of customers of the bank, unless there is some probable or reasonable cause or basis, to be recorded in writing, or materials before the authority making or authorising the search, taking of notes or extracts or seizure — However, cautioned that various provisions in the Income Tax Act, 1961 (S. 132, etc.) or CrPC (Ss. 91, 165 & 166) which authorised search and seizure were not ipso facto being invalidated herein; in any case said provisions had been extensively considered by the courts and had been held to be valid — Stamp Act, 1899 — S. 73 (as amended by A.P. Act 17 of 1986) — IT Act, 1961 — S. 132 — Constitution of India — Arts. 19(1)(a) & (d) and 21*

Section 73 of the Stamp Act, 1899 as incorporated by Andhra Pradesh Act 17 of 1986, by amending the Central Act in its application to the State, was struck down by the High Court as ultra vires the provisions of the Stamp Act and Article 14 of the Constitution. The State, through the named officers, was in appeal thereagainst.

Dismissing the appeals,

Held :

A bare reading of Section 73 as substituted by A.P. Act 17 of 1986 indicates the infirmities with which the provision suffers. The provision empowers "any person" authorised in writing by the Collector to have access to documents in private custody or custody of a public officer without regard to the fact whether the documents are sought to be used before any authority competent to receive evidence or whether such document would ever be voluntarily produced or brought before a public officer during the performance of any of his specified functions in his capacity as such (contrary to the Scheme of the rest of the Stamp Act, 1899 even as applicable to the State of Andhra Pradesh). The power is capable of being exercised by such persons at all reasonable times and it is not preceded by any requirement of reasons being recorded by the Collector or the person authorised, for his belief necessitating search. The provision suffers from the vice of excessive delegation as there are no guidelines in the Act as to the persons who may be authorised. The State must clearly define the officers by designation or state that the power can be delegated to officers not below a particular rank in the official hierarchy, as may be designated by the State. The person authorised has been vested with authority to impound the document. It is only in case of documents in custody of any bank that an exception has been carved out for giving a 30 days' previous notice to the bank to make good the deficit stamp duty before seizing and impounding the document. Not only there is no valid reason — none pointed out either in the pleadings or at the hearing — for drawing the distinction between a bank and other public office or any person having custody of document, even in the case of a bank, the power to adjudicate upon the need for impounding the document has been vested in the person authorised. (Paras 16, 12, 54, 46, 58, 3 and 43)

It cannot be denied that there is an element of confidentiality between a bank and its customers in relation to the latter's banking transactions. However, in the case of a matter being part of public records, including court records, the right of privacy cannot be claimed. Our cheques are not merely negotiable instruments but yet the world can learn a vast amount about us by knowing how and with whom we have spent our money. Same is the position when we use the telephone or post a letter. The State cannot have unrestricted access to inspect and seize or make roving inquiries into all bank records, without any reliable information before it prior to such inspection. Once it is accepted that the right to privacy deals with persons, the documents or copies of documents of the customer which are in a bank, must continue to remain confidential vis-à-vis the person, even if they are no longer at the customer's house and have been voluntarily sent to a bank. Therefore, unless there is some probable or reasonable cause or basis, to be recorded in writing, or material before the Collector for reaching an opinion that the documents in the possession of the bank tend to secure any stamp duty or to prove or to lead to the discovery of any fraud or omission in relation to any duty, the search or the taking of notes or extracts cannot be valid. The above safeguards must necessarily be read into the provision relating to search, inspection and seizure so as to save it from any unconstitutionality. When public records in the Sub- Registrar's Office or a bank or for that matter any other public office are inspected for the purposes referred to in the impugned Section 73, the public officer may indeed have no objection to such inspection. But, as in the present case, in the context of a bank, which either holds the private documents of its customers or copies of such private documents, the disclosure of the contents of the documents by the bank would amount to a breach of confidentiality and would, therefore, be violative of privacy rights of its customers. (Paras 53, 54, 45, 46 and 48; and 18 to 40)

However, it is not being said that any law which is not on the lines of the US Right to Financial Privacy Act, 1978 (Pub L No. 95-630) is invalid. Indian laws such as Section 132, etc. of the Income Tax Act, 1961; or Sections 91, 165 and 166 of the Criminal Procedure Code, 1973 as to search and seizure have been extensively considered by the courts in India and have been held to be valid. (Para 48). *District Registrar and Collector* v. *Canara Bank*, (2005) 1 SCC 496: AIR 2005 SC 186: (2005) 126 Comp Cas 356.

Bench Strength 2. Coram: **R.C. Lahoti, C.J.** and *Ashok Bhan*, J. [Date of decision: 1-11-2004]

Kharak Singh v. State of U.P., (1964) 1 SCR 332: (1963) 2 Cri LJ 329; Gobind v. State of M.P., (1975) 2 SCC 148: 1975 SCC (Cri) 468; R. Rajagopal v. State of T.N., (1994) 6 SCC 632; People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301; 'X' v. Hospital 'Z', (1998) 8 SCC 296; People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399; Sharda v. Dharmpal, (2003) 4 SCC 493; Maneka Gandhi v. Union of India, (1978) 1 SCC 248, relied on

Semayne's case, (1603) 5 Coke's Rep 91a: 77 ER 194 (KB); Entick v. Carrington, (1765) 19 Howells' State Trials 1029: 95 ER 807: 2 Wils KB 275; Boyd v. United States, 116 US 616: 29 L Ed 746 (1886); Olmstead v. United States, 277 US 438: 72 L Ed 944 (1928) (dissenting opinion of Brandeis, J.); Griswold v. State of Connecticut, 381 US 479: 14 L Ed 2d 510 (1965); Warden v. Heyden, 387 US 294 (1967); Katz v. United States, 389 US 347: 19 L Ed 2d 576 (1967); Terry v. Ohio, 392 US 1 (1968); Thornburgh v. American College of O&G, 476 US 747 (1986); Whalen v. Roe, 429 US 589: 51 L Ed 2d 64 (1977); United States v. Orito, 413 US 139 (1973); Stanley v. Georgia, 394 US 557: 22 L Ed 2d 542 (1969), discussed

United States v. Miller, 425 US 435 (1976), disapproved

[**Ed.**: *See also* Art. 19(1)(a), '(c)(2)(vii)8. Other constituents of Art. 19(1)(a) — Privacy, Right to', pp. 111 et seq., '(c)(2)(vii)9. Subjective and psychological content of Art. 19(1)(a)', p. 113, and Art. 21, '(c)(3) Privacy, Right to', pp. 635 et seq., and *see also* under Art. 21, '(d)(2) "Personal liberty" — Meaning and scope — Particular Instances and Statutes', pp. 763 et seq. in Vol. 6, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

[257] — S. 91 — Request for samples (of handwriting, fingerprints, blood, saliva, semen, etc.) from suspect persons — Constitutionality of — *Held, it does not bind the court to allow a police officer's request — Request based on a wrong premise can be rejected — Such a discretionary power of the court presupposes the requirement of recording the reasoning for allowing or refusing the request — In view of the decision in* Kathi Kalu Oghad, *AIR 1961 SC 1808, the contention that S. 27, POTA violated Art. 20(3), rejected — Hence, S. 27, POTA held, intra vires Arts. 14, 20(3) and 21 — Constitution of India — Arts. 21, 20(3) and 14 — Right to privacy — Prevention of Terrorism Act, 2002 — S. 27*

In the instant petitions filed under Article 32, the petitioners challenged the constitutionality of various provisions of the Prevention of Terrorism Act, 2002 (for short "POTA"). They contended that:

* * *

Section 27 violated Articles 14, 20(3) and 21 inasmuch as it left no power with the court to decide whether the request of the police officer was reasonable, it did not require the court to record any reason for allowing the request, and it amounted to compelling a person to give evidence against himself,

* * *

Dismissing the petitions,

Held :

Section 27 does not fix a blanket responsibility upon the court to grant permission immediately upon the receipt of a request. If the request is based on a wrong premise, the court is free to refuse the request. This discretionary power granted to the court presupposes that the court will have to record its reasoning for allowing or refusing a request. In view of the decision in *Kathi Kalu Oghad case*, AIR 1961 SC 1808, the contention that Section 27 violated Article 20(3) is not sustainable. Moreover, Section 27 is only a step in aid for further investigation and the samples so obtained can never be considered as conclusive proof for conviction. Consequently, the constitutionality of Section 27 is upheld. (Paras 52 and 53). *People's Union for Civil Liberties* v. *Union of India*, (2004) 9 SCC 580: AIR 2004 SC 456.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *G.P. Mathur*, JJ. [Date of decision: 16-12-2003]

State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808: (1962) 3 SCR 10: (1961) 2 Cri LJ 856, followed

[258] — S. 91 — Party summoned to produce document disclaiming possession — *Party not a witness in the proceedings — Held, such party cannot be forced to appear in court, made to state on oath and be subjected to cross-examination by the court or counsel — CrPC, 1898 — S. 94.* *Parmeshwari Devi* v. *State*, (1977) 1 SCC 169: 1977 SCC (Cri) 74: AIR 1977 SC 403: (1977) 2 SCR 160.

Bench Strength **3**. Coram: *P.N. Bhagwati*, *A.C. Gupta* and **P.N. Shinghal**, JJ. [Date of decision: 23-11-1976]

[259] — Ss. 91, 227, 228, 239 and 240 — Summons to produce document or other thing — *Accused cannot at the stage of framing of charge invoke S. 91 to seek production of any document to prove his innocence* (Para 25). *State of Orissa* v. *Debendra Nath Padhi*, (2005) 1 SCC 568: 2005 SCC (Cri) 415: AIR 2005 SC 359: (2005) 1 KLT 80: (2005) 99 Cut LT 348.

Bench Strength **3**. Coram: **Y.K. Sabharwal**, *D.M. Dharmadhikari* and *Tarun Chatterjee*, JJ. [Date of decision: 29-11-2004]

[260] — Ss. 91 and 233 — Accused's applications to secure certain materials, documents and witnesses to establish their defence — Rejected by trial court — *Held, trial court can refuse securing of defence evidence if it feels it is being done to further delay the trial*

In this particular matter there has been an inordinate delay, despite the High Court granting six months for the completion of the trial and thereafter another three months' extension was sought by the trial court. As per Section 233 CrPC, the trial court can refuse securing of defence evidence if it so feels that the same is being done to further delay the trial. Thus, the trial court has committed no error in rejecting the above applications. Even otherwise there seems to be no prejudice caused to the accused by mere rejection of these applications. (Paras 48 to 50). *C. Magesh* v. *State of Karnataka*, (2010) 5 SCC 645.

Bench Strength **2**. Coram : *V.S. Sirpurkar* and **Deepak Verma**, JJ. [Date of decision : 30-4-2010]

Criminal Revision Petition No. 677 of 2003 (Kant), referred to

— S. 93 *See also* S. 96, Criminal Procedure Code, 1898, p. 972 in Vol. 2

— S. 93 *See also* S. 1(2) proviso and Ss. 93-105

[261] — Ss. 93 to 101 and 165 — Confession during illegal remand to police custody leading to search and seizure — Relevant evidence obtained thereunder, held, is not excluded by law on supposed illegality of the police custody or illegality of the search and seizure — *Their admissibility to be entirely judged by provisions of Evidence Act, 1872 — Evidence Act, 1872 — Ss. 5, 27 and 24*

The High Court held that since the order granting police custody is ex facie illegal, the so-called confession and alleged recovery made during that custody have no evidentiary value. Even if it is assumed that the order granting police custody was illegal (though it is held in this case that the aforesaid order being a purely interlocutory order, no revision lay against the same and the High Court committed manifest error of law in entertaining the revision and setting aside the said order), the admissibility or otherwise of a piece of evidence has to be judged having regard to the provisions of the Evidence Act. The Evidence Act or the Code of Criminal Procedure or for that matter any other law in India does not exclude relevant evidence on the ground that it was obtained under an illegal search and seizure. Hence, the direction given by the High Court that the confession and alleged recovery have no evidentiary value is clearly illegal and has to be set aside. The effect of the confession and also the recovery of the incriminating article at the instance of the accused has to be examined strictly in accordance with the provisions of the Evidence Act. (Paras 14 and 15.2). *State* v. *N.M.T. Joy Immaculate*, (2004) 5 SCC 729: 2004 SCC (Cri) 1722: AIR 2004 SC 2282: 2004 Cri LJ 2515.

Bench Strength **3**. Coram: *S. Rajendra Babu*, *C.J.*[1] and **Dr. Ar. Lakshmanan**[2] and **G.P. Mathur**[1], JJ. [Date of decision: 5-5-2004]

M.P. Sharma v. Satish Chandra, AIR 1954 SC 300: 1954 Cri LJ 865; Kurma v. R., 1955 AC 197: (1955) 1 All ER 236: (1955) 2 WLR 223 (PC); Pooran Mal v. Director of Inspection (Investigation), (1974) 1 SCC 345: 1974 SCC (Tax) 114, relied on

2002 MLJ (Cri) 661, reversed

[262] — S. 93(1) — Issue of search warrant — *Magistrate should apply his mind and give reasons reflecting application of mind*

The Magistrate should not dispose of an application for search warrant in a mechanical way by a laconic order. Issue of search warrant being in the discretion of the Magistrate it would be reasonable to expect of the Magistrate to give reasons which swayed his discretion in favour of granting the request. A clear application of mind by the learned Magistrate must be discernible in the order granting the search warrant. *V.S. Kuttan Pillai* v. *Ramakrishnan*, (1980) 1 SCC 264: 1980 SCC (Cri) 226: AIR 1980 SC 185: 1980 MLJ (Cri) 402: (1980) 17 ACC 120.

Bench Strength 2. Coram: **D.A. Desai** and *O. Chinnappa Reddy*, JJ. [Date of decision: 18-9-1979]

[263] — S. 93(1)(a) — Search warrant under, when can issue — *Such warrant if issued to an accused person, held, would violate Art. 20(3)*

A search warrant under S. 93(1)(*a*) could only be issued where a summons could have been issued under S. 91(1) but the same would not be issued on an apprehension that the person to whom the summons is directed would not comply with the same and, therefore, in order to obtain the document or thing to produce which the summons was to be issued, a search warrant may be issued under S. 93(1)(*a*). A summons to produce a thing or document as contemplated by S, 91(1) cannot be issued to a person accused of an offence calling upon him to produce document or thing considered necessary or desirable for the purpose of an investigation, inquiry, trial or other proceeding under the Code. Ipso facto, therefore, a search warrant contemplated by S. 93(1)(*a*) cannot be issued by the Court to an accused person. *V.S. Kuttan Pillai* v. *Ramakrishnan*, (1980) 1 SCC 264: 1980 SCC (Cri) 226: AIR 1980 SC 185: 1980 MLJ (Cri) 402: (1980) 17 ACC 120.

Bench Strength 2. Coram: **D.A. Desai** and *O. Chinnappa Reddy*, JJ. [Date of decision: 18-9-1979]

[**Ed.**: The above statement is obiter in view of the search warrant not having been issued under clause (a) of S. 93(1).]

— S. 93(1)(b) *See* Ss. 93(1)(c) and (b)

[264] — S. 93(1)(c) — Search of premises, occupied by the accused in pursuance of a general search warrant issued under and recovery of incriminating evidence — *Such recovery arising out of passive submission of the accused to the search, held, does not violate Art. 20(3) even if documents recovered contain incriminating statements attributable to the personal knowledge of the accused. V.S. Kuttan Pillai* v. *Ramakrishnan*, (1980) 1 SCC 264: 1980 SCC (Cri) 226: AIR 1980 SC 185: 1980 MLJ (Cri) 402: (1980) 17 ACC 120.

Bench Strength 2. Coram: **D.A. Desai** and *O. Chinnappa Reddy*, JJ. [Date of decision: 18-9-1979]

[265] — Ss. 93(1)(c) and (b) — Scope — General search warrant under cl. (c) for search of premises of a public institution, held, can be issued — Cl. (b) has no application to such a case — *Cl. (c) cannot be construed in the context of cl. (b)*

Section 93(1)(*c*) comprehends a situation where a search warrant can be issued as the Court is unaware of not only the person but even the place where the documents may be found and that a general search is necessary. The power of the Court under S. 93(1)(*c*) cannot be cut down by importing into it some of the requirements of S. 93(1)(*b*) and as such cl. (*c*) need not be read in the context of cl. (*b*). Even where the documents are known to be at a certain place in possession of certain persons, a search warrant under cl. (*c*) cannot be ruled out on the ground of applicability of cl. (*a*).

In the present case search warrant was being issued to conduct search of the premises used as office of an institution. The place will be in possession of the institution. The office-bearers of the Sabha are accused of an offence. Documents and books of accounts of the institution are required for the purpose of the trial against the office-bearers of the institution. The office premises could not be said to be in possession of any individual accused but stricto sensu it would be in possession of the institution. Books of accounts and other documents of the institution could not be said to be in personal custody or possession of the office-bearers of the institution but they are in possession of the institution and are lying in the office of the institution. A search of such a public place under the authority of a general search warrant can be sustained under S. 93(1)(*c*).

Under S. 93(1)(*b*) there is a definite allegation to recover certain document or thing from a certain specific place but the Court is unaware of the fact whether that document or thing or the place is in possession of a particular person. In the present case the search warrant was to be executed at the office of the institution and the office-bearers of the institution were the persons who were in possession of the documents in respect of which the search warrant was issued. Therefore, S. 93(1)(*b*) would not be attracted. *V.S. Kuttan Pillai* v. *Ramakrishnan*, (1980) 1 SCC 264: 1980 SCC (Cri) 226: AIR 1980 SC 185: 1980 MLJ (Cri) 402: (1980) 17 ACC 120.

Bench Strength 2. Coram: **D.A. Desai** and *O. Chinnappa Reddy*, JJ. [Date of decision: 18-9-1979]

— **S. 94** *See also* S. 98, Criminal Procedure Code, 1898, p. 973 in Vol. 2

— **S. 94** *See* S. 1(2) proviso and Ss. 93-105
See also Ss. 93 to 101 and 165

[266] — Ss. 94 and 156(3) — Criminal writ petition — Direction for examination of documents — Scope — Successive orders passed for examination of documents — Determination of comparative scope of the orders — Relevance of circumstances in which the writ petition was filed — *Dispute among permanent trustees — One set of them claiming that in the meeting of trustees held on the date specified, the respondent trustee was reappointed as a permanent trustee — The other set comprising the appellants alleging that the minutes of the said meeting were forged and fabricated — Appellants first filing a complaint before police in that regard and, thereafter before Magistrate under Ss. 120-B, 465, 467, 468, 471 and 420 — Magistrate directing the police to investigate into the complaint — Police therefore registering an FIR — Meanwhile, appellants filing a civil suit for a declaration that the minutes of the alleged meeting of that date were forged and fabricated — In that suit, the Trust tendering copy of minutes book containing minutes of meetings allegedly held over a period of several years and one of the defendants disclosing herself to be in possession of certain relevant documents — Appellants then unsuccessfully approaching the Magistrate for issuance of a warrant for search and seizure of the minutes book and the said documents — Later, the police issuing notice to the respondent to produce the said documents — Respondent filing criminal writ petition for quashing the Magistrate's order for police investigation as well as the consequential FIR and the police notice — Appellants also getting themselves impleaded therein as interveners — Writ court, by a consent order, appointing a handwriting expert as Court Commissioner to examine the minutes book of meetings for the entire four year period including the meeting in dispute and also the documents required by the police — In view of a query from the Court Commissioner and also in view of appellants' denial of all of their signatures in the minutes book and the other documents, High Court passing a subsequent order that the Commissioner was not required "for the present" to examine all the signatures in the minutes book except those relating to the date of the disputed resolution — Effect of — Other matters having come to the notice of appellants only during the proceedings in the civil suit, the subsequent order of High Court, held, limited the examination of the minutes book to the meeting of the said date only for the present for the purpose of the complaint filed before the Magistrate — It did not restrict further examination of the minutes book if required — Hence, in case of necessity for any such further examination, appellants were at liberty to apply for the same to High Court before whom the matter was still pending — Penal Code, 1860 — Ss. 120-B, 465, 467, 468, 471 and 420 — CPC, 1908, Or. 11 Rr. 12, 14, 15, 18 & 20 — Constitution of India — Art.* 226 (Para 60). *Kishor Kirtilal Mehta* v. *Vijay Kirtilal Mehta*, (2008) 3 SCC 404: (2008) 2 SCC (Cri) 373: AIR 2008 SC 1667.

Bench Strength **2**. Coram: **Altamas Kabir** and *L.S. Panta*, JJ. [Date of decision: 18-2-2008]

— **S. 95** *See also* S. 99-A, Criminal Procedure Code, 1898, p. 973 in Vol. 2

— **S. 95** *See* S. 1(2) proviso and Ss. 93-105
See also Ss. 93 to 101 and 165

[267] — S. 95 — Effect of confirmed forfeiture under, held, is to shut out its publication and distribution for all time (Para 25). *Baragur Ramachandrappa* v. *State of Karnataka*, (2007) 5 SCC 11: (2007) 2 SCC (Cri) 427: 2007 Cri LJ 2933: (2007) 56 AIC 129 (SC).

Bench Strength **2**. Coram: *B.P. Singh* and **Harjit Singh Bedi**, JJ. [Date of decision: 2-5-2007]

[268] — S. 95 — Forfeiture of publication under — Standard by which offending publication to be judged — Progressiveness or conservativeness of class of people concerned — Relevance of — *Held, it would be difficult to examine all publications on a common yardstick and what may be a laughable allegation to a progressive people could appear as sheer heresy to a conservative or sensitive one — Penal Code, 1860 — S. 295-A — Forfeiture of publication under S. 95 CrPC — Standard by which offending publication to be judged — Progressiveness or conservativeness of class of people concerned — Constitution of India — Art. 19(2) — Forfeiture of publication under S. 95 CrPC — Standard by which offending publication to be judged — Progressiveness or conservativeness of class of people concerned —*

Relevance of (Para 12). *Baragur Ramachandrappa* v. *State of Karnataka*, (2007) 5 SCC 11: (2007) 2 SCC (Cri) 427: 2007 Cri LJ 2933: (2007) 56 AIC 129 (SC).

Bench Strength 2. Coram: *B.P. Singh* and **Harjit Singh Bedi**, JJ. [Date of decision: 2-5-2007]

State of U.P. v. Lalai Singh Yadav, (1976) 4 SCC 213: 1976 SCC (Cri) 556; S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574, relied on

[269] — **S. 95 — Forfeiture of publication under — Whether State Govt. may be actuated under S. 95 by complaint from eminent personalities or affected persons** — *Held, mere actuation of State Government by such persons would not amount to an abdication of its functions — In present case, Govt. had applied its mind to contents of the novel complained against and taken a balanced and reasoned decision on the matter*

The contention that the action taken by the State Government was not on its own volition and was therefore mala fide must also be rejected. Merely because some eminent personalities or group of persons had taken it upon themselves to bring to the notice of the State Government the inflammatory and baseless statements that had been made, it would not amount to an abdication by the State of its functions. The impugned notification shows that the State Government had applied its mind to the contents of the novel and the allegations made therein and had taken a balanced and reasoned decision on the matter. (Para 13). *Baragur Ramachandrappa* v. *State of Karnataka*, (2007) 5 SCC 11: (2007) 2 SCC (Cri) 427: 2007 Cri LJ 2933: (2007) 56 AIC 129 (SC).

Bench Strength 2. Coram: *B.P. Singh* and **Harjit Singh Bedi**, JJ. [Date of decision: 2-5-2007]

[270] — **S. 95 — Freedom of speech and expression — Role in inculcating scientific temperament and spirit of enquiry — Permissible reasonable restrictions on the said freedom — Deliberate and malicious statements in publication intended to outrage religious feelings of any class — Protection of minorities and those outside the mainstream of society from such attacks — Power of State Government to declare forfeiture of such publication under S. 95 CrPC — Constitutional validity and scope of — Safeguard under S. 96 CrPC — Effect** — *Held, S. 95 CrPC is preventive in nature and exemplifies the principle that freedom of speech and expression is not unfettered — No person has a right to impinge on the feelings of others on the premise that his right of freedom of speech remains unrestricted and unfettered — India being a country with vast disparities in language, culture and religion, the weaker amongst them must be shown extra care and consideration — Unwarranted and malicious criticism or interference in the faith of others cannot be accepted — S. 96 CrPC itself takes care of any misuse of authority conferred under S. 95, and the balancing of the individual right vis-à-vis larger public interest can be put under final scrutiny by a High Court Bench — Hence S. 95 is not violative of Art. 19(1)(a) — Hence Govt. has the power to nullify a publication which endangers public order — Held, on facts, offending publication in question contains an insidious and inflammatory suggestion as to character of an important figure of a particular religious cult — Said suggestion is designed to be hurtful and to bring the family of said figure to shame — Further, said imputation was not based in folklore, tradition or history as claimed in defence by the author since none of the scholarly articles cited in defence support such a claim — Lastly, the author refusing to remove the offending portions, forfeiture of book upheld — Penal Code, 1860 — S. 295-A — Constitution of India — Arts. 19(1)(a) & (2) and 51-A(h)*

Basaveshwara also known as "Basavanna" was considered to be a great saint of the 12th century by the Veershaivas, a religious sect. He was born in Bagewadi in Bijapur District, Karnataka State. His elder sister Akkanagamma was also considered to be a saintly woman. Her son Channabasaveshwara too was considered to be a great social reformer and a preacher of Veerashaivism, and of the Basava Philosophy. The family was considered to consist of individuals of progressive thought who sought to promote social reform in Hindu society and who for that purpose preached that all were equal.

Petitioner 11, Dr. P.V. Narayanna published a novel in 1995 entitled *Dharmakaarana* portraying the story of Basaveshwara, Akkanagamma and Channabasaveshwara narrated in the first person, the narrator being Basaveshwara himself. The book was selected by the Karnataka Sahitya Academy for its annual award as the best novel for the year 1995. Some eminent figures in the field of literature and otherwise, including Shri B.D. Jatti, the former Vice-President of India wrote to the State Government that some of the statements made therein were objectionable, inflammatory, hurtful and insulting to the sentiments and feelings of the Veerashaivas and the followers of Basaveshwara, and suggested that the novel should be forfeited.

The Akhila Bharat Veerashaiva Mahasabha filed a suit in the City Civil Court at Bangalore seeking an injunction restraining the Government from conferring the award on the author and for an order banning the publication and sale of the book, on which such an order was in fact made. Faced with this delicate situation, the State Government issued the notification under Section 95 CrPC, ordering the forfeiture of the book. A petition was thereafter filed under Section 96 CrPC by the author Dr. P.V. Narayanna, on which the matter was referred for decision to a Bench of three Judges of the High Court under Section 96(2) CrPC. The Judges examined the matter in extenso and by their judgment and order dated 16-4-1998 dismissed the petition. This judgment was impugned before the Supreme Court by special leave.

While dismissing the petition the High Court had observed that the story projected by the author in Chapter 12 that Channabasaveshwara was the illegitimate son of Akkanagamma as he had been conceived out of wedlock, was indeed hurtful. The High Court had further held that the allegation that it was the public odium that had followed the pregnancy that had compelled Basaveshwara and Akkanagamma to leave their home at Bagewadi and shift to Koodalasangama, was again an unwarranted accusation and without any basis. The Court finally found that the explanation tendered by the author for the change of residence was the subject-matter of a raging debate amongst historians and religious functionaries and that he had merely adopted this story for the novel, was unacceptable and without any foundation.

Dismissing the appeal and confirming the forfeiture of the book,

Held :

It is true that the inculcation of a scientific temperament and a spirit of enquiry is essential for human development and is a sine qua non for progress and for social change and Article 51-A(*h*) of the Constitution clearly recognises this principle. Likewise Article 19(1)(*a*) of the Constitution gives every citizen the right to freedom of speech and expression and this freedom is yet another vehicle towards the same direction and goal. (Para 8)

It is however clear that the freedom of speech and expression is not unfettered and Section 95 CrPC exemplifies this principle on the understanding that this freedom must be available to all and no person has a right to impinge on the feelings of others on the premise that his right to freedom of speech remains unrestricted and unfettered. It cannot be ignored that India is a country with vast disparities in language, culture and religion and unwarranted and malicious criticism or interference in the faith of others cannot be accepted. (Para 9)

The Government has the power to nullify a publication which endangers public order, although the freedom of expression in this situation is undoubtedly restricted even though such freedom "is an indicator of the permanent address of human progress". It would be difficult to examine all publications on a common yardstick and what may be a laughable allegation to a progressive people could appear as sheer heresy to a conservative or sensitive one. (Para 12)

The contention that the action taken by the State Government was not on its own volition and was therefore mala fide must also be rejected. Merely because some eminent personalities or group of persons had taken it upon themselves to bring to the notice of the State Government the inflammatory and baseless statements that had been made, it would not amount to an abdication by the State of its functions. The impugned notification shows that the State Government had applied its mind to the contents of the novel and the allegations made therein and had taken a balanced and reasoned decision on the matter. (Para 13)

Section 95 and Section 96 CrPC when read together are clearly preventive in nature and are designed to pre-empt any disturbance to public order. At the same time, Section 95 does not by itself create a criminal offence and the reference to the various sections of the Penal Code is merely descriptive of the kind of offences which need to be prevented by a declaration under Section 95. Hence the contention that the onus of proof would lie on the State Government is not acceptable as the intention has, to some extent, to be inferred from the nature of the publication. It is true that a forfeiture of a newspaper or book or a document is a serious encroachment on the right of a citizen, but if forfeiture is called for in the public interest it must without a doubt have pre-eminence over any individual interest. (Para 16)

The State Government must take a pragmatic approach in the matter. (Para 16)

Section 96 itself takes care of any misuse of the authority conferred under Section 95 and the right of an individual vis-à-vis the larger public interest can be put under scrutiny as the final decision is left to a High Court Bench of (if possible) three Judges. Section 95 CrPC is not violative of Article 19(1)(*a*) of the Constitution, as the action taken thereunder is of a preventive nature and an extremely efficacious remedy under Section 96 CrPC is available to an aggrieved party or person. It is significant, and it is clear from the very large number of judgments that most of the matters pertain to attacks on minorities or religious and social groups or individuals who are perceived as being prodigals or heretics and therefore unacceptable to the conservatives amongst the mainstream. It cannot ever be overemphasised that India is a country with huge diversities in language and religion and the weaker amongst them must be shown extra care and consideration. (Paras 18 and 19)

In the book in question Basaveshwara narrates a story about a woman, Jabala by name, who was said to be a "debased one" and goes on to state that when Jabala was questioned by her son as to the identity of his father, she had replied that she was unable to identify him as she had been with many men. A perusal of a translation of the offending part of the book in Chapter 12, reveals that as a matter of fact Jabala has been equated with Basaveshwara's elder sister Nagakka in terms of being of low character and whereas the former had become pregnant, without a marriage the latter had been visited by so many men that she did not know who had fathered her son. As this story had been told by Basaveshwara himself in first person the insidious and inflammatory suggestion is noticed that he like Jabala's son, did not shrink from facing the truth about his closest relative-his sister with whom he shared a mother-son relationship. It is true that if the allegations made in Chapter 12 were based in folklore, tradition or history something in extenuation could perhaps be said for the author. (Paras 22 and 23)

There is no indication in any of the scholarly articles submitted by the appellant to support his contention that the story portrayed in Chapter 12 had not been revealed for the first time in his book, as the circumstances leading to the birth of Channabasaveshwara and the reason for the change in residence from Bagewadi to Koodalasangama had been a matter of study, debate and speculation in the Veerashaiva community for generations, and had found its echo not only in numerous books and articles but in lore and legend as well. None of the articles relied on indicate that Akkanagamma was of low character to be equated with Jabala or the slightest hint that Akkanagamma had conceived Channabasaveshwara outside her marriage and had left Bagewadi in shame for that reason. Chapter 12 is not in sync with the rest of the novel and has been deliberately designed to be hurtful and to bring the family to shame. The novel with its complimentary passages in favour of Basaveshwara is merely a camouflage to spin and introduce a particularly sordid and puerile story in Chapter 12. (Paras 20 and 24)

As the forfeiture of the novel would have the result of shutting out its publication and distribution for all time, it was put to the author by the Supreme Court if he could be persuaded to remove the portions which had been found to be offensive by the State Government. The author was willing to remove only three or four references from the novel, which would be only cosmetic changes and would not satisfy the need of the hour. Hence the appeal is dismissed. (Para 25). *Baragur Ramachandrappa* v. *State of Karnataka*, (2007) 5 SCC 11: (2007) 2 SCC (Cri) 427: 2007 Cri LJ 2933: (2007) 56 AIC 129 (SC).

Bench Strength **2**. Coram: *B.P. Singh* and **Harjit Singh Bedi**, JJ. [Date of decision: 2-5-2007]

Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641: 1985 SCC (Tax) 121; State of U.P. v. Lalai Singh Yadav, (1976) 4 SCC 213: 1976 SCC (Cri) 556; S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574, relied on

Nand Kishore Singh v. State of Bihar, AIR 1986 Pat 98, approved

[271] — Ss. 95 and 96 — Essential condition for issuance of forfeiture notification under S. 95 — Effect of quashment of criminal proceedings re offending material — *Held, one of the essential conditions for exercise of power under S. 95 is that the publication contains matter which is an offence under the various provisions of IPC specified therein — Hence quashment of FIR in respect of offending material in present case knocked off entire edifice of impugned notification*

In the present case, the opinion of the State Government is based on the factum of registration of an FIR against the author and others for offences punishable under Sections 153 and 153-A read with Section 34 IPC. But, in *Manzar Sayeed Khan case*, (2007) 5 SCC 1, while quashing the same FIR, it was held that the offending articles in the book did not constitute an offence under Section 153-A IPC. Thus, the entire edifice of the impugned notification got knocked off by the said decision. (Paras 40 and 41)

It is not possible to accept the contention of the appellants that only the subjective satisfaction of the State Government was called for and the matter covered by the notification is sufficient and cannot be assailed. The impugned notification does not identify the communities between which the book had caused or is likely to cause enmity. Therefore, it cannot be found out from the impugned notification as to which communities got outraged by the publication of the book or it had caused hatred and animosity between which particular communities or groups. (Paras 42 and 15)

The statement in the impugned notification to the effect that the book was "likely to result in breach of peace and public tranquillity and in particular between those who revere Shivaji and those who may not" is too vague a ground to satisfy the tests enumerated herein. The High Court was therefore right in holding that the impugned notification does not fulfil the mandatory requirements of Section 95(1) CrPC and is therefore invalid. (Paras 43 and 44). *State of Maharashtra* v. *Sangharaj Damodar Rupawate*, (2010) 7 SCC 398.

Bench Strength 2. Coram : **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision : 9-7-2010]

State of U.P. v. Lalai Singh Yadav, (1976) 4 SCC 213: 1976 SCC (Cri) 556, relied on

Sangharaj Damodar Rupawate v. Nitin Gadre, (2007) 4 Mah LJ 461, affirmed

Gopal Vinayak Godse v. Union of India, AIR 1971 Bom 56; M.T. Khan v. Govt. of A.P., (2004) 2 SCC 267; Periyar and Pareekanni Rubbers Ltd. v. State of Kerala, (1991) 4 SCC 195; S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574; Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431: 1997 SCC (Cri) 1094, cited

[272] — Ss. 95 and 96 — Nature and scope — Exercise of power under, by Govt. in ordering forfeiture — Proper manner of and approach to be followed — Balancing of public and private interests — *Held, Ss. 95 and 96 when read together are clearly preventive in nature and are designed to pre-empt any disturbance to public order — S. 95 does not by itself create a criminal offence and reference to various sections of IPC therein is merely descriptive of the kind of offences which need to be prevented under S. 95 — The onus of proof does not lie on Govt. as the intention has, to some extent, to be inferred from the nature of the publication — If forfeiture is called for in the public interest, it must without a doubt have pre-eminence over any individual interest — Govt. must take a pragmatic approach in the matter — Constitution of India — Arts. 19(1)(a) & (2) — Penal Code, 1860 — S. 295-A*

Section 95 and Section 96 CrPC when read together are clearly preventive in nature and are designed to pre-empt any disturbance to public order. At the same time, Section 95 does not by itself create a criminal offence and the reference to the various sections of the Penal Code is merely descriptive of the kind of offences which need to be prevented by a declaration under Section 95. Hence the contention that the onus of proof would lie on the State Government is not acceptable as the intention has, to some extent, to be inferred from the nature of the publication. It is true that a forfeiture of a newspaper or book or a document is a serious encroachment on the right of a citizen, but if forfeiture is called for in the public interest it must without a doubt have pre-eminence over any individual interest. (Para 16)

The State Government must take a pragmatic approach in the matter. (Para 16)

Section 96 itself takes care of any misuse of the authority conferred under Section 95 and the right of an individual vis-à-vis the larger public interest can be put under scrutiny as the final decision is left to a High Court Bench of (if possible) three Judges. Section 95 CrPC is not violative of Article 19(1)(*a*) of the Constitution, as the action taken thereunder is of a preventive nature and an extremely efficacious remedy under Section 96 CrPC is available to an aggrieved party or person. It is significant, and it is clear from the very large number of judgments that most of the matters pertain to attacks on minorities or religious and social groups or individuals who are perceived as being prodigals or heretics and therefore unacceptable to the conservatives amongst the mainstream. It cannot ever be overemphasised that India is a country with huge diversities in language and religion and the weaker amongst them must be shown extra care and consideration. (Paras 18 and 19). *Baragur Ramachandrappa* v. *State of Karnataka*, (2007) 5 SCC 11: (2007) 2 SCC (Cri) 427: 2007 Cri LJ 2933: (2007) 56 AIC 129 (SC).

Bench Strength 2. Coram: *B.P. Singh* and **Harjit Singh Bedi**, JJ. [Date of decision: 2-5-2007]

State of U.P. v. Lalai Singh Yadav, (1976) 4 SCC 213: 1976 SCC (Cri) 556, relied on

Nand Kishore Singh v. State of Bihar, AIR 1986 Pat 98, approved

[273] — S. 95(1) — Provision in, conferring power to forfeit newspaper, book or document — Nature of, and mode of its interpretation — *Held, it affects right to freedom of speech and expression as well as right to privacy — Hence, it has to be construed strictly and power thereunder has to be exercised in manner and according to procedure laid down therein — Constitution of India — Arts. 19(1)(a) and 21*

The power to forfeit a newspaper, book or document is a drastic power inasmuch as it not only has a direct impact upon the due exercise of the cherished right of freedom of speech and expression as envisaged in Article 19(1)(*a*) of the Constitution, it also clothes a police officer to seize the infringing copies of the book, document or newspaper and to search places where they are reasonably suspected to be found, impinging upon the right of privacy. Therefore, the provision has to be construed strictly and exercise of power under it has to be in the manner and according to the procedure laid down therein. (Para 28). *State of Maharashtra* v. *Sangharaj Damodar Rupawate*, (2010) 7 SCC 398.

Bench Strength 2. Coram : **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision : 9-7-2010]

State of U.P. v. Lalai Singh Yadav, (1976) 4 SCC 213: 1976 SCC (Cri) 556, followed

Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1: (2007) 2 SCC (Cri) 417; Baragur Ramachandrappa v. State of Karnataka, (2007) 5 SCC 11: (2007) 2 SCC (Cri) 427, considered

Ramesh v. Union of India, (1988) 1 SCC 668: 1988 SCC (Cri) 266; Bhagwati Charan Shukla v. Provincial Govt., AIR 1947 Nag 1; Nand Kishore Singh v. State of Bihar, AIR 1986 Pat 98, referred to

[274] — Ss. 95(1) and 96(1) & (4) — Forfeiture notification under S. 95(1) — Test of validity of, and amenability to judicial review — Subjective satisfaction of Government — If enough — Notification forfeiting the book *Shivaji—Hindu King in Islamic India* — Validity — *Held, forfeiture notification must state grounds on which Government formed its opinion under S. 95(1) — Mere citation of words of the section, not sufficient — Detailed, albeit not inflexible guidelines to test validity of such notification laid down — Contention that only subjective satisfaction of State Government is called for and matter covered by impugned notification is sufficient and cannot be assailed, rejected — Notification in question forfeiting book on grounds that contents thereof had caused enmity between various communities, that book was "likely to result in breach of peace and public tranquillity and in particular between those who revere Shivaji and those who may not", and that for publication thereof FIR under Ss. 153, 153-A and 34 IPC had been registered against author — In view of: (i) omission to specify the "communities" it referred to, (ii) vagueness of statement therein, and (iii) quashment of very same FIR in* Manzar Sayeed Khan case, *(2007) 5 SCC 1 with finding that contents of book in question herein did not constitute offence under S. 153-A IPC, said notification rightly annulled by High Court — Penal Code, 1860, Ss. 153, 153-A and 34 — Constitution of India — Article 19*

By a Notification dated 20-12-2006 issued under Section 95(1) CrPC, the Maharashtra Government directed forfeiture of every copy of the book *Shivaji—Hindu King in Islamic India*. The notification indicated that in the opinion of the Government, the circulation of the said book, containing scurrilous and derogatory references to Shivaji, had resulted in causing enmity between various communities and had led to acts of violence and disharmony and that any further circulation of the said book was likely to result in breach of peace and public tranquillity. The said opinion was based on the grounds that the author had made several derogatory references, specified in the schedule appended to the notification, regarding Shivaji, in particular about his parentage and the Bhosle family; the said derogatory references were prejudicial to the maintenance of harmony between different groups and had disturbed the public tranquillity, the publication and circulation of the book had not only already resulted in causing enmity between the persons who revered Shivaji and other persons who might not so revere him but was likely to continuously cause such enmity. For publication of the book an FIR for offences under Sections 153 and 153-A read with Section 34 IPC had been registered against the author. In a petition filed under Section 96 CrPC read with Article 226 of the Constitution by the respondents herein and certain others, the High Court set aside and quashed the said notification. The State then filed the present appeal thereagainst by special leave.

Dismissing the appeal of the State,

Held :

The power to issue a declaration of forfeiture under Section 95 CrPC postulates compliance with twin essential conditions viz. (*i*) the Government must form the opinion to the effect that the newspaper, book or document contains "any matter ... Section 295-A IPC", and (*ii*) the Government must state the grounds of its opinion. Therefore, it is mandatory that such a declaration by the State Government in the form of notification must state the grounds on which the State Government has formed a particular opinion. A mere citation of the words of the section is not sufficient. (Para 26)

The power to forfeit a newspaper, book or document is a drastic power inasmuch as it not only has a direct impact upon the due exercise of the cherished right of freedom of speech and expression as envisaged in Article 19(1)(*a*) of the Constitution, it also clothes a police officer to seize the infringing copies of the book, document or newspaper and to search places where they are reasonably suspected to be found, impinging upon the right of privacy. Therefore, the provision has to be construed strictly and exercise of power under it has to be in the manner and according to the procedure laid down therein. (Para 28)

No inflexible guidelines can be laid down to test the validity of a notification issued under Section 95 CrPC. Nonetheless the following legal aspects can be kept in mind while examining the validity of such a notification:

(*i*) The statement of the grounds of its opinion by the State Government is mandatory and a total absence thereof would vitiate the declaration of forfeiture. Therefore, the grounds of the Government's opinion must be stated in the notification issued under Section 95 CrPC and while testing the validity of the notification the Court has to confine the inquiry to the grounds so disclosed;

(*ii*) Grounds of opinion must mean conclusion of facts on which the opinion is based. Grounds must necessarily be the import or the effect or the tendency of matters contained in the offending publication, either as a whole or in portions of it, as illustrated by passages which the Government may choose. A mere repetition of an opinion or reproduction of the section will not answer the requirement of a valid notification. However, at the same time, it is not necessary that the notification must bear a verbatim record of the forfeited material or give a detailed gist thereof;

(*iii*) The validity of the order of forfeiture would depend on the merits of the grounds. The High Court would set aside the order of forfeiture if there are no grounds of opinion because if there are no grounds of opinion it cannot be satisfied that the grounds given by the Government justify the order. However, it is not the duty of the High Court to find out for itself whether the book contained any such matter whatsoever;

(*iv*) The State cannot extract stray sentences of portions of the book and come to a finding that the said book as a whole ought to be forfeited;

(*v*) The intention of the author has to be gathered from the language, contents and import of the offending material. If the allegations made in the offending article are based on folklore, tradition or history, something in extenuation could perhaps be said for the author;

(*vi*) If the writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge under Section 153-A IPC that the writing contains a truthful account of past events or is otherwise supported by good authority. Adherence to the strict path of history is not by itself a complete defence to a charge under Section 153-A IPC;

(*vii*) Section 95(1) CrPC postulates that the ingredients of the offences stated in the notification should "appear" to the Government to be present. It does not require that it should be "proved" to the satisfaction of the Government that all requirements of punishing sections, including mens rea, were fully established;

(*viii*) The onus to dislodge and rebut the prima facie opinion of the Government that the offending publication comes within the ambit of the relevant offence, including its requirement of intent, is on the applicant and such intention has to be gathered from the language, contents and import thereof;

(*ix*) The effect of the words used in the offending material must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. The class of readers for whom the book is primarily meant would also be relevant for judging the probable consequences of the writing. (Para 37)

In the present case, the opinion of the State Government is based on the factum of registration of an FIR against the author and others for offences punishable under Sections 153 and 153-A read with Section 34 IPC. But, in *Manzar Sayeed Khan case*, (2007) 5 SCC 1, while quashing the same FIR, it was held that the offending articles in the book did not constitute an offence under Section 153-A IPC. Thus, the entire edifice of the impugned notification got knocked off by the said decision. (Paras 40 and 41)

It is not possible to accept the contention of the appellants that only the subjective satisfaction of the State Government was called for and the matter covered by the notification is sufficient and cannot be assailed. The impugned notification does not identify the communities between which the book had caused or is likely to cause enmity. Therefore, it cannot be found out from the impugned notification as to which communities got outraged by the publication of the book or it had caused hatred and animosity between which particular communities or groups. (Paras 42 and 15)

The statement in the impugned notification to the effect that the book was "likely to result in breach of peace and public tranquillity and in particular between those who revere Shivaji and those who may not" is too vague a ground to satisfy the tests enumerated herein. The High Court was therefore right in holding that the impugned notification does not fulfil the mandatory requirements of Section 95(1) CrPC and is therefore invalid. (Paras 43 and 44). *State of Maharashtra* v. *Sangharaj Damodar Rupawate*, (2010) 7 SCC 398.

Bench Strength 2. Coram : **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision : 9-7-2010]

Harnam Das v. State of U.P., AIR 1961 SC 1662: (1961) 2 Cri LJ 815; Narayan Dass Indurakhya v. State of M.P., (1972) 3 SCC 676: 1972 SCC (Cri) 720; State of U.P. v. Lalai Singh Yadav, (1976) 4 SCC 213: 1976 SCC (Cri) 556; State of U.P. v. Lalai Singh Yadav, (1976) 4 SCC 213: 1976 SCC (Cri) 556, followed

Random House Dictionary, referred to

Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1: (2007) 2 SCC (Cri) 417; Baragur Ramachandrappa v. State of Karnataka, (2007) 5 SCC 11: (2007) 2 SCC (Cri) 427, considered

Ramesh v. Union of India, (1988) 1 SCC 668: 1988 SCC (Cri) 266; Bhagwati Charan Shukla v. Provincial Govt., AIR 1947 Nag 1; Nand Kishore Singh v. State of Bihar, AIR 1986 Pat 98, referred to

State of U.P. v. Lalai Singh Yadav, (1976) 4 SCC 213: 1976 SCC (Cri) 556, relied on

Sangharaj Damodar Rupawate v. Nitin Gadre, (2007) 4 Mah LJ 461, affirmed

Gopal Vinayak Godse v. Union of India, AIR 1971 Bom 56; M.T. Khan v. Govt. of A.P., (2004) 2 SCC 267; Periyar and Pareekanni Rubbers Ltd. v. State of Kerala, (1991) 4 SCC 195; S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574; Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431: 1997 SCC (Cri) 1094, cited

— S. 96 *See* S. 1(2) proviso and Ss. 93-105
See also Ss. 93 to 101 and 165
See also Ss. 95 and 96

[275] — Ss. 96 to 103 and 165 — Importance of search and seizure during investigation — *Statement of Objects and Reasons, Ch. V and Ss. 42(1), (2) (as amended by Act 9 of 2001), 50 (as amended by Act 9 of 2001) and 96 to 103, NDPS Act — Need to maintain balance between stringent laws for tackling drug trafficking by well-organised smugglers on the one hand and safeguards against misuse and arbitrary or indiscriminate exercise of power by officers empowered under NDPS Act on the other hand — Need of proper balance, stressed — Such balance evident from the scheme of NDPS Act and its amendments due to signing of the Convention on Psychotropic Substances Act, 1971 — Convention on Psychotropic Substances Act, 1971, Preamble — Narcotic Drugs and Psychotropic Substances Act, 1985. Karnail Singh* v. *State of Haryana*, (2009) 8 SCC 539: (2009) 3 SCC (Cri) 887.

Bench Strength **5**. Coram: *K.G. Balakrishnan, C.J.* and *R.V. Raveendran, D.K. Jain,* **P. Sathasivam** and *J.M. Panchal*, JJ. [Date of decision: 29-7-2009]

[**Ed.**: India was amongst the 71 countries that signed the Protocol on Psychotropic Substances which met in Vienna from 11 January to 21 February, 1971. The website of International Narcotics Control Board may be referred to for relevant data and the PDF file on the convention: the weblinks are (1) http://www.incb.org/incb/convention_1971.html and (2) http://www.incb.org/pdf/e/conv/convention_1971_en.pdf]

— S. 97 *See* S. 1(2) proviso and Ss. 93-105
See also Ss. 93 to 101 and 165

[276] — S. 97 — Custody of minor children — Allegation by the father that the mother left the matrimonial home along with two children without any information — *Held, mother is also a natural guardian under S. 6 of the Hindu Minority and Guardianship Act, 1956 — Hence custody of the children with the mother was neither illegal nor were the children under her wrongful confinement — Order of the Chief Judicial Magistrate giving custody of such children to the father quashed and the father directed to hand over the custody of the children to the mother — However, this order is confined to proceedings under S. 97 and would not affect proceedings under S. 25 of the Guardian and Wards Act, 1890 pending before the Family Court — Hindu Minority and Guardianship Act, 1956 — S. 6 — Guardians and Wards Act, 1890 — S. 25. Anjali Anil Rangari* v. *Anil Kripasagar Rangari*, (1997) 10 SCC 342: 1997 SCC (Cri) 827.

Bench Strength **2**. Coram: *S.C. Sen* and *S.P. Kurdukar*, JJ. [Date of decision: 9-5-1997]

[277] — S. 97 — Search for person wrongfully confined — Child, aged 9 years, living with his own father — S. 97 not attracted — *However, this shall not be construed as any expression of opinion on merits of controversy regarding custody of the child which is pending adjudication in an application filed under the Guardians and Wards Act, 1890. Ramesh* v. *Laxmi Bai*, (1998) 9 SCC 266: 1998 SCC (Cri) 999.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *V.N. Khare*, JJ. [Date of decision: 29-8-1997]

— Ss. 98 and 99 *See* S. 1(2) proviso and Ss. 93-105
See also Ss. 93 to 101 and 165

— S. 100 *See also* Ss. 102 and 103, Criminal Procedure Code, 1898, pp. 973 et seq. in Vol. 2

— S. 100 *See* S. 1(2) proviso and Ss. 93- 105
See also Ss. 93 to 101 and 165
See also Ss. 102, 100 and 165
See also Ss. 165 and 100
See also Ss. 165, 102 and 100

[278] — S. 100 — Search of person distinguished from search of premises — *Only when an empowered officer or a duly authorised officer acting on prior information is about to carry out search of a "person" as distinguished from search of "premises", it is imperative for that officer to inform the person being searched of his right under S. 50(1), NDPS Act of being taken to the nearest gazetted officer or Magistrate for making the search — However, such information may not necessarily be in writing — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 50* (Para 7). *Gurbax Singh* v. *State of Haryana*, (2001) 3 SCC 28: 2001 SCC (Cri) 426: AIR 2001 SC 1002: (2001) 1 Crimes 235 (SC).

Bench Strength **2**. Coram: **M.B. Shah** and *K.G. Balakrishnan*, JJ. [Date of decision: 6-2-2001]

Kalema Tumba v. State of Maharashtra, (1999) 8 SCC 257: 1999 SCC (Cri) 1422; State of Punjab v. Baldev Singh, (1999) 6 SCC 172: 1999 SCC (Cri) 1080, relied on

[279] — S. 100 — Non-sealing of seized articles casts serious doubt on prosecution. *Surinder* v. *State of Haryana*, (1994) 4 SCC 365: 1994 SCC (Cri) 1202.

Bench Strength 2. Coram: *R.M. Sahai* and *Faizan Uddin*, JJ. [Date of decision: 3-5-1994]

[280] — Ss. 100, 102 — Search and seizure — Failure to join independent witnesses of locality — Corroboration — Necessity — *Seizure of stolen wood by forest authorities — Failure to join independent witness though available at a distance of about 100 yards — Even at the time of recording of confession of accused persons no independent witness was joined — Held, in the circumstances of the case, conviction cannot be based on uncorroborated testimony of forest officials though as a matter of law some corroboration was not a legal imperative — Forest Act, 1927 — Ss. 26 and 41. Gyan Singh* v. *State of U.P.*, 1995 Supp (4) SCC 658: 1996 SCC (Cri) 73.

Bench Strength 2. Coram: *M.M. Punchhi* and *S.C. Agrawal*, JJ. [Date of decision: 9-4-1992]

[281] — S. 100 — Arrest, warrant, search and seizure under NDPS Act, 1985 — General legal provision applicable for — Appropriate procedure/conditions — *Criminal Procedure Code, 1973 shall apply insofar as they are not inconsistent with the provisions of the NDPS Act, re-emphasised — Therefore, in case of search of a house investigating officer having followed conditions under S. 42 of the Act r/w S. 100 CrPC, allegation of breach of the right of a person's house being searched in the absence of a Magistrate or gazetted officer, held, was wholly incorrect — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 42 and 51* (Para 7). *Ghasita Sahu* v. *State of M.P.*, (2008) 3 SCC 52: (2008) 1 SCC (Cri) 605: AIR 2008 SC 1425: 2008 Cri LJ 2060.

Bench Strength 2. Coram: *S.B. Sinha* and **V.S. Sirpurkar**, JJ. [Date of decision: 28-1-2008]

State of H.P. v. Pawan Kumar, (2005) 4 SCC 350: 2005 SCC (Cri) 943, relied on

[282] — Ss. 100, 102, 103 and 165 — Chance recovery of narcotic drug or psychotropic substance — *Investigation under CrPC — Duty of Investigating Officer who comes across a person being in possession of contraband indicated — Provisions of NDPS Act attracted thereafter — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 50*

The provisions of Sections 100 and 165 CrPC are not inconsistent with the provisions of the NDPS Act and are applicable for affecting search, seizure or arrest under the NDPS Act also. However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure, comes across a person being in possession of the narcotic drug or the psychotropic substance, then he must follow from that stage onwards the provisions of the NDPS Act and continue the investigation as provided thereunder. If the investigating officer is not an empowered officer then it is expected of him that he must inform the empowered officer under the NDPS Act, who should thereafter proceed from that stage in accordance with the provisions of the NDPS Act. Failure to comply with the provisions of CrPC in respect of search and seizure and particularly those of Sections 100, 102, 103 and 165 per se would not vitiate the prosecution case. If there is such a violation, what the courts have to see is whether any prejudice was caused to the accused. While appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation and evaluate the evidence on record keeping that in view. (Para 14). *State of Punjab* v. *Baldev Singh*, (1999) 6 SCC 172: 1999 SCC (Cri) 1080: AIR 1999 SC 2378: 1999 Cri LJ 3672.

Bench Strength 5. Coram: **Dr. A.S. Anand, C.J.** and *S.B. Majmudar, Sujata V. Manohar, K. Venkataswami* and *V.N. Khare*, JJ. [Date of decision: 21-7-1999]

State of Punjab v. Balbir Singh, (1994) 3 SCC 299: 1994 SCC (Cri) 634, relied on

[283] — Ss. 100 and 51 — Search of offender — *Search memo signed only by policemen accompanying the Head Constable and not by any independent witnesses though present — Matter not free from doubt — CrPC, 1898 — Ss. 103 and 51. Bhagwan Singh* v. *State of Rajasthan*, (1976) 1 SCC 15: 1975 SCC (Cri) 737: AIR 1976 SC 985: 1976 Cri LJ 713.

Bench Strength 3. Coram: *Y.V. Chandrachud*, **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 14-8-1975]

[284] — Ss. 100 and 165 — Search and seizure — Chance recovery of narcotic drugs by a police officer, not being an empowered officer — Procedure to be followed by him — *Non-compliance with mandatory requirements of the provisions under NDPS Act vitiates the conviction — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 42(1), (2), 50, 52 and 57*

In the present case the police officer purely accidentally stumbled upon the offending articles and not being the empowered person, on coming to know about the accused persons being in custody of the offending articles, he sent for the panchas and on their arrival drew up the panchnama. In the circumstances, from the stage he had reason to believe that the accused persons were in custody of narcotic drugs and sent for the panchas, he was under an obligation to proceed further in the matter in accordance with the provisions of the NDPS Act. Under Section 42(1) proviso, if the search is carried out between sunset and sunrise, he must record the grounds of his belief. Admittedly, he did not record the grounds of his belief at any stage of the investigation subsequent to his realising that the accused persons were in possession of charas. He also did not forward a copy of the grounds to his superior officer, as required by Section 42(2) of the Act because he had not made any record under the proviso to Section 42(1). He also did not adhere to the provisions of Section 50 of the Act in that he did not inform the person to be searched that if he would like to be taken to a Gazetted Officer or a Magistrate, a requirement which has been held to be mandatory. Therefore, the accused is entitled to be acquitted. *Mohinder Kumar* v. *State, Panaji, Goa*, (1998) 8 SCC 655: AIR 1995 SC 1157.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and *N.P. Singh* and *Sujata V. Manohar*, JJ. [Date of decision: 20-1-1995]

State of Punjab v. Balbir Singh, (1994) 3 SCC 299: 1994 SCC (Cri) 634, followed

[285] — **Ss. 100 and 165 — Recovery of incriminating articles (belonging to deceased) from flat of accused at his instance — Reliability** — *Said flat was easily accessible, without disturbing the lock — Planting of articles by police, not totally ruled out — Hence held, the evidence of seizure of incriminating articles from the said flat, was rightly discarded by the courts below — Evidence Act, 1872 — S. 27*

The search and recovery of articles by the police on 11-2-2000 does not inspire confidence as the flat was easily accessible, without disturbing the lock and planting of the articles by the police cannot totally be ruled out. After going through the evidence of the witnesses and the *panchnamas* and list of seized articles, it is found that reasoning adopted by the courts below in discarding the evidence of seizure of articles from the flat of the accused persons cannot be said to be without any basis. (Para 20). *State of Goa* v. *Sanjay Thakran*, (2007) 3 SCC 755: (2007) 2 SCC (Cri) 162: (2007) 2 Guj LH 122: (2007) 54 AIC 240 (SC).

Bench Strength **2**. Coram: *B.N. Agrawal* and **P.P. Naolekar**, JJ. [Date of decision: 2-3-2007]

[286] — **Ss. 100 and 172 — Applicability of Ss. 5 and 6, TADA — Person in possession of arms and ammunition — On facts who was in possession** — *Arms and ammunition given by the accused to P for safe custody at his residence, recovered at the instance of the accused from the residence of P — In such circumstances, the accused and none else, held, was having the control over the said arms and ammunition for the purpose of conviction under Ss. 5 and 6, TADA — Terrorist and Disruptive Activities (Prevention) Act, 1987 — Ss. 5 and 6* (Para 10). *Prasad Ramakant Khade* v. *State of Maharashtra*, (1999) 8 SCC 493: 1999 SCC (Cri) 1487: AIR 2000 SC 138.

Bench Strength **3**. Coram: *G.B. Pattanaik*, **S.P. Kurdukar** and *K.T. Thomas*, JJ. [Date of decision: 12-10-1999]

— **S. 100(4)** *See* Ss. 165, 102, 100(4) and 154

See also Ss. 165, 102, 166(3) & (4) and 100(4)

See also Ss. 165, 166(3) & (4) and 100(4)

See also Ss. 165(4) and 100(4)

[287] — S. 100(4) — Independent witness — Meaning of — *Mere acquaintance with police officers would not make a witness non-independent — Every citizen is presumed to be independent until proved to be dependant on police for any purpose whatsoever — Merely because the witness was complainant in another bribery case or that he was a witness in two other cases though not yet examined in those cases would not render him a non-independent witness — Similarly, mere fact that one of the witnesses was driver of the vehicle in which raiding officials went to the place would not result in his losing the status of independent witness*

The necessity for "independent witness" in cases involving police raid or police search is incorporated in the statute not for the purpose of helping the indicated person to bypass the evidence of those panch witnesses who have had some acquaintance with the police or officers conducting the search at some time or the other. Acquaintance with the police by itself would not destroy a man's independent outlook. In a society where police involvement is a regular phenomenon many people would get acquainted with the police. But as long as they are not dependent on the police for their living or liberty or for any other matter, it cannot be said that they are not independent persons. If the police in order to carry out official duties, have sought the help of any other person he would not forfeit his independent character by giving help to police action. The requirement to have independent witness to corroborate the evidence of the police is to be viewed from a realistic angle. Every citizen of India must be presumed to be an independent person until it is proved that he was a dependant of the police or other officials for any purpose whatsoever. *State of U.P.* v. *Zakaullah*, (1998) 1 SCC 557: 1998 SCC (Cri) 456: AIR 1998 SC 1474: 1998 All LJ 290: 1998 Cri LJ 863.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 12-12-1997]

[288] — S. 100(4) — Independent witnesses — Non-availability of — If vitiative of the evidence regarding search — *Bedding which the accused was carrying searched and found to contain 10 kg of opium — IO and other witnesses disclosing that many independent witnesses had been requested to witness the search but all of them refused — Evidence of IO and the other witnesses on this point remaining unshaken despite cross-examination — In such circumstances, their evidence regarding the search, held, nonetheless admissible — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 42, 43 and 51* (Para 4). *Jal Singh* v. *State of Haryana*, (2000) 2 SCC 119: 2000 SCC (Cri) 337.

Bench Strength **2**. Coram: *G.T. Nanavati* and *S.N. Phukan*, JJ. [Date of decision: 2-12-1999]

[289] — S. 100(4) — Recovery from the house of the accused — No reasonable explanation for not summoning any independent witness residing in that locality — *Residents of the houses in the immediate proximity of the house of the accused available and large number of people present at the time of recovery — Held, prosecution should have come forward with some explanation why PW 4, who was not resident of that locality and belonged to the biradari of the complainant, was called and so selectively chosen to be the witness for the recoveries*

PW 4 is not a resident in the immediate proximity of the house of the respondent. He belongs to the same *biradari* of the complainant and lives behind the house of the IO, PW 9. There is no reasonable explanation, why such a person was called to be a witness to the recovery when there were any number of people available and who are residents of the houses in the immediate proximity of the house of the respondent. It is evident from the records that a large number of people were present at the time of the recovery, therefore, the prosecution should have come forward with some explanation, why PW 4 was so selectively chosen to be the witness for the recoveries. (Para 16). *State of U.P.* v. *Arun Kumar Gupta*, (2003) 2 SCC 202: 2003 SCC (Cri) 481: AIR 2003 SC 801: 2003 Cri LJ 894.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 8-1-2003]

[290] — S. 100(4) — Search — "Independent and respectable inhabitants of locality" — Panch witnesses not belonging to the locality where search was conducted — *Inconsistent versions given by them regarding purpose of their visit to justify their presence at the place of occurrence — One of the witnesses found to be a pocket witness and the other witness being his friend and associate their friendship having developed during their days of gambling — His conduct of giving false address to the police on more than one occasions rendering him untrustworthy — No serious attempt made by the raiding party to join independent and respectable inhabitants of the locality — Held, in the circumstances, panch witnesses not reliable* (Paras 8, 9 and 10). *Pradeep Narayan Madgaonkar* v. *State of Maharashtra*, (1995) 4 SCC 255: 1995 SCC (Cri) 708: AIR 1995 SC 1930: 1995 Cri LJ 3213.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *M.K. Mukherjee*, JJ. [Date of decision: 12-5-1995]

[291] — S. 100(4) — Search and seizure — *Accused apprehended at a bus stand in the evening — Shopkeeper and the people present there not willing to join search party — Held, in the circumstances, failure to join independent witness of locality not fatal — Conviction based on evidence of police officers alone not improper — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 5 — Arms Act, 1959 — S. 25. Rakesh Kumar* v. *State (Delhi Admn.)*, 1994 Supp (3) SCC 729.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 23-11-1994]

[292] — S. 100(4) — Search and seizure — Failure to call independent inhabitants of locality — Effect

Before conducting a search the police officer concerned is required to call upon some independent and respectable people of the locality to witness the search. In a given case it may so happen that no such person is available or, even if available, is not willing to be a party to such search. It may also be that after joining the search, such persons later on turn hostile. In any of these eventualities the evidence of the police officers who conducted the search cannot be disbelieved solely on the ground that no independent and respectable witness was examined to prove the search but if it is found — as in the present case — that no attempt was made even by the police officer concerned to join with him some persons of the locality who were admittedly available to witness the recovery, it would affect the weight of evidence of the police officer, though not its admissibility. *Sahib Singh* v. *State of Punjab*, (1996) 11 SCC 685: AIR 1997 SC 2417.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 13-9-1996]

[293] — S. 100(4) — Search and seizure — Failure to join independent witness — *Witnesses looking from a distance but none of them coming at the spot — Held, in the circumstances, not joining of those witnesses cannot affect the creditworthiness of the prosecution case. Balbir Singh* v. *State*, (1996) 11 SCC 139: 1997 SCC (Cri) 134.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *K.T. Thomas*, JJ. [Date of decision: 26-9-1996]

[294] — S. 100(4) — Search and seizure — Panch witnesses belonging to other village — Explanation that accused's village being a small village and inhabited mostly by relations of the accused — *Held, in the circumstances of the case, explanation for not joining independent witnesses of the same village acceptable. Sama Alana Abdulla* v. *State of Gujarat*, (1996) 1 SCC 427: 1996 SCC (Cri) 113: AIR 1996 SC 569.

Bench Strength 2. Coram: *M.K. Mukherjee* and **G.T. Nanavati**, JJ. [Date of decision: 16-11-1995]

[295] — S. 100(4) — All disclosures, discoveries and arrests made in presence of three interested witnesses as no independent witness could be found — *Held, creates a doubt or suspicion which must go to the benefit of the accused — Evidence Act, 1872 — S. 27*

Significantly all disclosures, discoveries and even arrests have been made in the presence of three specific persons, who were related to the deceased — no independent witness could be found in the aforesaid context — is it deliberate or is it sheer coincidence. The ingenuity devised by the prosecutor knew no bounds — can it be attributed to be sheer coincidence? Without any further consideration of the matter, one thing can be, more or less with certain amount of conclusiveness be stated that these at least create a doubt or suspicion as to whether the same have been tailor-made or not and in the event of there being such a doubt, the benefit must and ought to be transposed to the accused persons. (Para 19). *State of Haryana* v. *Ram Singh*, (2002) 2 SCC 426: 2002 SCC (Cri) 350: AIR 2002 SC 620: 2002 Cri LJ 987.

Bench Strength 2. Coram: **U.C. Banerjee** and *N. Santosh Hegde*, JJ. [Date of decision: 15-1-2002]

[296] — S. 100(4) — Evidentiary value — Failure to join independent witness during search and seizure — Effect

There can be no legal proposition that evidence of police officers, unless supported by independent witnesses, is unworthy of acceptance. Non-examination of independent witness or even presence of such witness during police raid would cast an added duty on the court to adopt greater care while scrutinising the evidence of the police officers. If the evidence of the police officer is found acceptable it would be an erroneous proposition that the court must reject the prosecution version solely on the ground that no independent witness was examined. *Kalpnath Rai* v. *State*, (1997) 8 SCC 732: AIR 1998 SC 201.

Bench Strength 2. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 6-11-1997]

Balbir Singh v. State, (1996) 11 SCC 139: 1997 SCC (Cri) 134; Paras Ram v. State of Haryana, (1992) 4 SCC 662: 1993 SCC (Cri) 13; Sama Alana Abdulla v. State of Gujarat, (1996) 1 SCC 427: 1996 SCC (Cri) 113; Anil v. State of Maharashtra, (1996) 2 SCC 589: 1996 SCC (Cri) 356; Tahir v. State (Delhi), (1996) 3 SCC 338: 1996 SCC (Cri) 515, followed

[297] — S. 100(4) — Arms Act, 1959 — S. 25 — Search and seizure of illicit arms — *Independent witness available but not joined — No explanation for such lapse forthcoming — Held, in the circumstances of the case, conviction on the basis of two police officials alone not sustainable — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 5. Sans Pal Singh* v. *State of Delhi*, (1998) 2 SCC 371: 1998 SCC (Cri) 641: AIR 1999 SC 49.

Bench Strength 2. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 8-1-1998]

[298] — S. 100(4) — Appellant found in possession of 90 litres of spirit — *Convicted by lower courts under S. 16(1)(a) r/w S. 61(1)(a), Punjab Excise Act, 1914 and sentenced to one year's RI and to pay a fine of Rs 500 and in default to undergo six months' RI — Appellant challenging conviction on the ground that during the search two witnesses were not summoned as required by S. 100(4) CrPC — Held, that by itself would not render conviction illegal once the court accepted the evidence of official witnesses as trustworthy — Conviction confirmed — However, sentence reduced to six months' RI as the occurrence had taken place in 1979 — Sentence of fine with default clause confirmed. Madan Lal* v. *State of Punjab*, 1995 Supp (3) SCC 241: 1995 SCC (Cri) 834.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 25-8-1993]

[299] — S. 100(4) — Terrorist and Disruptive Activities (Prevention) Act, 1985 — S. 6 — Arms Act, 1959 — S. 25 — Accused apprehended in early hours of morning in a lonely road — *Not* *possible to procure independent witnesses — Conviction based on evidence of police officers alone not improper.* *Jaloba* v. *State of Haryana*, 1989 Supp (2) SCC 197: 1990 SCC (Cri) 46.

Bench Strength 2. Coram: *S. Natarajan* and *Kuldip Singh*, JJ. [Date of decision: 29-3-1989]

[300] — S. 100(4) — Witnesses of same area — Accused apprehended in midnight near police outpost along with incriminating articles — *Pancha witnesses residents of same area — Held, procedure relating to search not violated — Fact that pancha witness was not residing in vicinity of seizure does not disturb acceptance of his evidence relating to seizure of contrabands and other articles — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 51. Durand Didier* v. *UT, Goa*, (1990) 1 SCC 95: 1990 SCC (Cri) 65: AIR 1989 SC 1966: (1990) 25 ECC 289.

Bench Strength 2. Coram: *S. Natarajan* and *S. Ratnavel Pandian*, JJ. [Date of decision: 29-8-1989]

[301] — Ss. 100(4) and (5) — Panch witness to the taking of sample of the contraband article and sealing thereof — Omission on the part of such panch witness to support the prosecution case — Effect of — *Such omission by itself, held, not fatal to the prosecution case if from material on record and evidence of seizing authority the court is satisfied that the seizure was genuinely made — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 51*

The mere fact that a panch witness did not support the prosecution case by itself would not make the prosecution case any less acceptable, if otherwise the court is satisfied from the material on record and from the evidence of the seizing authority that such seizure was genuinely made. (Para 7). *P.P. Fathima* v. *State of Kerala*, (2003) 8 SCC 726.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 4-11-2003]

[302] — Ss. 100(4) & (5) and 166(3) & (4) — Search and recovery of articles — Search witness — *Witness not belonging to the locality where search taking place but brought by police along with them — Driver of the car in which investigating team came to the place — Held, can be taken as a witness for the search in absence of any material infirmity in his evidence*

A witness of search other than the one from the locality even if he has been brought by the investigating agencies along with them cannot be disbelieved only on the ground that he was not of the locality where the search took place but was brought by the police along with them for the purposes of search. The evidence, however, can be rejected if it suffers from any serious infirmities or if there is any inherent inconsistency in the testimony. If there is intrinsic merit in the evidence of the witness of the search the same cannot be rejected solely on the ground that the witness is not from the locality of the search or that he was brought by the police with them. Merely because the witness in question was not of the locality and he was one of the drivers of the cars in which the investigating team came to the place of search and he was taken as a witness of search for the sake of convenience, his evidence cannot be rejected when there was no material in cross-examination to discredit his testimony. *Ronny* v. *State of Maharashtra*, (1998) 3 SCC 625: 1998 SCC (Cri) 859: AIR 1998 SC 1251.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S.S.M. Quadri**, JJ. [Date of decision: 5-3-1998]

[303] — Ss. 100(4) and 165 — Recovery — *Omission on the part of investigating officer to join with him some independent persons or respectables of the locality to witness the recovery, held, devalues evidence regarding the recovery but does not render it inadmissible. State of Punjab* v. *Wassan Singh*, (1981) 2 SCC 1: 1981 SCC (Cri) 292: AIR 1981 SC 697: (1981) 2 SCR 615: 1981 Cri LJ 410.

Bench Strength 2. Coram: **R.S. Sarkaria** and *E.S. Venkataramiah*, JJ. [Date of decision: 15-1-1981]

— S. 100(5) *See* Ss. 100(4) and (5)
See also Ss. 100(4) & (5) and 166(3) & (4)

[304] — Ss. 100(5), 161 and 162 — Recovery of article (bloodstained knickers of deceased) on the basis of statement made by accused before police — Held, seizure memo need not be attested by any independent witness — *Mere absence of independent witness when investigating officer recorded the statement of the accused and the article was recovered pursuant thereto is not sufficient ground to discard the evidence — Evidence of police officer regarding the recovery at the instance of the accused should ordinarily by believed — It is for the accused to show that such evidence is unreliable — However, position is different when search is made under Ch. VII CrPC — Evidence Act, 1872 — S. 27*

The circumstance relating to the recovery of the bloodstained knickers is a formidable one. Mere absence of independent witness when the investigating officer recorded the statement of A-2 and the knickers were recovered pursuant to the said statement, is not a sufficient ground to discard the evidence under Section 27 of the Evidence Act. (Para 22)

There is no requirement either under Section 27 of the Evidence Act or under Section 161 CrPC, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. A search is made to find out a thing or document about which the searching officer has no prior idea where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guesswork that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts the search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. (Para 19)

Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the investigating officer contemporaneous with such recovery must necessarily be attested by the independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the investigating officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth. (Para 20)

It is an archaic notion that actions of the police officer should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions. (Para 21). *State (Govt. of NCT of Delhi)* v. *Sunil*, (2001) 1 SCC 652: 2001 SCC (Cri) 248: 2001 Cri LJ 504.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 29-11-2000]

Transport Commr., A.P., Hyderabad v. S. Sardar Ali, (1983) 4 SCC 245: 1983 SCC (Cri) 827: AIR 1983 SC 1225, relied on

State v. Ramesh, 1998 Cri LJ 4233 (Del), reversed

—S. 101 *See* S. 1(2) proviso and Ss. 93-105

See also Ss. 93 to 101 and 165

—S. 102 *See* S. 1(2) proviso and Ss. 93-105

See also Ss. 51 and 102

See also Ss. 100, 102

See also Ss. 100, 102, 103 and 165

See also Ss. 104, 102 and 165

See also Ss. 165 and 102

See also Ss. 165, 102 and 100

See also Ss. 165, 102, 100(4) and 154

See also Ss. 165, 102, 166(3) & (4) and 100(4)

See also Ss. 437, 439 and 102

See also Ss. 457 and 102

[305] — S. 102 — Executive power of State in respect of search and seizure — Extent of, depends upon facts and circumstances in each case — *Exercise of the executive power for search and seizure on check-posts and barriers set up under S. 28 of U.P. Sales Tax Act for verification and control of essential commodities, held, justified — U.P. Sales Tax Act, 1948 (15 of 1948) — Ss. 28 and 28-A to 28-C — U.P. Sales Tax Rules, 1948, R. 83(4) — Essential Commodities Act, 1955 — S. 6-A — Constitution of India — Art. 162*

The executive power of search and seizure is a necessary concomitant of a welfare State. Many questions arising in the field of search and seizure are factual in nature. Every factual variation presents not only a new problem, but also a new constitutional question. In this field the decisions of courts do not help in clarifying the law and are of little precedential value.

From the point of view either of Entry 54, List II, or of Art. 301 of the Constitution, there is no question of any lack of competence in the State legislature to set up the checkposts and barriers on the State's borders. These check-posts and barriers though set up under the sales tax law can be utilised as a machinery for due observance of other laws and orders, e.g. for verification and control of movement of wheat by traders on private account from the State of Uttar Pradesh to various other States. *Bishambhar Dayal Chandra Mohan* v. *State of U.P.*, (1982) 1 SCC 39: 1982 SCC (Cri) 53: AIR 1982 SC 33: (1982) 1 SCR 1137.

Bench Strength 2. Coram: **A.P. Sen** and *Baharul Islam*, JJ. [Date of decision: 5-11-1981]

[306] — S. 102 — Seizure and confiscation of bricks by Collector in exercise of power under — *Exercise of such statutory power is not a sovereign act so as to disentitle the aggrieved person to sue State of M.P. — M.P. Ceiling on Agricultural Holdings Act, 1960 (20 of 1960) — S. 228(7) and (8). Bhuri Bai* v. *State of M.P.*, 1987 Supp SCC 690.

Bench Strength 3. Coram: *O. Chinnappa Reddy, M.H. Kania* and *K. Jagannatha Shetty*, JJ. [Date of decision: 7-8-1987]

Kasturi Lal v. State of U.P., AIR 1965 SC 1039: 1965 (2) Cri LJ 144 and State of Gujarat v. Memon Mahomed, AIR 1967 SC 1885, relied on

[307] — S. 102 — Freezing of all bank accounts of a Mutt and its connected bodies, merely on ground that head of the said Mutt was involved in a murder case — Propriety — *Held, was not proper*

That apart, the order of the High Court allowing the writ petition and setting aside the direction issued regarding freezing of the accounts has attained finality as the same has not been challenged in any higher forum. The High Court rightly observed that an organisation (Mutt) cannot be paralysed or closed down by issuing a direction under Section 102 CrPC only for the reason that the head of the Mutt and a few office-bearers are alleged to be involved in some offence. The freezing of all the accounts of the Mutt and its associated trusts and endowments is a clear pointer to the fact that the State machinery anyhow wants to paralyse the entire working of the Mutt and the associated trusts and endowments in order to put pressure upon the petitioner and other co-accused who are in any manner connected with the Mutt so that they may not be able to defend themselves. It is indeed surprising that in spite of the clear language used in sub-section (1) of Section 102 CrPC to the effect — any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any office — all the 183 accounts were frozen merely on the ground that the head of the Mutt was involved in the murder case. The action of freezing the accounts demonstrates as to what extent the State machinery can go while prosecuting the petitioner in the present case. (Paras 23 and 15). *Sri Jayendra Saraswathy Swamigal (II)* v. *State of T.N.*, (2005) 8 SCC 771.

Bench Strength 2. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur**, J. [Date of decision: 26-10-2005]

[308] — S. 102 — Omission on the part of Raid Officer to seize the case property, if on facts amounted to misconduct — Meaning of misconduct — Case-law regarding, discussed and dictionary meaning considered — Error of judgment or negligence simpliciter, held, is not misconduct — *In a given case what should have been done, held, depends on the facts and circumstances of the case and no hard-and-fast rule can be laid down therefor — In the present case, Police Inspector, on receiving a complaint of alleged demand of bribe by Inspector (Malaria), constituting a raiding party comprising himself and certain others — A member of the raiding party offering tainted money to Inspector (Malaria) but the latter refusing to accept the same — Police Inspector not seizing the said tainted money — Criminal proceedings against Inspector (Malaria) ending in acquittal — However, the criminal court not pass-*

ing any adverse remarks against the said Police Inspector — Department however, initiating disciplinary proceedings against the Police Inspector under provisions of service rules on the charge that he had not seized the tainted money which could be an important piece of evidence in the criminal proceedings — Disciplinary authority not recording any finding of fact that the delinquent Police Inspector was guilty of an unlawful behaviour in relation to discharge of his duties in service — In such circumstances, held, the said Police Inspector could not be said to have committed any misconduct merely because in the opinion of higher authorities he ought to have seized the tainted money — Delhi Police (Punishment and Appeal) Rules, 1980, Rr. 15, 16 and 8(b)

The appellant was an Inspector in the Delhi Police and was at the relevant time posted in the Anti-Corruption Branch (for short "AC"). Allegedly, one *K* lodged a complaint with AC that *P*, Inspector (Malaria), MCD, was demanding a certain sum by way of illegal gratification from him for not challaning his godown. The appellant constituted a raiding party consisting of the complainant *K* (PW 2), *D* (PW 4) and certain other police officers including himself. The complainant produced currency notes in the said sum whereupon phenolphthalein powder was applied and the tainted money was handed over to the complainant. When the complainant attempted to pay the said amount to *P*, he did not accept the same. The tainted money was, therefore, not seized. *P* allegedly indicated that the complainant might give the same to *D* (PW 4) and that he in turn would accept the money from him. Thereafter, PW 4 sat on the pillion of the scooter and they reached at a petrol pump. He was arrested. However, the tainted money was returned to the complainant by the investigating officer. In the criminal proceedings the criminal court, on appreciation of evidence, disbelieved the prosecution case and acquitted *P*. During pendency of the said criminal proceedings, a departmental proceedings was initiated against the appellant on the charge of his omission to seize the tainted money which was allegedly an important piece of evidence. He was held guilty of the said charges and a punishment of forfeiture of one year's approved service was imposed upon him. His appeal was dismissed by the appellate authority. After unsuccessfully approaching CAT and the High Court, the appellant filed the present appeal by special leave.

Before the Supreme Court, the appellant contended that that in the peculiar facts and circumstances of the present case, the appellant could not be said to have committed any misconduct.

On the other hand, the Department supported the impugned judgment.

Allowing the appeal,

Held :

A disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was wilful in character. No such finding was arrived at. An error of judgment per se is not a misconduct. A negligence simpliciter also would not be a misconduct. (Para 12)

CAT opined that the acts of omission on the part of the appellant were not a mere error of judgment. On what premise the said opinion was arrived at is not clear. The Appellate Authority had categorically held that the appellant being a raiding officer should have seized the tainted money as case property. In a given case, what should have been done, is a matter which would depend on the facts and circumstances of each case. No hard-and-fast rule can be laid down therefor. The criminal court admittedly did not pass any adverse remarks against the appellant. A finding of fact was arrived at that the accused did not make demand of any amount from the complainant and thus no case has been made out against him. Therefore, in the peculiar facts and circumstances of the present case, the appellant cannot be said to have committed any misconduct. (Paras 13 to 16). *Inspector Prem Chand* v. *Govt. of NCT of Delhi*, (2007) 4 SCC 566: (2007) 2 SCC (L&S) 58: (2007) 3 LLN 106: (2007) 114 FLR 982: (2007) 4 SLR 240.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 5-4-2007]

Union of India v. J. Ahmed, (1979) 2 SCC 286: 1979 SCC (L&S) 157; Zunjarrao Bhikaji Nagarkar v. Union of India, (1999) 7 SCC 409: 1999 SCC (L&S) 1299, relied on

[309] — S. 102 — Penalty for confiscation, of goods — Not justified for commission or omission of acts which were lawful at the time of such commission or omission but became illegal subsequently by operation of law. *J.K. Cotton Spg. & Wvg. Mills Ltd.* v. *Union of India*, 1987 Supp SCC 350: AIR 1988 SC 191.

Bench Strength **3**. Coram: *R.S. Pathak, C.J.* and *Ranganath Misra* and **M.M. Dutt**, JJ. [Date of decision: 30-10-1987]

[310] — S. 102 — Seizure — General purpose and aim of

In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of sub-sections (4) and (5) of S. 100 of the Code. In the case of a seizure under the Act, there is no provision for preparing a list of the things seized in the course of the seizure for, all those things are seized not separately but as part of the vehicle itself. But it is in the interests of the very officer or person seizing the vehicle, so that they may not be open to any charge being laid against them later, that such officer or person takes care to prepare a list of detachable things which are ordinarily not part of the vehicle and give a copy of the list to the person incharge of the vehicle at the time of the seizure. *Transport Commr.* v. *S. Sardar Ali, Bus Owner,* (1983) 4 SCC 245: 1983 SCC (Cri) 827: AIR 1983 SC 1225: 1983 Cri LJ 1506.

Bench Strength 2. Coram: *D.A. Desai* and **O. Chinnappa Reddy**, JJ. [Date of decision: 26-8-1983]

[311] — Ss. 102, 100 and 165 — Search and seizure — Seized articles — Admissibility of — Need for independent witnesses — *Evidence Act, 1872 — Ss. 3 and 5*

There is no such inflexible proposition of law that in the absence of independent witnesses being associated with search, the seizure cannot be relied upon. In the absence of independent witnesses during seizure operations investigating officers' evidence need not always be disbelieved. Of course, closer scrutiny of evidence is what is required. Having regard to the fact situation in the present case, the police officers cannot be faulted for not going in search of the witnesses in the locality. There is no law that the evidence of police officials in regard to seizure ought to be discarded. They took the help of Gilani (A-3) who by then was in police custody to locate the house of Shaukat (A-2) and that Gilani (A-3) was with the police, was mentioned by Afsan Guru (A-4) in her Section 313 statement. (Para 309). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Sahib Singh v. State of Punjab, (1996) 11 SCC 685: 1997 SCC (Cri) 315; Kehar Singh v. State (Delhi Admn.), (1988) 3 SCC 609: 1988 SCC (Cri) 711, clarified

Sanjay v. State (NCT of Delhi), (2001) 3 SCC 190: 2001 SCC (Cri) 449, relied on

[312] — Ss. 102 and 104 — "Seizing" and "impounding" — Difference between — *A seizure is made at a particular moment of property which was not earlier possessed, whereas impounding means to keep in custody of law and to take legal or formal possession of property after it has been seized — Documents seized by CBI under S. 104 CrPC does not amount to impounding of documents as special Act i.e. Passports Act which exists for the impounding of a passport — Passport Act, 1967 — S. 10(3)(e)*

There is a difference between *seizing* of a document and *impounding* a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property or document. (Para 15). *Suresh Nanda* v. *CBI*, (2008) 3 SCC 674: (2008) 2 SCC (Cri) 121: AIR 2008 SC 1414: 2008 Cri LJ 1599: (2008) 147 DLT 397.

Bench Strength 2. Coram: *P.P. Naolekar* and *Markandey Katju*, JJ. [Date of decision: 24-1-2008]

[313] — Ss. 102 and 451 — Search and seizure — Vehicle seized by police — Return of — Procedure

Once a car is seized in connection with a case it can be returned pursuant to the order of a competent court only. *George* v. *State of Kerala*, (1998) 4 SCC 605: AIR 1998 SC 1376: 1998 Cri LJ 2034.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 18-3-1998]

[314] — S. 102(1) — Police officer's power to seize property — Pre-conditions for applicability — Word "property" — Import of — *Bank account of accused or his relation, held, constitutes "property" — If circumstances exist creating suspicion of commission of any offence in relation to the bank account, S. 102(1) is attracted empowering the police officer investigating the offence to seize the bank account and issue order prohibiting the account from being operated upon — Prevention of Corruption Act, 1988 — Ss. 13 & 16*

The CBI, ACB, Mumbai registered FIR against the respondent and others under Sections 120-B, 467, 468, 471 and 420 IPC and Section 13(2) r/w Section 13(1)(*d*) of the Prevention of Corruption Act, 1988. The respondent at the material time was an Architect and Town Planner in the Deptt. of Town Planning of the Union Territory of Daman and Diu. The original plan of Daman was prepared by the Department of Architecture and Planning and was approved by the Town and Country Planning Board. In the approved plan, various zones were earmarked for industries, roads, defence, agriculture etc. It was alleged that the respondent and one *D* entered into a conspiracy by which *D* caused a forged map of Daman to be prepared, thereby increasing the industrial zone. On the basis of the same forged map, the respondent issued false certificates indicating that the land fell within the industrial zone. On account of such act, the land prices shot up from Rs 100 to Rs 110 per square metre to Rs 800 to Rs 1600 per square metre, and in the process, accused persons caused pecuniary advantage to be gained by the landowners. Pursuant to the FIR the premises of the respondent at Daman and the premises of his mother at Calcutta were searched and certain incriminating documents were seized. Lockers in banks held jointly by mother and brother and mother and sister of the respondent were also searched and sealed. The investigating officer issued instructions to the Managers of different banks not to allow the accounts to be operated upon. The mother of the respondent then filed an application before the Additional Chief Metropolitan Magistrate under Section 457 CrPC to allow her to operate the bank account and for return of the documents and articles seized, claiming that they belonged to her. The Magistrate granted the relief in respect of the locker in question but refused to allow the mother to operate the bank account. The matter was carried to the High Court which held that the bank account of an accused or any relation of the accused cannot be held to be "property" within the meaning of Section 102 CrPC and, therefore, the investigating officer had no powers either to seize the said bank account or to issue any order prohibiting the operation of the bank account.

Allowing the appeal of the State,

Held :

The High Court in the present case erred in taking the view it did. (Para 12)

A plain reading of sub-section (1) of Section 102 indicates that the police officer has the power to seize any property which may be found under circumstances creating suspicion of the commission of any offence. The legislature having used the expression "any property" and "any offence" have made the applicability of the provisions wide enough to cover offences created under any Act. But the two preconditions for applicability of Section 102(1) are that it must be "property" and secondly, in respect of the said property there must have been suspicion of commission of any offence. (Para 6)

The bank account of the accused or any of his relations is "property" within the meaning of Section 102 CrPC and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence which the police officer is investigating into. Corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 CrPC and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. Under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (*e*) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given in respect of the power of seizure under Section 102 CrPC is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act. (Para 12)

Though law has been laid down as above, but so far as the present case is concerned, the impugned order of the High Court has already been given effect to and the accused has been operating his account, and so, the same need not be interfered with. (Para 12). *State of Maharashtra* v. *Tapas D. Neogy*, (1999) 7 SCC 685: 1999 SCC (Cri) 1352: (1999) 98 Comp Cas 626.

Bench Strength 2. Coram: **G.B. Pattanaik** and *N. Santosh Hegde*, JJ. [Date of decision: 16-9-1999]

Purbanchal Road Service v. State, 1991 Cri LJ 2798 (Gau); Textile Traders Syndicate Ltd. v. State of U.P., AIR 1960 All 405: 1960 Cri LJ 871; Malnad Construction Co. v. State of Karnataka, 1994 Cri LJ 645 (Kant); Swaran Sabharwal v. Commr. of Police, 1988 Cri LJ 241 (Del) (DB), overruled

P.K. Parmar v. Union of India, 1992 Cri LJ 2499 (Del); Bharath Overseas Bank v. Minu Publication, 1988 MLW (Cri) 106; Bharat Overseas Bank Ltd. v. Prema Ramalingam, 1991 MLW (Cri) 353; Gurcharan Singh (Dr.) v. State of Punjab, (1978) 80 Punj LR 514 (DB), approved

[315] — S. 102(3) — Non-production of seizure list, held, would not affect the prosecution case — Lapses, when do not affect the prosecution case — *Held, non-production of seizure list is, undoubtedly, a lapse on the part of the prosecution — However, if there exists credible evidence on record, such a lapse would not affect the prosecution case — Lapses, if do not have the effect of causing any prejudice to the accused, cannot be used to impeach the testimony of eyewitnesses — Criminal Trial — Appreciation of Evidence — Infirmities/Lapses/Omissions*

Non-production of the seizure list in court as a part of the records is undoubtedly, a lapse on the part of the prosecution but the issue, however, needs to be considered from the point of view of credibility of the witnesses. In the event of there being credible evidence on record, a lapse pertaining to non-production of seizure list would not really affect the case of prosecution in any way. The issue has to be considered from the point of view of prejudice to the accused. (Para 14)

Although there are lapses in the prosecution case, but the question that arises for consideration is whether any prejudice has been caused by reason of such a lapse. If the answer thereto is in the affirmative it would definitely have a serious impact on the trial. But in case if it is in the negative no prejudice could be said to have been caused to the accused and correspondingly question of the trial being vitiated on that ground would not arise at all. The eyewitnesses' account as available on record cannot but be termed to be trustworthy and by reason therefor, the lapses stand overshadowed by the testimony of the eyewitnesses. (Para 15). *Sukhdev Yadav* v. *State of Bihar,* (2001) 8 SCC 86: 2001 SCC (Cri) 1416: AIR 2001 SC 3678.

Bench Strength 2. Coram: **U.C. Banerjee** and *N. Santosh Hegde*, JJ. [Date of decision: 13-9-2001]

Shivnath Singh v. State of U.P., (1994) 2 SCC 563: 1994 SCC (Cri) 568, considered

Baleshwar Mandal v. State of Bihar, (1997) 7 SCC 219: 1997 SCC (Cri) 1042, relied on

— S. 103 *See* S. 1(2) proviso and Ss. 93- 105

See also Ss. 100, 102, 103 and 165

— S. 104 *See* S. 1(2) proviso and Ss. 93- 105

See also Ss. 102 and 104

[316] — S. 104 — Power to impound documents and to recover duty with or without penalty — *Held, has to be construed strictly and would be sustained only when falling within the four corners and letter of the law — Passports Act, 1967 — S. 10 — Constitution of India — Arts. 19(1)(a) & (d) and 21 — Stamp Act, 1899 — Ss. 33, 34, 35 and 38*

Power to impound a document and to recover duty with or without penalty thereon has to be construed strictly and would be sustained only when falling within the four corners and letter of the law. This has been the consistent view of the courts. (Para 14). *District Registrar and Collector* v. *Canara Bank*, (2005) 1 SCC 496: AIR 2005 SC 186: (2005) 126 Comp Cas 356.

Bench Strength 2. Coram: **R.C. Lahoti, C.J.** and *Ashok Bhan*, J. [Date of decision: 1-11-2004]

[317] — Ss. 104, 102 and 165 — Impounding of passport — Permissibility of, under CrPC — Appellant a non-resident Indian; search conducted by CBI and passport seized — *Application moved by appellant before Special Judge, CBI for release of passport allowed but was set aside by High Court in criminal revision — Order of High Court set aside — Held, in case of impounding of passport, resort should be had to S. 10(3)(e) of Passports Act which specifically deals with impounding of passport and not S. 104 CrPC which allows a court to impound document or thing produced before it — Passports Act is a special Act, it would override the provisions of CrPC for the purposes of impounding of passport — Passport Act, 1967 — Ss. 10(3)(e) and 10-A*

The passport of the appellant, an NRI as well as other documents were seized by the respondent from New Delhi. The said search and seizure was pursuant to an FIR. The passport seized during the search was retained by the CBI officials. An application was moved by the appellant before the Special Judge, CBI, New Delhi praying for release of his passport. The learned Special Judge, directed the release of the passport to the appellant by imposing upon him certain conditions. Aggrieved, CBI, the respondent preferred a criminal revision before the High Court. The High Court, reversed the order of the learned Special Judge and refused to release the passport to the appellant. Aggrieved against the order of the High Court, present appeal, by special leave, has been preferred by the appellant.

Contention of the appellant was that power and jurisdiction to impound the passport of any individual has to be exercised under the Passports Act, 1967 (hereinafter referred to as "the Act"). Specifically under sub-section (3)(*e*) of Section 10 of the Act.

Allowing the appeal,

Held :

When Section 104 CrPC and Section 10 of the Act are read together, under CrPC, the court is empowered to impound any document or thing produced before it whereas the Act speaks specifically of impounding of the passport. Thus, the Act is a special Act relating to a matter of passport, whereas Section 104 CrPC authorises the court to impound document or thing produced before it. Where there is a special Act dealing with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act. As the Passports Act is a special Act, the rule that "general provision should yield to the specific provision" is to be applied. Thus, by necessary implication, the power of court to impound any document or thing produced before it would exclude passport. The maxim *generalia specialibus non derogant* applies to such situation. Hence, impounding of a passport cannot be done by the court under Section 104 CrPC though it can impound any other document or thing. (Paras 9, 10, 11 and 18)

While the police may have the power to *seize* a passport under Section 102(1) CrPC, it does not have the power to *impound* the same. Impounding of a passport can only be done by the *Passport Authority* under Section 10(3) of the Passports Act, 1967. Hence, while the police may have power to seize a passport under Section 102 CrPC if it is permissible within the authority given under Section 102 CrPC, it does not have power to retain or impound the same, because that can only be done by the Passport Authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under Section 102 CrPC), thereafter the police must send it along with a letter to the Passport Authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter for the Passport Authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the Passport Authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party. (Paras 12, 14 and 16)

There is a difference between *seizing* of a document and *impounding* a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property or document. (Para 15)

In the present case, neither the Passport Authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the Passport Authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October 2006. This was clearly illegal. Under Section 10-A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport Authority under Section 10(3). (Para 17)

For the aforesaid reasons, the impugned order of the High Court is set aside and the respondent is directed to hand over the passport to the appellant within a week from today. However, it shall be open to the respondent to approach the Passport Authorities under Section 10 or the autho- rities under Section 10-A of the Act for impounding the passport of the appellant in accordance with law. (Para 19). *Suresh Nanda* v. *CBI*, (2008) 3 SCC 674: (2008) 2 SCC (Cri) 121: AIR 2008 SC 1414: 2008 Cri LJ 1599: (2008) 147 DLT 397.

Bench Strength 2. Coram: *P.P. Naolekar* and *Markandey Katju*, JJ. [Date of decision: 24-1-2008]

Damji Valji Shah v. LIC, AIR 1966 SC 135; Gobind Sugar Mills Ltd. v. State of Bihar, (1999) 7 SCC 76; Belsund Sugar Co. Ltd. v. State of Bihar, (1999) 9 SCC 620, followed

State of Orissa v. Binapani Dei, AIR 1967 SC 1269, relied on

—S. 105 *See* S. 1(2) proviso and Ss. 93- 105

[318] — Ch. VII-A (S. 105-A to S. 105-L) and Ss. 166-A & 166-B — Inapplicability of Ch. VII-A to local offences or properties earned therefrom — *Held, said provisions are not ordinary law of land, and are applicable only to offences which have international ramifications — They impose stringent measures for attachment and forfeiture of properties earned by offences, by way of reciprocal arrangement in contracting countries*

— Provisions thereunder are supplemental to special provisions contained in Ss. 166-A & 166-B, and have nothing to do with investigation into offences in general — In the instant case, offences alleged were local, and even properties were not shown to be connected with crimes mentioned in Statement of Objects and Reasons of amending Act 40 of 1993, which had inserted Ch. VII-A — Further, no connection was established between alleged crimes and properties — Hence, impugned order quashing forfeiture proceedings of such properties calls for no interference (Paras 5 to 10, 14, 16, 18 and 19). *State of M.P.* v. *Balram Mihani*, (2010) 2 SCC 602.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *S.S. Nijjar*, JJ. [Date of decision: 1-2-2010]

[319] — Ss. 105-B, 156, 157 and 166-B — CBI — Its role as National Central Bureau (NCB) of Interpol — *Held, this role is independent of its role under the Delhi Special Police Establishment Act, 1946 — CBI as NCB derives its authority from constitution of Interpol and not from DSPE Act — CBI can therefore perform functions under the Extradition Act, 1962 despite non-existence of any specific provision to this effect in DSPE Act — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), S. 5 — Extradition Act, 1962, Ss. 5 to 10 and 34-B. Bhavesh Jayanti Lakhani* v. *State of Maharashtra*, (2009) 9 SCC 551.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-8-2009]

[320] — Ss. 105-B and 105-C — Where language of a statute is extremely general and not clear, contextual background has to be taken into consideration for arriving at clear interpretation — *S. 105-B(2) CrPC, 1973, though starts with a non obstante clause, when read in entirety refers to person in "contracting State", while Ss. 105-B & 105-C CrPC, start with words "where a court in India" — Thus, if Ch. VII-A was meant for general offences and properties earned therefrom, such a phraseology would not have been used — Hence, Ch. VII-A is a specific chapter relating to specified offences therein and has nothing to do with local offences or properties earned therefrom* (Para 17). *State of M.P.* v. *Balram Mihani*, (2010) 2 SCC 602.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *S.S. Nijjar*, JJ. [Date of decision: 1-2-2010]

— S. 106 *See also* S. 106, Criminal Procedure Code, 1898, p. 976 in Vol. 2

[321] — Ss. 106 and 107 — Appellant ordered by lower court to execute bond for observing good conduct for two years — *Operation of order stayed by Supreme Court on admission of appeal — Disposal of appeal after six years — Held, the appellant need not execute the bond as he had not attracted any complaint of any untoward behaviour or misconduct — As the observance of good conduct would now, if at all, have to be in future, the operation of the order need not be revived at this distance of time, though the appeal has to be dismissed otherwise — Contempt of Courts Act, 1971 — S. 19. Brij Gopal Chaturvedi* v. *State of M.P.*, 1997 SCC (Cri) 569: 1995 Cri LJ 2117.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 18-1-1995]

— S. 107 *See also* S. 107, Criminal Procedure Code, 1898, pp. 976 et seq. in Vol. 2

— S. 107 *See* Ss. 21, 20 and 107

See also Ss. 106 and 107

See also Ss. 145 and 107

[322] — S. 107 — Applicability — Nature of proceedings under

The nature of proceedings under S. 107 'is of preventive justice'. It is to be invoked when any person is likely to commit a breach of peace or disturb public tranquillity. The proceedings under S. 107 are for public peace and tranquillity whereas those under S. 145 relate to disputes regarding possession between parties concerning any land or water or boundaries thereof. *Prakash Chand Sachdeva* v. *State*, (1994) 1 SCC 471: 1994 SCC (Cri) 438: AIR 1994 SC 1436: 1994 Cri LJ 2117.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **R.M. Sahai**, JJ. [Date of decision: 14-12-1993]

[323] — S. 107 — Evidentiary value of statement recorded under — *Held on facts, trial court committed an error of law in treating the statement recorded in proceedings under S. 107 of a court witness not present at the scene and time of occurrence as substantive evidence while rejecting the substantive and reliable testimony of eyewitnesses. Naunidh* v. *State of U.P.*, 1981 Supp SCC 62: 1982 SCC (Cri) 138: AIR 1982 SC 1299.

Bench Strength **3**. Coram: *S. Murtaza Fazal Ali*, *Baharul Islam* and *A. Varadarajan*, JJ. [Date of decision: 24-3-1981]

[324] — S. 110 — Security of good behaviour from habitual offenders — *Wide, vague and generalised words of, must be read down so as to be in conformity with Article 21 — Court must be satisfied that the person kept in custody under S. 110 is sure to commit offences mentioned if he is not so held and should not allow poor and helpless persons to be detained ritualistically — No circumstances placed before the court, justifying keeping the petitioner, a poor and old man above 70 years, longer in custody under S. 110 — Hence, trial Court directed to drop proceedings against him as well as against another such co-prisoner in the interest of justice — Constitution of India — Arts. 14, 19 and 21*

Words of wide import, vague amplitude and far too generalised to be safe in the hands of the police cannot be constitutionalised in the context of Article 21 unless read down to be as a fair and reasonable legislation with reverence for human rights. So read, only a narrow signification can be attached to the words in clauses (*a*) to (*g*) of S. 110. Expressions like 'by habit', 'habitual', 'desperate', 'dangerous, 'hazardous' cannot be flung in the face of a man with laxity of semantics. The court must insist on specificity of facts and a consistent course of conduct convincing enough to draw the rigorous inference that by confirmed habit, the counter-petitioner is sure to commit the offences mentioned if he is not kept captive. The exercise of power under S. 110 should not be an idle ritual deprived of reality. The trial Magistrates must discharge their duties, when trying cases under S. 110, with great responsibility and whenever the counter-petitioner is a prisoner, must give him the facility of being defended by counsel now that Article 21 has been reinforced by Article 39-A. Otherwise the order to bind over will be bad, and void. If men can be whisked away by the police and imprisoned for long months and the court can keep the cases pending without thought to the fact that an old man is lying in cellular confinement without hope of his case being disposed of, Article 21, read with Articles 14 and 19 of the Constitution, remain symbolic and scriptural rather than a shield against unjust deprivation. *Gopalanachari* v. *State of Kerala*, 1980 Supp SCC 649: 1981 SCC (Cri) 546: AIR 1981 SC 674: 1981 Cri LJ 337.

Bench Strength **3**. Coram: **V.R. Krishna Iyer**, *R.S. Pathak* and *O. Chinnappa Reddy*, JJ. [Date of decision: 12-11-1980]

— S. 117 *See* Ss. 151/117

Sections 125 to 128 — Maintenance

— Ss. 125 to 128 *See also* Ss. 488 to 490, Criminal Procedure Code, 1898, pp. 1260 et seq. in Vol. 2

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(1) Generally

See also Ss. 125 to 128, '(2) Relevance of personal law',
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'(16) Practice and Procedure', below

[325] — S. 125 CrPC, held, is a measure of social legislation and is to be construed liberally for the welfare and benefit of the wife and the children (Para 8). *Shantha* v. *B.G. Shivananjappa*, (2005) 4 SCC 468: 2005 SCC (Cri) 1089: AIR 2005 SC 2410: 2005 Cri LJ 2615.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **A.K. Mathur**, JJ. [Date of decision: 6-5-2005]

[326] — Ch. IX (Ss. 125 to 128) — Jurisdiction of Family Courts under Family Courts Act, 1984 in matters relating to proceedings under Ch. IX CrPC — Preamble and Prefatory Note — Statement of Objects and Reasons — Objects of the Act, restated — *The Act, inter alia, seeks to exclusively provide within jurisdiction of Family Courts the matters relating to maintenance, including proceedings under Ch. IX CrPC — Family Courts Act, 1984, Preamble and Prefatory Note* (Para 13). *Shabana Bano* v. *Imran Khan*, (2010) 1 SCC 666.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **Deepak Verma**, JJ. [Date of decision: 4-12-2009]

[327] — S. 125 — Provision under — Object of — *Approach while construction of said provision — Constitution of India — Arts. 15(3) & 39*

Section 125 CrPC is enacted for social justice and specially to protect women and children as also old and infirm poor parents and falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution. The provision gives effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves. (Para 9)

The sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause — the cause of the derelicts. (Para 14). *Savitaben Somabhai Bhatiya* v. *State of Gujarat*, (2005) 3 SCC 636: 2005 SCC (Cri) 787: AIR 2005 SC 1809: 2005 Cri LJ 2141: (2005) 2 Guj LR 1378.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-3-2005]

Captain Ramesh Chander Kaushal v. *Veena Kaushal*, (1978) 4 SCC 70, 1978 SCC (Cri) 508, *relied on*

[328] — S. 125 — Maintenance proceedings — Scope and object — *Held, S. 125 is a measure of social justice specially enacted to protect women and children and falls within constitutional sweep of Art. 15(3) reinforced by Art. 39 — Object is to prevent vagrancy and destitution — It provides a speedy remedy for supply of food, clothing and shelter to the deserted wife — It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves — Constitution of India — Arts. 15(3) and 39* (Para 6). *Chaturbhuj* v. *Sita Bai*, (2008) 2 SCC 316: (2008) 1 SCC (Cri) 356: AIR 2008 SC 530: (2008) 1 KLT 41: 2008 Cri LJ 727: (2008) 105 Cut LT 729: (2008) 2 Guj LR 1159.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Aftab Alam*, JJ. [Date of decision: 27-11-2007]

Captain Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70: 1978 SCC (Cri) 508; Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636: 2005 SCC (Cri) 787, relied on

[329] — S. 125 — Maintenance of wives, children and parents — Purpose — Measure of social justice to prevent vagrancy and destitution — *CrPC, 1898, S. 488* (Paras 18 to 25). *Chanmuniya* v. *Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141.

Bench Strength **2**. Coram: *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision: 7-10-2010]

Jagir Kaur v. Jaswant Singh, AIR 1963 SC 1521: (1963) 2 Cri LJ 413; Nanak Chand v. Chandra Kishore Aggarwal, (1969) 3 SCC 802: 1970 SCC (Cri) 127; Capt. Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70: 1978 SCC (Cri) 508; Vimala v. Veeraswamy, (1991) 2 SCC 375: 1991 SCC (Cri) 442; Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556: 1985 SCC (Cri) 245, relied on

[330] — Ss. 125, 126(1) and Ch. IX — Family Courts Act, 1984 — Ss. 7(2)(a) and 8(b) — Maintenance petition — Jurisdiction — *Petition filed in Family Court of the district concerned — Respondent residing in same district but in territorial jurisdiction of another Magistrate — Dismissal of maintenance petition on ground of territorial jurisdiction — Held, an application under S. 125 has to be taken against any person in any district where the person is residing — So jurisdiction for filing any proceeding under S. 125 would be in the district itself where the Family Court for the district is situated — Hence, petition had been rightly filed before Family Court, since under S. 8(b) Magistrate's jurisdiction under Ch. IX CrPC has been excluded — Matter therefore remanded to Family Court for fresh consideration* (Paras 11 and 14 to 16). *Dawalsab* v. *Khajasab*, (2009) 14 SCC 660: (2009) 80 AIC 71 (SC).

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 15-7-2009]

[331] — S. 125 — Obligation of husband and son or daughter to maintain his wife or his/her mother — Nature of — Plea of inability due to financial constraints not acceptable — *Hindu Adoptions and Maintenance Act, 1956 — Ss. 18 and 20*

According to the Law of the Land with regard to maintenance, there is an obligation of the husband to maintain his wife which does not arise by reason of any contract — express or implied — but out of jural relationship of husband and wife consequent to the performance of marriage. Such an obligation of the husband to maintain his wife arises irrespective of the fact whether he has or has no property, as it is considered an imperative duty and a solemn obligation of the husband to maintain his wife. The husband cannot be heard saying that he is unable to maintain due to financial constraints so long as he is capable of earning. Similarly, it is obligatory on the part of a son to maintain his aged father and mother by reason of personal obligation. Under the old Hindu law, this obligation was imposed on the son alone, but now the present-day Hindu law extends this obligation both on sons and daughters. In this connection, it is relevant to point out that according to sub-section (1) of Section 18 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu wife is entitled to the maintenance from her husband during her lifetime. She is entitled to claim maintenance from her husband so long as she is chaste subject to the conditions laid down in sub-section (2) of Section 18 of the said Act. Under the present law, as said earlier, both son and daughter are liable to maintain aged or infirm parents including childless stepmother, when the latter is unable to maintain herself. It is well settled that a son has to maintain his mother irrespective of the fact whether he inherits any property or not from his father, as on the basis of the relationship alone he owes a duty and an obligation, legal and moral, to maintain his mother who has given birth to him. Further, according to Section 20 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu is under a legal obligation to maintain his wife, minor sons, unmarried daughters and aged or infirm parents. The obligation to maintain them is personal, legal and absolute in character and arises from the very existence of the relationship between the parties. *Kirtikant D. Vadodaria* v. *State of Gujarat*, (1996) 4 SCC 479.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 26-4-1996]

[332] — S. 125 — Constitutionality of — Challenged on ground of unreasonably limiting the maintenance to Rs 500 — *Nature of S. 125 pointed*

(1) Generally *(contd.)*

out — It does not provide for determination of civil liabilities of parties — No case for issuing rule nisi made out. Inderjit Kaur v. *Union of India*, (1990) 1 SCC 344: 1990 SCC (Cri) 132.

Bench Strength **2**. Coram: *K. Jagannatha Shetty* and *K.N. Saikia*, JJ. [Date of decision: 2-1-1989]

[333] — S. 125 — Held, proceedings under, are of a civil nature (Para 14). *Vijay Kumar Prasad* v. *State of Bihar*, (2004) 5 SCC 196: 2004 SCC (Cri) 1576: AIR 2004 SC 2123: (2004) 2 KLT 435: (2004) 3 Mah LJ 1101: (2004) 3 MPLJ 560: 2004 Cri LJ 2047.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 7-4-2004]

[334] — S. 125 — Maintenance proceedings — Object of — "Unable to maintain herself" — Meaning of — *Held, is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support — "Unable to maintain herself" — Meaning of — Means inability of wife to maintain herself in the way she was used to in the place of her husband*

The respondent wife had filed an application before the trial court under Section 125 CrPC claiming maintenance from the appellant husband. The appellant and the respondent had entered into marital knot about four decades back and for more than two decades they were living separately. In the application it was claimed that she was unemployed and unable to maintain herself.

Considering the evidence on record, the trial court found that the respondent applicant had no sufficient means to maintain herself and hence direction to pay her Rs 1500 p.m. was given. Revision filed thereagainst was dismissed. Application was filed by the appellant in the High Court under Section 482 CrPC. The High Court noticed that the conclusions had been arrived at on appreciation of evidence and, therefore, there was no scope for any interference. Hence the present appeal.

Dismissing the appeal,

Held :

The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. (Para 6). *Chaturbhuj* v. *Sita Bai*, (2008) 2 SCC 316: (2008) 1 SCC (Cri) 356: AIR 2008 SC 530: (2008) 1 KLT 41: 2008 Cri LJ 727: (2008) 105 Cut LT 729: (2008) 2 Guj LR 1159.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Aftab Alam*, JJ. [Date of decision: 27-11-2007]

[335] — S. 125 — Nature and scope of jurisdiction of Magistrate under — Power to pass interim order based on prima facie satisfaction — *Held, magistrate has implied power under, on being prima facie satisfied on the basis of an affidavit filed by the applicant for maintenance, to pass interim order directing the person from whom the maintenance is claimed to pay a reasonable sum by way of maintenance to the applicant pending final disposal of the application*

The jurisdiction of a magistrate under Chap. IX of the Code is not strictly a criminal jurisdiction. While passing an order for maintenance under it, the magistrate does not impose any punishment on such person for a crime committed by him. It does not really create any serious new obligation unknown to Indian social life. It contains a summary remedy for securing some reasonable sum by way of maintenance, subject to a decree, if any, which may be made in a civil court in a given case provided the Personal Law applicable to the person concerned authorises the enforcement of any such right to maintenance. The Code, however, provides a quick remedy to protect the applicant against starvation and to tide over immediate difficulties. It is, therefore, the duty of the court to interpret the provisions in Chap. IX in such a way that the construction placed on them may not defeat the very object of the legislation. In absence of any express prohibition under S. 125 and having regard to the nature of jurisdiction exercised by a magistrate thereunder, as also the provisions of S. 7(2)(*a*) of the Family Courts Act, 1984 passed recently by Parliament proposing to transfer the jurisdiction exercisable by magistrate under S. 125 of the Code to the Family Courts, S. 125 should be interpreted as conferring power by necessary implication on the magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to therein pending final disposal of the application. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. The recognition of such implied power may lead to passing of interim orders in few cases where liability to pay maintenance may not exist, but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties. The magistrate may, however, insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. Such an order may also be made in an appropriate case ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. If a civil court can pass such interim orders on affidavits, there is no reason why a magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. *Savitri* v. *Govind Singh Rawat*, (1985) 4 SCC 337: 1985 SCC (Cri) 556: AIR 1986 SC 984.

Bench Strength **2**. Coram: **E.S. Venkataramiah** and *R.B. Misra*, JJ. [Date of decision: 9-10-1985]

[336] — S. 125 — Role of Magistrate and advocate in proceedings under

The role of the court is not that of silent spectator or of a passive agency. When a dispute is brought before the court, particularly where maintenance of a neglected wife or a minor child is in issue, the court must take genuine interest to find out the truth of the matter. The Magistrate should ask proper questions to the witnesses so as to elicit relevant evidence. The lawyer's duty is also to pay his role properly so as to save wastage of time where the wife is being unjustifiably deprived of maintenance. *Sumitra Devi* v. *Bhikan Choudhary*, (1985) 1 SCC 637: 1985 SCC (Cri) 145: AIR 1985 SC 765: 1985 Cri LJ 528.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **Ranganath Misra**, JJ. [Date of decision: 28-1-1985]

[337] — S. 125 — Summary remedy — Order under S. 125 does not finally determine the status, rights and obligations of the parties — *The section only provides for maintenance of indigent wives, children and parents*

An order passed in an application under Section 125 CrPC does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide a summary remedy for providing maintenance to a wife, children and parents. After not disputing the paternity of the child and after accepting the fact that the marriage ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the appellant to contend in proceedings under Section 125 CrPC that there was no valid marriage as essential rites were not performed at the time of the said marriage. The provision under Section 125 is not to be utilised for defeating the rights conferred by the legislature on the destitute women, children or parents who are victims of the social environment. (Paras 9 and 10). *Dwarika Prasad Satpathy* v. *Bidyut Prava Dixit*, (1999) 7 SCC 675: 1999 SCC (Cri) 1345: AIR 1999 SC 3348.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 14-10-1999]

[338] — Ss. 125 and 127 — Scope — Right of wife to residence, held, is a part and parcel of wife's right to maintenance — *Scope of said right discussed — Further held, divorced wife was also entitled to said right, but circumscribed by provisions of Ss. 25 and 24 of Hindu Marriage Act, 1955 or any divorce settlement arrived at by mutual consent — Hindu Adoptions and Maintenance Act, 1956 — S. 18 r/w S. 3(b) — Hindu Marriage Act, 1955 — Ss. 25, 24 and 27 — Divorce Act, 1869 — S. 37 — Parsi Marriage and Divorce Act, 1936 — Ss. 40, 39 and 42 — Special Marriage Act, 1954 — Ss. 37 and 36 — Family Courts Act, 1984 — S. 7(1) Expln. (f)*

The right of a wife to reside in the matrimonial home under personal laws is the following: a Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him. Right to residence is a part and parcel of wife's right to maintenance. The right to maintenance cannot be defeated by the husband executing a Will to defeat such a right. The right has come to be statutorily recognised with the enactment of Section 18 read with Section 3(*b*) of the Hindu Adoptions and Maintenance Act, 1956. For the purpose of maintenance the term "wife" includes a divorced wife. However, on the status of wife being terminated by a decree of divorce under the Hindu Marriage Act, 1955 the rights of the divorced wife seem to be cribbed, confined and cabined by the provisions of the Hindu Marriage Act and to the rights available under Sections 25 and 27 of the Act. (Paras 12, 29 and 36). *B.P. Achala Anand* v. *S. Appi Reddy*, (2005) 3 SCC 313: AIR 2005 SC 986: (2005) 117 DLT 354: (2005) 1 KLT 904.

Bench Strength **3**. Coram: **R.C. Lahoti, C.J.** and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 11-2-2005]

(1) Generally *(contd.)*

[339] — S. 125 — Limited/restricted estate given to female Hindu towards her maintenance under a compromise entered in proceedings under S. 488 CrPC, 1898 after commencement of Hindu Succession Act, 1956 — *Held, as soon as the property came in her possession, the limited estate was transformed into absolute estate by operation of sub-s. (1) of S. 14, HSA, 1956 notwithstanding the fact the property was acquired under an instrument of compromise containing limitations or restrictions — Sub-s. (2) of S. 14, HSA, 1956 is not attracted when property is acquired in lieu of right of maintenance — CrPC, 1898 — S. 488 — Hindu Succession Act, 1956 — S. 14. Nazar Singh* v. *Jagjit Kaur,* (1996) 1 SCC 35: AIR 1996 SC 855.

Bench Strength 2. Coram: **B.P. Jeevan Reddy** and *S.B. Majmudar* and **P.K. Balasubramanyan**, JJ. [Date of decision: 13-11-1995]

[340] — S. 125 — Application for medical expenses by wife under S. 151 CPC in a proceedings initiated under S. 27 of the Special Marriage Act there being no provision for such expenses — Maintainability — *Held, provisions of CPC would apply to courts exercising power under the Act — Relief can be claimed under one statute relying on the provisions of the other statute — The contention that the Special Marriage Act, 1954 does not provide for medical expenses, therefore, not tenable — CPC, 1908, S. 151 — Special Marriage Act, 1954 — Ss. 36, 37 and 27*

The relationship between the respondent wife and the appellant husband was not cordial and friendly. On 16-6-2001 at about 1.30 a.m., the wife quarrelled with the husband regarding his late coming. The husband in order to avoid the quarrel came out to proceed downstairs. The wife accompanied him to stop him from going down and accidentally fell from the stairs and got severely injured. The wife was twice operated for the injuries. After the first operation, the wife lodged an FIR against her husband and in-laws and the husband had to face a criminal trial. The husband's mother died of heart attack due to shock. On 1-7-2001, the wife filed a suit for dissolution of marriage under Section 27 of the Special Marriage Act, 1954. In the suit for dissolution of marriage, prayers were also made for permanent alimony pendente lite, return of wife's goods lying with the husband and costs, etc. The wife also made a claim for reimbursement of medical expenses of Rs 3,82,262.75p. under an application under S. 151 CPC. The trial court after deducting a sum of Rs 76,181 for insurance money which was reimbursed awarded a sum of Rs 3,06,181 to the respondent wife. The High Court after deducting a sum of Rs 83,723 towards airfare which had been incurred and added by the wife in her claim, modified the order of award.

Dismissing the appeal,

Held :

The preliminary objection as to the jurisdiction of the trial court as to maintainability of application for medical expenses filed by the wife has no substance and must be rejected. Although proceedings had been initiated in accordance with the provisions of the Special Marriage Act, 1954 and matrimonial suit was pending, it was open to the applicant wife to institute an application under Section 151 CPC for her medical expenses. Even otherwise, looking to the scheme of the Special Marriage Act, 1954, it is clear that provisions of CPC would apply to courts exercising power under the Act. Therefore, no interference is called for against the order passed by the trial court and modified by the High Court. (Para 19)

Apart from the provisions of the Hindu Marriage Act, 1955 or the Hindu Adoptions and Maintenance Act, 1956, the two expressions, "maintenance" and "support" in the Special Marriage Act, 1954 are comprehensive and of wide amplitude and they would take within their sweep medical expenses. The contention that no relief can be claimed under one statute relying on the provisions of the other statute as the Special Marriage Act, 1954 does not provide for medical expenses is not tenable. Reading the scheme of the Special Marriage Act, 1954, it is clear that a wife is entitled to "maintenance and support". The two terms "maintenance" and "support" are comprehensive in nature and of wide amplitude. (Paras 31 and 21 to 25)

The right of the wife to claim interim maintenance has attained finality. On the basis of material on record, the trial court, after hearing the parties, held that the wife was entitled to medical expenses which order was slightly modified by the High Court upholding her right to get medical reimbursement from her husband. There is no infirmity in the decision or reasoning of the courts below which calls for any interference in exercise of discretionary and equitable jurisdiction under Article 136 of the Constitution. The appeal, therefore, has no substance and must be dismissed. The prayer for extension of time for payment of the amount fixed by the High Court, on the facts and in the circumstances of the case and in the ends of justice is granted till 31-12-2008. (Paras 31, 32 and 34). *Rajesh Burman* v. *Mitul Chatterjee*, (2009) 1 SCC 398.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 4-11-2008]

Pradeep Kumar Kapoor v. Shailja Kapoor, AIR 1989 Del 10; Atul Sashikant Mude v. Niranjana Atul Mude, AIR 1998 Bom 234; R. Suresh v. Chandra, AIR 2003 Kant 183; Ajay Saxena v. Rachna Saxena, AIR 2007 Del 39; Mangat Mal v. Punni Devi, (1995) 6 SCC 88, relied on

Black's Law Dictionary, 6th Edn., pp. 953-54, relied on

Chand Dhawan v. Jawaharlal Dhawan, (1993) 3 SCC 406: 1993 SCC (Cri) 915; MSCO. (P) Ltd. v. Union of India, (1985) 1 SCC 51: 1985 SCC (Tax) 19, distinguished

(2) Relevance of personal law

See also under Ss. 125 to 128, '(3) Applicability to Muslim women', below

See also FAMILY AND PERSONAL LAWS

[341] — S. 125 — Secular in nature and not in conflict with any personal law — *Muslim Personal Law (Shariat) Application Act, 1937 — S. 2 — Hindu Adoptions and Maintenance Act, 1956 — Parsi Marriage and Divorce Act, 1936*

Section 125 is a part of the Code of Criminal Procedure, not of the civil laws which define and govern the rights and obligations of the parties belonging to particular religions, like the Hindu Adoptions and Maintenance Act, the Shariat, or the Parsi Matrimonial Act. S. 125 was enacted in order to provide a quick and summary remedy to a class of persons who are unable to maintain themselves.

Neglect by a person of sufficient means to maintain these and the inability of those persons to maintain themselves are the objective criteria which determine the applicability of S. 125. Such provisions, which are essentially of a prophylactic nature, cut across the barriers of religion. True, that they do not supplant the personal law of the parties but, equally, the religion professed by the parties or the state of the personal law by which they are governed, cannot have any repercussion on the applicability of such laws unless, within the framework of the Constitution, their application is restricted to a defined category of religious groups or classes. The liability imposed by S. 125 to maintain close relatives who are indigent is founded upon the individual's obligation to the society to prevent vagrancy and destitution. That is the moral edict of the law and morality cannot be clubbed with religion. Clause (*b*) of the Explanation to S. 125(1), which defines 'wife' as including a divorced wife, contains no words of limitation to justify the exclusion of Muslim women from its scope. Section 125 is truly secular in character. *Mohd. Ahmed Khan* v. *Shah Bano Begum*, (1985) 2 SCC 556: 1985 SCC (Cri) 245: AIR 1985 SC 945: 1985 Cri LJ 875.

Bench Strength 5. Coram: **Y.V. Chandrachud, C.J.** and *D.A. Desai, O. Chinnappa Reddy, E.S. Venkataramiah* and *Ranganath Misra*, JJ. [Date of decision: 23-4-1985]

[342] — S. 125 — There is no conflict between S. 125 and the provisions of Muslim personal law on the liability of Muslim husband to provide for maintenance of his divorced wife who is unable to maintain herself

The Quran imposes an obligation on the Muslim husband to make provision for or to provide maintenance to the divorced wife. Mahr is a mark of respect to the wife. The sum settled by way of Mahr is generally expected to take care of the ordinary requirements of the wife, during the marriage and after. But the statements contained in text books on Muslim personal law are inadequate to establish the proposition that the Muslim husband is not under an obligation to provide for the maintenance of his divorced wife, who is unable to maintain herself. The application of those statements of law must be restricted to that class of cases, in which there is no possibility of vagrancy or destitution arising out of the indigence of the divorced wife. The argument that, according to the Muslim personal law, a husband's liability to provide for the maintenance of his divorced wife is limited to the period of iddat, despite the fact that she is unable to maintain herself, has therefore to be rejected. If she is unable to maintain herself, she is entitled to take recourse to S. 125 of the Code. *Mohd. Ahmed Khan* v. *Shah Bano Begum*, (1985) 2 SCC 556: 1985 SCC (Cri) 245: AIR 1985 SC 945: 1985 Cri LJ 875.

Bench Strength 5. Coram: **Y.V. Chandrachud, C.J.** and *D.A. Desai, O. Chinnappa Reddy, E.S. Venkataramiah* and *Ranganath Misra*, JJ. [Date of decision: 23-4-1985]

[343] — S. 125(3) second proviso, Expln. — Indicates that S. 125 operates irrespective of personal law of the parties

The right conferred by S. 125 can be exercised irrespective of the personal law of the parties. This is fortified especially in regard to Muslims, by the provision contained in the Explanation to the second proviso to S. 125(3) of the Code. The Explanation confers upon the wife the right to refuse to live with her husband if he contracts another marriage, leave alone 3 or 4 other marriages. It shows, unmistakably, that S. 125 overrides the personal law, if there is any conflict between the

(2) Relevance of personal law *(contd.)*

two. *Mohd. Ahmed Khan* v. *Shah Bano Begum*, (1985) 2 SCC 556: 1985 SCC (Cri) 245: AIR 1985 SC 945: 1985 Cri LJ 875.

Bench Strength **5**. Coram: **Y.V. Chandrachud, C.J.** and *D.A. Desai, O. Chinnappa Reddy, E.S. Venkataramiah* and *Ranganath Misra*, JJ. [Date of decision: 23-4-1985]

[344] — S. 125 — Maintenance proceedings — Personal law applicable to the parties cannot be wholly excluded from consideration. *Kirtikant D. Vadodaria* v. *State of Gujarat*, (1996) 4 SCC 479.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 26-4-1996]

[345] — S. 125 — Applicant must prove her/his status under her/his personal law before the application for maintenance can be maintained

The attempt to exclude altogether the personal law applicable to the parties from consideration has to be repelled. The section has been enacted in the interest of a wife, and one who intends to take benefit under sub-section (1)(a) has to establish the necessary condition, namely, that she is the wife of the person concerned. This issue can be decided only by a reference to the law applicable to the parties. It is only where an applicant establishes her status on relationship with reference to the personal law that an application for maintenance can be maintained. Once the right under the section is established by proof of necessary conditions mentioned therein, it cannot be defeated by further reference to the personal law. The issue whether the section is attracted or not cannot be answered except by the reference to the appropriate law governing the parties. *Yamunabai Anantrao Adhav* v. *Anantrao Shivram Adhav*, (1988) 1 SCC 530: 1988 SCC (Cri) 182: AIR 1988 SC 644: 1988 Cri LJ 793: 1988 Mah LJ 335: (1988) 1 KLT 416.

Bench Strength **2**. Coram: *Ranganath Misra* and **L.M. Sharma**, JJ. [Date of decision: 27-1-1988]

Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556: 1985 SCC (Cri) 245, distinguished

[346] — S. 125 — Benefit of personal law to award maintenance — Benefit of personal law for awarding or continuing maintenance can be given to the applicant, ineligible under S. 125, to avoid multiplicity of proceedings. *Jagdish Jugtawat* v. *Manju Lata*, (2002) 5 SCC 422: 2002 SCC (Cri) 1147.

Bench Strength **3**. Coram: *D.P. Mohapatra, Brijesh Kumar* and *D.M. Dharmadhikari*, JJ. [Date of decision: 23-4-2002]

[347] — S. 125 — Comparison between S. 125 CrPC and S. 18, Hindu Adoptions and Maintenance Act — *Held, there is no inconsistency between S. 125 and the provisions in the 1956 Act — The scope of the two laws is different — Hindu Adoptions and Maintenance Act, 1956 — S. 18* (Para 10). *Savitaben Somabhai Bhatiya* v. *State of Gujarat*, (2005) 3 SCC 636: 2005 SCC (Cri) 787: AIR 2005 SC 1809: 2005 Cri LJ 2141: (2005) 2 Guj LR 1378.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-3-2005]

[348] — S. 125 — Maintenance — Claim of, by wife — Adjudication upon — Relevance of personal law by which parties concerned are governed — Extent of — *Held, provisions of S. 125 are applicable and enforceable whatever may be the personal law of the parties — But, S. 125 requires the claimant taking benefit under sub-s. (1)(a) thereof to establish that she is the wife of the person concerned and the said issue can be decided only by reference to the law applicable to the parties — Hence, personal law is relevant for deciding the validity of the marriage and therefore cannot be altogether excluded from consideration — Thus, issue whether the section is attracted or not cannot be answered except by reference to the appropriate law governing the parties — Once the right under S. 125 is established by proof of necessary conditions mentioned therein, it cannot be defeated by further reference to the personal law* (Paras 9 and 15). *Savitaben Somabhai Bhatiya* v. *State of Gujarat*, (2005) 3 SCC 636: 2005 SCC (Cri) 787: AIR 2005 SC 1809: 2005 Cri LJ 2141: (2005) 2 Guj LR 1378.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-3-2005]

Nanak Chand v. Chandra Kishore Aggarwal, (1969) 3 SCC 802: 1970 SCC (Cri) 127; Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530: 1988 SCC (Cri) 182, relied on

[349] — S. 127(3)(b) — Scheme and object — Sum received by a divorced woman under any customary or personal law must be sufficient for her maintenance under the prevailing circumstances — *Payment of Mahr (Dower) is different from maintenance allowance paid on divorce — Payment of Rs 500 by way of Mahr as recompense for divorce, held, insufficient and therefore, husband not absolved under S. 127(3)(b) from payment of maintenance*

The respondent, a Muslim, married the appellant and had a son. His monthly earning was well above Rs 1000. He gave talaq to the appellant and paid Rs 500 by way of Mahr and Rs 750 towards maintenance for period of iddat. The appellant prayed for maintenance allowance for herself and her son under S. 125, CrPC and the Magistrate granted payment of a monthly sum of Rs 250 to her and Rs 150 to the child. The additional first class Magistrate, however, vacated the grant of maintenance on the score of divorce coupled with discharge of Mahr and iddat dues.

Held:

Section 127(3)(*b*) has a setting, scheme and a purpose and no talaq of the purpose different from the sense is permissible in statutory construction. It takes care to avoid double payment — One under custom at the time of divorce and another under S. 125. However, neither personal law nor other salvationary plea will hold against the policy of public law pervading S. 127(3)(*b*) as much as it does S. 125.

Sections 125-127 form a secular code deliberately designed to protect destitute women, who are victims of neglect during marriage and after divorce. It is rooted in the State's responsibility for the welfare of the weaker sections of women and children and is not confined to members of one religion or region, but the whole community of womanhood. Whatever the facts of a particular case, the Code, by enacting Ss. 125-127 charges the court with the humane obligation of enforcing maintenance or its just equivalent to ill-used wives and castaway ex-wives, unless the woman has received voluntarily a sum, at the time of divorce, sufficient to keep her going according to the circumstances of the parties. The payment of an amount, customary or other, contemplated by the measure must inset the intent of preventing destitution and providing a sum which is more or less the present worth of the monthly maintenance allowances the divorcee may need until death or remarriage overtake her.

Section 127(3)(*b*) requires that payment of the sum and the divorce should be essentially parts of the same transaction so as to make one consideration for the other. At any rate the payment of money contemplated by S. 127(3)(*b*) should be so linked with the divorce as to become payable only in the event of the divorce. Mahr as understood in Mohammadan law cannot, under any circumstances be considered as consideration for divorce or a payment made in lieu of loss of connubial relationship. Muslim law shows its reverence for the wife in the institution of mahr (dower). The quintessence of mahr whether it is prompt or deferred is clearly not a contemplated quantification of a sum of money in lieu of maintenance upon divorce. Indeed, dower focusses on marital happiness and is an incident of connubial joy. Divorce is farthest from the thought of the bride and the bridegroom when mahr is promised. Moreover, dower may be prompt and is payable during marriage and cannot, therefore, be a recompense for divorce too distant and unpleasant for the bride and bridegroom to envision on the nuptial bed.

In the present case the mahr paid is Rs 500 and the income therefrom may well be Rs 5 a month, too ludicrous to mention as maintenance. The amount earlier awarded is the minimum. *Fuzlunbi* v. *K. Khader Vali*, (1980) 4 SCC 125: 1980 SCC (Cri) 916: AIR 1980 SC 1730: 1980 Cri LJ 1249.

Bench Strength 3. Coram: **V.R. Krishna Iyer**, *O. Chinnappa Reddy* and *A.P. Sen*, JJ. [Date of decision: 8-5-1980]

[350] — Ss. 127(3)(b) and 125 — Payment of mahr or dower by Muslim husband to wife does not attract S. 127(3)(b) and order of maintenance under S. 125 is not liable to be cancelled on such payment — *Mahr or dower is not payable on divorce but is payable on marriage*

Mahr is an amount payable by the husband to the wife on marriage and not on divorce. Since S. 127(3)(*b*) speaks of sum 'payable on such divorce' it is inapplicable in case of payment of Mahr. Even assuming that, in a given case, the entire amount of Mahr is of the deferred variety payable on the dissolution of marriage by divorce, it cannot be said that it is an amount which is payable on divorce. Divorce may be a convenient or identifiable point of time at which the deferred amount has to be paid by the husband to the wife. But, the payment of the amount is not occasioned by the divorce, which is what is meant by the expression 'on divorce', which occurs in S. 127(3)(*b*). The alternative premise that Mahr is an obligation imposed upon the husband as a mark of respect for the wife, is wholly detrimental to the stance that it is an amount payable to the wife on divorce. S. 127(3)(*b*) may have been introduced because of the misconception that dower is an amount payable "on divorce". But, that cannot convert an amount payable as a mark of respect for the wife into an amount payable on divorce.

However, the statement made in Bai Tahira case that "payment of Mahr money, as a customary discharge, is within the cognizance of that provision" [viz. S. 127(3)(*b*)] is incorrect. *Mohd. Ahmed Khan* v. *Shah Bano Begum*, (1985) 2 SCC 556: 1985 SCC (Cri) 245: AIR 1985 SC 945: 1985 Cri LJ 875.

Bench Strength 5. Coram: **Y.V. Chandrachud, C.J.** and *D.A. Desai, O. Chinnappa Reddy, E.S. Venkataramiah* and *Ranganath Misra*, JJ. [Date of decision: 23-4-1985]

Bai Tahira v. Ali Hussain Fidaalli Chothia, (1979) 2 SCC 316: 1979 SCC (Cri) 473, partly affirmed

Fuzlunhi v. K. Khader Vali, (1980) 4 SCC 125: 1980 SCC (Cri) 916, affirmed

(3) Applicability to Muslim women

See also Ss. 125 to 128, '(2) Relevance of personal law', above, and

'(8) Maintenance in case of divorce (including divorced Muslim women)', below

See also generally under all headings

[351] — S. 125 — Muslim women not barred from filing petition under — Muslim Women (Protection of Rights on Divorce) Act, 1986, held, applies only to divorced women and not to women who are not divorced — *Furthermore, since the proceedings under S. 125 CrPC and the 1986 Act are tried before the same court, and given the beneficial nature of the 1986 Act, even if a divorced Muslim woman applies under S. 125 CrPC, it is open to the court to treat it as an application under the 1986 Act — Muslim Women (Protection of Rights on Divorce) Act, 1986*

The view expressed by the First Revisional Court that no Muslim woman can maintain a petition under Section 125 CrPC is clearly unsustainable. The Muslim Women (Protection of Rights on Divorce) Act, 1986 only applies to divorced women and not to a woman who is not divorced. Furthermore, proceedings under Section 125 CrPC are civil in nature. Even if the court noticed that there was a divorced Muslim woman who had made an application under Section 125 CrPC, it was open to the court to treat the same as a petition under the 1986 Act considering the beneficial nature of the legislation, especially since proceedings under Section 125 CrPC and claims made under the Muslim Women Act are tried by the same court. (Paras 6 and 3). *Iqbal Bano* v. *State of U.P.*, (2007) 6 SCC 785: (2007) 3 SCC (Cri) 258: AIR 2007 SC 2215: (2007) 3 KLT 63: (2007) 4 All LJ 587: (2007) 55 AIC 4 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 5-6-2007]

Vijay Kumar Prasad v. State of Bihar, (2004) 5 SCC 196: 2004 SCC (Cri) 1576, relied on

[352] — S. 125 — Nature and interpretation of — Held, it is beneficial legislation — Hence, its benefit must accrue even to divorced Muslim wife (Para 23). *Shabana Bano* v. *Imran Khan*, (2010) 1 SCC 666.

Bench Strength 2. Coram: *B. Sudershan Reddy* and **Deepak Verma**, JJ. [Date of decision: 4-12-2009]

(4) Matters to be established for entitlement to maintenance under

See also Ss. 125 to 128, '(1) Generally', and

'(2) Relevance of personal law', above

'(5) Second marriage, desertion, previous wife, refusal to live with husband',

'(6) Second wife', and

'(8) Maintenance in case of divorce (including divorced Muslim women)', below

[353] — S. 125 — Obligation of husband and son or daughter to maintain his wife or his/her mother — Nature of — Plea of inability due to financial constraints not acceptable — *Hindu Adoptions and Maintenance Act, 1956 — Ss. 18 and 20*

According to the Law of the Land with regard to maintenance, there is an obligation of the husband to maintain his wife which does not arise by reason of any contract — express or implied — but out of jural relationship of husband and wife consequent to the performance of marriage. Such an obligation of the husband to maintain his wife arises irrespective of the fact whether he has or has no property, as it is considered an imperative duty and a solemn obligation of the husband to maintain his wife. The husband cannot be heard saying that he is unable to maintain due to financial constraints so long as he is capable of earning. Similarly, it is obligatory on the part of a son to maintain his aged father and mother by reason of personal obligation. Under the old Hindu law, this obligation was imposed on the son alone, but now the present-day Hindu law extends this obligation both on sons and daughters. In this connection, it is relevant to point out that according to sub-section (1) of Section 18 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu wife is entitled to the maintenance from her husband during her lifetime. She is entitled to claim maintenance from her husband so long as she is chaste subject to the conditions laid down in sub-section (2) of Section 18 of the said Act. Under the present law, as said earlier, both son and daughter are liable to maintain aged or infirm parents including childless stepmother, when the latter is unable to maintain herself. It is well settled that a son has to maintain his mother irrespective of the fact whether he inherits any property or not from his father, as on the basis of the relationship alone he owes a duty and an obligation, legal and moral, to maintain his mother who has given birth to him. Further, according to Section 20 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu is under a legal obligation to maintain his wife, minor sons, unmarried daughters and aged or infirm parents. The obligation to maintain them is personal, legal and absolute in character and arises from the very existence of the relationship between the parties. *Kirtikant D. Vadodaria* v. *State of Gujarat*, (1996) 4 SCC 479.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 26-4-1996]

[354] — **S. 125 — Order for maintenance of wives, children and parents — "Wife" — Meaning of** — *Held, expression "wife" as per S. 125 refers to only legally married wife* (Paras 8 and 18). *Savitaben Somabhai Bhatiya* v. *State of Gujarat*, (2005) 3 SCC 636: 2005 SCC (Cri) 787: AIR 2005 SC 1809: 2005 Cri LJ 2141: (2005) 2 Guj LR 1378.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-3-2005]

[355] — **S. 125 — Rights of destitute women and children under — Where paternity not disputed and fact accepted that marriage ceremony performed, held, appellant cannot contend in S. 125 proceedings that there was no valid marriage because essential rites were not performed** — *Provisions of S. 125 cannot be used to defeat the rights of destitute women and children*

After not disputing the paternity of the child and after accepting the fact that the marriage ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the appellant to contend in proceedings under Section 125 CrPC that there was no valid marriage as essential rites were not performed at the time of the said marriage. The provision under Section 125 is not to be utilised for defeating the rights conferred by the legislature on the destitute women, children or parents who are victims of the social environment. (Paras 9 and 10). *Dwarika Prasad Satpathy* v. *Bidyut Prava Dixit*, (1999) 7 SCC 675: 1999 SCC (Cri) 1345: AIR 1999 SC 3348.

Bench Strength 2. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 14-10-1999]

[356] — **S. 125 — Claim of maintenance by wife from husband — Requirement of proof of marriage between the parties** — *Finding recorded by the Magistrate in another case under S. 494 IPC, which was filed by the respondent who is alleging to be the wife of appellant, that the respondent had failed to establish her marriage with appellant or an alleged second marriage by the appellant — Held, in view of the said finding, respondent cannot claim maintenance under S. 125 from appellant. Samir Mandal* v. *State of Bihar*, (2001) 10 SCC 50.

Bench Strength 3. Coram: *G.B. Pattanaik, U.C. Banerjee* and *S.N. Variava*, JJ. [Date of decision: 5-2-2001]

[357] — **S. 125 — Maintenance — Claim of, by wife — Validity of marriage — Determination of** — *Standard of proof required for — Law in respect of —* Dwarika Prasad Satpathy *v.* Bidyut Prava Dixit, *(1999) 7 SCC 675, reiterated — Evidence Act, 1872 — Ss. 103, 102, 50 & 3* (Para 13). *Savitaben Somabhai Bhatiya* v. *State of Gujarat*, (2005) 3 SCC 636: 2005 SCC (Cri) 787: AIR 2005 SC 1809: 2005 Cri LJ 2141: (2005) 2 Guj LR 1378.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-3-2005]

Dwarika Prasad Satpathy v. Bidyut Prava Dixit, (1999) 7 SCC 675: 1999 SCC (Cri) 1345, followed

[358] — **S. 125 — Marriage — Standard of proof — Where claimant establishes that she and alleged husband lived together as husband and wife, held, a rebuttable presumption arises that they are legally married** — *Evidence Act, 1872 — Ss. 50 and 114. Dwarika Prasad Satpathy* v. *Bidyut Prava Dixit*, (1999) 7 SCC 675: 1999 SCC (Cri) 1345: AIR 1999 SC 3348.

Bench Strength 2. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 14-10-1999]

[359] — **S. 125 — Marriage — Proof of — Held, standard of proof in respect of, is not as strict as is required in a trial for offence of bigamy under S. 494 IPC** — *Once it is admitted that a marriage procedure was followed, held, it is not necessary to prove that procedure was complete as per relevant rites — Appellant husband denying validity of marriage claiming that he underwent ceremony under duress (at knifepoint) — Held, on facts, High Court rightly dismissed the appellant's revision application holding that according to the standard of proof required under S. 125 CrPC, Respondent 1 had succeeded in proving the marriage — Evidence Act, 1872 — Ss. 103, 102*

Respondent 1, *B*, filed an application under Section 125 CrPC for maintenance on behalf of herself and her daughter, Respondent 2. She contended that she and the appellant, *D*, underwent a marriage ceremony at the temple of Lord Jagannath at Nayagarh, in the presence of witnesses. After the ceremony, *B* was persuaded to continue staying at her parental home, because of the fear that the father of *D* may not accept her as his daughter-in-law. She was already in an advanced stage of pregnancy. She contended that *D* had taken a vow in the name of Lord Nilambhadhab Bije that he would marry her. Only then had she agreed to enter into a sexual relationship with him. However, after her pregnancy became known, *D* went back on his word. Ultimately she went on hunger strike in front

(4) Matters to be established for entitlement to maintenance under *(contd.)*

of *D*'s office. Upon the intervention of various people, including the SDO, the marriage ceremony was arranged and held. Within 3 or 4 days she gave birth to a girl child, Respondent 2. *B* and *D* continued to live separately.

The appellant, *D*, contended that he had been forced to undergo the marriage ceremony at knifepoint. The trial court allowed the application under Section 125 CrPC and granted Rs 400 per month as maintenance to *B* and Rs 200 to the daughter. In revision the Sessions Court set aside the maintenance awarded to *B* on the finding that *D* had been forced to undergo the marriage ceremony as contended by him; that thus there was no valid marriage. The Sessions Court, however, accepted that Respondent 2 had been born as a result of relations between *B* and *D* and upheld the maintenance awarded to her.

Both parties filed revision applications before the High Court, which dismissed that of the appellant and allowed that of Respondent 1. Relying on the evidence on record, the High Court found that the marriage had been solemnised at the temple as contended and negatived the contention that *D* had been forced to go through the ceremony at knifepoint. The High Court also accepted that the child had been born as a result of the relations between *B* and *D*.

In appeal before the Supreme Court it was contended on behalf of the appellant that there was no valid marriage between him and *B*. Dismissing the appeal with costs,

Held :

The validity of the marriage for the purpose of summary proceedings under Section 125 CrPC is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceedings is not as strict as is required in a trial of offence under Section 494 IPC. If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption. The appellant contended before the learned Magistrate that the said marriage was performed under duress and at the point of a knife, he was required to exchange garlands. That contention is not proved by leading necessary evidence. Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per the Hindu rites in the proceedings under Section 125 CrPC. (Para 6)

An order passed in an application under Section 125 CrPC does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide a summary remedy for providing maintenance to a wife, children and parents. After not disputing the paternity of the child and after accepting the fact that the marriage ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the appellant to contend in proceedings under Section 125 CrPC that there was no valid marriage as essential rites were not performed at the time of the said marriage. The provision under Section 125 is not to be utilised for defeating the rights conferred by the legislature on the destitute women, children or parents who are victims of the social environment. (Paras 9 and 10)

From the evidence which is led if the Magistrate is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125 CrPC which are of a summary nature, strict proof of performance of essential rites is not required. Either of the parties aggrieved by the order of maintenance under Section 125 CrPC can approach the civil court for declaration of status as the order passed under Section 125 does not finally determine the rights and obligations of the parties. (Para 13). *Dwarika Prasad Satpathy* v. *Bidyut Prava Dixit*, (1999) 7 SCC 675: 1999 SCC (Cri) 1345: AIR 1999 SC 3348.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 14-10-1999]

Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530: 1988 SCC (Cri) 182; Bhaurao Shankar Lokhande v. State of Maharashtra, AIR 1965 SC 1564: (1965) 2 SCR 837, distinguished

S. Sethurathinam Pillai v. Barbara, (1971) 3 SCC 923: 1972 SCC (Cri) 171; Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70: 1978 SCC (Cri) 508; Vimala (K.) v. Veeraswamy (K.), (1991) 2 SCC 375: 1991 SCC (Cri) 442; Santosh v. Naresh Pal, (1998) 8 SCC 447, relied on

See also (1985) 1 SCC 637

[360] — S. 125 — Marital status of parties — Prima facie satisfaction of Magistrate sufficient — *Decision of Magistrate on marital status of parties is subject to final order in civil proceedings, if any — High Court not justified in interfering with pure finding of fact reached by the Magistrate. Santosh* v. *Naresh Pal*, (1998) 8 SCC 447.

Bench Strength **2**. Coram: *S.B. Majmudar* and *S.P. Kurdukar*, JJ. [Date of decision: 2-3-1998]

[361] — S. 125 — Maintenance claim by appellant-wife — Factum of marriage disputed by respondent-husband — Factors to be considered for determining nature of relationship between the two — *Fact that the two were living as husband and wife for decades relevant — But respondent denying performance of essential Hindu religious rites such as Saptapadi — In absence of any findings in that regard, on facts, matter remitted to the Magistrate for fresh inquiry regarding the factum of marriage — Hindu Marriage Act, 1955 — S. 7 — Evidence Act, 1872 — S. 114*

Although invoking the fire and performing Saptapadi around the sacred fire have been considered to be basic requirements for a traditional Hindu marriage, there can be marriage acceptable in law according to customs which do not insist on performance of such rites and marriages of this type give rise to legal relationships which law accepts. The facts that for about a decade the parties had lived together, that public records including voters' lists described them as husband and wife and competent witnesses of the village of the wife as also the husband had supported the factum of the marriage and that the witnesses had also spoken about the reputation of the appellant being known in the locality as the wife of the respondent, should not be overlooked while considering the case of marriage. Since the form of marriage has not been found, it would be proper in the peculiar facts of the case to remit the matter to the Magistrate for a fresh inquiry at which apart from the evidence already on record both sides should be entitled to lead further evidence particularly in support of their respective stands relating to the factum of marriage. The Magistrate must keep in mind that even if the fact of marriage is discarded, the minor child being found to be an illegitimate daughter of the respondent would be entitled to maintenance. *Sumitra Devi* v. *Bhikan Choudhary*, (1985) 1 SCC 637: 1985 SCC (Cri) 145: AIR 1985 SC 765: 1985 Cri LJ 528.

Bench Strength 2. Coram: *P.N. Bhagwati* and **Ranganath Misra**, JJ. [Date of decision: 28-1-1985]

[362] — S. 125 — Maintenance proceedings — Object of — "Unable to maintain herself" — Meaning of — *Held, is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support — "Unable to maintain herself" — Meaning of — Means inability of wife to maintain herself in the way she was used to in the place of her husband*

The respondent wife had filed an application before the trial court under Section 125 CrPC claiming maintenance from the appellant husband. The appellant and the respondent had entered into marital knot about four decades back and for more than two decades they were living separately. In the application it was claimed that she was unemployed and unable to maintain herself.

Considering the evidence on record, the trial court found that the respondent applicant had no sufficient means to maintain herself and hence direction to pay her Rs 1500 p.m. was given. Revision filed thereagainst was dismissed. Application was filed by the appellant in the High Court under Section 482 CrPC. The High Court noticed that the conclusions had been arrived at on appreciation of evidence and, therefore, there was no scope for any interference. Hence the present appeal.

Dismissing the appeal,

Held :

The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. (Para 6). *Chaturbhuj* v. *Sita Bai*, (2008) 2 SCC 316: (2008) 1 SCC (Cri) 356: AIR 2008 SC 530: (2008) 1 KLT 41: 2008 Cri LJ 727: (2008) 105 Cut LT 729: (2008) 2 Guj LR 1159.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Aftab Alam*, JJ. [Date of decision: 27-11-2007]

[363] — S. 125 — Maintenance — Claim of, by wife — Requisites for maintaining proceedings — Condition to establish that wife unable to maintain herself — Basis of and test required, considered

Where the wife was surviving by begging, it would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. The wife should be in a position to maintain a standard of living which is neither luxurious nor penurious

(4) Matters to be established for entitlement to maintenance under *(contd.)*

but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 CrPC. (Para 8). *Chaturbhuj* v. *Sita Bai*, (2008) 2 SCC 316: (2008) 1 SCC (Cri) 356: AIR 2008 SC 530: (2008) 1 KLT 41: 2008 Cri LJ 727: (2008) 105 Cut LT 729: (2008) 2 Guj LR 1159.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Aftab Alam*, JJ. [Date of decision: 27-11-2007]

Bhagwan Dutt v. Kamla Devi, (1975) 2 SCC 386: 1975 SCC (Cri) 563, relied on

[364] — S. 125 — Expression "unable to maintain herself" — Held, covers means available to the wife while she was living with her husband and not after her desertion — Burden lies on the husband to prove that he has no sufficient means to discharge his obligation or he did not neglect or refuse to maintain her — *Statement by wife that she was unable to maintain herself, held, would be enough — It would be for the husband to prove otherwise*

It was a case where the husband neglected or refused to maintain his wife. The High Court did not consider the question if the husband was having sufficient means. It rather unnecessarily put the burden on the wife to prove that she was unable to maintain herself. The words "unable to maintain herself" would mean the means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after the desertion to survive somehow. Section 125 is enacted on the premise that it is the obligation of the husband to maintain his wife, children and parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain them or any one of them. The High Court also observed that the wife did not plead as to since when she was living separately. This is not quite a relevant consideration. Even though the wife was unable to prove that the husband had remarried, yet the fact remained that the husband was living with another woman. That would entitle the wife to live separately and would amount to neglect or refusal by the husband to maintain her. The statement of the wife that she was unable to maintain herself would be enough and it would be for the husband to prove otherwise. (Para 7). *Rajathi* v. *C. Ganesan*, (1999) 6 SCC 326: 1999 SCC (Cri) 1118: AIR 1999 SC 2374: 1999 Cri LJ 3668.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **D.P. Wadhwa**, JJ. [Date of decision: 22-7-1999]

[365] — S. 125 — Expression 'unable to maintain itself' — *CrPC, 1898 — S. 488*

A comparative study of the old and new provisions would show that while in S. 488 the condition "unable to maintain itself" apparently attached only to the child and not to the wife, in S. 125, this condition has been expressly made applicable to the case of wife. *Bhagwan Dutt* v. *Kamla Devi*, (1975) 2 SCC 386: 1975 SCC (Cri) 563: AIR 1975 SC 83: (1975) 2 SCR 483: (1975) MLJ (Cri) 81.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, **R.S. Sarkaria** and *A.C. Gupta*, JJ. [Date of decision: 17-10-1974]

[366] — Ss. 125 and 397 — Proof of valid marriage and paternity of child; interference in revision — *Held, where Magistrate finds marriage not proved and also dismisses claim of paternity, High Court should entertain applicant's revision petition, re-evaluate the evidence and then come to its own decision as to whether Magistrate's findings and conclusions are legally sustainable or not, while at the same time bearing in mind the differences in approach necessary for a revision and an appeal — Emphasised that such an approach is imperative in view of the purpose of S. 125, which is to curtail destitution and prevent orphanhood being imposed on children — High Court erred in dismissing appellant's revision petition summarily — Matter remitted to High Court for disposal afresh*

Section 125 CrPC is intended to curtail destitution and also to ameliorate orphancy. The High Courts should be slow to interfere with a positive finding in favour of marriage and paternity of a child. Hence in such instances the Supreme Court has pointed out that High Courts shall not interfere with such fact findings. But that principle cannot be imported in the present case where a child happened to be bastardised as a consequence of the order passed by the Magistrate and the claimant was in effect found to be a woman of unvirtuous morality. In such a situation the High Court should have entertained revision and re-evaluated the evidence and come to a conclusion whether the findings or conclusions reached by the Magistrate are legally sustainable or not. While maintaining the difference in the overall approach between an appeal and a revision, the jurisdiction of the court has to be exercised by the High Court in revision. (Para 5). *Pravati Rani Sahoo* v. *Bishnupada Sahoo*, (2002) 10 SCC 510.

Bench Strength **2**. Coram: *K.T. Thomas* and *S.N. Variava*, JJ. [Date of decision: 17-8-2001]

Pathumma v. Muhammad, (1986) 2 SCC 585: 1986 SCC (Cri) 212; Santosh v. Naresh Pal, (1998) 8 SCC 447, explained and distinguished

[367] — S. 125 — Muslim woman (appellant) five months' pregnant at the time of her marriage — Claiming maintenance for herself and for the child born just four months after the marriage — *Denial of maintenance by respondent husband challenging validity of marriage on ground of concealment of fact of pregnancy by the appellant at the time of marriage — Considering the advanced stage of the pregnancy and the conduct of the respondent subsequent to the marriage, held on facts, it could not be said that the pregnancy was concealed by the appellant from the respondent — Such marriage was valid — Hence, order of Judicial Magistrate allowing maintenance to the appellant and refusing the same to the child as she was not fathered by the respondent, held, liable to be restored*

It is very difficult to believe that a woman who is five months' pregnant will be able to conceal the pregnancy from the husband. Such an advanced stage of pregnancy cannot be concealed as the pregnancy starts showing by that time. In any case, the pregnancy could not have been concealed from the husband. A husband will at least know for sure that the wife is pregnant specially when the pregnancy is five months' old. Therefore, it cannot be accepted that the respondent did not know at the time of marriage that the appellant was already pregnant. (Para 4)

Also, the conduct of the respondent at the relevant time is to be considered. He went through the marriage. He did not raise any objection even after the marriage. He was present at the time of delivery of the child. Presumably he gave his own name as the name of the father of the child for the official record. Even thereafter, for nearly four years he went along with the marriage and brought up the child while treating the appellant as his wife. Any person who learns that his newly married wife is already pregnant for five months and who does not accept that marriage or pregnancy, will not behave in the manner in which the respondent did. Thus, the facts on record show that the husband was aware of the pregnancy of the wife at the time of the marriage. Therefore, such a marriage cannot be said to be invalid. (Paras 5 and 7)

The judgment of the learned Magistrate holding the marriage to be valid and allowing maintenance to the appellant, is restored. Liberty to the appellant to seek enhancement of the rate of maintenance in accordance with law. (Para 8). *Amina* v. *Hassn Koya*, (2003) 6 SCC 93: 2003 SCC (Cri) 1276: (2003) 2 KLT 738: 2003 Cri LJ 2540.

Bench Strength 2. Coram: *M.B. Shah* and **Arun Kumar**, JJ. [Date of decision: 28-4-2003]

Kulsumbi v. Abdul Kadir, ILR (1921) 45 Bom 151: AIR 1921 Bom 205, considered

Abdullah v. Beepathu, ILR (1967) 1 Ker 361, approved

[368] — S. 125(1), Expln. (b) — "Wife" in S. 125(1), held, means legally wedded wife — S. 125(1) does not protect a woman who unwittingly marries a man who is already married — *As against this, S. 2(f) of 2005 Act, embraces a wider concept by affording protection not only to legally wedded wife but also to a woman who is having domestic relationship which may not strictly be marriage but is "in the nature of marriage" — This is a recognition of live-in relationship (subject to conditions laid down herein) — Conventional family law in India provides for alimony only when a legally wedded wife is deserted but 2005 Act expands the scope by providing protection in the case of live-in relationship also — Words and Phrases — "Live-in Relationship", "wife" — Protection of Women from Domestic Violence Act, 2005, S. 2(f)*

The respondent claimed maintenance from the appellant under Section 125 of the Criminal Procedure Code, 1973. The appellant however asserted that the respondent was not his legally wedded wife because he was already married to a woman called *L*. The Family Court and the High Court accepted the respondent's claim treating the respondent to be the appellant's legally wedded wife. *L* was not put to notice and therefore it was not clear whether the respondent could be treated as the appellant's legally wedded wife. The Supreme Court in this context examined the provisions of the Protection of Women from Domestic Violence Act, 2005

Allowing the appeal and remanding the matter to the Family Court,

Held :

The expression "domestic relationship" in Section 2(*f*) of the Domestic Violence Act, 2005 includes not only the relationship of marriage but also a relationship in the nature of marriage. Parliament has drawn a distinction between the relationship of marriage and a relationship in the marriage, and has provided that in either case, the person who enters into either relationship is entitled to the benefit of the Act. Parliament has taken notice of a new social phenomenon which has emerged in India known as live-in relationship. This new relationship is still rare in India, and is sometimes found in big urban cities in India, but it is very common in North America and Europe. (Paras 10, 14 and 20)

(4) Matters to be established for entitlement to maintenance under *(contd.)*

When a wife is deserted, in most countries the law provides for maintenance to her by her husband, which is called alimony. However, earlier there was no law providing for maintenance to a woman who was having a live-in relationship with a man without being married to him and was then deserted by him. (Para 22)

A "relationship in the nature of marriage" is akin to a common law marriage. Common law marriages require that although not being formally married: (*a*) *The couple must hold themselves out to society as being akin to spouses*. (*b*) They must be of legal age to marry. (*c*) They must be otherwise qualified to enter into a legal marriage, including being unmarried. (*d*) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses *for a significant period of time*. A "relationship in the nature of marriage" under the 2005 Act must also fulfil the above requirements, and in addition the parties must have lived together in a "shared household" as defined in Section 2(*s*) of the Act. Merely spending weekends together or one night would not make it a "domestic relationship". (Para 31)

Not all live-in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned above must be satisfied, and this has to be proved by evidence. If a man has a "keep" whom he maintains financially and uses mainly for sexual purposes and/or as a servant, it would not be a relationship in the nature of marriage.

No doubt the view being taken in this case would exclude many women who have had a live-in relationship from the benefit of the 2005 Act, but then it is not for the Supreme Court to legislate or amend the law. Parliament has used the expression "relationship in the nature of marriage" and not "live-in relationship". The Court in the garb of interpretation cannot change the language of the statute. (Para 33)

There is no finding in the judgment of the Family Court Judge on the question whether the appellant and the respondent had lived together for a reasonably long period of time in a relationship which was in the nature of marriage. Such findings were essential to decide this case. The matter is remanded to the Family Judge for decision on this issue. (Para 37). *D. Velusamy* v. *D. Patchaiammal*, (2010) 10 SCC 469: (2010) 6 CTC 216: (2010) 4 KLT 384: (2010) 4 UPLJ 138 .

Bench Strength **2**. Coram: **Markandey Katju** and *T.S. Thakur*, JJ. [Date of decision: 21-10-2010]

Vimala v. Veeraswamy, (1991) 2 SCC 375: 1991 SCC (Cri) 442; Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636: 2005 SCC (Cri) 787; S. Khushboo v. Kanniammal, (2010) 5 SCC 600: (2010) 2 SCC (Cri) 1299, relied on

(5) Second marriage, desertion, previous wife, refusal to live with husband

See also Ss. 125 to 128, '(4) Matters to be established for entitlement', above

'(6) Second wife', and

'(8) Maintenance in case of divorce (including divorced Muslim women)', below

[369] — S. 125(3) Expln. — Wife filing application for maintenance on ground that her husband contracted a second marriage — *Cl. (3) of S. 488 justifies wife's refusal to live with her husband in such a case — Held — Husband is under legal obligation to maintain her — CrPC, 1898 — S. 488(3) Deochand* v. *State of Maharashtra*, (1974) 4 SCC 610: 1974 SCC (Cri) 646: AIR 1974 SC 1488.

Bench Strength **3**. Coram: *A.N. Ray, C.J.* and **Y.V. Chandrachud** and *V.R. Krishna Iyer*, JJ. [Date of decision: 4-4-1974]

[370] — S. 125(3) Expln. — Husband contracting another marriage — *Maintenance to previous wife payable from the date of the other marriage. Begum Subanu* v. *A.M. Abdul Gafoor*, (1987) 2 SCC 285: 1987 SCC (Cri) 300: AIR 1987 SC 1103: 1987 Cri LJ 980.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 3-4-1987]

[371] — S. 125(3) Expln. — Muslim husband contracting another marriage held, equally liable to pay maintenance to previous wife who thereby had a right to live separately — *That Muslim law permits polygamy irrelevant to the injury to the previous wife — Husband therefore liable to maintain previous wife and her children*

The appellant Muslim wife married the respondent on May 11, 1980 and a daughter was delivered by her on May 9, 1981. On ground of neglect and failure to provide maintenance, she filed a petition under S. 125, CrPC seeking maintenance for herself and the child. The Magistrate dismissed the petition on the ground that she failed to establish adequate justification for living separately. While the revision was pending before the Sessions Judge, the respondent married another woman on October 18, 1984. The appellant in revision urged the second marriage to be by itself sufficient ground for grant of maintenance. The Sessions Judge disallowed her claim on the ground that the respondent took a second wife on her failing to rejoin him and in any case he was willing to take her back after the second marriage. He therefore allowed maintenance only for the child at Rs 100 per month. The High Court refused to interfere under S. 482 CrPC.

Held :

Insofar as a Muslim wife is concerned there cannot be discrimination between the two situations contemplated by the Explanation in S. 125(3), CrPC, namely, of the husbands contracting another marriage or of taking a mistress. The Explanation places a second wife and a mistress on the same footing and does not make any differentiation between them on the basis of their status under matrimonial law. And the reason is clear. From the point of view of the neglected wife, for whose benefit the Explanation has been provided, it will make no difference whether the woman intruding into her matrimonial life and taking her place in the matrimonial bed is another wife permitted under law to be married and not a mistress. The legal status of the woman to whom a husband has transferred his affections cannot lessen her distress or her feelings of neglect. In fact from one point of view the taking of another wife portends a more permanent destruction of her matrimonial life than the taking of a mistress by the husband.

It will undoubtedly lead to a strange situation if it were to be held that a wife will be entitled to refuse to live with her husband if he has taken a mistress but she cannot refuse likewise if he has married a second wife. The Explanation has to be construed from the point of view of the injury to the matrimonial rights of the wife and not with reference to the husband's right to marry again. The Explanation has, therefore, to be seen in its full perspective and not disjunctively. Otherwise it will lead to discriminatory treatment between wives whose husbands have lawfully married again and wives whose husbands have taken mistresses. In the present situation therefore one need not resort to a comparison of Muslim wives with Hindu wives or Christian wives but can restrict the comparison to Muslim wives themselves who stand affected under one or the other of the two contingencies envisaged in the Explanation and notice the discrimination.

The same conclusion is reached if the Explanation is viewed in the larger context of the avowed object of S. 125. So read a right has been conferred on the wife under the Explanation to live separately and claim maintenance from the husband if he breaks his vows of fidelity and marries another woman or takes a mistress. Therefore, the respondent's contention that his taking another wife will not entitled the appellant to claim separate residence and maintenance cannot be sustained. The Explanation is of uniform application to all wives including Muslim wives whose husbands have either married another woman or taken a mistress. *Begum Subanu* v. *A.M. Abdul Gafoor*, (1987) 2 SCC 285: 1987 SCC (Cri) 300: AIR 1987 SC 1103: 1987 Cri LJ 980.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 3-4-1987]

Mohd. A. Khan v. Shah Bano Begum, (1985) 2 SCC 556: 1985 SCC (Cri) 245, relied on

Bayanna v. Devamma, 1953 Mad WN (Cri) 243: AIR 1954 Mad 226 ; Kandaswami v. Nachammal, AIR 1963 Mad 263: 76 Mad LW 161: 1963 (2) Cri LJ 166 ; Syed Ahmad v. N.P. Taj Begum, AIR 1958 Mys 128: 1958 Mad LJ (Cri) 496: 1958 Cri LJ 1201 ; Shambu v. Ghalamma, AIR 1966 Mys 311: 1966 Cri LJ 1291 ; Tejabai v. Shankarrao, AIR 1966 Bom 48: 67 Bom LR 478: 1966 Cri LJ 131 ; Mohammed Haneefa v. Mariam Bi, AIR 1969 Mad 414: (1969) 1 Mad LJ 97: 1969 Mad LJ (Cri) 162: 1969 Cri LJ 1412 ; Shahulameedu v. Subaida Beevi, 1970 Ker LT 4 and Chand Begum v. Hyderbaig, 1972 Cri LJ 1270, approved

Bela Rani v. Bhupal Chandra, AIR 1956 Cal 134: 60 Cal WN 212: 1956 Cri LJ 526: 97 Cal LJ 189 ; Rupchand v. Charubala, AIR 1966 Cal 83: 70 Cal WN 53: 1966 Cri LJ 143 ; Ishar v. Soma Devi, AIR 1959 Punj 295: ILR 1958 Punj 1353: 1959 Cri LJ 767 ; Dhan Kaur v. Niranjan Singh, AIR 1960 Punj 595: 1960 Cri LJ 1494 and Ramji Malviya v. Munni Devi, AIR 1959 All 767: 1959 Cri LJ 1386, ***overruled***

[372] — S. 125(3) Expln. — On husband contracting another marriage or taking a mistress, held, wife entitled to live separately and claim maintenance — *Rule applies irrespective of religion of the parties — Husband not absolved of his liability by offering to take back previous wife and maintaining her — Only acceptable offer could be one of separate residence maintained for her by husband — Previous wife cannot be compelled to share conjugal home with another woman*

It is no defence for the respondent to say that in view of his offer to take back the appellant and maintain her he stands absolved of his liability to pay maintenance. The offer had been made after the second marriage and was not to the effect that he would set up a separate residence for the appellant so as to enable her to live in peace and with dignity. A husband who marries again cannot compel the first wife to share the conjugal home with the co-wife and as such unless he offers to set up a separate residence for the first wife, any offer to take her back cannot be considered bona fide. On the basis of such an insincere offer the appellant's rights cannot be negated or defeated. *Begum Subanu* v. *A.M. Abdul Gafoor*, (1987) 2 SCC 285: 1987 SCC (Cri) 300: AIR 1987 SC 1103: 1987 Cri LJ 980.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 3-4-1987]

Chand Begum v. Hyderbaig, 1972 Cri LJ 1270, 1273, approved

(5) Second marriage, desertion, previous wife, refusal to live with husband *(contd.)*

[373] — S. 125 — Marital status — Determination of — Natural justice — Notice to affected party — *Held on facts, woman whose status as legally wedded wife of appellant was affected, ought to have been put to notice before declaring that respondent was entitled to maintenance under S. 125, CrPC, 1973 — Specific Relief Act, 1963, S. 34 — Hindu Marriage Act, 1955, Ss. 11 and 13*

Since *L* was not made a party to the proceedings before the Family Court Judge or before the High Court and no notice was issued to her hence any declaration about her marital status vis-à-vis the appellant is wholly null and void as it will be violative of the rules of natural justice. Without giving a hearing to *L* no such declaration could have validly be given by the courts below that she had not married the appellant herein since such as a finding would seriously affect her rights. And if no such declaration could have been given obviously no declaration could validly have been given that the appellant was validly married to the respondent, because if *L* was the wife of the appellant then without divorcing her the appellant could not have validly married the respondent. (Para 9)

The High Court and the Family Court Judge erred in law in holding that the appellant was not married to *L* without even issuing notice to *L*. Hence this finding has to be set aside and the matter remanded to the Family Court which may issue notice to *L* and after hearing her give a fresh finding in accordance with law. The question whether the appellant was married to the respondent or not can be decided only after the aforesaid finding. (Para 36). *D. Velusamy* v. *D. Patchaiammal*, (2010) 10 SCC 469: (2010) 6 CTC 216 (SC): (2010) 4 KLT 384: (2010) 4 UPLJ 138 (SC).

Bench Strength **2**. Coram: **Markandey Katju** and *T.S. Thakur*, JJ. [Date of decision: 21-10-2010]

[374] — S. 125(3) Expln. — Scope of — Held, makes no distinction between husband taking another wife or a mistress — Concern is for previous wife — *To her the distress and neglect is the same in either case — Object of S. 125 to be kept in view. Begrm Subanu* v. *A.M. Abdul Gafoor*, (1987) 2 SCC 285: 1987 SCC (Cri) 300: AIR 1987 SC 1103: 1987 Cri LJ 980.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 3-4-1987]

[375] — Ss. 125(3) second proviso and (4) — Grant of maintenance to a wife refusing to live with her husband under duress — *Husband, a Muslim, writing to wife to come back otherwise the letter would be treated as a divorce — Letter having sought to obtain her consent to live with him under duress, held, constituted sufficient reason for the wife to refuse to live with her husband — Sessions Court therefore, justified in granting maintenance under S. 125 to his wife and children — High Court not justified in interfering with pure findings of fact by setting aside the maintenance granted to the wife while maintaining it for the children. Khatoon* v. *Mohd. Yamin*, (1982) 2 SCC 373: 1982 SCC (Cri) 439: AIR 1982 SC 853: 1982 MLJ (Cri) 421.

Bench Strength **3**. Coram: **S. Murtaza Fazal Ali**, *D.A. Desai* and *A. Varadarajan*, JJ. [Date of decision: 5-1-1982]

[376] — S. 125(3) Expln. — Husband living with another woman — Wife held entitled to live separately and claim maintenance even if she failed to prove her allegation of second marriage by the husband u/s 494 IPC — *Hindu Adoptions and Maintenance Act, 1956 — S. 18(2) — Provisions of, apposite and so kept in view in such situation*

The wife presented a petition under Section 125 IPC against her husband. It was alleged that her husband having sufficient means neglected or refused to maintain her and that she was unable to maintain herself. The Magistrate granted her maintenance at the rate of Rs 200 per month. The husband went in revision to the Court of Session. The Sessions Judge dismissed the revision and confirmed the order of the Magistrate. Still feeling aggrieved the husband filed a petition under Section 482 CrPC in the High Court. This was allowed by a Single Judge, who by the impugned order, set aside the orders both of the Judicial Magistrate and the Sessions Judge and dismissed the petition of the wife for maintenance. Allowing the appeal by special leave,

Held :

In the present case the wife alleged that her husband had contracted a second marriage. She filed a complaint under Section 494 IPC which was dismissed and the husband was acquitted. The High Court took this circumstance against the wife and adversely commented on her refusal to live with her husband. The High Court lost sight of the fact how it would be difficult for the wife to prove the second marriage. To prove the second marriage as a fact essential ceremonies constituting it must be proved and if the second marriage is not proved to have been validly performed by observing essential ceremonies and customs in the community conviction under Section 494 IPC ought not to be made. The fact, however, remains in the present case that the husband is living with another woman. The proviso to sub-section (3) would squarely apply and justify refusal of the wife to live with her husband. There can be, however, other grounds for the wife to refuse to live with her husband, e.g., if she is subjected to cruelty by him. (Para 7). *Rajathi* v. *C. Ganesan*, (1999) 6 SCC 326: 1999 SCC (Cri) 1118: AIR 1999 SC 2374: 1999 Cri LJ 3668.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **D.P. Wadhwa**, JJ. [Date of decision: 22-7-1999]

[377] — S. 125(3) Expln. — Wife living separately — In her petition wife not required to plead since when she was living separately — That is not a relevant consideration. *Rajathi* v. *C. Ganesan*, (1999) 6 SCC 326: 1999 SCC (Cri) 1118: AIR 1999 SC 2374: 1999 Cri LJ 3668.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **D.P. Wadhwa**, JJ. [Date of decision: 22-7-1999]

[378] — S. 125(3) second proviso and Expln. — Claim for maintenance by wife — First wife if abandoned by husband or a case of desertion by her — Determination of — *Appellant wife thrown out of her matrimonial house by respondent husband on account of his second marriage — Her refusal to join company of her husband therefor — Held, appellant specifically stated that after marriage, till children were born, her relationship with her husband was cordial — But after he brought home a second wife, he declared that he would not keep appellant and started ill-treating her and threw her out of the house along with children — She also stated in her cross-examination that her children were with her but for last one year they were with respondent — She further admitted very fairly that respondent was educating the children — She asserted that for last 4 years, her entry to house of her husband was stopped — Courts below committed serious error in holding that appellant had abandoned her husband and desisted from joining him for 4-5 years and, therefore, respondent was justified in getting married again — In wake of admitted second marriage of respondent, appellant would be entitled to claim maintenance and her earlier refusal to join company of respondent would be of no consequence whatsoever — It was very clear that she was thrown out on account of respondent having contracted second marriage — It was nowhere on record that she had left house without any rhyme or reason — Hence, claim of appellant for maintenance tenable — Appellant, in her evidence, gave average earnings of her husband, which went unchallenged — Hence, considering overall situation, maintenance @ Rs 1500 p.m. granted* (Paras 11 to 18). *Saygo Bai* v. *Chueeru Bajrangi*, (2010) 13 SCC 762.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *T.S. Thakur*, JJ. [Date of decision: 19-11-2010]

[379] — S. 125(3) second proviso and Expln. — 'Just ground' — Meaning of — *Impotency of husband amounts to cruelty on wife which constitutes "just ground" for wife's refusal to live with her husband, and claim maintenance — Explanation to the proviso is illustrative and not exhaustive — Concept of cruelty is the same in civil as criminal cases — Denial or breach of conjugal relationship would justify separate living by the wife and her claim to maintenance*

The respondent wife within two months of her marriage to the appellant left her matrimonial home finding her husband impotent and refused to live with him on the ground that he being impotent was incapable of discharging his marital obligations. The question was whether the husband's impotency is a 'just ground' within the second proviso to S. 125(3) on the basis of which the Magistrate could make an order for maintenance notwithstanding the husband's offer to maintain his wife.

Held :

Where it is proved to the satisfaction of the court that a husband is impotent and is unable to discharge his marital obligations, this would amount to both legal and mental cruelty which would undoubtedly be a 'just ground' as contemplated by the Second Proviso to S. 125(3) for the wife's refusal to live with husband and the wife would be entitled to maintenance from her husband according to his means. The concept of cruelty remains the same whether it is a civil case or a criminal case or a case under any other similar Act. The general principles governing acts constituting cruelty — Legal or mental — ill treatment or indifference cannot vary from case to case though the facts may be different.

The object of introducing the Explanation to the Second Proviso was to widen the scope and ambit of the term 'just ground' so as to give a clear instance of circumstances which may be treated as 'just ground' for refusal of the wife to live with her husband. The provision is not exhaustive but purely illustrative and self-explanatory and takes within its fold not only the two instances mentioned therein

(5) Second marriage, desertion, previous wife, refusal to live with husband *(contd.)*

but all other circumstances similar to the contingencies contemplated in the Explanation as also other instances of physical, mental or legal cruelty not excluding the impotence of the husband. The grounds on which the wife refuses to live with her husband should be just and reasonable as contemplated by the proviso.

In the present case the respondent wife is forced or compelled to live a life of celibacy while staying with her husband who is unable to have sexual relationship with her. Such a life is one of perpetual torture which is not only mentally or psychologically injurious but even from the medical point of view is detrimental to the health of the woman. If the husband was impotent and unable to discharge his marital obligations, he could not fulfil the main object of marriage more particularly, under the Mohammedan law where marriage is a sacrosanct contract and not a purely religious ceremony as in the case of Hindu Law. *Sirajmohmedkhan Janmohamadkhan* v. *Hafizunnisa Yasinkhan*, (1981) 4 SCC 250: 1981 SCC (Cri) 829: AIR 1981 SC 1972: 1981 Cri LJ 1430: (1981) 22 GLR 1175.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.P. Sen*, JJ. [Date of decision: 14-9-1981]

[**Ed.**: (1) It is respectfully submitted that in Para 12 reliance on the passage quoted from the judgment of Mahmood, J. in *Din Muhammad case*, (1885) 5 All 226, 229, is misplaced as "conjugal relation" has been used in a different sense in that case.

The present judgment overrules the stand taken by Burn, J. in *Arunachala* v. *Anandayammal* and relied on by Hidayatullah, J. in *Emperor* v. *Daulat Raibhan*, that under S. 488, CrPC, 1898, if the husband agrees to provide food, clothing and shelter to the wife, the latter is not justified to live separately and claim maintenance. To the failure of the husband to provide "conjugal relationship" (sexual relationship), it was held, that it was not relevant to S. 488 and so would not justify the wife to live separately and claim maintenance. Under second proviso to S. 125(3), CrPC, 1973 failure of the husband to provide such conjugal relationship has now been held to be a "just ground" for the wife to live separately. In that respect it may be conceded that the statutory provision may be read to say that it is not enough for the husband merely to provide comfort and safety in the form of food, clothing and shelter but it is also necessary to provide 'conjugal relationship'.

The passage quoted from the judgment of Mahmood, J. in Para 12, it is humbly submitted, is not at all referring to the above aspect. What the learned Judge in *Din Muhammad*, (1885) 5 All 226, held was that if conjugal relation (meaning the bond of marriage) ceases to exist under the personal law of the parties, then the wife cannot maintain an action for maintenance. The words "conjugal relation" in *Din Muhammad* were used to mean the status of husband and wife under a subsisting marriage while in the above two cases it implied sexual relationship. This is clear from the conclusion in *Din Muhammad*, namely: "All that the Magistrate has to determine in a case of this kind is whether the woman claiming maintenance is still the wife of the person against whom she advances such a claim".

(2) In a way the rule quoted from *Din Muhammad* in Para 12 and approved in para 13 stands nullified by Expln. (*b*) to S. 125 (1) wherein a 'wife' includes a divorced wife so that even though "conjugal relation ceases", that is, the bond of marriage ends, an order for maintenance can be passed and would not "cease to have any enforceable effect" as long as she has not remarried.]

[380] — S. 125(3) second proviso and Expln. thereto — Maintenance by wife — First wife if abandoned by husband or a case of desertion by her — Determination of — *Appellant wife thrown out of her matrimonial house by respondent husband on account of his second marriage — Her refusal to join company of her husband therefor — Held, appellant specifically stated that after marriage, till children were born, her relationship with her husband was cordial — But after he brought home a second wife, he declared that he would not keep appellant and started ill-treating her and threw her out of the house along with children — She also stated in her cross-examination that her children were with her but for last one year they were with respondent — She further admitted very fairly that respondent was educating the children — She asserted that for last 4 years, her entry to house of her husband was stopped — Courts below committed serious error in holding that appellant had abandoned her husband and desisted from joining him for 4-5 years and, therefore, respondent was justified in getting married again — In wake of admitted second marriage of respondent, appellant would be entitled to claim maintenance and her earlier refusal to join company of respondent would be of no consequence whatsoever — It was very clear that she was thrown out on account of respondent having contracted second marriage — It was nowhere on record that she had left house without any rhyme or reason — Hence, claim of appellant for maintenance tenable — Appellant, in her evidence, gave average earnings of her husband, which went unchallenged — Hence, considering overall situation, maintenance @ Rs 1500 p.m. granted* (Paras 11 to 18). *Saygo Bai* v. *Chueeru Bajrangi*, (2010) 13 SCC 762.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *T.S. Thakur*, JJ. [Date of decision: 19-11-2010]

[381] — S. 125 — Maintenance — That because the wife and children had left the house on their own, held, is no ground to disentitle them to maintenance — *In the facts and circumstances of the case the respondent was bound to maintain his wife and children. Mannava Satyawati* v. *Mannava Malleswara Rao*, 1995 Supp (3) SCC 259: 1995 SCC (Cri) 836.

Bench Strength **2**. Coram: *Kuldip Singh* and *Yogeshwar Dayal*, JJ. [Date of decision: 6-1-1994]

[382] — S. 125 — Maintenance — Claim of, by deserted wife — Requisites for maintaining proceedings — *Held, burden in the first place is upon wife to show that means of her husband are sufficient — Also, an inseparable condition has to be established that wife is unable to maintain herself — These two conditions, held, are in addition to the requirement that husband must have neglected or refused to maintain his wife — In the instant case, there was no dispute that appellant husband had requisite means — He had placed material to show that respondent wife was earning some income — Held, that was not sufficient to rule out application of S. 125 as it had to be established that with the amount she earned she was able to maintain herself — Herein, the trial court, the Revisional Court and the High Court had analysed evidence and held that respondent wife was unable to maintain herself — Conclusions, held, are essentially factual and are not perverse — Hence, there is no scope for interference* (Paras 7 and 9). *Chaturbhuj* v. *Sita Bai*, (2008) 2 SCC 316: (2008) 1 SCC (Cri) 356: AIR 2008 SC 530: (2008) 1 KLT 41: 2008 Cri LJ 727: (2008) 105 Cut LT 729: (2008) 2 Guj LR 1159.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Aftab Alam*, JJ. [Date of decision: 27-11-2007]

Bhagwan Dutt v. Kamla Devi, (1975) 2 SCC 386: 1975 SCC (Cri) 563, relied on

[383] — S. 125 — Maintenance — Wife having left her matrimonial home without any justifiable ground — Held, not entitled to maintenance — *On facts, two reasons given by respondent wife for her ill-treatment by husband, namely, his greed for dowry and that the respondent was not good-looking, held, were non-existent — Also, no other reason for ill-treatment — Facts indicating that for several years after their marriage they enjoyed normal marital relationship — Hence held, Magistrate rightly rejected wife's claim for maintenance*

The findings recorded by the learned Magistrate were fully justified as they were based on the evidence on record and appear to be reasonable. In her application the respondent had given two reasons for her ill-treatment by the appellant, namely, his greed for dowry and that she was not good-looking. So far as the second reason is concerned, in the course of her deposition, the respondent has not said a word about it. So far as the first reason is concerned, on a careful scrutiny of the evidence on record, it is concluded that no dowry was ever demanded either before the marriage or after the marriage. Even PW 2, the mother of the respondent had to admit that the appellant had never demanded any dowry or gift. Of course she added that all this was in his mind. Therefore, the trial court properly appreciated the evidence on record while recording the finding that there was never any demand for dowry by the appellant. There was, therefore, no reason for him to ill-treat his wife for this reason. Thus, both the reasons given in the application for her ill-treatment are non-existent. (Para 18)

Having perused the evidence on record with a view to ascertain whether for any other reason the respondent was ill-treated by the appellant, it is found that the behaviour of the appellant has been throughout normal. It is admitted by the parties that they frequently went during vacations to visit different places. On some occasions they were even accompanied by the relatives of the respondent. The appellant permitted the respondent to continue her studies even after her marriage and that is how she secured her BA degree after marriage. He also arranged an agency of UTI to keep her engaged and also opened a joint account in a bank which she could operate. All these facts go to indicate that for several years after their marriage they enjoyed normal marital relationship. In fact, there is evidence to show that the appellant used to praise his wife in the presence of others by complimenting her and giving her credit for the good performance of their son in his studies. (Para 19)

Further, it is difficult to believe that if the appellant started torturing the respondent within 15 days of the marriage, the respondent would not have reported this matter at least to her mother. According to her mother, she came to know about her ill-treatment 5 to 6 years after marriage. According to the respondent in her complaint, she had mentioned about such happenings to her mother about eight years after her marriage. While there is reference to reports lodged by the respondent to the police regarding torture by the appellant, not one such report has been brought on record which may have been lodged before the respondent left her matrimonial home. The only police report brought on record is one lodged after the respondent left her matrimonial home. This report is of not much importance. There is no contemporaneous document in the form of letters which may have been

(5) Second marriage, desertion, previous wife, refusal to live with husband *(contd.)*

written by the respondent to her friends or relatives mentioning about her being subjected to torture or harassment by the appellant. The respondent being an educated lady, it is difficult to believe that she would not have written letters to her friends and relatives during the twelve years that she lived with the appellant as husband and wife. Apart from her mother, the respondent has produced no evidence or proof that she was tortured and harassed by the appellant. The learned Magistrate also noticed that though they lived at different places around Calcutta during the period of twelve years after their marriage, not one witness was examined by the respondent to prove that the appellant treated the respondent with cruelty. On the other hand, some witnesses have been examined by the appellant to prove that they lived a normal life and there was no question of the respondent being tortured by the appellant for any reason whatsoever. Even the other facts support the case of the appellant that he had not treated the respondent with cruelty for any reason whatsoever. (Para 19)

Thus, the High Court was not justified in setting aside the findings recorded by the learned Judicial Magistrate. (Para 20). *Deb Narayan Halder* v. *Anushree Halder*, (2003) 11 SCC 303: 2004 SCC (Cri) 164: AIR 2003 SC 3174.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 26-8-2003]

[384] — S. 125 — Petition filed by wife having abandoned matrimonial home on ground of neglect and failure of husband to provide sustenance — *Burden on husband to prove that he offered to take wife back and maintain her and that she failed to rejoin him. Begum Subanu* v. *A.M. Abdul Gafoor*, (1987) 2 SCC 285: 1987 SCC (Cri) 300: AIR 1987 SC 1103: 1987 Cri LJ 980.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 3-4-1987]

[385] — S. 125 — Concept as developed in some jurisdictions in USA — Explained — Contract as basis for grant of palimony — Express or implied contract — *Words and Phrases — "Palimony"*

In USA the expression "palimony" was coined which means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying him, and is then deserted by him. The first decision on palimony was the well-known decision of the California Superior Court in *Marvin* case, (1976) 18 Cal 3d 660 (California SC). The US Supreme Court has not given any decision on whether there is a legal right to palimony, but there are several decisions of the courts in various States in USA. These courts in USA have taken divergent views, some granting palimony, some denying it altogether, and some granting it on certain conditions. Hence in USA the law is still in a state of evolution on the right to palimony. (Para 23)

Although there is no statutory basis for grant of palimony in USA, the courts there which have granted it on a contractual basis. Some courts in USA have held that there must be a written or oral agreement between the man and woman that if they separate, the man will give palimony to the woman, while other courts have held that if a man and woman have lived together for a substantially long period without getting married there would be deemed to be an *implied or constructive contract* that palimony will be given on their separation. A law has now been passed in 2010 by the State Legislature of New Jersey that there must be a written agreement between the parties to claim palimony. There are widely divergent views of the courts in USA regarding the right to palimony. Some States like Georgia and Tennessee expressly refuse to recognise palimony agreements. (Paras 24 and 27)

Written palimony contracts are rare, but some US courts have found implied contracts when a woman has given up her career, has managed the household, and assisted a man in his business for a lengthy period of time. Even when there is no explicit written or oral contract some US courts have held that the action of the parties make it appear that a constructive or implied contract for grant of palimony existed. However, a meretricious contract exclusively for sexual service is held in all US courts as invalid and unenforceable. (Para 28). *D. Velusamy* v. *D. Patchaiammal*, (2010) 10 SCC 469: (2010) 6 CTC 216 (SC): (2010) 4 KLT 384: (2010) 4 UPLJ 138 (SC).

Bench Strength **2**. Coram: **Markandey Katju** and *T.S. Thakur*, JJ. [Date of decision: 21-10-2010]

Marvin v. Marvin, (1976) 18 Cal 3d 660 (California SC), relied on

Taylor v. Fields, (1986) 224 Cal Rptr 186 (California CA); Devaney v. L'Esperance, (2008) 195 NJ 247 (New Jersey SC), discussed

[386] — Ss. 125 and 127 — Scope — Right of deserted wife to stay in tenancy premises — Nature and scope — Eviction suit filed against tenant-husband — Right of deserted wife to contest — *Restriction of enforceability of said right against husband alone — So long as tenant would have been entitled to stay in tenancy premises by availing benefit of provisions of Transfer of Property Act, 1882 and rent control legislation, held, the* *wife too can continue to stay in tenancy premises exercising her right to residence as a part of her right to maintenance, subject to compliance with all such obligations, including payment of rent to which tenant is subject — A deserted wife continuing in occupation of such premises, and which were her matrimonial home, occupies a position akin to heir of tenant-husband, if right to residence of such wife has not come to an end — Further held, a deserted wife who has been or is entitled to be in occupation of the matrimonial home is entitled to contest such suit subject to two conditions that: (1) tenant has given up contest or is not interested in contesting suit, and such giving up shall prejudice deserted wife who is residing in the premises, and (2) scope and ambit of defence by wife would not be on a footing higher or larger than that of tenant himself — Clarified that landlord's right to eviction against his tenant was not being subordinated to the wife's right to residence enforceable against her husband — Both rights were to coexist as long as they could — Suitable amendment in legislation called for in respect of above ruling — However, in the meantime, above position of law to remain in force under Art. 142 — On facts, appellant, in status of deserted wife, was rightly permitted by High Court to be joined as party to eviction proceedings pending against her husband and contest suit and deposit rent in court for payment to landlord on behalf of tenant-husband, who had lost interest in defending the said suit — Constitution of India — Art. 142 — Hindu Adoptions and Maintenance Act, 1956 — S. 18 r/w S. 3(b) — Family Courts Act, 1984 — S. 7(1) Expln. (f) — Transfer of Property Act, 1882 — Ss. 108 and 105 — Karnataka Rent Control Act, 1961 (22 of 1961), S. 21*

A deserted wife who has been or is entitled to be in occupation of the matrimonial home is entitled to contest the suit for eviction filed against her husband in his capacity as tenant subject to satisfying two conditions: first, that the tenant has given up the contest or is not interested in contesting the suit and such giving up by the tenant-husband shall prejudice the deserted wife who is residing in the premises; and secondly, the scope and ambit of the contest or defence by the wife would not be on a footing higher or larger than that of the tenant himself. Such a wife would be entitled to raise all such pleas and claim trial thereon, as would have been available to the tenant himself and no more. So long as, by availing the benefit of the provisions of the Transfer of Property Act and rent control legislation, the tenant would have been entitled to stay in the tenancy premises, the wife too can continue to stay exercising her right to residence as a part of right to maintenance subject to compliance with all such obligations including the payment of rent to which the tenant is subject. A deserted wife in occupation of the tenanted premises on the other hand cannot be placed in a position worse than that of a sub-tenant contesting a claim for eviction on the ground of sub-letting. Having been deserted by the tenant-husband, she cannot be deprived of the roof over her head where the tenant has conveniently left her to face the peril of eviction attributable to default or neglect of himself. A deserted wife continuing in occupation of the premises obtained on lease by her husband, and which was their matrimonial home, occupies a position akin to that of an heir of the tenant-husband if the right to residence of such wife has not come to an end. The tenant having lost interest in protecting his tenancy rights as available to him under the law, the same right would devolve upon and inhere in the wife so long as she continues in occupation of the premises. A suitable amendment in the legislation is called for to that effect. And, so long as that is not done, the Supreme Court responding to the demands of social and gender justice, needs to mould the relief and do complete justice by exercising its jurisdiction under Article 142 of the Constitution. However, the purpose of the holding as above is to give the wife's right to residence a meaningful efficacy as dictated by the needs of the times. It is neither intended or proposed that the landlord's right to eviction against his tenant be subordinated to the wife's right to residence enforceable against her husband. Let both the rights coexist so long as they can. (Paras 32 and 33)

The appellant, in the status of a deserted wife — in the facts and circumstances of the case — was rightly permitted by the High Court to be joined as a party to the proceedings. She was also rightly allowed to contest the suit and deposit the rent in the court for payment to the landlord for and on behalf of the tenant-husband. (Para 34)

However, it is admitted by the appellant that on 3-12-1998, that is, during the pendency of these proceedings and while the matter was pending in the High Court a decree for dissolution of marriage by divorce based on mutual consent had been passed. The terms and conditions of such settlement have not been brought on record by the appellant which she ought to have done. It is not the case of the appellant that she is entitled to continue her residence in the tenanted premises by virtue of an obligation incurred by her husband to provide residence for her as a part of maintenance. She

(5) Second marriage, desertion, previous wife, refusal to live with husband *(contd.)*

cannot, therefore, be allowed to prosecute the appeal and defend her right against the claim for eviction made by the landlord. (Para 36). *B.P. Achala Anand* v. *S. Appi Reddy*, (2005) 3 SCC 313: AIR 2005 SC 986: (2005) 117 DLT 354: (2005) 1 KLT 904.

Bench Strength 3. Coram: **R.C. Lahoti, C.J.** and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 11-2-2005]

[387] — Ss. 125(1), (4) and (5) — High Court's finding that the appellant-wife was living in adultery, held, on facts, unsustainable — *But even assuming her to be guilty of adultery, maintenance to minor children cannot be refused on that ground. Milagrinha Gonsalves* v. *Pedre A. Gonsalves*, 1987 Supp SCC 191: 1988 SCC (Cri) 45.

Bench Strength 2. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 12-1-1987]

[388] — S. 125(3) second proviso — Just ground for refusal of wife to live with her husband — Impotency of husband amounts to cruelty and is a just ground for wife's refusal to live with her husband — *Such wife, unable to maintain herself is therefore entitled to claim maintenance under S. 125*

The woman goes to the marital home of her husband, with a fond hope and expectation that she would have not only a happy but also peaceful conjugal society of her husband. When the wife found that her husband is unable to perform sexual obligation, which is one of the important factors to cement bondage of affection and cordial relationship in the marital home, it would be a perpetual agony for the wife to continue to live in peace in the conjugal home. Cruelty is a ground for divorce or judicial separation in civil law. Under these circumstances, she would be well-justified to live separately from the husband and at the same time keep maintaining her married status.

In the instant case the respondent-wife had not immediately rushed to sever her marital relations with the appellant. She had sufficiently waited for long time to see whether there would be any improvement in the potency of the appellant. Having found no hope, she chose to live separately from the appellant. Therefore, it could safely be concluded that the respondent having tried all means to sustain the marital relations but having found that it was impossible for the appellant to gain potency, she had chosen to live apart from the appellant. Therefore, there was sufficient ground for the wife to live separately. *Major Ashok Kumar Singh* v. *VIth Addl. Sessions Judge*, (1996) 1 SCC 554: 1996 SCC (Cri) 161: AIR 1996 SC 333: 1996 ALJ 81: 1996 Cri LJ 392.

Bench Strength 2. Coram: *K. Ramaswamy* and *B.L. Hansaria*, JJ. [Date of decision: 6-9-1995]

Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan, (1981) 4 SCC 250: 1981 SCC (Cri) 829, followed

[**Ed.**: It may be noted that the Court has relied on its earlier decision in *Sirajmohmedkhan Janmohamadkhan* v. *Hafizunnisa Yasinkhan*, (1981) 4 SCC 250, which in turn was decided on what we felt was a mistaken reading of the ratio of *Din Mohamed*, ILR 5 (1885) All 267 as submitted in our Editorial Note at (1981) 4 SCC 251.

In respect of the present ruling the following questions arise:

1. The order has apparently been made under the second proviso to Section 125(3) which is applicable only on the non-compliance with the order passed under Section 125(1). Here the question of non-compliance did not arise as the order of maintenance under Section 125(1) was itself being disputed as is clear from the fact that the Court has cited Section 125(1) only in para 3 above.

2. To be sure, the failure of the husband to provide 'conjugal relations' does not become a 'just ground' for the wife to live separately while examining the wife's claim for maintenance under Section 125 which aims at prevention of vagrancy by enabling the criminal court to order provision for food, clothing and shelter to the wife.

Din Mohamed, which the Court commanded to its aid in *Sirajmohmedkhan Janmohamadkhan* clearly declared: "all that the magistrate has to determine in a case of this kind is whether the woman claiming maintenance is still the wife of the person against whom she advances such a claim". It was indeed not the failure of the husband to provide sexual relations which was held determinative of the issue. Instead, the status of the woman as wife was held decisive then.

3. The Court seems to have been influenced by the feeling that since impotency means denial of conjugal rights so essential to a marriage, there is justification for holding that the failure of husband to provide sexual relations should be a ground to the wife to live separately from the husband.

Impotency is not a ground for divorce. But it is a ground for declaring a marriage null and void. And it is pertinent to note that in the event of a decree of nullity ordinarily courts do not order maintenance.]

(6) Second wife

[389] — S. 125 — Hindu woman married after coming into force of Hindu Marriage Act, 1955 in accordance with Hindu rites with a Hindu male having a wife living, held, not entitled to maintenance under S. 125 as such marriage is void ipso jure under S. 11, Hindu Marriage Act, 1955 — *'Wife' in sub-s. (1)(a) — Interpretation of — Reference to personal law can be made*

Section 125 of the Code has been enacted in the interest of a wife, and one who intends to take benefit under sub-section (1)(a) has to establish the necessary condition, namely, that she is the wife of the person concerned. The word 'wife' is not defined in the Code except indicating in the Explanation its inclusive character so as to cover a divorcee. A woman cannot be a divorcee unless there was a marriage in the eye of the law preceding that status. The expression must, therefore, be given the meaning in which it is understood in law applicable to the parties, subject to the Expln. (b), which is not relevant in the present context. It is only where an applicant establishes her status on relationship with reference to the personal law that an application for maintenance can be maintained. Once the right under the section is established by proof of necessary conditions mentioned therein, it cannot be defeated by further reference to the personal law.

The necessary condition for a lawful marriage as laid down under S. 5(1)(i) of the Hindu Marriage Act is that neither party should have a spouse living at the time of the marriage. A marriage in contravention of this condition is, therefore, void ipso jure i.e. void from the very inception by virtue of S. 11 of the Act. Such a marriage has to be ignored as not existing in law at all if and when such a question arises.

Merely because Expln. (b) to S. 125(1) of the Code entitles a divorcee to the benefits of the section, it cannot be said that a woman marrying according to Hindu rites a man who has a wife living should be brought within the sweep of the section by giving an extended meaning. For the purpose of extending the benefit of the section to a divorced woman and an illegitimate child Parliament considered it necessary to include in the section specific provisions to that effect, but has not done so with respect to women not lawfully married.

Even if the second wife, the appellant, was not informed at the time of her marriage with the respondent about the respondent's earlier marriage, her prayer for maintenance under S. 125 of the Code cannot be allowed. The appellant cannot rely on the principle of estoppel so as to defeat the provisions of the Act. So far as the respondent treating her as his wife is concerned, it is again of no avail as the issue has to be settled under the law. It is the intention of the legislature which is relevant and not the attitude of the party. *Yamunabai Anantrao Adhav* v. *Anantrao Shivram Adhav*, (1988) 1 SCC 530: 1988 SCC (Cri) 182: AIR 1988 SC 644: 1988 Cri LJ 793: 1988 Mah LJ 335: (1988) 1 KLT 416.

Bench Strength **2**. Coram: *Ranganath Misra* and **L.M. Sharma**, JJ. [Date of decision: 27-1-1988]

Followed in (1988) 1 SCC 537

[390] — S. 125 — Hindu woman marrying after commencement of Hindu Marriage Act, 1955 a Hindu male having wife or wives already living, held, not entitled to maintenance under S. 125, her marriage being null and void under S. 11 r/w S. 5(1)(i) of the Act — *Hindu Marriage Act, 1955 — Ss. 11 and 5(1)(i). Bakulabai* v. *Gangaram*, (1988) 1 SCC 537: 1988 SCC (Cri) 189: (1988) 1 KLT 413: 1988 Mah LJ 330.

Bench Strength **2**. Coram: *Ranganath Misra* and **L.M. Sharma**, JJ. [Date of decision: 27-1-1988]

Yamunabai v. Anantrao Shivram Adhav, (1988) 1 SCC 530, followed

[391] — S. 125 — Maintenance — Claim of, by second wife — Second marriage invalid — Effect — *Held, marriage of a woman in accordance with Hindu rites with a man having a living spouse is a complete nullity in the eye of the law — Such woman is therefore not entitled to the benefit of S. 125 CrPC or the Hindu Marriage Act, 1955 — Scope of S. 125 cannot be enlarged by introducing any artificial definition to include a woman not lawfully married in the expression "wife" — Evidence showing that the respondent husband was having a living spouse at the time of alleged marriage with the appellant claimant — Thus, marriage with appellant was void — Appellant not entitled to maintenance — Plea that appellant was not informed about the respondent's earlier marriage when she married him, was of no avail — Principle of estoppel cannot be pressed into service to defeat the provision of S. 125 — Hindu Marriage Act, 1955 — Ss. 11, 24 & 25 — Hindu Adoptions and Maintenance Act, 1956 — S. 18* (Paras 8, 15, 18, 20, 17 and 21). *Savitaben Somabhai Bhatiya* v. *State of Gujarat*, (2005) 3 SCC 636: 2005 SCC (Cri) 787: AIR 2005 SC 1809: 2005 Cri LJ 2141: (2005) 2 Guj LR 1378.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-3-2005]

Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530: 1988 SCC (Cri) 182; Vimala (K.) v. Veeraswamy (K.), (1991) 2 SCC 375: 1991 SCC (Cri) 442, relied on

[392] — S. 125 — Marriage in contravention of S. 5(i), HMA, 1955 — Subsistence of an earlier marriage at the time of solemnising the second marriage — Proof of — *Held, when a plea of subsisting marriage is raised by the respondent husband it has to be satisfactorily proved by tendering evidence — On facts, earlier marriage of respondent husband was established — Hence, his second marriage with appellant who was claiming*

(6) Second wife *(contd.)*

maintenance under S. 125 CrPC was void — Evidence Act, 1872 — S. 3 — Hindu Marriage Act, 1955 — Ss. 5(i) and 11 (Paras 19, 20 and 15). *Savitaben Somabhai Bhatiya* v. *State of Gujarat*, (2005) 3 SCC 636: 2005 SCC (Cri) 787: AIR 2005 SC 1809: 2005 Cri LJ 2141: (2005) 2 Guj LR 1378.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-3-2005]

Vimala (K.) v. Veeraswamy (K.), (1991) 2 SCC 375: 1991 SCC (Cri) 442, relied on

[393] — S. 125 — Maintenance — Object — Claim of Hindu wife for maintenance — Plea taken by husband that marriage was void due to subsistence of an earlier marriage — *Marriage of the claimant in customary form not in dispute — Burden of strict proof of the earlier marriage on husband — Held on facts, husband failed to discharge the burden — Maintenance amount of Rs 400 per mensem awarded by trial Magistrate, justified, the same being commensurate with the means of the husband and the wife having no means to maintain herself*

Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. Under the Hindu Law a second wife, whose marriage is void on account of the survival of the first marriage is not a legally wedded wife. She is, therefore, not entitled to maintenance under S. 125. Such a provision in law which disentitles the second wife from receiving maintenance from her husband under S. 125, CrPC. for the sole reason that the marriage ceremony though performed in the customary form lacks legal sanctity can be applied only when the husband satisfactorily proves the subsistence of a legal and valid marriage particularly when S. 125 is a measure of social justice intended to protect women and children. (Para 3)

In this case though the respondent-husband repudiated the marriage of the appellant as void on account of subsistence of an earlier marriage, he failed to discharge the heavy burden by tendering strict proof of the fact that he had earlier married another woman 'V' in the customary form and the marriage was subsisting when the appellant was married to him. In absence of a clear admission of an earlier marriage the statement that the respondent is living with another woman as husband and wife cannot persuade the court to hold that the marriage duly solemnised between the appellant and the respondent suffers from any legal infirmity. The insurance policy indicating that 'V' was the wife of the respondent and the family identity card issued by Road Transport Corporation where respondent was working showing 'V' as his wife, being the documents issued on the basis of what the respondent himself had stated, are not conclusive of the subsistence of a valid marriage between the respondent and 'V' when the admitted marriage with the appellant was solemnised. (Para 2)

There is no dispute that the appellant was married to the respondent in the customary form. They lived together as husband and wife and of late the respondent had neglected to maintain her. The respondent has no case that the appellant has means to maintain herself or that the amount she has claimed is not commensurate with the means of the respondent. The Magistrate was, therefore, justified in awarding an amount of Rs 400 per mensem towards the maintenance of the appellant. That order of the Magistrate has to be restored. (Para 4). *Vimala (K.)* v. *Veeraswamy (K.)*, (1991) 2 SCC 375: 1991 SCC (Cri) 442: (1991) 2 KLJ 162: (1991) 1 GLH 380.

Bench Strength 3. Coram: *A.M. Ahmadi, V. Ramaswami* and **M. Fathima Beevi**, JJ. [Date of decision: 20-3-1991]

[394] — S. 125 — Maintenance — Second wife not entitled — Where appellant's first wife was alive and the marriage had not been annulled by decree of divorce or otherwise, held, High Court erred in granting maintenance in favour of second wife — *Maintenance awarded to her set aside — However, children of second marriage to continue to get maintenance* (Para 2). *Khemchand Om Prakash Sharma* v. *State of Gujarat*, (2000) 3 SCC 753: 2000 SCC (Cri) 748.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 25-2-2000]

[395] — S. 125 — Maintenance — Entitlement to — Muslim husband's marriage with sister of existing wife — Legality of — Such marriage, held, irregular (fasid) and not void (batil) — *Therefore, unless terminated in accordance with law, it continues to subsist — Hence, the wife and children of such marriage, held, entitled to maintenance — Case law on void and irregular marriages discussed — Muslim Law — Maintenance — Entitlement to, under S. 125 CrPC*

The respondent filed an application against the appellant, claiming maintenance for herself and for her minor daughter under Section 125 CrPC. She stated that she was the legally wedded wife of the appellant and that her minor daughter was born from the wedlock. She added that the appellant had already married her elder sister but had thereafter married the respondent with the consent of his first wife. That gradually, the appellant had started neglecting the respondent and her daughter who had no means to support themselves. She therefore claimed a certain amount as maintenance for each of them.

The appellant herein denied that he had married the respondent. The defence put up by the appellant was not accepted by the trial court which in turn, granted relief to the respondent. The Revisional Court and the High Court upheld the order of the trial court. The appellant then filed the present appeal by special leave.

Before the Supreme Court, the appellant contended that under the Muslim law, a man could not marry his wife's sister during his wife's lifetime. That since such conjunction was prohibited, even if the marriage had been performed the same was void in law and did not confer any rights either on the respondent or her daughter.

On the other hand, the respondent submitted that in a proceeding under Section 125 CrPC the Court was not required to adjudicate upon the validity of a marriage and on a prima facie view it could pass an order for maintenance of both the wife and her daughter. That till the marriage was not declared to be void by a competent court of law, it continued to subsist and all rights flowing from a valid marriage continued to be available to the respondent and her daughter.

Dismissing the appeal with costs,

Held :

If the marriage which was said to have been performed between the appellant and the respondent is held to be void then, Respondent 1 will not be entitled to maintenance from the appellant under Section 125 CrPC. If, on the other hand, the marriage is held to be irregular, then the marriage will subsist for all purposes, unless declared to be void by a competent court. Till such a declaration is made, along with the respondent, her daughter will also be entitled to maintenance under Section 125 CrPC. (Para 23)

Under the Muslim law a distinction has been drawn between void marriages and irregular marriages. Since a marriage, which is temporarily prohibited may be rendered lawful once the prohibition is removed, such a marriage is irregular (fasid) and not void (batil). (Para 26)

The bar of unlawful conjunction (jama bain-al-mahramain) renders a marriage irregular and not void. Consequently, under the Hanafi law as far as Muslims in India are concerned, an irregular marriage continues to subsist till terminated in accordance with law and the wife and the children of such marriage would be entitled to maintenance under the provisions of Section 125 CrPC. (Para 32)

Therefore, it has to be held that the unlawful conjunction and/or marriage between the appellant and the respondent continues to subsist not having been declared void by any competent forum and that accordingly the respondent and her daughter both will be entitled to maintenance under Section 125 CrPC. (Paras 34 and 35). *Chand Patel* v. *Bismillah Begum*, (2008) 4 SCC 774: (2008) 2 SCC (Cri) 490: AIR 2008 SC 1915: (2008) 2 KLT 1038.

Bench Strength **2**. Coram: **Altamas Kabir** and *J.M. Panchal*, JJ. [Date of decision: 14-3-2008]

F.D. Mulla: Principles of Mahomedan Law; Fatwa-i-Alamgiri, referred to

Tajbi v. Mowla Khan, ILR (1917) 41 Bom 485: (1917) 39 IC 603, approved

Kaniza v. Hasan Ahmad Khan, AIR 1926 Oudh 231: (1926) 92 IC 82; Taliamand v. Muhammad Din, AIR 1930 Lah 907: (1931) 129 IC 12; Rahiman Bibi Saheba v. Mahboob Bibi Saheba, ILR 1938 Mad 278, impliedly approved

Aizunnissa Khatoon v. Karimunnissa Khatoon, ILR (1895) 23 Cal 130, impliedly overruled

Rameshchandra Rampratapji Daga v. Rameshwari Rameshchandra Daga, (2005) 2 SCC 33; Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636: 2005 SCC (Cri) 787; Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530: 1988 SCC (Cri) 182, considered

(7) Maintenance in case of live-in relationship/Presumed marriage/De facto marriage/Cohabitation

See also Ss. 125-128, '(4) Matters to be established for entitlement to maintenance under', '(5) Second marriage, desertion, previous wife, refusal to live with husband' and

'(6) Second wife', above

[396] — S. 125 — "Wife" — Interpretation — Long cohabitation without valid marriage — Entitlement of such woman to maintenance — *Considering that there was divergence of judicial opinion on interpretation of word "wife" in S. 125, matter referred to larger Bench in light of Protection of Women from Domestic Violence Act, 2005, which gave wide interpretation to terms like "domestic abuse" and "domestic relationship" which included live-in relationship and entitles such women to reliefs under 2005 Act — Opinion expressed that a broad and expansive interpretation should be given to term "wife" to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under S. 125 CrPC, so as to fulfil true spirit and* *essence of the beneficial provision of maintenance under S. 125 — CrPC, 1898, S. 488 — Protection of Women from Domestic Violence Act, 2005, S. 3 Expln. 1 cl. (iv), Ss. 21, 22 and 26 — Constitution of India — Art. 141 — Words and Phrases — "Wife"* (Paras 26 to 42). *Chanmuniya* v. *Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141.

Bench Strength **2**. Coram: *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision: 7-10-2010]

Dwarika Prasad Satpathy v. Bidyut Prava Dixit, (1999) 7 SCC 675: 1999 SCC (Cri) 1345; Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530: 1988 SCC (Cri) 182; Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636: 2005 SCC (Cri) 787; Marvin v. Marvin, (1976) 18 Cal 3d 660, considered

(8) Maintenance in case of divorce (including divorced Muslim women)

See also Ss. 125 to 128, '(4) Matters to be established for entitlement to maintenance under', and

'(5) Second marriage, desertion, previous wife, refusal to live with husband', above

[397] — Ss. 125 and 127(3)(b) — Applicability, scope and interpretation — Divorced woman's right to maintenance — Showing of element of neglect by husband necessary — *Absence of mutual consent under S. 125(4) is apparent, where the parties are Muslim, from divorce by husband and his provision for separate residence for the wife — Payment under customary or personal law as contemplated in S. 127(3)(b) will disentitle the wife to claim maintenance allowance only if the payment is adequate enough for her continuous maintenance — Payment under Muslim law of mehar money of Rs 5000 to wife living in Bombay, held inadequate and hence, her claim for maintenance allowance rightly decreed — Consent decree of 1962 settling all claims of the wife, however, cannot deprive her of the new right under S. 125 of the 1973 Code*

Section 125 requires, as a sine qua non for its application, neglect by husband or father. In this generous jurisdiction, a broader perception and appreciation of the facts and their bearing must govern the verdict — not chopping little logic or tinkering with burden of proof.

In the present case, the Magistrate proceeded on neglect to maintain which was nowhere contradicted. So this condition is satisfied as the husband had no case of non-neglect.

The absence of mutual consent to live separately, under S. 125(4), is apparent from the fact of divorce by the husband and his provision of a separate residence for her. Divorce here plainly implied that the husband ordered the wife out of her conjugal home.

No settlement of claims made before the 1973 Code which does not have the special statutory right of the divorcee under new S. 125 can operate to negate that claim. Hence, the contention that the claim for maintenance could not survive in view of the settlement by consent decree whereby all claims had been adjusted, is not acceptable.

Also the purpose of the payment 'under any customary or personal law', in the context of S. 127(3)(*b*) must be to obviate destitution of the divorcee and to provide her with wherewithal to maintain herself. The whole scheme of S. 127(3)(*b*) is manifestly to recognise the substitute maintenance arrangement by lump sum payment organised by the custom of the community or the personal law of the parties. There must be a rational relation between the sum so paid and its potential as provision for maintenance; to interpret otherwise is to stultify the project. Law is dynamic and its meaning cannot be pedantic but purposeful. No husband can claim under S. 127(3)(*b*) absolution from his obligation under S. 125 towards a divorced wife except on proof of payment of a sum stipulated by customary or personal law whose quantum is more or less sufficient to do duty for maintenance allowance. The payment of illusory amounts by way of customary or personal law requirement will be considered in the reduction of maintenance rate but cannot annihilate that rate unless it is a reasonable substitute.

Payment of mehar money, as a customary discharge, is within the cognizance of S. 127. But interest from Rs 5000 is surely not enough in a city like Bombay. *Bai Tahira* v. *Ali Hussain Fidaalli Chothia*, (1979) 2 SCC 316: 1979 SCC (Cri) 473: AIR 1979 SC 362: 1979 Cri LJ 151: 1979 Mah LJ 95.

Bench Strength **3**. Coram: **V.R. Krishna Iyer**, *V.D. Tulzapurkar* and *R.S. Pathak*, JJ. [Date of decision: 6-10-1978]

[398] — S. 125(1) Expln. (b) — Claim to maintenance by divorced wife, held, maintainable — *A woman after divorce is entitled to claim maintenance from former husband if she cannot provide for herself and remains unmarried — Such husband remains under a statutory duty and obligation to provide maintenance to his former wife — That divorce was based on desertion is no ground to deny maintenance — Plea rejected that upon divorce mutual rights, duties and obligation of parties came to an end and so wife would no longer be entitled to maintenance — Hindu Marriage Act, 1955 — Ss. 13(1)(i-b) and 25*

Though the marital relations between the petitioner and the respondent came to an end by the divorce granted by the Family Court under Section 13 of the Hindu Marriage Act, the respondent continues to be a "wife" within the meaning of Section 125 CrPC on account of Explanation (*b*) to sub-section (1). (Para 8)

On account of Explanation (*b*) a woman who has been divorced by her husband on account of a decree passed by the Family Court under the Hindu Marriage Act, continues to enjoy the status of a wife for the limited purpose of claiming maintenance allowance from her ex-husband. (Para 9)

Claim for maintenance under the first part of Section 125 CrPC is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation provided by Explanation (*b*) to sub-section (1) of Section 125 CrPC. If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to maintenance allowance. (Para 10)

A woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her. (Para 11). *Rohtash Singh* v. *Ramendri*, (2000) 3 SCC 180: 2000 SCC (Cri) 597: AIR 2000 SC 952: 2000 Cri LJ 1498: 2000 All LJ 629.

Bench Strength **2**. Coram: **S. Saghir Ahmad** and *D.P. Wadhwa*, JJ. [Date of decision: 2-3-2000]

Capt. Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70: 1978 SCC (Cri) 508, followed

Sukumar Dhibar v. Anjali Dasi, 1983 Cri LJ 36 (Cal), approved

Rohtash Singh v. Ramendri, (1999) 38 All Cri Cases 798 (All), affirmed

[399] — S. 125(1) Expln. (b) — Every divorcee, otherwise eligible, is entitled to the benefit of maintenance allowance and the dissolution of the marriage makes no difference to this right under the 1973 Code. *Bai Tahira* v. *Ali Hussain Fidaalli Chothia*, (1979) 2 SCC 316: 1979 SCC (Cri) 473: AIR 1979 SC 362: 1979 Cri LJ 151: 1979 Mah LJ 95.

Bench Strength **3**. Coram: **V.R. Krishna Iyer**, *V.D. Tulzapurkar* and *R.S. Pathak*, JJ. [Date of decision: 6-10-1978]

[400] — Ss. 125(1) Expln. (b) and 125(4) — Divorce obtained by mutual consent — Such divorced wife who has not remarried and entitled to maintenance under the Explanation cannot be debarred by invoking S. 125(4) — *Expression 'wife' in sub-s. (4) does not include a divorced woman — Words and phrases — 'Wife'*

In the instant case the divorced wife had not remarried after the divorce by mutual consent under S. 13-B, Hindu Marriage Act, 1955 and so on a showing that the divorced husband had neglected or refused to maintain her was entitled to maintenance by virtue of S. 125(1) read with clause (*b*) of its Explanation. The divorced husband however succeeded before the High Court in denying her maintenance by relying on Section 125(4) on the plea that a divorcee woman was not entitled to maintenance once it is found that the divorce was by mutual consent. Allowing the appeal of the divorced wife,

Held :

The expression "wife" in sub-section (4) of Section 125 does not have the extended meaning of including a woman who has been divorced. This is for the obvious reason that unless there is a relationship of husband and wife there can be no question of a divorcee woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the woman to live with her husband? Similarly there would be no question of the husband and wife living separately by mutual consent because after divorce there is no need for consent to live separately. In the context, therefore, sub-section (4) of Section 125 does not apply to the case of a woman who has been divorced or who has obtained a decree for divorce. Therefore, a wife who obtains divorce by mutual consent cannot be denied maintenance by virtue of Section 125(4). (Para 3). *Vanamala* v. *H.M. Ranganatha Bhatta*, (1995) 5 SCC 299: 1995 SCC (Cri) 899.

Bench Strength **2**. Coram: **A.M. Ahmadi**, **C.J.** and *S.C. Sen*, J. [Date of decision: 27-7-1995]

Kongini Balan v. M. Visalakshy, 1986 Cri LJ 697: 1985 Ker LJ 749: 1985 Ker LT 967 (Ker); Krishan Kumar v. Kiran, (1991) 1 DMC 248 (MP); M. Ramakrishna Reddy v. T. Jayamma, 1992 Cri LJ 1368 (AP), approved

[401] — S. 125 — Maintenance — Divorce petition of husband decreed — *Lump sum payment to wife by husband in lieu of maintenance granted by civil and criminal courts in favour of the wife and her child, ordered by Supreme Court having regard to facts and circumstances of the case — Hindu Adoptions and Maintenance Act, 1956 — S. 18 — Hindu Marriage Act, 1955 — Ss. 13 and 25*

(8) Maintenance in case of divorce (including divorced Muslim women) *(contd.)*

The appellant had filed an application in the Supreme Court claiming Rs 6000 towards maintenance. A reply has been filed by the respondent stating that the District Judge had directed the respondent to pay Rs 700 per month to the appellant and Rs 500 per month to the son as maintenance as per the provisions contained in Section 25 of the Hindu Marriage Act. In suit filed under the Hindu Adoption and Maintenance Act the trial court has directed the respondent to pay Rs 1000 per month as maintenance for son in addition to the aforesaid amount. Apart from above an ex parte order has also been passed in proceedings under Section 125 of the Criminal Procedure Code wherein the respondent had been directed to pay Rs 1000 per month to the appellant and Rs 800 per month to the son. It was also averred that a criminal case has also been instituted by the appellant against the respondent under Section 494 of the Penal Code. The respondent in his reply offered to give some immovable joint family properties to the appellant and her son in lieu of maintenance. But the offer may not be workable and may create complications, specially in view of the fact that the respondent has asserted the said properties to be the joint family properties and there is no such enforceable document on record by which the consent of the father and other brothers may be clearly and unequivocally accepted. Therefore, it would be proper that the respondent should pay a lump sum amount to the appellant, interest income whereof may be enough for her maintenance and also that of her son. It has come on record that the appellant is living with her father and she is working as a teacher in some school where she is getting Rs 2000 per month. The respondent is working as a Junior Engineer in Municipal Corporation of the city of Jalgaon. In the facts of the case, payment of a lump sum amount of rupees eight lakhs by the respondent to the appellant would meet the ends of justice. The respondent is directed to pay a lump sum amount of rupees eight lakhs to the appellant as maintenance for herself and her son within 6 months. After the entire amount of rupees eight lakhs has been paid by the respondent to the appellant, the proceedings of the cases instituted under Section 125 CrPC and Section 494 IPC shall stand quashed and the proceedings under Section 18 of the Hindu Adoptions and Maintenance Act shall be abated. If the sum of rupees eight lakhs is not paid by the respondent to the appellant as indicated above, it will be open to the appellant to execute the decree and recover the said amount from the respondent in accordance with law. (Paras 12 to 15). *Sujata Uday Patil* v. *Uday Madhukar Patil*, (2006) 13 SCC 272: (2007) 51 AIC 480 (SC).

Bench Strength **2**. Coram: **G.P. Mathur** and *A.K. Mathur*, JJ. [Date of decision: 13-12-2006]

Reynold Rajamani v. Union of India, (1982) 2 SCC 474: AIR 1982 SC 1261, relied on

[402] — S. 125 — Divorce by mutual consent — *Pendency of divorce petition filed by the husband and maintenance proceedings filed by the wife — Parties living separately for a period of more than ten years — Marriage between the parties found to be irretrievably broken down and there being no possibility of reconciliation — Parties mutually agreeing that the marriage should be dissolved subject to the payment of Rs 60,000 by the husband to the wife — In peculiar facts and circumstances of the case, the Supreme Court in exercise of its powers under Art. 142 of the Constitution directed that the marriage between the parties shall stand dissolved by a decree of divorce — All the four daughters shall continue to live with their father who shall maintain and take proper care of them — Wife shall be allowed to meet the children at the residence of the husband on prior arrangement — Constitution of India — Art. 142 — Hindu Marriage Act, 1955 — S. 13-B. Kanchan Devi* v. *Promod Kumar Mittal*, (1996) 8 SCC 90: AIR 1996 SC 3192.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 3-4-1996]

[403] — S. 125 — Interim alimony — Maintenance awarded under S. 125 CrPC adjustable against amount awarded in matrimonial proceedings — *On the facts and circumstances fresh directions for payment by husband issued — Hindu Marriage Act, 1955 — S. 24. Sudeep Chaudhary* v. *Radha Chaudhary*, (1997) 11 SCC 286: AIR 1999 SC 536.

Bench Strength **2**. Coram: **S.P. Bharucha** and *Faizan Uddin*, JJ. [Date of decision: 31-1-1997]

[404] — S. 125 — Wife's claim for maintenance for herself and children — Maintenance fixed by Civil Court under S. 24, Hindu Marriage Act, 1956, pending divorce proceedings by wife, held, has no relevance for fixation by magistrate of maintenance under S. 125 — *Hindu Marriage Act, 1955 — S. 24*

Ordinarily the determination of a civil right by a Civil Court must prevail against a like decision by the Criminal Court. But, in the instant case, the direction of the Civil Court is not a final determination under the Hindu Adoptions and Maintenance

Act, but an order pendente lite, under S. 24, Hindu Marriage Act, and the amount does not include the maintenance for the children. *Capt. Ramesh Chander Kaushal* v. *Veena Kaushal*, (1978) 4 SCC 70: 1978 SCC (Cri) 508: AIR 1978 SC 1807: 1979 Cri LJ 3.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *D.A. Desai*, JJ. [Date of decision: 27-4-1978]

[405] — S. 125 — Alimony — Quantum — *Directions for enhanced payment of from the estate of the deceased ex-husband keeping in view the rising cost of living, etc. Nandarani Mazumdar* v. *Indian Airlines*, (1983) 4 SCC 461: 1983 SCC (Cri) 858: AIR 1983 SC 1201.

Bench Strength 3. Coram: *P.N. Bhagwati*, *A.N. Sen* and **Ranganath Misra**, JJ. [Date of decision: 1-9-1983]

[406] — Ss. 125 and 127 — Maintenance — Scope — Right of divorced wife to stay in tenancy premises — Nature and scope — Eviction suit filed against tenant-husband — Right of divorced wife to contest — *Restriction of enforceability of said right against husband alone — Whether or not divorced wife has right of residence in the matrimonial home, held, would depend on terms and conditions of divorce decree/settlement, and provision for maintenance (including residence) that has been made therein — In case provision for residence of divorced wife has been made in the matrimonial home situated in tenanted premises, such divorced wife would be entitled to defend, in eviction proceedings, tenancy rights and rights of occupation thereunder in same manner in which tenant-husband could have done, but certainly not on basis of a right higher or larger than that — She would be liable to be evicted in same manner in which her husband as tenant would have been liable to be evicted — Moreover, onus to bring on record terms of divorce settlement/decree are on divorced wife — On facts, during pendency of eviction proceedings against tenant- husband, to which appellant had been joined and given leave to defend as deserted wife, decree for divorce based on mutual settlement had been passed — Neither were terms and conditions of such settlement brought on record, nor was it the case of appellant that she was entitled to continue her residence in tenanted premises as part of her right to maintenance — Hence, held, appellant cannot be allowed to prosecute the appeal and defend her right against claim for eviction made by the landlord — Hindu Adoptions and Maintenance Act, 1956 — S. 18 r/w S. 3(b) — Hindu Marriage Act, 1955 — Ss. 25, 24 and 27 — Divorce Act, 1869 — S. 37 — Parsi Marriage and Divorce Act, 1936 — Ss. 40, 39 and 42 — Special Marriage Act, 1954 — Ss. 37 and 36 — TP Act, 1882 — Ss. 108 and 105 — Karnataka Rent Control Act, 1961 (22 of 1961) — S. 21*

The case of a divorced wife stands on a little different footing from a deserted wife. Divorce is termination of the matrimonial relationship and brings to an end the status of wife as such. Whether or not the divorced wife has the right of residence in the matrimonial home, would depend on the terms and conditions in which the decree of divorce has been granted and provision for maintenance (including residence) has been made. In the event of the provision for residence of a divorced wife having been made by the husband in the matrimonial home situated in the tenanted premises, such divorced wife too would be entitled to defend, in the eviction proceedings, the tenancy rights and rights of occupation thereunder in the same manner in which the tenant-husband could have done and certainly not higher or larger than that. She would be liable to be evicted in the same manner in which her husband as tenant would have been liable to be evicted. (Paras 35 and 21)

However, it is admitted by the appellant that on 3-12-1998, that is, during the pendency of these proceedings and while the matter was pending in the High Court a decree for dissolution of marriage by divorce based on mutual consent had been passed. The terms and conditions of such settlement have not been brought on record by the appellant which she ought to have done. It is not the case of the appellant that she is entitled to continue her residence in the tenanted premises by virtue of an obligation incurred by her husband to provide residence for her as a part of maintenance. She cannot, therefore, be allowed to prosecute the appeal and defend her right against the claim for eviction made by the landlord. (Para 36). *B.P. Achala Anand* v. *S. Appi Reddy*, (2005) 3 SCC 313: AIR 2005 SC 986: (2005) 117 DLT 354: (2005) 1 KLT 904.

Bench Strength 3. Coram: **R.C. Lahoti**, **C.J.** and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 11-2-2005]

Karam Singh Sobti v. Pratap Chand, (1964) 4 SCR 647: AIR 1964 SC 1305, relied on

Bharat Heavy Plates and Vessels Ltd., Re, AIR 1985 AP 207; V.B. Jaganathan v. A.R. Srividhya, (1997) 2 MLJ 366; Old Gate Estates Ltd. v. Alexander, (1949) 2 All ER 822: (1950) 1 KB 311 (CA); Hutchinson v. Hutchinson, (1947) 2 All ER 792; Brown v. Draper, (1944) 1 All ER 246: 1944 KB 309 (CA); Middleton v. Baldock, (1950) 1 All ER 708: (1950) 1 KB 657 (CA); Vaughan v. Vaughan, (1953) 1 QB 762, approved

National Provincial Bank Ltd. v. Ainsworth, 1965 AC 1175: (1965) 2 All ER 472: (1965) 3 WLR 1 (HL); Harriman v. Harriman, 1909 P 123: (1908-10) All ER Rep 85 (CA); Abdur Rahim Undre (Dr.) v. Padma Abdur Rahim Undre, AIR 1982 Bom 341, considered

(8) Maintenance in case of divorce (including divorced Muslim women) *(contd.)*

[407] — S. 125(4) — Divorce agreement by mutual consent — Wife not disentitled to claim maintenance so long as she remains unmarried and is unable to maintain herself — *Concept of living separately by mutual consent arises only during subsistence of marriage — In the circumstances of the case, mere fact that the wife is having two kanals of land is not a sufficient ground to disentitle her to receive maintenance. Gurmit Kaur* v. *Surjit Singh*, (1996) 1 SCC 39.

Bench Strength 2. Coram: *K. Ramaswamy* and *S.B. Majmudar*, JJ. [Date of decision: 28-11-1995]

[**Ed.**: It appears that the parties are governed by Hindu Law where divorce outside the court is not permissible. But in the instant case the parties have not challenged the divorce agreement and the Supreme Court has proceeded on the assumption that it was a valid agreement.]

[408] — S. 125 — Claim of maintenance under — *In case of dismissal of petition of husband under any of the provisions of Ss. 9 to 14 of Hindu Marriage Act, no alimony can be granted to wife petitioning under S. 25 of that Act but maintenance be claimed under S. 125 CrPC. Chand Dhawan* v. *Jawaharlal Dhawan*, (1993) 3 SCC 406: 1993 SCC (Cri) 915: 1993 Cri LJ 2930.

Bench Strength 2. Coram: **M.M. Punchhi** and *Yogeshwar Dayal*, JJ. [Date of decision: 11-6-1993]

[409] — S. 125 — Divorce proceedings under Hindu Marriage Act, 1955 — Appellant husband directed by the High Court to pay maintenance pendente lite to his wife and minor daughters — *Appeal dismissed and decree of divorce declined but maintenance order continued — Claim of the wife and the children found valid otherwise against the husband under S. 125 — Held, the said maintenance shall be taken to have been awarded under S. 125 — Hindu Marriage Act, 1955 — Ss. 13 and 24. Chigurupati Bambasiva Rao* v. *Chigurupati Vijayalaxmi*, (1997) 11 SCC 84: 1997 SCC (Cri) 1063.

Bench Strength 2. Coram: *M.M. Punchhi* and *S.B. Majmudar*, JJ. [Date of decision: 21-4-1997]

[**Ed.**: Considerations for awarding maintenance pendente lite under the Hindu Marriage Act and maintenance under Section 125 CrPC are entirely different. In the situation as presented in this case should the husband be denied the opportunity to plead the defences available to him under Section 125, CrPC before passing of an order under that section? Moreover, would it be open to the husband in the present case to seek cancellation of the order under Section 125(5) in case the facts so warrant, or alteration of the order under Section 127?

A similar question arose in *Ramesh Chander Kaushal* v. *Veena Kaushal*, (1978) 4 SCC 70 where the Supreme Court pointed out that the direction under Section 24, HMA is not a final determination but an order pendente lite and so would not prevent the Magistrate from exercising his jurisdiction under Section 125, CrPC. In that case the Magistrate had awarded higher maintenance under Section 125, CrPC.]

[410] — S. 125 — Maintenance claim fixed and matrimonial dispute settled — Transfer proceedings — Matrimonial dispute — Disposal in terms of settlement — *Petition disposed of on the following terms: on the payment of Rs 5,00,000 by respondent to petitioner the proceeding under Ss. 498-A, 406 and 120-B IPC and under S. 9 of Hindu Marriage Act, 1955 shall stand quashed — Joint petition for divorce by mutual consent shall be allowed — Rs 3000 per month shall be paid for the welfare of the son till the boy attains majority — On two consecutive defaults in making said payment, the criminal case shall stand revived — Penal Code, 1860, Ss. 498-A, 406 and 120-B — CPC, 1908, S. 25. Navpreet Kaur* v. *Gurkirat Singh*, (2008) 17 SCC 485: (2009) 73 AIC 18 (SC).

Bench Strength 2. Coram: *Dr. Arijit Pasayat* and *P. Sathasivam*, JJ. [Date of decision: 6-12-2008]

[411] — S. 125 — Muslim women not barred from filing petition under — Muslim Women (Protection of Rights on Divorce) Act, 1986, held, applies only to divorced women and not to women who are not divorced — *Furthermore, since the proceedings under S. 125 CrPC and the 1986 Act are tried before the same court, and given the beneficial nature of the 1986 Act, even if a divorced Muslim woman applies under S. 125 CrPC, it is open to the court to treat it as an application under the 1986 Act — Muslim Women (Protection of Rights on Divorce) Act, 1986*

The view expressed by the First Revisional Court that no Muslim woman can maintain a petition under Section 125 CrPC is clearly unsustainable. The Muslim Women (Protection of Rights on Divorce) Act, 1986 only applies to divorced women and not to a woman who is not divorced. Furthermore, proceedings under Section 125 CrPC are civil in nature. Even if the court noticed that there was a divorced Muslim woman who had made an application under Section 125 CrPC, it was open to the court to treat the same as a petition under the 1986 Act considering the beneficial nature of the legislation, especially since proceedings under Section 125 CrPC and claims made under the Muslim Women Act are tried by the same court. (Paras 6 and 3). *Iqbal Bano* v. *State of U.P.*, (2007) 6 SCC 785: (2007) 3 SCC (Cri) 258: AIR 2007 SC 2215: (2007) 3 KLT 63: (2007) 4 All LJ 587: (2007) 55 AIC 4 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 5-6-2007]

Vijay Kumar Prasad v. State of Bihar, (2004) 5 SCC 196: 2004 SCC (Cri) 1576, relied on

[412] — S. 125 — Muslim divorced wife's maintenance petition against ex-husband filed under S. 125 CrPC before Family Court — Maintainability and temporal extent of maintenance — *Such application till the applicant does not remarry, held, maintainable irrespective of absence of any application under S. 5 of Muslim Women (Protection of Rights on Divorce) Act, 1986 — Her entitlement to maintenance continues even in post-*iddat *period as long as she does not remarry — Hence, orders of courts below restricting the maintenance amount to* iddat *period set aside and matter remanded for disposal in accordance with law — Muslim Women (Protection of Rights on Divorce) Act, 1986, Ss. 3, 4 and 5 — Constitution of India — Art. 136 — Family Courts Act, 1984, Ss. 7(1) Expln. (f), 20, 3 and 2(d)*

The appellant, a Muslim lady, was married to the respondent. She filed a petition under Section 125 CrPC against the respondent in the Court of Family Judge to claim maintenance allowance for herself and her new-born child. In reply, the respondent contended, inter alia, that he had already divorced the appellant and therefore, under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (the Muslim Act), the appellant was not entitled to any maintenance after the divorce and after the expiry of the *iddat* period. The parties had not given any joint or separate application under Section 5 of the Muslim Act. The Family Court granted a certain amount per month towards maintenance from the date of institution of the petition till the date of divorce and further from the said date till the expiry of *iddat* period but denied the amount of maintenance thereafter.

The High Court substantially upheld the order of the Family Court. The appellant then filed the present appeal by special leave.

Before the Supreme Court, the appellant contended that both the courts below proceeded on a wrong assumption that after divorce of a Muslim wife, a petition under Section 125 CrPC would not be maintainable. That the courts below lost sight of Section 7(1)(*f*) of the Family Courts Act, 1984 (the Family Act).

The respondent supported the impugned judgment.

Thus, the question before the Supreme Court was whether a Muslim divorced wife would be entitled to receive maintenance from her divorced husband under Section 125 CrPC and, if yes, then through which forum.

Allowing the appeal,

Held :

Section 20 of the Family Act makes it crystal clear that the provisions of that Act shall have overriding effect on all other enactments in force dealing with the issue of maintenance. (Para 15)

From Sections 7(1)(*a*), (*b*) & Explanation (*f*) and Section 20 of the Family Act it is quite discernible that a Family Court established under the Family Act shall exclusively have jurisdiction to adjudicate upon the applications filed under Section 125 CrPC. (Paras 14 to 16)

The appellant's petition under Section 125 CrPC would be maintainable before the Family Court as long as the appellant does not remarry. The amount of maintenance to be awarded under Section 125 CrPC cannot be restricted for the *iddat* period only. (Para 21)

Cumulative reading of the relevant portions of the judgments in *Danial Latifi*, (2001) 7 SCC 740 and *Iqbal Bano*, (2007) 6 SCC 785 would make it crystal clear that even a divorced Muslim woman would be entitled to claim maintenance from her divorced husband, as long as she does not remarry. This being a beneficial piece of legislation, the benefit thereof must accrue to the divorced Muslim women. (Para 23)

Therefore, the impugned orders are set aside and quashed. It is held that even if a Muslim woman has been divorced, she would be entitled to claim maintenance from her husband under Section 125 CrPC after the expiry of period of *iddat* also, as long as she does not remarry. As a necessary consequence thereof, the matter is remanded to the Family Court for its disposal on merits at an early date, in accordance with law. The respondent shall bear the costs of litigation of the appellant. Counsel's fees Rs 5000. (Para 24). *Shabana Bano* v. *Imran Khan*, (2010) 1 SCC 666.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **Deepak Verma**, JJ. [Date of decision: 4-12-2009]

Danial Latifi v. Union of India, (2001) 7 SCC 740: (2007) 3 SCC (Cri) 266; Iqbal Bano v. State of U.P., (2007) 6 SCC 785: (2007) 3 SCC (Cri) 258, followed

[413] — S. 125 — Scheme of, replaced by another under a later statute for divorced Muslim women — Constitutionality — Discrimination — *Held, there is no discrimination where State provides for a*

(8) Maintenance in case of divorce (including divorced Muslim women) *(contd.)*

particular group (divorced Muslim women in this case) a scheme for maintenance and prevention of vagrancy which is equally or more beneficial than that provided in the earlier general law then prevailing (S. 125 CrPC, 1973 in this case) — Contention that as a result of the Muslim Women (Protection of Rights on Divorce) Act, 1986 petitioners had lost their right to maintenance, held, is no longer of significance in view of the interpretation placed by the Supreme Court on the Act — Constitution of India — Arts. 14, 15 and 16

A comparison of Sections 3(1)(*a*) and 3(3) with Section 125 CrPC will make it clear that requirements provided in Section 125 and the purpose, object and scope thereof being to prevent vagrancy by compelling those who can do so to support those who are unable to support themselves and who have a normal and legitimate claim to support are satisfied. If that is so, the argument of the petitioners that a different scheme being provided under the Act, which is equally or more beneficial on the interpretation placed by the Supreme Court herein than the one provided under the Code of Criminal Procedure, deprives them of their right, loses its significance. (Para 30)

Before the passing of the impugned Act, a Muslim woman who was divorced by her husband was granted a right to maintenance from her husband under the provisions of Section 125 CrPC until she may remarry and such a right, if deprived, would not be reasonable, just and fair. Thus the provisions of the Act depriving the divorced Muslim women of such a right to maintenance from her husband and providing for her maintenance to be paid by the former husband only for the period of iddat and thereafter to make her run from pillar to post in search of her relatives one after the other and ultimately to knock at the doors of the Wakf Board does not appear to be a reasonable and fair substitute of the provisions of Section 125 CrPC. Such deprivation of the divorced Muslim women of their right to maintenance from their former husbands under the beneficial provisions of the Code of Criminal Procedure which are otherwise available to all other women in India cannot be stated to have been effected by a reasonable, right, just and fair law and, if these provisions are less beneficial than the provisions of Chapter IX of the Code of Criminal Procedure, a divorced Muslim woman has obviously been unreasonably discriminated against and deprived of the protection of the provisions of the general law as indicated under the Code which are available to Hindu, Buddhist, Jain, Parsi or Christian women or women belonging to any other community. The provisions prima facie, therefore, appear to be violative of Article 14 of the Constitution mandating equality and equal protection of law to all persons otherwise similarly circumstanced and also violative of Article 15 of the Constitution which prohibits any discrimination on the ground of religion as the Act would obviously apply to Muslim divorced women only and solely on the ground of their belonging to the Muslim religion. (Para 33)

If on a rule of construction, a given statute will become "ultra vires" or "unconstitutional" and, therefore, void, whereas on another construction which is permissible, the statute remains effective and operative, the court will prefer the latter on the ground that the legislature does not intend to enact unconstitutional laws. The latter interpretation should be accepted and, therefore, the interpretation placed herein results in upholding the validity of the Act. It is well settled that when by appropriate reading of an enactment the validity of the Act can be upheld, such interpretation is accepted by courts and not the other way round. (Para 33). *Danial Latifi* v. *Union of India*, (2001) 7 SCC 740: AIR 2001 SC 3958.

Bench Strength 5. Coram: *G.B. Pattanaik*, **S. Rajendra Babu**, *D.P. Mohapatra*, *Doraiswamy Raju* and *Shivaraj V. Patil*, JJ. [Date of decision: 28-9-2001]

[414] — S. 125 — Effect additional maintenance available under S. 3(1)(b) of the 1986 Muslim Women Act — *Held, said S. 3(1)(b) provides additional maintenance to the divorced mother for maintaining her infant child for the fosterage period of two years from the date of birth of the child and is independent of the right of the minor children unable to maintain themselves to maintenance under S. 125, CrPC — Muslim Women (Protection of Rights on Divorce) Act, 1986 — S. 3(1)(b). Noor Saba Khatoon* v. *Mohd. Quasim*, (1997) 6 SCC 233: 1997 SCC (Cri) 924: AIR 1997 SC 3280: (1997) 2 KLT 363: 1997 Cri LJ 3972.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *K. Venkataswami*, JJ. [Date of decision: 29-7-1997]

[415] — S. 125 — State Wakf Board's liability to provide maintenance to a divorced Muslim woman who is unable to maintain herself and has not remarried — *Such divorced woman not required to initiate proceedings in the first instance against her children, parents and relatives who have no means to pay her maintenance and obtain negative orders and then proceed against the State Wakf Board — She may direct her claim against the State Wakf Board in the first instance and in that* *proceeding she can plead and prove inability of her relatives to maintain her — If the State Wakf Board controverts that her relatives have enough means to pay maintenance they may be added as parties to the litigation — Muslim Women (Protection of Rights on Divorce) Act, 1986 — S. 4*

The respondent was a Muslim divorced wife. She filed a petition against the State Wakf Board under Section 4(2) of the Act seeking maintenance. The appellant Wakf Board moved the High Court praying for quashing of proceedings but the High Court declined to do so. The appellants approached the Supreme Court for the same purpose. It was contended that unless sub-section (1) of Section 4 gets exhausted by proper orders, sub-section (2) of Section 4 (in which the liability of the State Wakf Board is to be found) cannot be invoked. In other words, it was contended that in the present set of proceedings, the appellants cannot be made to face or litigate about before the Magistrate trying the matter. Rejecting the contention

Held :

The Drafter's pattern in sub-dividing the provision into sub-sections (1) and (2) evidently was not to cause any split in the legislative theme because the provision, is an integrated whole. One step is dependent on another. It is futile for a divorced woman seeking succour to run after relatives, be it her children, parents, relatives or other relatives, who are not possessed of means to offer her maintenance and in fighting litigations in succession against them, dragging them to courts of law in order to obtain negative orders justificatory to the last resort of moving against the State Wakf Board. She would instead be entitled to plead and prove such relevant facts in one proceeding, as to the inability of her relations in maintaining her and directing her claim against the State Wakf Board in the first instance. It is, however, open for the State Wakf Board to controvert that the relations mentioned in the provision, or some of them, have the means to pay maintenance to her. In that event the Magistrate would perfectly be justified in adding those relatives as parties to the litigation in order to determine as towards whom shall he direct his orders for payment of maintenance. In one and the same proceeding, one or more orders conceivably can be passed in favour of the divorced woman, subject of course to her not remarrying and remaining unable to maintain herself.

The High Court committed no wrong in declining to interfere at the initial stage of the proceedings at the behest of the appellant Wakf Board. They are at liberty to take before the Magistrate hearing the matter, such defences as are open to them on the merit of the matter and within the framework of the legislative scheme embodied in Section 4 of the Act. *Secretary, Tamil Nadu Wakf Board* v. *Syed Fatima Nachi*, (1996) 4 SCC 616: 1996 SCC (Cri) 810: AIR 1996 SC 2423.

Bench Strength 2. Coram: **M.M. Punchhi** and *Sujata V. Manohar*, JJ. [Date of decision: 9-7-1996]

[416] — S. 125 — Divorce — Condition precedent for effectiveness of divorce so as to disentitle a Muslim woman to claim maintenance, held, is the pronouncement of the divorce — *Such pronouncement has to be proved on evidence — Merely taking a plea in the written statement before the trial court in reply to an application for maintenance, that the non-applicant had divorced the applicant sometime in the past, held, would not have the effect of effectuating a divorce on the date of delivery of the copy of the written statement to the applicant — Nor could a similar statement made in an affidavit by the non-applicant in some other case, to which the applicant was not a party, be of any evidentiary value in this regard — Words and Phrases — "Pronouncement" — Muslim Law — Divorce — Condition precedent for being effective*

The appellant and *A* (Respondent 2 herein) were married in 1968. On 12-4-1979, the appellant, on behalf of herself and her two minor children, filed an application under Section 125 CrPC complaining of desertion and cruelty on the part of Respondent 2 towards her. In his written statement filed before the Family Court, *A* vaguely made certain generalised accusations against the appellant such as that she was sharp, shrewd, mischievous and had brought disgrace to the family. He added that feeling fed up with such unbecoming activities of her, he had divorced her on 11-7-1987 and that therefore she was not entitled to any maintenance. The particulars of the alleged *talaq* were not pleaded nor the circumstances under which and the persons, if any, in whose presence *talaq* was pronounced were stated. Except examining himself, Respondent 2 adduced no evidence in proof of *talaq* said to have been given by him on 11-7-1987. There were no reasons substantiated in justification of *talaq* and no plea or proof that any effort at reconciliation preceded the *talaq*. The plea of Respondent 2 was upheld by the Family Court. The Family Court referred to some affidavit dated 31-8-1988 said to have been filed by Respondent 2 in some civil suit details whereof were not available on the record of the present case but certainly to which litigation the appellant was not a party. In that affidavit it was stated by Respondent 2 that he had divorced the appellant 15 months before. The

(8) Maintenance in case of divorce (including divorced Muslim women) *(contd.)*

Family Court held that from such affidavit the plea of Respondent 2 found corroboration of his having divorced the appellant. The High Court held that although the alleged divorce had not been communicated to the appellant but the communication stood completed on 5-12-1990 with the filing of the written statement by Respondent 2. Therefore, the High Court concluded that the appellant was entitled to claim maintenance from 1-1-1988 to 5-12-1990. The figure of maintenance was appointed by the High Court at Rs 200. Thereafter, the appellant filed the instant appeal by special leave.

Allowing the appeal,

Held :

Talaq, in order to be effective has to be pronounced. The term "pronounce" means to proclaim, to utter formally, to utter rhetorically, to declare, to utter, to articulate. There is no proof of *talaq* having taken place on 11-7-1987. A mere plea taken in the written statement of a divorce having been pronounced sometime in the past cannot by itself be treated as effectuating *talaq* on the date of delivery of the copy of the written statement to the wife. Respondent 2 ought to have adduced evidence and proved the pronouncement of *talaq* on 11-7-1987 and if he failed in proving the plea raised in the written statement, the plea ought to have been treated as failed. So also the affidavit dated 31-8-1988, filed in some previous judicial proceedings not inter partes, containing a self-serving statement of Respondent 2, could not have been read in evidence as relevant and of any value. (Para 16)

Therefore, it is held that neither the marriage between the parties stood dissolved on 5-12-1990 nor did the liability of Respondent 2 to pay maintenance come to an end on that day. Respondent 2 shall continue to remain liable for payment of maintenance until the obligation comes to an end in accordance with law. (Para 17). *Shamim Ara* v. *State of U.P.*, (2002) 7 SCC 518: 2002 SCC (Cri) 1814: AIR 2002 SC 3551.

Bench Strength 2. Coram: **R.C. Lahoti** and *P. Venkatarama Reddi*, JJ. [Date of decision: 1-10-2002]

Ma Mi v. Kallander Ammal, AIR 1927 PC 15: 100 IC 1: (1927) 54 IA 61: ILR 5 Rang 18; Kalenther Ammal v. Ma Mi, ILR (1924) 2 Rang 400; Asha Bibi v. Kadir Ibrahim Rowther, ILR (1909) 33 Mad 22: 3 IC 730; Wahid Khan v. Zainab Bibi, ILR (1914) 36 All 458: 25 IC 387; Ibrahim v. Syed Bibi, ILR (1888) 12 Mad 63; Ahmad Kasim Molla v. Khatun Bibi, ILR (1932) 59 Cal 833: 141 IC 689: AIR 1933 Cal 27; Ful Chand v. Nazab Ali Chowdhary, ILR (1909) 36 Cal 184: 1 IC 740; Sarabai v. Rabiabai, ILR (1905) 30 Bom 537: 8 Bom LR 35; Furzund Hossein v. Janu Bibee, ILR (1878) 4 Cal 588; Rashid Ahmad v. Anisa Khatun, (1931-32) 59 IA 21: ILR (1932) 54 All 46: 135 IC 762: AIR 1932 PC 25; M.M. Abdul Khader v. Azeeza Bee, (1944) 1 MLJ 17: 214 IC 38: AIR 1944 Mad 227; Kathiyumma v. Urathel Marakkar, (1931) 133 IC 375: AIR 1931 Mad 647, overruled

Mohd. Haneefa v. Pathummal Beevi, 1972 KLT 512; A. Yousuf Rawther v. Sowramma, AIR 1971 Ker 261: 1970 Ker LT 477; Jiauddin Ahmed v. Anwara Begum, (1981) 1 Gau LR 358; Rukia Khatun v. Abdul Khalique Laskar, (1981) 1 Gau LR 375, approved

Bai Tahira v. Ali Hussain Fidaalli Chothia, (1979) 2 SCC 316: 1979 SCC (Cri) 473, relied on

Mulla on Principles of Mahomedan Law (19th Edn., 1990), para 310; Tahir Mahmood: The Muslim Law of India (2nd Edn.), pp. 113-19; Chambers 20th Century Dictionary, New Edition, p. 1030, referred to

Applied in Iqbal Bano v. State of U.P., (2007) 6 SCC 785

[417] — S. 125 — There is no conflict between S. 125 and the provisions of Muslim personal law on the liability of Muslim husband to provide for maintenance of his divorced wife who is unable to maintain herself

The Quran imposes an obligation on the Muslim husband to make provision for or to provide maintenance to the divorced wife. Mahr is a mark of respect to the wife. The sum settled by way of Mahr is generally expected to take care of the ordinary requirements of the wife, during the marriage and after. But the statements contained in text books on Muslim personal law are inadequate to establish the proposition that the Muslim husband is not under an obligation to provide for the maintenance of his divorced wife, who is unable to maintain herself. The application of those statements of law must be restricted to that class of cases, in which there is no possibility of vagrancy or destitution arising out of the indigence of the divorced wife. The argument that, according to the Muslim personal law, a husband's liability to provide for the maintenance of his divorced wife is limited to the period of iddat, despite the fact that she is unable to maintain herself, has therefore to be rejected. If she is unable to maintain herself, she is entitled to take recourse to S. 125 of the Code. *Mohd. Ahmed Khan* v. *Shah Bano Begum*, (1985) 2 SCC 556: 1985 SCC (Cri) 245: AIR 1985 SC 945: 1985 Cri LJ 875.

Bench Strength 5. Coram: **Y.V. Chandrachud, C.J.** and *D.A. Desai*, *O. Chinnappa Reddy*, *E.S. Venkataramiah* and *Ranganath Misra*, JJ. [Date of decision: 23-4-1985]

[418] — S. 125(1) Expln. (b) — Muslim wife whose marriage dissolved by a decree of dissolution passed at her instance entitled to maintenance under S. 125 — *Hence Rs 100 as maintenance for herself and Rs 40 as maintenance* *for her child directed to be paid with arrears — She could also apply to Magistrate for increasing the amounts of maintenance under S. 127(1) on ground of increase in cost of living. Zohara Khatoon* v. *Mohd. Ibrahim*, (1986) 1 SCC 398: 1986 SCC (Cri) 72: AIR 1986 SC 587: 1986 Cri LJ 556: 1986 ALJ 281: 1986 BLJR 401.

Bench Strength **2**. Coram: **D.P. Madon** and *G.L. Oza*, JJ. [Date of decision: 26-11-1985]

Zohara Khatoon v. Ibrahim, (1981) 2 SCC 509: 1981 SCC (Cri) 517, affirmed

[419] — S. 125(1) Expln. (b) — 'Wife' — Divorced Muslim woman who has not remarried is a 'wife' for the purpose of S. 125. *Mohd. Ahmed Khan* v. *Shah Bano Begum*, (1985) 2 SCC 556: 1985 SCC (Cri) 245: AIR 1985 SC 945: 1985 Cri LJ 875.

Bench Strength **5**. Coram: **Y.V. Chandrachud, C.J.** and *D.A. Desai, O. Chinnappa Reddy, E.S. Venkataramiah* and *Ranganath Misra*, JJ. [Date of decision: 23-4-1985]

[420] — S. 125(1) Expln. (b) — "Wife" to include divorced muslim wife — *Held, even applies where the dissolution of marriage obtained by a Mohammedan wife under the Dissolution of Muslim Marriages Act, 1939 — Distinction between unilateral divorce by Muslim husband and one under the 1939 Act relevant only to application of Cls. (b) and (c) of S. 127(3)*

Per Fazal Ali and Varadarajan, JJ.

Explanation (*b*) to S. 125(1) applies to a divorced Mohammedan wife by whatever mode the dissolution of marriage is brought about whether she was unilaterally divorced by the husband by *talaq* or where she obtains divorce either by mutual agreement (*'khula' 'mubarat' or 'tawfeez') or through a civil court under the Dissolution of Muslim Marriages Act, 1939.*

Regarding S. 488, CrPC, 1898, the predecessor of present S. 125, CrPC, 1973, it has been held that it provided a summary remedy for awarding maintenance to neglected wives irrespective of caste, creed, community or religion to which they belonged. However, where the validity of a marriage or mode of divorce or cessation of marriage under the personal law of a party is concerned that would have to be determined according to the personal law. Section 488 excluded any other Act regarding the quantum of maintenance and the circumstances under which it could be granted.

Regarding Mohammedans under the scheme of Ss. 488 and 489, CrPC, 1898, it was settled that the award of maintenance would cease from the date of divorce given by the husband and the completion of the period of *iddat*.

Hence before the 1973 Code, the right of maintenance of a Mohammedan wife ceased to exist if she was divorced by her husband and had observed the period of *iddat*.

The 1973 Code has made a departure in this regard by abrogating this part of the Mahomedan law under which the wife ceased to get maintenance if the conjugal relationship of the husband and wife came to an end. Clause (*b*) of explanation to S. 125(1) envisages all the three modes of divorce by which a muslim marriage can be dissolved, whether it be unilateral divorce by the husband or where the wife obtains by agreement with her husband or through a civil court under the 1939 Act.

However, a clear distinction is made between *talaq* by husband and divorce obtained by the wife under the 1939 Act as regards cancellation of the order of maintenance under S. 127, CrPC, 1973. The first two modes of muslim divorce, viz. *talaq* and one by agreement between parties is governed by Cl. (*b*) of S. 127(3) while the case of divorce obtained by wife from civil court would be governed by clause (*c*), S. 127(3). So that while clause (*b*) of sub-section (3) of S. 127 does provide for cancellation of the maintenance on payment of dower if a woman has been divorced, the said clause does not contemplate cancellation of maintenance where a woman obtains divorce from her husband through a civil court under the provisions of the Act of 1939. Under clause (*c*) where a woman obtains a divorce from her husband the amount of maintenance cannot be cancelled until she voluntarily relinquishes or surrenders her rights to the same

Per Koshal, J. (concurring)

(1) Divorce is nothing more nor less than another name for dissolution of marriage, whether the same results from act of parties or is a consequence of proceedings at law, and it would be wrong to regard the two terms as not being synonymous with each other, unless the legislature makes a direction to the contrary. And. S. 125, CrPC contains no such direction.

(2) Explanation (*b*) is not by its very terms restricted to voluntary action of the husband. The word 'obtained' would indicate achievement by exertion in spite of opposition. Hence a dissolution of marriage obtained through the coercive process of civil court would be covered.

(3) Divorce by unilateral act of husband being peculiar to Mahomedan law, the interpretation advanced by the respondent, would limit the

application of Explanation (*b*) to Muslims alone, which per se is an absurd result. *Zohara Khatoon* v. *Mohd. Ibrahim*, (1981) 2 SCC 509: 1981 SCC (Cri) 517: AIR 1981 SC 1243: (1981) 2 SCR 910: 1981 Cri LJ 754: 1981 MLJ (Cri) 551.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**[1], *A.D. Koshal* and *A. Varadarajan*[1], JJ. [Date of decision: 18-2-1981]

[**Ed.**: *Quaere 1.* Whether Explanation (*b*) is not applicable when there is an annulment of a Hindu marriage or a decree of judicial separation is passed. See observations in para 18 (supra).

2. The statement in para 25 that maintenance could be got cancelled by a Mahomedan husband if he has paid dower must be read subject to the recent decision in *Fuzlunbi* v. *K. Khader Vali*, (1980) 4 SCC 125: 1980 SCC (Cri) 916, which is at least categorical to the extent that where the dower amount is *too low* it would not absolve the husband from his obligation to pay maintenance.]

(9) Maintenance of children

See also under FAMILY AND PERSONAL LAWS

[421] — S. 125 — Liability of father to maintain minor children — Medical negligence — Poor lady already having a number of children (seven in this case) offering herself for complete sterilisation operation at government hospital, operated upon and given a certificate to that effect — However, subsequently she conceiving and giving birth to a female child — At this stage it was found that only her right Fallopian tube was operated upon and the left one was left untouched — *In such circumstances, the doctor concerned, held, acted most negligently — Hence, in spite of the parents' moral and statutory liability to maintain their minor children, the said lady, held, entitled to damages for medical negligence — Case-law discussed — Hindu Adoptions and Maintenance Act, 1956 — Ss. 20 and 23 — Consumer Protection Act, 1986 — Ss. 2(1)(o) and (g)*

It is, no doubt, true that the parents are under an obligation to maintain their minor children. This is a moral, apart from a statutory, liability in view of the provisions contained in Section 125 CrPC. It is also a statutory duty on account of Sections 20 and 23 of the Hindu Adoptions and Maintenance Act. (Paras 38 and 39)

"Maintenance" would obviously include provision for food, clothing, residence, education of the children and medical attendance or treatment. (Para 39)

Similarly, under the Mohammedan law, a father is bound to maintain his sons until they have attained the age of puberty. He is also bound to maintain his daughters until they are married. But the statutory liability to maintain the children would not operate as a bar in claiming damages on account of tort of medical negligence in not carrying out the sterilisation operation with due care and responsibility. The two situations are based on two different principles. The statutory as well as personal liability of the parents to maintain their children arises on account of the principles that if a person has begotten a child, he is bound to maintain that child. Claim for damages, on the contrary, is based on the principle that if a person has committed a civil wrong, he must pay compensation by way of damages to the person wronged. (Para 40). *State of Haryana* v. *Santra*, (2000) 5 SCC 182: AIR 2000 SC 1888.

Bench Strength 2. Coram: **S. Saghir Ahmad** and *D.P. Wadhwa*, JJ. [Date of decision: 24-4-2000]

[422] — S. 125 — Paternity — Denial of in claim for maintenance of child — *Where purported father denying paternity but refusing to undergo DNA test, held, such a person disentitled from disputing paternity — Evidence Act, 1872 — Ss. 112 and 114 Ill. (g)* (Para 5). *Dwarika Prasad Satpathy* v. *Bidyut Prava Dixit*, (1999) 7 SCC 675: 1999 SCC (Cri) 1345: AIR 1999 SC 3348.

Bench Strength 2. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 14-10-1999]

[423] — S. 125 — Right of minor children staying with their divorced mother to claim maintenance under S. 125 from their Muslim father having sufficient means till they attain majority or in case of females till they get married — *Held, not affected by S. 3(1)(b) of Muslim Women (Protection of Rights on Divorce) Act, 1986 — S. 3(1)(b) of the 1986 Act provides additional maintenance to the divorced mother for maintaining her infant child for the fosterage period of two years from the date of birth of the child and is independent of the right of the minor children unable to maintain themselves to maintenance under S. 125 — That right is absolute under S. 125 as well as under Muslim personal law — Benefit of S. 125 is available irrespective of religion and it would be unreasonable, unfair and inequitable to deny this benefit to the children only on ground of their being born of Muslim parents — Muslim Women (Protection of Rights on Divorce) Act, 1986 — S. 3(1)(b)*

The respondent married the appellant in 1980 according to Muslim rites. During the wedlock, three children — two daughters and a son — were born. Later, the respondent allegedly turned the appellant out of the matrimonial home along with the three children then aged 6 years, 3 years and 1-1/2 years and also refused and neglected to maintain her and the children and thereafter took a second wife. Thereupon on 13-2-1992 the appellant filed an application under Section 125 CrPC for maintenance claiming that she had no means to maintain herself and her children and that the respondent had sufficient income and means to maintain them. By its order dated 19-1-1993, the trial court directed the respondent to pay maintenance to the appellant at the rate of Rs 200 per month for herself and at the rate of Rs 150 per month for each of the three minor children, till they attain the age of majority. While the matter rested thus, the respondent divorced the appellant and thereafter filed an application in the trial court seeking modification of the order dated 19-1-1993, in view of the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The trial court maintained its order granting maintenance to each of the children but as regards the appellant it held that in view of the provisions of the 1986 Act, she after her divorce was entitled to maintenance only for a period of three months i.e. for the period of iddat. The respondent filed a revision petition which was dismissed in 1994. The respondent thereupon filed a miscellaneous petition under Section 482 CrPC in the High Court. A Single Judge of the High Court accepted the plea of the respondent that vide Section 3(1)(*b*) of the 1986 Act, a divorced Muslim woman is entitled to claim maintenance from her previous husband for her minor children *only* for a period of two years from the date of birth of the child concerned and that the minor children were *not* entitled to claim maintenance under Section 125 CrPC after the coming into force of the 1986 Act. The High Court noticed that the two older children were aged 6 years and 3 years when the application for maintenance was filed on their behalf by their mother, and thus "had completed two years prior to filing of the petition for grant of maintenance" and as such those two children were held not entitled to the grant of any maintenance under Section 125 CrPC and that the third child, who was only 1-1/2 years of age on 19-1-1993, was entitled to receive maintenance till she attained the age of two years i.e. till 19-7-1993 from the date of filing of the application i.e. 13-2-1992.

Allowing the appeal,

Held :

The 1986 Act aims to protect the rights of Muslim women who have been divorced. It was *not* enacted to regulate the obligations of a Muslim father to maintain his minor children unable to maintain themselves which continued to be governed by Section 125 CrPC. The children of Muslim parents are entitled to claim maintenance under Section 125 CrPC for the period till they attain majority or are able to maintain themselves, whichever is earlier and in case of females, till they get married, and this right is not restricted, affected or controlled by the divorcee wife's right to claim maintenance for maintaining the infant child/children in her custody for a period of two years from the date of birth of the child concerned under Section 3(1)(*b*) of the 1986 Act. Section 3(1)(*b*) of the 1986 Act thus provides an additional maintenance to her, which is granted on the *claim* of the divorced mother *on her own behalf* for maintaining the infant/infants for a period of two years from the date of the birth of the child concerned who is/are living with her and presumably is aimed at providing some extra amount to the mother for *her* nourishment for nursing or taking care of the infant/infants up to a period of two years. It has nothing to do with the right of the child/children to claim maintenance under Section 125 CrPC. So long as the conditions for the grant of maintenance under Section 125 CrPC are satisfied, the rights of the minor children, unable to maintain themselves, are not affected by Section 3(1)(*b*) of the 1986 Act. Under Section 125 CrPC the maintenance of the children is obligatory on the father (irrespective of his religion) and as long as he is in a position to do so and the children have no independent means of their own, it remains his *absolute obligation* to provide for them. Insofar as children born of Muslim parents are concerned there is nothing in Section 125 CrPC which exempts a Muslim father from his obligation to maintain the children. Indeed a Muslim father can claim custody of the children born through the divorced wife to fulfil his obligation to maintain them and if he succeeds, he need not suffer an order or direction under Section 125 CrPC but where such custody has not been claimed by him, he cannot refuse and neglect to maintain his minor children on the ground that he has divorced their mother. The right of the children to claim maintenance under Section 125 CrPC is separate, distinct and independent of the right of their divorcee mother to claim maintenance for herself for maintaining the infant children up to the age of 2 years from the date of birth of the child concerned under Section 3(1) of the Act. There is nothing in the 1986 Act which in any manner affects the application of the provisions of Sections 125-128 of the CrPC relating to grant of maintenance insofar as minor children of Muslim parents, unable to maintain themselves, are concerned.

(9) Maintenance of children *(contd.)*

The non obstante clause with which Section 3(1) of the 1986 Act begins has nothing to do with the independent right or entitlement of the minor children to be maintained by their Muslim father. Section 3(1)(*b*) of the 1986 Act and Section 125 CrPC apply and cover different situations and there is no conflict, much less a real one, between the two.

It would be unreasonable, unfair, inequitable and even preposterous to deny the benefit of Section 125 CrPC to the children only on the ground that they are born of Muslim parents. The effect of a beneficial legislation like Section 125 CrPC, cannot be allowed to be defeated except through clear provisions of a statute. A Muslim father's obligation, like that of a Hindu father, to maintain his minor children as contained in Section 125 CrPC is *absolute* and is not at all affected by Section 3(1)(*b*) of the 1986 Act. Apart from the statutory provisions, even under the Muslim Personal Law, the right of minor children to receive maintenance from their father, till they are able to maintain themselves, is absolute.

Therefore, the trial court was perfectly right in directing the payment of amount of maintenance to each of the three children as per the order dated 19-1-1993 and the Additional Sessions Judge in revision also committed no error in dismissing the revision petition filed by the respondent. The High Court, on the other hand, fell in complete error in holding that the right to claim maintenance of the children under Section 125 CrPC was taken away and superseded by Section 3(1)(*b*) of the 1986 Act. *Noor Saba Khatoon* v. *Mohd. Quasim*, (1997) 6 SCC 233: 1997 SCC (Cri) 924: AIR 1997 SC 3280: (1997) 2 KLT 363: 1997 Cri LJ 3972.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *K. Venkataswami*, JJ. [Date of decision: 29-7-1997]

Prof. Tahir Mahmood: "Statute-Law Relating to Muslims in India", (1995 Edn.), relied on

[424] — S. 125 — Maintenance for child — Father disputing paternity — Blood grouping test to determine parentage — *Where purpose of the application was nothing more than to avoid payment of maintenance, without making any ground whatever to have recourse to the test, the application for blood test cannot be accepted. Goutam Kundu* v. *State of W.B.*, (1993) 3 SCC 418: 1993 SCC (Cri) 928: AIR 1993 SC 2295: 1993 Cri LJ 3233: 1993 (2) ALT (Cri) 356.

Bench Strength 2. Coram: *A.M. Ahmadi* and **S. Mohan**, JJ. [Date of decision: 14-5-1993]

[425] — S. 125 — Maintenance allowance — Grant of, in favour of children — *Respondent husband persisting with his contention regarding the paternity of those children — Held, the children cannot be made to starve simply because of the said contention of the respondent — From the amount of Rs 2,86,000 deposited by the Union of India with the Registry of the Supreme Court, claim in respect of which is made herein both by appellant Union of India as well as respondent, a sum of Rs 60,000 released in favour of the mother of said children subject to the condition that she would return the said amount if the final decision in the instant appeal goes against the respondent and in favour of Union of India. Union of India* v. *G.S. Bajwa (Ex Flt. Lt.)*, (2002) 10 SCC 579.

Bench Strength 2. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 20-7-2000]

[426] — S. 125 — Proof of child's legitimacy — Applicability — *Child born during wedlock should be declared to be legitimate unless conclusive and compulsive proof exists to the contrary — Courts should be slow in declaring a child to be illegitimate and mother as an unchaste lady — Evidence Act, 1872 — S. 112*

The rule of conclusive proof of legitimacy of a child under S. 112 of the Evidence Act which is based on the dictates of justice has always made the courts incline towards upholding the legitimacy of a child unless the facts are so compulsive and clinching as to necessarily warrant a finding that the child could not at all have been begotten to the father and as such a legitimation of the child would result in rank injustice to the father. Courts have always desisted from lightly or hastily rendering a verdict and that too, on the basis of slender materials, which will have the effect of branding a child as a bastard and its mother an unchaste woman. *Dukhtar Jahan* v. *Mohd. Farooq*, (1987) 1 SCC 624: 1987 SCC (Cri) 237: AIR 1987 SC 1049: 1987 Cri LJ 849: (1987) 1 HLR 362.

Bench Strength 2. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 20-1-1987]

[427] — Ss. 125(1)(b) and (c) — Even though bigamous marriage illegal under S. 11 of Hindu Marriage Act, 1955 but when after such marriage Hindu male and female living together for a number of years as husband and wife, held, child born as a result of such union acquired legitimate status under S. 16(1) of the Act — *Even ignoring the factum of marriage, the child must be treated as legitimate child, hence entitled to maintenance under cls. (b) and (c) of S. 125(1) — Hindu Marriage Act, 1955 — S. 16(1). Bakulabai* v. *Gangaram*, (1988) 1 SCC 537: 1988 SCC (Cri) 189: (1988) 1 KLT 413: 1988 Mah LJ 330.

Bench Strength 2. Coram: *Ranganath Misra* and **L.M. Sharma**, JJ. [Date of decision: 27-1-1988]

[428] — S. 125 — Even an illegitimate minor child entitled to maintenance. *Sumitra Devi* v. *Bhikan Choudhary*, (1985) 1 SCC 637: 1985 SCC (Cri) 145: AIR 1985 SC 765: 1985 Cri LJ 528.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **Ranganath Misra**, JJ. [Date of decision: 28-1-1985]

[429] — S. 125 — Order for maintenance of wives, children and parents — Word "children" — Connotation of — *Held, includes an illegitimate child* (Para 18). *Savitaben Somabhai Bhatiya* v. *State of Gujarat*, (2005) 3 SCC 636: 2005 SCC (Cri) 787: AIR 2005 SC 1809: 2005 Cri LJ 2141: (2005) 2 Guj LR 1378.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-3-2005]

[430] — S. 125 — Nature of proceedings under — Maintenance to child does not depend upon the child's legitimacy

Proceedings under S. 125, CrPC, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner. *Dukhtar Jahan* v. *Mohd. Farooq*, (1987) 1 SCC 624: 1987 SCC (Cri) 237: AIR 1987 SC 1049: 1987 Cri LJ 849: (1987) 1 HLR 362.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 20-1-1987]

[431] — S. 125 — Maintenance grant to minor child — Proof of legitimacy of the child — Mature child may be born in seven months' time from the date of marriage — *Statement of a rustic and illiterate mother that the child was not born prematurely can be ignored — Evidence Act, 1872 — S. 112*

On the sole ground that the child had been born in about 7 months' time after the marriage it cannot be concluded that the child should have been conceived even before the respondent had consummated the marriage. Giving birth to a viable child after 28 weeks' duration of pregnancy is not biologically an improbable or impossible event. In "*Combined Textbook of Obstetrics and Gynaecology*" by Sir Gugald Baird 7th edn. at page 162 it is reported as under:

> "In the case of *Clark* v. *Clark*, (1939) p. 228 an extremely small baby, born alive 174 days after last possible date when intercourse with the husband could have taken place, and which survived, was held to be legitimate. While it is most unusual for babies of this weight or gestation period to survive it does occasionally happen."

The learned Judge ought not, therefore, to have rushed to the conclusion that a child born in about 7 months' time after the marriage of the parents should have necessarily been conceived even before the marriage took place.

The wrong statement of a rustic and illiterate mother that her child was not born prematurely can be ignored as her statement can suffer from error of judgment. *Dukhtar Jahan* v. *Mohd. Farooq*, (1987) 1 SCC 624: 1987 SCC (Cri) 237: AIR 1987 SC 1049: 1987 Cri LJ 849: (1987) 1 HLR 362.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 20-1-1987]

[432] — S. 125 — Illegitimate child — Claim of, if justified on facts — *Mother's evidence even if be in the nature of an accomplice, held, was corroborated by other's evidence — Award of maintenance by trial court was adequately supported by evidence and deserves to be upheld* (Paras 8 to 10). *Dimple Gupta* v. *Rajiv Gupta*, (2007) 10 SCC 30: (2007) 59 AIC 46 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **Harjit Singh Bedi**, JJ. [Date of decision: 12-10-2007]

[433] — S. 125 — Maintenance grant to minor child of a Muslim — Proof of legitimacy of the child — *Childbirth taking place in husband's house, husband neither discarding the wife nor disowning the child immediately after the childbirth and divorce taking place ten months after the childbirth — Entry in birth register showing the husband as father of the child — Husband and wife being closely related prior to the marriage, husband's pre-martial access to the wife possible — In the circumstances and in view of conduct of the parties as also S. 112 of Evidence Act, 1872, held, the husband's denial of paternity not acceptable and he therefore liable to pay maintenance — Muslim Women (Protection of Rights on Divorce) Act, 1986 — S. 3(b) — Evidence Act, 1872 — S. 112*

If the appellant wife was pregnant even at the time of the marriage she could not have concealed that fact for long and in any event the respondent husband would have come to know of it within two or three months of the marriage and thereupon he would have immediately protested and either discarded the appellant or reported the matter to the village elders and relatives and sought for a divorce. On the contrary the respondent had continued to lead life with the appellant in a normal manner till the birth of the child. Even the confinement appears to have taken place in his house as otherwise the child's birth would not have been registered in his village. The respondent had not disowned the child immediately after its birth or sent away the appellant to her parents' house. Such would not have been his conduct if he had any doubt about the

(9) Maintenance of children *(contd.)*

paternity of the child. Moreover, there is an entry in the birth register setting out the respondent as the father of the child. Though the respondent attempted to neutralise the entry in the birth register by examining a witness and making it appear that the entry had been made on the basis of information given by a third party, the lower courts have refused to give credence to the vague and uncorroborated testimony of the witness. It is also significant to note that the respondent had allowed eleven months to pass before effecting a divorce. By his inaction for such a long period the respondent has given room for inference that the divorce may have been effected for other reasons and not on account of the appellant giving birth to a child conceived through someone else. Lastly, even if the child had been born after a full-term pregnancy it has to be borne in mind that the possibility of the respondent having had access to the appellant before marriage cannot be ruled out because they were closely related and would therefore have been moving in close terms. All these factors negate the plea of the respondent that the minor child was not fathered by him. *Dukhtar Jahan* v. *Mohd. Farooq*, (1987) 1 SCC 624: 1987 SCC (Cri) 237: AIR 1987 SC 1049: 1987 Cri LJ 849: (1987) 1 HLR 362.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 20-1-1987]

[434] — Ss. 125 and 482 — Magistrate granting maintenance to minor child holding the child to be legitimate issue — *High Court though in exercise of power under S. 482 though can interfere should have upheld the Magistrate's order of maintenance — Held, High Court erred by not doing so — Proper course for the High Court indicated*

The proper course for the High Court, even if entitled to interfere with the concurrent findings of the courts below in exercise of its powers under S. 482, CrPC, should have been to sustain the order of maintenance and direct the respondent to seek an appropriate declaration in the civil court, after a full-fledged trial, that the child was not born to him and as such he is not legally liable to maintain it. *Dukhtar Jahan* v. *Mohd. Farooq*, (1987) 1 SCC 624: 1987 SCC (Cri) 237: AIR 1987 SC 1049: 1987 Cri LJ 849: (1987) 1 HLR 362.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 20-1-1987]

[435] — S. 125 — Order earlier made by Supreme Court with agreement of the parties for payment of Rs 200 per month by the petitioner-husband as maintenance of his only son and withdrawal of all the cases filed against each other — *Criminal case filed by the respondent-wife on allegation of the theft of her articles withdrawn — But subsequent to the order of the Court, suit filed by wife of recovery of the amount of dowry and other articles — Petitioner-husband contending that the suit being in breach of the Court's order, wife be punished for contempt — Held, suit not barred by Court's Order — Contempt of Courts Act, 1971 — S. 2(b). Arvind Kumar* v. *Arun Lata*, 1989 Supp (2) SCC 293.

Bench Strength **2**. Coram: *O. Chinnappa Reddy* and *M.M. Dutt*, JJ. [Date of decision: 10-4-1987]

[436] — S. 125 — Maintenance of a girl by parents from the time of attaining majority till marriage — *Though S. 125 does not fix liability of parents to maintain children beyond attainment of majority, but right of a minor girl for maintenance from parents after attaining majority till her marriage is recognised under S. 20(3) of Hindu Adoptions and Maintenance Act — Therefore, on a combined reading of the two provisions held, High Court was justified in upholding the order of Family Court, by which it granted maintenance under S. 125 to the daughter even after her attaining majority but till her marriage, taking the view that it would avoid multiplicity of proceedings as otherwise the party would be forced to file another petition under S. 20(3) for further maintenance — Hindu Adoptions and Maintenance Act, 1956 — S. 20(3). Jagdish Jugtawat* v. *Manju Lata*, (2002) 5 SCC 422: 2002 SCC (Cri) 1147.

Bench Strength **3**. Coram: *D.P. Mohapatra*, *Brijesh Kumar* and *D.M. Dharmadhikari*, JJ. [Date of decision: 23-4-2002]

Noor Saba Khatoon v. Mohd. Quasim, (1997) 6 SCC 233: 1997 SCC (Cri) 924, applied

[437] — S. 125(1)(b) — Application for grant of maintenance to children after they have attained majority — Maintainability — *Held, application for grant of maintenance regarding children is maintainable, till they have not attained majority — Cause of action for grant of maintenance would arise only in the event a person having sufficient means, neglects or refuses to maintain his legitimate or illegitimate minor children, unable to maintain themselves — Hence, once children attain majority, said provision would cease to apply — Herein, it was clear from order of Magistrate that no order of maintenance was passed in favour of children after they had attained majority — Hence, there was no question of recovery of any amount granted towards maintenance of children, after they had* *attained majority — Majority Act, 1875, S. 3* (Paras 8, 10 and 16). *Amarendra Kumar Paul* v. *Maya Paul*, (2009) 8 SCC 359: (2009) 3 SCC (Cri) 868.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 4-8-2009]

Shantha v. B.G. Shivananjappa, (2005) 4 SCC 468: 2005 SCC (Cri) 1089, relied on

[438] — S. 125 — Maintenance to child — Claim of — Full and final settlement of claim — *Maintenance claimed for her child by a woman (appellant) whose marriage with alleged husband (Respondent 2) was void — Respondent 2 agreeing to pay a lump sum amount to settle the dispute — Supreme Court directing him to pay a sum of Rs 2 lakhs to appellant within 4 months by way of bank draft in the name of child — Further direction that the said amount be kept in a fixed deposit with monthly interest payment facility till the child attains majority — Till the said deposit is made, the quantum of maintenance fixed by the Supreme Court i.e. Rs 850 directed to be paid* (Para 24). *Savitaben Somabhai Bhatiya* v. *State of Gujarat*, (2005) 3 SCC 636: 2005 SCC (Cri) 787: AIR 2005 SC 1809: 2005 Cri LJ 2141: (2005) 2 Guj LR 1378.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-3-2005]

(10) Maintenance of parents

[439] — S. 125 — Obligation of husband and son or daughter to maintain his wife or his/her mother — Nature of — Plea of inability due to financial constraints not acceptable — *Hindu Adoptions and Maintenance Act, 1956 — Ss. 18 and 20*

According to the Law of the Land with regard to maintenance, there is an obligation of the husband to maintain his wife which does not arise by reason of any contract — express or implied — but out of jural relationship of husband and wife consequent to the performance of marriage. Such an obligation of the husband to maintain his wife arises irrespective of the fact whether he has or has no property, as it is considered an imperative duty and a solemn obligation of the husband to maintain his wife. The husband cannot be heard saying that he is unable to maintain due to financial constraints so long as he is capable of earning. Similarly, it is obligatory on the part of a son to maintain his aged father and mother by reason of personal obligation. Under the old Hindu law, this obligation was imposed on the son alone, but now the present-day Hindu law extends this obligation both on sons and daughters. In this connection, it is relevant to point out that according to sub-section (1) of Section 18 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu wife is entitled to the maintenance from her husband during her lifetime. She is entitled to claim maintenance from her husband so long as she is chaste subject to the conditions laid down in sub-section (2) of Section 18 of the said Act. Under the present law, as said earlier, both son and daughter are liable to maintain aged or infirm parents including childless stepmother, when the latter is unable to maintain herself. It is well settled that a son has to maintain his mother irrespective of the fact whether he inherits any property or not from his father, as on the basis of the relationship alone he owes a duty and an obligation, legal and moral, to maintain his mother who has given birth to him. Further, according to Section 20 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu is under a legal obligation to maintain his wife, minor sons, unmarried daughters and aged or infirm parents. The obligation to maintain them is personal, legal and absolute in character and arises from the very existence of the relationship between the parties. *Kirtikant D. Vadodaria* v. *State of Gujarat*, (1996) 4 SCC 479.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 26-4-1996]

[440] — S. 125(1)(d) — Daughter, unmarried or married, having sufficient means liable to pay maintenance allowance to her father or mother who is unable to maintain himself or herself — *Word 'his' in expression "his father or mother" in Cl. (d) also includes daughter — Penal Code, 1860 — S. 8 read with S. 2(y) Criminal Procedure Code — General Clauses Act, 1897 — S. 13(1)*

Section 125(1)(*d*) has imposed a liability on both the son and the daughter to maintain their father or mother who is unable to maintain himself or herself. The object of S. 125 is to provide a summary remedy to save dependents from destitution and vagrancy and thus to serve a social purpose. It is the moral obligation of a son or a daughter to maintain his or her parents and there is no reason to exclude the daughter from the social obligation to maintain her parents. The expression "his father or mother" in Cl. (*d*) of S. 125(1) is not confined only to the father or mother of the son but also to the father or mother of the daughter and as such that expression should also be construed as "her father or mother" in view of S. 8, IPC read with S. 2(*y*) CrPC and S. 13(1) of the General Clauses Act. Pronoun 'his' as used in cl. (*d*) of S. 125(1) includes both a male and a female. Though in the first part of the report of the Joint Committee on the Criminal Procedure Code, 1973, the word 'son' has been

(10) Maintenance of parents *(contd.)*

used, in the latter part of the report the use of word 'children' indicates inclusion of both sons and daughters. However, in view of clear statutory provision, it is not necessary to refer to the report.

It is not possible to accept the contention that a daughter after her marriage has no obligation to maintain her parents even if they are unable to maintain themselves. A daughter after her marriage does not cease to be a daughter of the father or mother.

Thus, the parents will be entitled to claim maintenance against their daughter, whether married or unmarried, provided however, the other conditions as mentioned in the section are fulfilled. Before ordering maintenance in favour of a father or a mother against their married daughter, the court must be satisfied that the daughter has sufficient means of her own independently of the means or income of her husband, and that the father or the mother, as the case may be, is unable to maintain himself or herself. *Vijaya Manohar Arbat* v. *Kashirao Rajaram Sawai*, (1987) 2 SCC 278: 1987 SCC (Cri) 354: AIR 1987 SC 1100: 1987 Cri LJ 977: (1987) 11 ECC 416.

Bench Strength **2**. Coram: *G.L. Oza* and **M.M. Dutt**, JJ. [Date of decision: 18-2-1987]

Bhagwan Dutt v. Kamla Devi, (1975) 2 SCC 386: 1975 SCC (Cri) 563 ; M. Areefa Beevi v. Dr. K.M. Sahib, 1983 Cri LJ 412: 1982 Ker LT 242: 1982 Ker LJ 186 ; Repalli Masthanamma v. Thota Sriramula, 1982 Andh WR 393, approved

Raj Kumari v. Yashodha Devi, 1978 Cri LJ 600: (1977) 79 Punj LR 568: (1977) 4 Cri LJ 292: 1978 Hindu LR 711, ***overruled***

Vijaya Manohar Arbat v. Kashirao Rajaram Sawai, 1978 Cri LJ 1399 (Bom), reversed

[441] — S. 125(1)(d) — Stepmother when entitled to claim maintenance from her stepson — *Expression "mother" in S. 125(1)(d) means only real or natural mother and does not include stepmother — Stepmother is a distinct and separate entity and cannot be equated with the natural mother who has given birth to the child — An adoptive mother can be included in the expression "mother" — However, having regard to the purpose behind the benevolent provisions of S. 125 held, a childless stepmother is entitled to claim maintenance from her stepson provided she is a widow or her husband, if living, is also incapable of maintaining her — Whether the stepson is liable to maintain his stepmother out of inherited family estate — Question left open — Hindu Adoptions and Maintenance Act, 1956 — S. 20 — General Clauses Act, 1897 — S. 3(20)*

When the appellant was a child of tender age his mother expired and his father took Respondent 2 as his second wife from whom 5 sons and 2 daughters were born. All of them were major and at least 3 of them were well-to-do and capable of maintaining their mother. The father was also possessed of sufficient means. Respondent 2 claimed maintenance from the stepson, the appellant, leaving out all her natural born sons and husband who were well-to-do. The Magistrate took the view that in spite of Respondent 2 being a stepmother of the appellant, she had a right to claim maintenance from the appellant and awarded a sum of Rs 400 per month as maintenance allowance. This order was upheld by the City Sessions Judge and the High Court. Allowing the appeal,

Held :

The expressions 'mother' and 'stepmother' have not been defined either in the Code or in the General Clauses Act, 1897. These expressions have also not been defined by the Hindu law or the Hindu Adoptions and Maintenance Act, 1956 or by any other law. All that the explanation attached to Section 20 of the Hindu Adoptions and Maintenance Act, 1956 provides is that the expression 'parent' includes a childless stepmother. On a conspectus view of dictionary meaning of the two expressions — 'mother' and 'stepmother' in various dictionaries, it clearly emerges that there is inherent distinction between the status of a 'mother' and 'stepmother' and they are two distinct and separate entities and both could not be assigned the same meaning. The expression 'mother' clearly means only the natural mother who has given birth to the child and not the one who is the wife of one's father by another marriage.

A stepmother is one who is taken as a wife by the father of the child other than the one from whom he is born or who has given birth to him.

This clearly goes to show that the woman who gives birth to a child and another woman who is taken by the father as his 'other' wife are two distinct and separate entities in the eye of the law and who in common parlance are known and recognized as real 'mother' and 'stepmother'. That being so, another woman who is taken as a wife by the father of the child cannot be given the status of a mother to the child born from another woman as there is no blood relation between the two.

Even under the old Hindu law also, the expression 'mother' was referable only to the natural mother who has given birth to the child and not the stepmother. It would be difficult to assume that the legislature was unmindful of the social fabric and the structure of relationship in the families. The existence of various kinds of relatives in our society was not something of which Parliament may be said to be ignorant when it thought to enact the New Code of 1973 and for the first time not only the parents were included amongst the persons entitled to claim maintenance under Section 125(1)(*d*) but even the divorced woman had been included in the expression 'wife', to be entitled to claim maintenance, who were not so included in Section 488 of the Old Code of 1898.

In the General Clauses Act though the expression 'father' has been defined in clause (20) of Section 3, but the expression 'mother' has not been defined. The expression 'father' as defined in the General Clauses Act, 1897 means in the case of anyone whose personal law permits adoption, "shall include an adoptive father". Applying the said analogy, at best, an adoptive mother may also be included in the expression 'mother' but not a stepmother.

Hence the expression 'mother', in clause (*d*) of Section 125(1) of the Code, means and is referable only to the real or natural mother, who has actually given birth to the child. It cannot be said that the word 'mother' occurring in clause (*d*) of Section 125(1) includes a woman who has the status of a 'stepmother' by reason of her lawful marriage with the father of the person sought to be made liable for maintenance under Section 125.

While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation. Having regard to this special object the provisions of Section 125 of the Code have to be given a liberal construction to fulfil and achieve this intention of the legislature. Consequently to achieve this object a childless stepmother may claim maintenance from her stepson provided she is a widow or her husband, if living, is also incapable of supporting and maintaining her. The obligation of the son to maintain his father, who is unable to maintain himself, is unquestionable. When she claims maintenance from her natural born children, she does so in her status as their 'mother'. Such an interpretation would be in accord with the explanation attached to Section 20 of the Hindu Adoptions and Maintenance Act, 1956 because to exclude altogether the personal law applicable to the parties from consideration in matters of maintenance under Section 125 of the Code may not be wholly justified. However, no intention of legislature can be read in Section 125 of the Code that even though a mother has her real and natural born son or sons and a husband capable of maintaining her, she could still proceed against her *stepson* to claim maintenance.

In the present case the stepmother preferred to claim the maintenance only from the stepson leaving out all her natural born sons and husband who are well-to-do. Prima facie she proceeded against her stepson with a view to punish and cause harassment to her stepson which is wholly unjustified. In the facts and circumstances of the case she is not entitled to claim any maintenance from her stepson. *Kirtikant D. Vadodaria* v. *State of Gujarat*, (1996) 4 SCC 479.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 26-4-1996]

*Havaben Karimbhai Belim v. Razakbhai, (1978) 19 Guj LR 237: 1977 Cri LR (Guj) 381; Pitei Bewa v. Laxmidhar Jena, 1985 Cri LJ 1124 (Ori); Ganga Sharan Varshney v. Shakuntala Devi, 1990 Cri LJ 128: 1990 All LJ 34, **overruled***

Ramabai v. Dinesh, 1976 Mah LJ 565; Rewalal Arjun Babu v. Kamlabai Arjun Babu, 1985 MPLJ 541; Ayyagari Suryanarayana Vara Prasada Rao v. Ayyagari Venkatakrishna Veni, 1989 Cri LJ 673: (1988) 2 Andh LT 26; Bai Daya v. Natha Govindlal, ILR (1885) 9 Bom 279, approved

[**Ed.**: With respect, the above ruling that only childless stepmother who is a widow is entitled to claim maintenance from her stepson requires some clarification. What if she has to support a minor child or worse an insane or handicapped child? It appears that in such cases she equally deserves sympathy and support.]

[442] — S. 126(1) — Territorial jurisdiction — Parent's claim for maintenance — Place where proceedings under S. 125 may be taken — *Crucial words in S. 125 in respect of — Difference in position with respect to claim by wife and children pointed out — Held, benefit given to wife and children to initiate proceedings at place where they reside not given to parents — Parents have to initiate proceedings where person from whom maintenance is sought lives or "is"*

An application under Section 125 CrPC, 1973 was filed by Respondent 2, the father, in Siwan. The appellant filed an application for transfer of the case from Siwan to Patna contending inter alia that the court at Siwan had no jurisdiction to entertain the application because the appellant lived in Patna and was practising as a lawyer at the Patna High Court. The High Court rejected the application for transfer primarily on other grounds and the question relating to jurisdiction was not specifically adverted to.

In support of the appeal the appellant submitted that the question relating to jurisdiction was specifically urged before the High Court and it was clearly stated that the appellant resided at Patna and the court at Siwan could not have entertained the application.

Allowing the appeal to the extent below and transferring the case,

Held :

The crucial expression for the purpose of jurisdiction in respect of a petition which is filed under Section 125 CrPC, 1973 by a father is not where "parties reside" and "is". (Para 12)

Sections 126(1)(*b*) & (*c*) relate to the maintenance of wife and children under Section 125 of the Code. The benefit given to the wife and the children to initiate proceedings at the place where they reside is not given to the parents. A bare reading of the section makes it clear that the parents cannot be placed on the same pedestal as that of the wife or the children for the purpose of Section 126 of the Code. Unlike Sections 126(1)(*b*) & (*c*) an application by the father or the mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives. (Paras 13 and 14)

In the present case, no finding has been recorded by the High Court on this particular aspect which needs a factual adjudication. The stand of the appellant is that he practises in Patna and was not present in Siwan physically when the application was filed for maintenance. Respondent 2, the father has indicated the son practising in the Patna High Court. Obviously, if his son was practising at the time of presentation of the petition in the Patna High Court, he could not have been physically present at Siwan, whatever extended meaning may be given to the expression "is". In view of this the position is clear that the court at Siwan has no jurisdiction to deal with the petition. (Para 15). *Vijay Kumar Prasad* v. *State of Bihar,* (2004) 5 SCC 196: 2004 SCC (Cri) 1576: AIR 2004 SC 2123: (2004) 2 KLT 435: (2004) 3 Mah LJ 1101: (2004) 3 MPLJ 560: 2004 Cri LJ 2047.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 7-4-2004]

(11) Territorial jurisdiction

[443] — S. 126(1) — "Resides", "is" and "last resided" — *CrPC, 1898 — S. 488(8)*

The crucial words of the sub-section are "resides", "is" and "where he last resided with his wife". S. 488(8) gives three alternative forums for proceedings under S. 488. This has been designedly done by the Legislature to enable a discarded wife or a helpless child to get the much needed and urgent relief in one or the other three forums convenient to them. Since the proceedings are in the nature of civil proceedings, the remedy is a summary one and the person seeking that remedy is ordinarily a helpless person the words should be liberally construed without doing any violence to the language.

The word "resides" means both a permanent dwelling as well as a temporary living in a place. It is, therefore, capable of different meanings, including domicile in the strictest and the most technical sense and a temporary residence. In any case it does not include a casual stay in, or a flying visit to a particular place. The context and purpose of the present statute certainly do not compel the importation of the concept of domicile in its technical sense. The purpose of the statute would be better served if the word "resides" was understood to include temporary residence. The word "is" confers jurisdiction on the Court on the basis of a casual visit and the expression "last resided" indicates that the Legislature could not have intended to use the word "reside" in the technical sense of domicile. The word "resides" cannot be given a meaning different from the word "resided" in the expression "last resided" and, therefore, the wider meaning fits in the setting in which the word "resides" appears.

The word "reside" is defined thus: a person resides in a place if he through choice makes it his abode permanently or even temporarily and whether a person has chosen to make a particular place his abode depends upon the facts of each case.

The cognate expression "last resided" takes colour from the word "resides" used earlier in the sub-section. The same meaning should be given to the word "resides" and the word "resided", that is to say, if the word "resides" includes temporary residence, the expression "last resided" means the place where the person had his last temporary residence. S. 2(1) of the Code extends the operation of the Code to the whole of India except the State of Jammu and Kashmir; that is to say, the provisions of the Code, including S. 488(8) thereof, have operation only throughout the territory of India, except the State of Jammu and Kashmir. If so, when sub-section (8) of S. 488 of the Code, prescribing the limits of jurisdiction, speaks of the residence of a person with his wife, it can only mean his last residence with his wife in the territories of India. It cannot obviously mean his residing with her in a foreign country, for an Act cannot confer jurisdiction on a foreign Court. It would, therefore, be a legitimate construction of the said expression that the district where he last resided with his wife must be a district in India.

The expression "is" is inserted between the words "resides" and "last resided". The word, therefore, cannot be given the same meaning as the word "resides" or the expression "last resided" bears. The meaning of the word is apparent if, the relevant part of the sub-section is read. The verb "is" connotes in the context the presence or the existence of the person in the district when the proceedings are taken. It is much wider than the word "resides": it is not limited by the animus manendi of the person or the duration or the nature of his stay. What matters is his physical presence at a particular point of time. This meaning accords with the object of the chapter wherein the concerned section appears. It is intended to reach a person, who deserts a wife or child leaving her or it or both of them helpless in any particular district and goes to a distant place or even to a foreign country, but returns to that district or a neighbouring one on a casual or a flying visit. The wife can take advantage of his visit and file a petition in the district where he is during his stay. So too, if the husband who deserts his wife, has no permanent residence but is always on the move, the wife can catch him at a convenient place and file a petition under S. 488 of the Code. She may accidentally meet him in a place where he happens to come by coincidence and take action against him before he leaves the said place. This is a salutary provision intended to provide for such abnormal cases. *Jagir Kaur* v. *Jaswant Singh*, AIR 1963 SC 1521: (1964) 2 SCR 73: (1963) 2 Cri LJ 413.

Bench Strength **3**. Coram: **K. Subba Rao**, *Raghubar Dayal* and *J.R. Mudholkar*, JJ. [Date of decision: 13-2-1963]

[444] — S. 126(1)(a) — "Where he is" — Word "is" contained in — Meaning and import of — *Held, the true intention has to be contextually culled out — Words and phrases — "Where person resides", "Where person is", "is" — "Is" in the phrase "where person is" implies wider concept than "resides"*

The expression "is" in S. 126(1)(*a*) cannot be given the same meaning as the word "resides" or the expression "he last resided". It connotes, in the context, the presence or the existence of the persons in the district where the proceedings are taken. It is wider in its concept than the word "resides" and what matters is "his" physical presence at the particular point of time. The expression "is" cannot be construed to be a fleeting presence, though it may not necessarily be for a considerable length of time as the expression "resides" may require. Although the expression normally refers to the present, often it has a future meaning. It may also have a past signification as in the sense of "has been". The true intention has to be contextually culled out. (Para 15). *Vijay Kumar Prasad* v. *State of Bihar*, (2004) 5 SCC 196: 2004 SCC (Cri) 1576: AIR 2004 SC 2123: (2004) 2 KLT 435: (2004) 3 Mah LJ 1101: (2004) 3 MPLJ 560: 2004 Cri LJ 2047.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 7-4-2004]

[445] — S. 126(1) — Territorial jurisdiction — Parent's claim for maintenance — Place where proceedings under S. 125 may be taken — *Crucial words in S. 125 in respect of — Difference in position with respect to claim by wife and children pointed out — Held, benefit given to wife and children to initiate proceedings at place where they reside not given to parents — Parents have to initiate proceedings where person from whom maintenance is sought lives or "is"*

An application under Section 125 CrPC, 1973 was filed by Respondent 2, the father, in Siwan. The appellant filed an application for transfer of the case from Siwan to Patna contending inter alia that the court at Siwan had no jurisdiction to entertain the application because the appellant lived in Patna and was practising as a lawyer at the Patna High Court. The High Court rejected the application for transfer primarily on other grounds and the question relating to jurisdiction was not specifically adverted to.

In support of the appeal the appellant submitted that the question relating to jurisdiction was specifically urged before the High Court and it was clearly stated that the appellant resided at Patna and the court at Siwan could not have entertained the application.

Allowing the appeal to the extent below and transferring the case,

Held :

The crucial expression for the purpose of jurisdiction in respect of a petition which is filed under Section 125 CrPC, 1973 by a father is not where "parties reside" and "is". (Para 12)

Sections 126(1)(*b*) & (*c*) relate to the maintenance of wife and children under Section 125 of the Code. The benefit given to the wife and the children to initiate proceedings at the place where they reside is not given to the parents. A bare reading of the section makes it clear that the parents cannot be placed on the same pedestal as that of the wife or the

(11) Territorial jurisdiction *(contd.)*

children for the purpose of Section 126 of the Code. Unlike Sections 126(1)(*b*) & (*c*) an application by the father or the mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives. (Paras 13 and 14)

In the present case, no finding has been recorded by the High Court on this particular aspect which needs a factual adjudication. The stand of the appellant is that he practises in Patna and was not present in Siwan physically when the application was filed for maintenance. Respondent 2, the father has indicated the son practising in the Patna High Court. Obviously, if his son was practising at the time of presentation of the petition in the Patna High Court, he could not have been physically present at Siwan, whatever extended meaning may be given to the expression "is". In view of this the position is clear that the court at Siwan has no jurisdiction to deal with the petition. (Para 15). *Vijay Kumar Prasad* v. *State of Bihar*, (2004) 5 SCC 196: 2004 SCC (Cri) 1576: AIR 2004 SC 2123: (2004) 2 KLT 435: (2004) 3 Mah LJ 1101: (2004) 3 MPLJ 560: 2004 Cri LJ 2047.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 7-4-2004]

[446] — S. 125 — Appeal relating to jurisdiction of maintenance petition — Allowing the appeal with costs assessed at Rs 25,000 to be paid to appellant (Para 16). *Dawalsab* v. *Khajasab*, (2009) 14 SCC 660: (2009) 80 AIC 71 (SC).

Bench Strength 2. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 15-7-2009]

[447] — S. 125 — Maintenance petition — Territorial jurisdiction of the Magistrate — *Even temporary residence, if not casual, is sufficient to confer jurisdiction on Magistrate at that place or of the District concerned. Darshan Kumari* v. *Surinder Kumar*, 1995 Supp (4) SCC 137: 1996 SCC (Cri) 44.

Bench Strength 2. Coram: *P.B. Sawant* and *N.P. Singh*, JJ. [Date of decision: 11-4-1994]

[448] — Ss. 126(1) and 125 — Venue of maintenance proceedings — *Petition filed at the place of residence of wife, held, competent — Dismissal of petition by Magistrate on ground that the husband was not residing within his jurisdiction improper. Kumutham* v. *Kannappan*, (1998) 5 SCC 693: 1998 SCC (Cri) 1377: AIR 1999 SC 839.

Bench Strength 3. Coram: *S.C. Agrawal, S. Saghir Ahmad* and *K.T. Thomas*, JJ. [Date of decision: 6-4-1998]

(12) Quantum of maintenance

See also under FAMILY AND PERSONAL LAWS

[449] — S. 125 — Maintenance — Claim as to enhancement of — Amendment in claim petition in respect of — Necessity — *Submission made by respondent that there was no amendment made to the claim petition seeking enhancement — Rejection of, by Supreme Court holding that the said plea was too technical* (Para 23). *Savitaben Somabhai Bhatiya* v. *State of Gujarat*, (2005) 3 SCC 636: 2005 SCC (Cri) 787: AIR 2005 SC 1809: 2005 Cri LJ 2141: (2005) 2 Guj LR 1378.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-3-2005]

[450] — S. 125 — Quantum of — *Assistant Engineer husband obtaining decree of divorce against Assistant Engineer wife and remarrying — Two daughters out of the first marriage and two children out of the second marriage — Elder daughter studying for Engineering and the younger in 12th Class — In such circumstances grant of maintenance of Rs 50 p.m. to each of the two daughters in maintenance suit raised to Rs 1000 p.m. for each daughter w.e.f. 1-1-1995 — Moreover, a sum of Rs 30,000 each directed to be deposited in the name of each daughter separately in fixed deposit for two years — Rs 1,00,000 further directed to be paid on the marriage of each of them — Hindu Marriage Act, 1955 — Ss. 26 & 25. S. Jayalakshmi (Mrs)* v. *T. Prakash Rao*, (1996) 8 SCC 501.

Bench Strength 2. Coram: *Kuldip Singh* and *S. Saghir Ahmad*, JJ. [Date of decision: 18-4-1995]

[451] — S. 125 — On facts, quantum of maintenance to be awarded to wife and child to be determined afresh by Sessions Judge in relation to husband's income — *Meanwhile, husband directed to pay an interim maintenance allowance of Rs 50 per month to the wife. Lilawati* v. *State of U.P.*, (1982) 1 SCC 437: 1982 SCC (Cri) 247.

Bench Strength 2. Coram: *R.S. Sarkaria* and **V.D. Tulzapurkar**, JJ. [Date of decision: 2-9-1980]

[452] — S. 125 — Alimony — Quantum — *Directions for enhanced payment of from the estate of the deceased ex-husband keeping in view the rising cost of living, etc. Nandarani Mazumdar* v. *Indian Airlines*, (1983) 4 SCC 461: 1983 SCC (Cri) 858: AIR 1983 SC 1201.

Bench Strength 3. Coram: *P.N. Bhagwati, A.N. Sen* and **Ranganath Misra**, JJ. [Date of decision: 1-9-1983]

[453] — S. 125 — Amount of maintenance raised by Supreme Court for education of the child — *CPC, 1908, Or. 32-A, R. 1(2)(d). Abha Astavans* v. *Suresh Astavans*, 1983 SCC (Cri) 426.

Bench Strength 2. Coram: **V.D. Tulzapurkar** and *A.N. Sen*, JJ. [Date of decision: 23-3-1981]

[454] — S. 125 — Enhancement of maintenance — Grounds for — Increase in earnings of husband — *On divorce, two children being born from wedlock, in custody of husband — Initially maintenance granted to wife by trial court Rs 800 p.m. — In meantime, earnings of husband marginally increasing — In light of facts, maintenance increased to Rs 1500 p.m.* (Para 4). *Naresh Chandra Singhania* v. *Deepika*, (2005) 10 SCC 299.

Bench Strength 2. Coram: *Ruma Pal* and *Arun Kumar*, JJ. [Date of decision: 27-10-2004]

[455] — S. 125 — Quantum of maintenance — Husband an Army Officer having sufficient means to maintain his wife — *Held, Rs 500 per month being the maximum provided under the Code awarded by the Magistrate is well-justified. Major Ashok Kumar Singh* v. *VIth Addl. Sessions Judge*, (1996) 1 SCC 554: 1996 SCC (Cri) 161: AIR 1996 SC 333: 1996 ALJ 81: 1996 Cri LJ 392.

Bench Strength 2. Coram: *K. Ramaswamy* and *B.L. Hansaria*, JJ. [Date of decision: 6-9-1995]

[456] — S. 125 — Quantum of maintenance — Revision of — Efflux of time — *Order granting maintenance of Rs 50 to a child becoming final in 1984 — But having regard to devaluation of money due to inflation and the child having grown up in age, amount of maintenance raised to Rs 150 per month. Bakulabai* v. *Gangaram*, (1988) 1 SCC 537: 1988 SCC (Cri) 189: (1988) 1 KLT 413: 1988 Mah LJ 330.

Bench Strength 2. Coram: *Ranganath Misra* and **L.M. Sharma**, JJ. [Date of decision: 27-1-1988]

[457] — Ss. 125, 397 and 401 — Maintenance — Reduction in quantum of, by High Court — Propriety — *Wife and child granted Rs 1000 and 500 p.m. respectively by the trial court — In revision, High Court though finding no reason to interfere, still reducing the said amounts to Rs 800 and 400 respectively — Such reduction, held, was absolutely uncalled for — Hence, trial court's order restored* (Paras 3 and 4). *Ashoka Dutta Gupta* v. *Sujit Dutta Gupta*, (2000) 9 SCC 193: 2000 SCC (Cri) 1201.

Bench Strength 2. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 31-3-2000]

[458] — S. 125(1) and Expln. (b) — Total amount that may be awarded to wife and her children as maintenance under — *Expression "in the whole" — Meaning of*

What the section plainly means is that the Court cannot grant more than Rs 500 for each one of the claimants. 'In the whole', in the context, means taking all the items of maintenance together, not all the members of the family put together, because, if a woman has a dozen children and if her husband neglects the wife and children and also his parents, it cannot be that if all seek maintenance in one petition, the court cannot award more than Rs 500, while if each filed a separate petition, then it would be a maximum of Rs 500 for each. *Capt. Ramesh Chander Kaushal* v. *Veena Kaushal*, (1978) 4 SCC 70: 1978 SCC (Cri) 508: AIR 1978 SC 1807: 1979 Cri LJ 3.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *D.A. Desai*, JJ. [Date of decision: 27-4-1978]

[459] — S. 125 (as amended by Act 50 of 2001 w.e.f. 24-9-2001) — Maintenance amount exceeding Rs 500 as per the amendment — Date of entitlement to — *Family Court granting maintenance of Rs 2000 and 1000 p.m. for Appellant 1 wife and Appellant 2 daughter respectively from 21-7-1997 (date of filing application before Magistrate) — High Court granting Rs 750 p.m. for both from 29-11-2006 (date of final disposal by Family Court) — On the one hand wife is naturally entitled to be maintained by husband from the date of marriage but on the other hand maintenance exceeding Rs 500 p.m. could not have been granted prior to Amendment Act, 2001 — Therefore, maintenance exceeding Rs 500 p.m., on facts, held, can only be granted from the date Amendment Act, 2001 came into force i.e. w.e.f. 24-9-2001*

The appellants would be entitled to Rs 1000 each p.m. as maintenance from the date the Amendment Act, 2001 came into force i.e. w.e.f. 24-9-2001. The Family Court granted maintenance to the appellants—wife as well as daughter—at the rate of Rs 2000 and Rs 1000 respectively from the date of application i.e. 21-7-1997. The Family Court could not have granted maintenance exceeding Rs 500 p.m. either to Appellant 1 or Appellant 2 from the date of application i.e. 21-7-1997. At the most, such an order could have been made effective from the date the Amendment Act, 2001 came into force. Moreover, duration of litigation is not within the power or in the hands of the applicant and entitlement to maintenance should not be left to the uncertain date of disposal of the case. Maintenance is a right which accrues to a wife against her husband the minute the former gets married to the

(12) Quantum of maintenance *(contd.)*

latter. It is not only a *moral* obligation but is also a *legal* duty cast upon the husband to maintain his wife. Hence, whenever a wife does not stay with her husband and claims maintenance, the only question which the court is called upon to consider is whether she was justified to live separately from her husband and still claim maintenance from him? If the reply is in the affirmative, she is entitled to claim maintenance. (Paras 46, 44, 41 and 42). *Shail Kumari Devi* v. *Krishan Bhagwan Pathak*, (2008) 9 SCC 632: (2008) 3 SCC (Cri) 839: AIR 2008 SC 3006: (2008) 3 KLT 576: 2008 Cri LJ 3881.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 28-7-2008]

[460] — S. 127 — Enhanced maintenance — *Whether to be allowed from the date of the application or from the date of order is within the discretion of the court — Merely because the husband has incurred liability to pay instalments by obtaining loans is no ground for denying maintenance to the wife and minor child. Sau Suman Narayan Niphade* v. *Narayan Sitaram Niphade*, 1995 Supp (4) SCC 243: 1996 SCC (Cri) 53.

Bench Strength 2. Coram: *A.M. Ahmadi* and *S.P. Bharucha*, JJ. [Date of decision: 24-3-1993]

[461] — Ss. 127 and 125 — Maintenance to wife and a minor child aged about 15 years studying in 9th standard — *Gross salary of husband Rs 5388 — Amount of maintenance enhanced from Rs 600 per mensem to Rs 1600 per mensem. Jayanta Kumar Laha* v. *Kabita Laha*, 1994 SCC (Cri) 1749.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and *R.M. Sahai*, JJ. [Date of decision: 26-11-1993]

[462] — S. 127(3)(b) — Scheme and object — Sum received by a divorced woman under any customary or personal law must be sufficient for her maintenance under the prevailing circumstances — *Payment of Mahr (Dower) is different from maintenance allowance paid on divorce — Payment of Rs 500 by way of Mahr as recompense for divorce, held, insufficient and therefore, husband not absolved under S. 127(3)(b) from payment of maintenance*

The respondent, a Muslim, married the appellant and had a son. His monthly earning was well above Rs 1000. He gave talaq to the appellant and paid Rs 500 by way of Mahr and Rs 750 towards maintenance for period of iddat. The appellant prayed for maintenance allowance for herself and her son under S. 125, CrPC and the Magistrate granted payment of a monthly sum of Rs 250 to her and Rs 150 to the child. The additional first class Magistrate, however, vacated the grant of maintenance on the score of divorce coupled with discharge of Mahr and iddat dues.

Held :

Section 127(3)(*b*) has a setting, scheme and a purpose and no talaq of the purpose different from the sense is permissible in statutory construction. It takes care to avoid double payment — One under custom at the time of divorce and another under S. 125. However, neither personal law nor other salvationary plea will hold against the policy of public law pervading S. 127(3)(*b*) as much as it does S. 125.

Sections 125-127 form a secular code deliberately designed to protect destitute women, who are victims of neglect during marriage and after divorce. It is rooted in the State's responsibility for the welfare of the weaker sections of women and children and is not confined to members of one religion or region, but the whole community of womanhood. Whatever the facts of a particular case, the Code, by enacting Ss. 125-127 charges the court with the humane obligation of enforcing maintenance or its just equivalent to ill-used wives and castaway ex-wives, unless the woman has received voluntarily a sum, at the time of divorce, sufficient to keep her going according to the circumstances of the parties. The payment of an amount, customary or other, contemplated by the measure must inset the intent of preventing destitution and providing a sum which is more or less the present worth of the monthly maintenance allowances the divorcee may need until death or remarriage overtake her.

Section 127(3)(*b*) requires that payment of the sum and the divorce should be essentially parts of the same transaction so as to make one consideration for the other. At any rate the payment of money contemplated by S. 127(3)(*b*) should be so linked with the divorce as to become payable only in the event of the divorce. Mahr as understood in Mohammadan law cannot, under any circumstances be considered as consideration for divorce or a payment made in lieu of loss of connubial relationship. Muslim law shows its reverence for the wife in the institution of mahr (dower). The quintessence of mahr whether it is prompt or deferred is clearly not a contemplated quantification of a sum of money in lieu of maintenance upon divorce. Indeed, dower focusses on marital happiness and is an incident of connubial joy. Divorce is farthest from the thought of the bride and the bridegroom when mahr is promised. Moreover, dower may be prompt and is payable during marriage and cannot, therefore, be a recompense for divorce too distant and unpleasant for the bride and bridegroom to envision on the nuptial bed.

In the present case the mahr paid is Rs 500 and the income therefrom may well be Rs 5 a month, too ludicrous to mention as maintenance. The amount earlier awarded is the minimum. *Fuzlunbi* v. *K. Khader Vali*, (1980) 4 SCC 125: 1980 SCC (Cri) 916: AIR 1980 SC 1730: 1980 Cri LJ 1249.

Bench Strength **3**. Coram: **V.R. Krishna Iyer**, *O. Chinnappa Reddy* and *A.P. Sen*, JJ. [Date of decision: 8-5-1980]

[463] — S. 125 (as amended by Act 50 of 2001) — Maintenance of wife and daughter — Quantum — Considerations for — *Appellant 1 wife in possession of cultivable land and living in respondent husband's house — Respondent husband an SBI cashier having a gross salary of Rs 18,508.98 and taking home pay packet of Rs 9831.76 — Family Court fixing Rs 2000 for Appellant 1 wife and Rs 1000 for Appellant 2 daughter — High Court reduced the maintenance amount to Rs 750 p.m. for each appellant — Appellant 1 wife in possession of cultivable land and living in respondent husband's house, held, are relevant considerations — Therefore, amount of maintenance for wife fixed by Family Court at Rs 2000 p.m. was not right — On facts, held, the appellants are entitled to an amount of Rs 1000 each p.m. as maintenance*

The respondent was working as cashier with State Bank of India and was getting gross salary of Rs 18,508.98. After deduction, his pay packet was of Rs 9831.76. The respondent retired from service in January 2006. On 21-7-1997 Appellant 1 (wife) and Appellant 2 (minor daughter) had made an application for maintenance under Section 125 CrPC before the Magistrate concerned. They also made an application for interim maintenance on 20-11-1999. The Magistrate granted an interim maintenance of Rs 300 p.m. w.e.f. 12-2-1998. On 3-9-2001 after recording of final evidence, the Magistrate adjourned the case for final arguments. In the meantime w.e.f. 24-9-2001 Section 125 CrPC was amended (striking out the maintenance limit of Rs 500) and the case was transferred to the newly established Family Court concerned. On 30-10-2006 the Family Court allowed the application dated 12-9-2006 for arrears of maintenance (which came to Rs 11,600) and on 29-11-2006 finally disposed of the case granting a maintenance of Rs 2000 pm to Appellant 1 and Rs 1000 to Appellant 2 w.e.f. 21-7-1997 (i.e. the date of application for maintenance before the Magistrate). By the impugned order of the High Court, the revision preferred by the respondent against the order dated 29-11-2006 of the Family Court was allowed reducing the maintenance amount to Rs 750 p.m. for each appellant and granting it w.e.f. 29-11-2006 (i.e. the date of final disposal of the case by the Family Court).

Allowing the appeal partly,

Held :

In view of overall facts and circumstance and in the ends of justice the appellants are entitled to an amount of Rs 1000 each p.m. as maintenance. On merits, the Family Court was not right in fixing the amount of maintenance at Rs 2000 p.m. for Appellant 1 and Rs 1000 p.m. for Appellant 2. From the material on record, it is clear that Appellant 1 wife is residing in the house belonging to the respondent husband and such finding has been recorded even by the Family Court. It is also in evidence that she was receiving income from the land in her possession which belonged to her husband, the respondent herein. It is true that the respondent could not state the actual amount received by the wife from the cultivation of the land, but it is also one of the considerations which is relevant and material while fixing the amount of maintenance. Moreover, Appellant 1 has inherited some land from her father. (Paras 46 and 45). *Shail Kumari Devi* v. *Krishan Bhagwan Pathak*, (2008) 9 SCC 632: (2008) 3 SCC (Cri) 839: AIR 2008 SC 3006: (2008) 3 KLT 576: 2008 Cri LJ 3881.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 28-7-2008]

[464] — S. 125 (as amended by Act 50 of 2001) — Maintenance to child — Quantum of — Adequacy of — Question as to — *High Court enhancing quantum from Rs 350 to Rs 500 — No dispute raised regarding enhancement and in fact there was a concession to the prayer for enhancement before the High Court — By amendment of S. 125 in 2001 the maximum limit regarding grant of maintenance prescribed at Rs 500, omitted — Considering the peculiar facts of the case, amount of maintenance enhanced to Rs 850 with effect from the date of judgment of the Supreme Court — Criminal Procedure Code (Amendment) Act, 2001 — S. 2* (Paras 22 and 23). *Savitaben Somabhai Bhatiya* v. *State of Gujarat*, (2005) 3 SCC 636: 2005 SCC (Cri) 787: AIR 2005 SC 1809: 2005 Cri LJ 2141: (2005) 2 Guj LR 1378.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-3-2005]

(13) Interim maintenance

[465] — S. 125 (before amendment by Act 50 of 2001) — Interim maintenance — Grant of, prior to Amendment Act 50 of 2001 without there being any express provision for — *Held, Magistrate had implied power to grant interim maintenance even prior to Amendment Act, 2001 — Rationale for, discussed and stated*

The Magistrate was right and wholly justified under law in ordering interim maintenance by his order dated 20-11-1998. There is no infirmity in that part of the order which holds that interim maintenance can be granted by the Magistrate even before the amendment of Section 125 CrPC in 2001. It is true that there is no express provision in CrPC which authorises a Magistrate to make an interim order directing payment of maintenance pending disposal of an application for maintenance. CrPC also does not also expressly prohibit the making of such an order. Having regard to the nature of proceedings, the primary object to secure relief to deserted and destitute wives, discarded and neglected children and disabled and helpless parents and to ensure that no wife, child or parent is left beggared and destitute on the scrap-heap of society so as to be tempted to commit crime or to tempt others to commit crime in regard to them, it is held that the Magistrate had "*implied power*" to make such order. The jurisdiction of the Magistrate under Chapter IX (Order for Maintenance of Wives, Children and Parents) is not *strictly* criminal in nature. Moreover, the remedy provided by Section 125 CrPC is a *summary remedy* for securing reasonable sum by way of maintenance subject to a decree passed by a competent civil court. Hence, in absence of any express *bar* or *prohibition*, Section 125 could be interpreted as conferring power by necessary implication to make interim order of maintenance subject to final outcome of the application. (Paras 22 to 26 and 41). *Shail Kumari Devi* v. *Krishan Bhagwan Pathak*, (2008) 9 SCC 632: (2008) 3 SCC (Cri) 839: AIR 2008 SC 3006: (2008) 3 KLT 576: 2008 Cri LJ 3881.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 28-7-2008]

Savitri v. Govind Singh Rawat, (1985) 4 SCC 337: 1985 SCC (Cri) 556, relied on

[466] — S. 125 — Interim alimony — Maintenance awarded under S. 125 CrPC adjustable against amount awarded in matrimonial proceedings — *On the facts and circumstances fresh directions for payment by husband issued — Hindu Marriage Act, 1955 — S. 24. Sudeep Chaudhary* v. *Radha Chaudhary*, (1997) 11 SCC 286: AIR 1999 SC 536.

Bench Strength 2. Coram: **S.P. Bharucha** and *Faizan Uddin*, JJ. [Date of decision: 31-1-1997]

[467] — S. 125 — Interim maintenance — Sustainability — *Fixed by Addl. District Judge at the rate of Rs 12,000 p.m. from the date of filing application under S. 24, HMA, 1955 — High Court confirmed the same having regard to averments made in the pleadings and other annexures — On perusal of the High Court's order and the annexures and hearing the arguments of both sides, held, impugned order does not suffer from any infirmity — Hindu Marriage Act, 1955 — S. 24. Deepak Jain* v. *Charu Jain*, (2007) 10 SCC 229: (2007) 54 AIC 149 (SC).

Bench Strength 2. Coram: **Dr. Ar. Lakshmanan** and *Altamas Kabir*, JJ. [Date of decision: 14-3-2007]

[468] — S. 125 — Nature and scope of jurisdiction of Magistrate under — Power to pass interim order based on prima facie satisfaction — *Held, magistrate has implied power under, on being prima facie satisfied on the basis of an affidavit filed by the applicant for maintenance, to pass interim order directing the person from whom the maintenance is claimed to pay a reasonable sum by way of maintenance to the applicant pending final disposal of the application*

The jurisdiction of a magistrate under Chap. IX of the Code is not strictly a criminal jurisdiction. While passing an order for maintenance under it, the magistrate does not impose any punishment on such person for a crime committed by him. It does not really create any serious new obligation unknown to Indian social life. It contains a summary remedy for securing some reasonable sum by way of maintenance, subject to a decree, if any, which may be made in a civil court in a given case provided the Personal Law applicable to the person concerned authorises the enforcement of any such right to maintenance. The Code, however, provides a quick remedy to protect the applicant against starvation and to tide over immediate difficulties. It is, therefore, the duty of the court to interpret the provisions in Chap. IX in such a way that the construction placed on them may not defeat the very object of the legislation. In absence of any express prohibition under S. 125 and having regard to the nature of jurisdiction exercised by a magistrate thereunder, as also the provisions of S. 7(2)(*a*) of the Family Courts Act, 1984 passed recently by Parliament proposing to transfer the jurisdiction exercisable by magistrate under S. 125 of the Code to the Family Courts, S. 125 should be interpreted as conferring power by necessary implication on the magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to therein pending final disposal of the application. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. The recognition of such implied power may lead to passing of interim orders in few cases where liability to pay maintenance may not exist, but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties. The magistrate may, however, insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. Such an order may also be made in an appropriate case ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. If a civil court can pass such interim orders on affidavits, there is no reason why a magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. *Savitri* v. *Govind Singh Rawat*, (1985) 4 SCC 337: 1985 SCC (Cri) 556: AIR 1986 SC 984.

Bench Strength **2**. Coram: **E.S. Venkataramiah** and *R.B. Misra*, JJ. [Date of decision: 9-10-1985]

[469] — S. 125(3) first proviso — Limitation of one year to seek recovery of arrears of maintenance — Applicability to the interim application filed in the main petition — *Appellant wife and her daughter granted maintenance amounting to Rs 500 and Rs 300 respectively, by the Magistrate on 20-1-1993 — Since the amount was not paid and no warrant issued by the Magistrate, appellant wife filing petition claiming Rs 5365 as arrears of maintenance from 20-1-1993 to 31-8-1993 (date of filing the petition) — Respondent husband's revision against the order of the trial court dismissed by the Sessions Judge as well as the High Court — He failing to pay the amount due — Thereafter, appellant wife filing interim application in the main petition claiming arrears of maintenance amounting to Rs 46,000 from 20-1-1993 to 16-6-1998 (date of filing the IA) — Respondent depositing Rs 5365 but objecting to further claim on ground that the interim application filed on 16-6-1998 was barred by limitation under first proviso to S. 125(3) — Held, the main petition filed in 1993 was pending and kept alive and the subsequent IA was filed only to specify the exact amount accrued up to that date — Such application was only supplementary or incidental to the main petition which was admittedly filed within the period of limitation — Hence bar under S. 125(3) first proviso not applicable to the IA — Further held, insisting on filing successive applications is unreasonable since liability to pay maintenance is a continuing liability* (Paras 2, 7 and 8). *Shantha* v. *B.G. Shivananjappa*, (2005) 4 SCC 468: 2005 SCC (Cri) 1089: AIR 2005 SC 2410: 2005 Cri LJ 2615.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **A.K. Mathur**, JJ. [Date of decision: 6-5-2005]

[470] — S. 125 — Interim maintenance — Enhancement of — Disposal of application for, in priority over suit for divorce — Need for — *Held, court is duty-bound to dispose of pending application for enhancement of maintenance, before suit for divorce is decided — Pending disposal of divorce suit, wife granted interim maintenance of Rs 4000 p.m. by District Judge — Aggrieved, wife filing revision petition before High Court — Meanwhile, she also filing application before District Judge for enhancement of amount of maintenance on ground that her husband's earnings had increased — Disposing the said revision petition High Court directing court below to decide divorce suit within one year and directing the wife not to press for enhancement of maintenance till its disposal — Sustainability — Held, High Court not justified in passing order which virtually rejected wife's application for enhancement of maintenance — Supreme Court enhancing maintenance to Rs 7000 with further directions to trial court to dispose of divorce suit within one year — CPC, 1908, S. 115 — Constitution of India, Art. 227 — Hindu Marriage Act, 1955, Ss. 24 and 13* (Paras 6 and 7). *Sipra Bhattacharyya* v. *Dr. Apares Bhattacharyya*, (2009) 4 SCC 366.

Bench Strength **2**. Coram: *Tarun Chatterjee* and *H.L. Dattu*, JJ. [Date of decision: 19-1-2009]

(13) Interim maintenance *(contd.)*

[471] — S. 125 (before amendment by Act 50 of 2001) — Grant of Rs 300 p.m. as interim maintenance by Magistrate, held on facts, was justified (Para 46). *Shail Kumari Devi* v. *Krishan Bhagwan Pathak*, (2008) 9 SCC 632: (2008) 3 SCC (Cri) 839: AIR 2008 SC 3006: (2008) 3 KLT 576: 2008 Cri LJ 3881.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 28-7-2008]

[472] — S. 125 — Interim maintenance — Quantum — Appellant, minor son of the first respondent, represented by his mother — *Magistrate directed first respondent to pay interim maintenance of Rs 5000 per month — However, before the Supreme Court, first respondent offered to pay Rs 7500 per month subject to the final decision in the pending proceedings — Held, interim maintenance accordingly increased to Rs 7500 per month* (Paras 4 and 9). *Manu Khanna* v. *V.P. Sharma*, (2008) 17 SCC 469: (2009) 73 AIC 77 (SC).

Bench Strength **2**. Coram: *R.V. Raveendran* and *D.K. Jain*, JJ. [Date of decision: 5-12-2008]

(14) Date of entitlement to maintenance

[473] — S. 125(2) — Date of entitlement to maintenance — Effect of amendment by Act 50 of 2001 — *Held, no substantial change has been made re date of payment*

There is no substantial change so far as the date of payment is concerned. Under Section 125(2) CrPC as originally enacted, it was provided that such maintenance could be made payable from the date of the order or if so ordered, from the date of application. Even after the amendment of 2001, an order for payment of maintenance can be made by a court either from the date of the order or where an express order is made to pay maintenance from the date of application, then the amount of maintenance can be paid from that date i.e. from the date of application. (Paras 17 and 21). *Shail Kumari Devi* v. *Krishan Bhagwan Pathak*, (2008) 9 SCC 632: (2008) 3 SCC (Cri) 839: AIR 2008 SC 3006: (2008) 3 KLT 576: 2008 Cri LJ 3881.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 28-7-2008]

[474] — S. 125(2) — Decision of the High Court holding S. 125(2) ultra vires Art. 14 without notice to the Attorney General and without such contention being raised in pleadings not sustainable — *In view of the great emphasis placed in judgment upon unconstitutionality of the provision decision on merits also quashed — Matter remitted to the High Court for fresh decision with a direction to the husband to pay to the wife a sum of Rs 500 p.m. as interim maintenance and all arrears thereof. Basant Lal* v. *State of U.P.*, (1998) 8 SCC 589: 1998 SCC (Cri) 1548.

Bench Strength **2**. Coram: *S.P. Bharucha* and *M.K. Mukherjee*, JJ. [Date of decision: 18-1-1996]

[475] — S. 125(2) — Date from which maintenance to be allowed — *Application by wife under S. 125 for maintenance filed (on 28-5-1993) during pendency of husband's petition for divorce — Decree of divorce passed on ground of desertion (on 15-7-1995) — Application under S. 125 allowed subsequently — Divorce decree becoming final — Contention that wife would not be entitled to maintenance for any period prior to the passing of the decree held to be correct, but Family Court order allowing maintenance from date of application not interfered with "for that short period" — Constitution of India — Art. 136 — Post-divorce maintenance under CrPC, S. 125* (Para 12). *Rohtash Singh* v. *Ramendri*, (2000) 3 SCC 180: 2000 SCC (Cri) 597: AIR 2000 SC 952: 2000 Cri LJ 1498: 2000 All LJ 629.

Bench Strength **2**. Coram: **S. Saghir Ahmad** and *D.P. Wadhwa*, JJ. [Date of decision: 2-3-2000]

[476] — Ss. 125 and 354(6) — Maintenance from the date of application — Need for reasons/justification — *Held, though an express order with reasons is necessary but no special reasons are required to be recorded — Rule of granting maintenance only from the date of order, held, would not be correct*

For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the court. No such requirement can be read in Section 125(1) CrPC in absence of express provision to that effect. (Paras 43, 40, 42 and 29)

Hence, the High Court was not right in holding that as a *normal rule*, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. (Para 40). *Shail Kumari Devi* v. *Krishan Bhagwan Pathak*, (2008) 9 SCC 632: (2008) 3 SCC (Cri) 839: AIR 2008 SC 3006: (2008) 3 KLT 576: 2008 Cri LJ 3881.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 28-7-2008]

Mohd. Inaytullah Khan v. Salma Bano, 1983 Jab LJ 55; Rameshwar v. Ramibai, 1987 Cri LJ 1952 (MP); Lachhmani v. Ramu, (1983) 1 Crimes 590 (MP); Qamruddin v. Rashida, (1992) 1 WLC 305 (Raj); Shyamlal v. Mansha Bai, 1998 Cri LJ 2704 (Raj); Mohd. Ismail v. Bilquees Bano, 1998 Cri LJ 2803 (All); Nitha Ranjan Chakraborty v. Kalpana Chakraborty, 2002 Cri LJ 4768 (Cal); Samaydin v. State of U.P., 2001 Cri LJ 2064 (All); Bijay Kapri v. Kanishta Devi, (2000) 2 PLJR 241 (Pat), overruled

Gnanaselvi v. *Illavarasan, (1999) 1 Crimes 22 (Mad); Amarjit Kaur* v. *Sartaz Singh, 1996 Cri LJ 4476 (P&H); Krishna Jain* v. *Dharam Raj Jain, 1992 Cri LJ 1028 (MP); K. Sivaram* v. *K. Mangalamba, 1990 Cri LJ 1880 (AP), approved*

(2007) 3 Pat LJR 723, reversed

(15) Cancellation or modification of maintenance order

[477] — Ss. 127(3) and 125 — Remarriage by wife — *Maintenance allowance to the wife directed to be paid up to the date of her remarriage but the allowance granted to her child directed to be continued to be paid so long as the child remains in her custody. A. Raveendrababu* v. *Devaki Vijayamma*, (1982) 3 SCC 477: 1983 SCC (Cri) 103.

Bench Strength **2**. Coram: *V.D. Tulzapurkar* and *A. Varadarajan*, JJ. [Date of decision: 9-11-1982]

[478] — Ss. 127(3)(b) and 125 — Payment of mahr or dower by Muslim husband to wife does not attract S. 127(3)(b) and order of maintenance under S. 125 is not liable to be cancelled on such payment — *Mahr or dower is not payable on divorce but is payable on marriage*

Mahr is an amount payable by the husband to the wife on marriage and not on divorce. Since S. 127(3)(*b*) speaks of sum 'payable on such divorce' it is inapplicable in case of payment of Mahr. Even assuming that, in a given case, the entire amount of Mahr is of the deferred variety payable on the dissolution of marriage by divorce, it cannot be said that it is an amount which is payable on divorce. Divorce may be a convenient or identifiable point of time at which the deferred amount has to be paid by the husband to the wife. But, the payment of the amount is not occasioned by the divorce, which is what is meant by the expression 'on divorce', which occurs in S. 127(3)(*b*). The alternative premise that Mahr is an obligation imposed upon the husband as a mark of respect for the wife, is wholly detrimental to the stance that it is an amount payable to the wife on divorce. S. 127(3)(*b*) may have been introduced because of the misconception that dower is an amount payable "on divorce". But, that cannot convert an amount payable as a mark of respect for the wife into an amount payable on divorce.

However, the statement made in Bai Tahira case that "payment of Mahr money, as a customary discharge, is within the cognizance of that provision" [viz. S. 127(3)(*b*)] is incorrect. *Mohd. Ahmed Khan* v. *Shah Bano Begum*, (1985) 2 SCC 556: 1985 SCC (Cri) 245: AIR 1985 SC 945: 1985 Cri LJ 875.

Bench Strength **5**. Coram: **Y.V. Chandrachud, C.J.** and *D.A. Desai, O. Chinnappa Reddy, E.S. Venkataramiah* and *Ranganath Misra*, JJ. [Date of decision: 23-4-1985]

Bai Tahira v. *Ali Hussain Fidaalli Chothia, (1979) 2 SCC 316: 1979 SCC (Cri) 473, partly affirmed*

Fuzlunhi v. *K. Khader Vali, (1980) 4 SCC 125: 1980 SCC (Cri) 916, affirmed*

[479] — S. 125 — Maintenance — Suspension of order — Revival of the order of — *Subsequent to passing of the order of maintenance by the court, parties compromising and starting living together but later falling apart — In such circumstances, during the operation of the compromise, the order of maintenance, held, remained suspended but was not wiped out altogether — Hence, when the compromise failed Supreme Court restoring the position of the wife under the original order of maintenance — However, parties given liberty to claim any other relief by raising a matrimonial dispute before the matrimonial court — Family Courts Act, 1984 — S. 7(1)(a) & Expln. (f)*

In a matrimonial dispute the wife had been granted an interim maintenance at a certain rate. Subsequently, the parties reached a compromise whereunder the wife came to live with the husband but could not continue to do so. In such circumstances, the husband's contention that the orders of maintenance could not be revived as there had arisen a fresh cause of action, was upheld by the High Court leaving the wife to approach the criminal court again for appropriate relief. Allowing the wife's appeal and restoring her position under the original order of maintenance,

Held :

The matter can be viewed from either angle. It can be viewed that there was a genuine effort by the wife to rehabilitate herself in her matrimonial home but in vain. The previous orders of maintenance in a manner of speaking could at best be taken to have been suspended but not wiped out altogether. The other view can be that the maintenance order stood exhausted and thus she be left to fight a new litigation on a fresh cause of action. Out of the two courses, the first one is preferable as the second one would lead to injustice. In a given case the wife may then be reluctant to settle with her husband lest she lose the order of maintenance secured on his neglect or refusal. Her husband on the other side, would jump to impromptu devices to demolish the maintenance order in duping the wife to a temporary reconciliation. Thus, in order to do complete justice between the parties, in the facts and circumstances of the case, the wife's claim to maintenance has to be activated and she has to be put in the same position as before. However, it would be open to the

(15) Cancellation or modification of maintenance order *(contd.)*

parties to claim such other relief as may be due to him/her by raising a matrimonial dispute before the matrimonial court. *Mahua Biswas* v. *Swagata Biswas*, (1998) 2 SCC 359.

Bench Strength 2. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 17-11-1997]

[480] — **S. 125 — Order of trial court for payment of, @ Rs 1000 per month from date of filing of suit — Stay of, in appeal with direction to pay maintenance @ Rs 750 per month from date of filing of appeal — Challenge to** — *Held, trial court's order would remain stayed if respondent would pay entire arrears from the date of filing of the suit till before the filing of the appeal @ Rs 750 per month within 6 months in 3 equal bimonthly instalments and would continue to pay the current amount of maintenance as directed by the appellate court — Hindu Marriage Act, 1955, S. 25 — Hindu Adoptions and Maintenance Act, 1956, Ss. 18 and 23(2)* (Para 3). *Susheelamma* v. *K. Gaviyanna*, (2007) 15 SCC 666.

Bench Strength 2. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 28-11-2005]

[481] — **S. 125 — Order for maintenance passed by Magistrate will not be affected by any subsequent compromise or reunion between the husband and the wife** — *Order must be vacated or altered in terms of the provisions of the Code itself*

A statutory order can ordinarily be demolished only in terms of the statute. If an order for maintenance has been made against the deserter it will operate until vacated or altered in terms of the provisions of the Code itself. If the husband has a case under S. 125(4), (5) or S. 127 of the Code it is open to him to initiate appropriate proceedings. But until the original order for maintenance is modified or cancelled by a higher court or is varied or vacated in terms of S. 125(4) or (5) or S. 127, its validity survives. It is enforceable and no plea that there has been cohabitation in the interregnum or that there has been a compromise between the parties can hold good as a valid defence. *Bhupinder Singh* v. *Daljit Kaur*, (1979) 1 SCC 352: 1979 SCC (Cri) 302: AIR 1979 SC 442: 1979 Cri LJ 198: 1979 MLJ (Cri) 446: 1979 ALJ 209.

Bench Strength 3. Coram: *V.R. Krishna Iyer*, *P.N. Shinghal* and *A.P. Sen*, JJ. [Date of decision: 13-11-1978]

[482] — **S. 125 — Order of maintenance under, can be revoked only prospectively having regard to the subsequent developments embodied in order of civil court**. *T.M. Narayanan* v. *Nishad (Minor)*, 1990 Supp SCC 163(1): 1990 SCC (Cri) 545.

Bench Strength 2. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 2-3-1987]

Brij Pal Singh v. Sukhbiri Devi, (1962) 1 Cri LJ 681, overruled

(16) Practice and Procedure

See also under Ss. 125 to 128, '(1) Generally', above and

See also '(17) Enforcement of maintenance order/Payment in instalments', below

[483] — **S. 125 — Maintenance proceedings — Trial court to take a prima facie view of the matter and need not go into the matrimonial disputes between the parties in detail**

It was not necessary for the High Court to examine the whole evidence threadbare to exercise jurisdiction under Section 482 of the Code. Rather in a case under Section 125 of the Code the trial court is to take a prima facie view of the matter and it is not necessary for the Court to go into the matrimonial disputes between the parties in detail. (Para 12). *Rajathi* v. *C. Ganesan*, (1999) 6 SCC 326: 1999 SCC (Cri) 1118: AIR 1999 SC 2374: 1999 Cri LJ 3668.

Bench Strength 2. Coram: *S. Saghir Ahmad* and **D.P. Wadhwa**, JJ. [Date of decision: 22-7-1999]

Krishnan v. Krishnaveni, (1997) 4 SCC 241: 1997 SCC (Cri) 544, relied on

[484] — **S. 125 — Delay in disposal — High Court directed for expeditious disposal — Matter pending even after one year and five months since said direction** — *Held, Magistrate is directed to dispose of the matter expeditiously and to deal with any request for adjournment sternly and restrict the parties strictly to the issue at hand* (Para 8). *Manu Khanna* v. *V.P. Sharma*, (2008) 17 SCC 469: (2009) 73 AIC 77 (SC).

Bench Strength 2. Coram: *R.V. Raveendran* and *D.K. Jain*, JJ. [Date of decision: 5-12-2008]

[485] — **S. 125 — Ex parte order** — *Supreme Court under Art. 136 satisfied that husband was not served with notice — Ex parte order of the Magistrate and of the High Court set aside and matter remanded for being disposed of afresh by the Magistrate — No further notice to husband. Mohd. Naim Siddiqui* v. *Sultana Khatoon*, (1982) 3 SCC 369: 1983 SCC (Cri) 50.

Bench Strength 2. Coram: **V.D. Tulzapurkar** and *A. Varadarajan*, JJ. [Date of decision: 10-2-1981]

[486] — S. 125 — Grant of maintenance to wife by trial Court — Finding of trial court based on proper appreciation of evidence — *Interference by High Court in revision not justified. Kamla Devi* v. *Mool Raj*, 1989 Supp (2) SCC 722(1): 1991 SCC (Cri) 230.

Bench Strength **2**. Coram: *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision: 15-4-1988]

(17) Enforcement of maintenance order/ Payment in instalments

See also Ss. 125 to 128, '(16) Practice and Procedure', above

[487] — S. 125 — Arrears of maintenance can be directed to be paid in instalments. *Begum Subanu* v. *A.M. Abdul Gafoor*, (1987) 2 SCC 285: 1987 SCC (Cri) 300: AIR 1987 SC 1103: 1987 Cri LJ 980.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 3-4-1987]

[488] — S. 125(3) — Non-compliance with order of Magistrate to make payment of maintenance — Magistrate has no power to impose sentence for more than one month

The language of sub-section (3) of Section 125 is quite clear and it circumscribes the power of the Magistrate to impose imprisonment for a term which may extend to one month or until the payment, if sooner made. This power of the Magistrate cannot be enlarged and therefore the only remedy would be after expiry of one month, for breach or non-compliance with the order of the Magistrate the wife can approach the Magistrate again for similar relief. By no stretch of imagination can the Magistrate be permitted to impose sentence for more than one month. (Para 1). *Shahada Khatoon* v. *Amjad Ali*, (1999) 5 SCC 672: 1999 SCC (Cri) 1029.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *M.B. Shah*, JJ. [Date of decision: 7-4-1999]

[489] — S. 125 — Limitation — Applicability to maintenance proceedings under — Execution application under S. 125 CrPC, whether barred by limitation — *Held, period of limitation is provided for in terms of S. 125(3) CrPC, first proviso — However, in the instant case, S. 15(1), Limitation Act, would apply, as, on facts, order of stay was granted by Revisional Court as also by High Court in the proceedings — Hence, limitation for filing application for execution would be computed upon excluding the period during which the order of stay was operating — Limitation Act, 1963, S. 15(1)* (Paras 8, 11 to 14). *Amarendra Kumar Paul* v. *Maya Paul*, (2009) 8 SCC 359: (2009) 3 SCC (Cri) 868.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 4-8-2009]

Shantha v. B.G. Shivananjappa, (2005) 4 SCC 468: 2005 SCC (Cri) 1089, relied on

[490] — Ss. 125(3) and 128 — Recovery of arrears of maintenance allowance — Imposition of sentence of imprisonment on defaulting party will not discharge liability to pay maintenance amount

A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. A person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance "without sufficient cause" to comply with the order. Sentencing a person to jail is a "mode of enforcement". It is not a "mode of satisfaction" of the liability. The liability can be satisfied only by making actual payment of the arrears. Sentencing to jail is the means for achieving the end of enforcing the order by recovering the amount of arrears. Thus a sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears. *Kuldip Kaur* v. *Surinder Singh*, (1989) 1 SCC 405: 1989 SCC (Cri) 171: AIR 1989 SC 232: 1989 Cri LJ 794.

Bench Strength **2**. Coram: **M.P. Thakkar** and *S. Natarajan*, JJ. [Date of decision: 3-11-1988]

[491] — S. 128 — Release of detenu on parole — Period of parole to be excluded in reckoning period of detention — *COFEPOSA Act, 1974 — S. 12(6)*

The objective underlying preventive detention cannot be achieved or fulfilled if the detenu is granted parole and brought out of detention. Even if any conditions are imposed with a view to restrict the movements of the detenu while on parole, the observance of those conditions can never lead to an equation of the period of parole with the period of detention. The observance of the conditions of parole, wherever imposed, such as reporting daily or periodically before a designated authority, residing in a particular town or city, travelling within prescribed limits alone and not going beyond etc. will not prevent the detenu from moving and acting as a free agent during the rest of the time or within the circumscribed limits of travel and having full scope and opportunity to meet people of his choice and have dealings with them, to correspond with one and all and to have easy and effective communication with whomsoever he likes through telephone, telex etc. It will, therefore, be futile to contend that the period of parole of a detenu has all the trappings of actual detention in prison and as such both the periods should find a natural merger and they stand denuded of their distinctive characteristics. *Pushpa Devi M. Jatia* v. *M.L. Wadhawan*, (1987) 3 SCC 367: 1987 SCC (Cri) 526: AIR 1987 SC 1748: 1987 Cri LJ 1888: (1987) 12 ECC 356.

Bench Strength **2**. Coram: *A.P. Sen* and *S. Natarajan*, JJ. [Date of decision: 29-4-1987]

Poonam Lata v. M.L. Wadhawan, (1987) 3 SCC 347, affirmed

***overruled** in Sunil Fulchand Shah v. Union of India, (2000) 3 SCC 409*

(18) Interference by High Court/ Supreme Court

[492] — Ss. 125, 397 and 401 — High Court in exercise of its revisional jurisdiction not justified in interfering with order of maintenance passed by Magistrate in favour of wife — *Reduction of amount of maintenance and making the same payable from date of order instead of date of application held, improper — Order of trial court restored. Premlata Sahai* v. *Ram Niranjan Sahai*, 1989 Supp (2) SCC 731: 1991 SCC (Cri) 236.

Bench Strength **2**. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 26-10-1988]

Kamla Devi v. Mool Raj, 1989 Supp (2) SCC 722(I), followed

[493] — S. 125 — Revision — Dismissal of revision not on merits but because of non-payment of maintenance by appellant husband to respondent wife as directed earlier — *Held on facts, not justified — CPC, 1908, S. 115*

The appellant husband was liable to pay Rs 4,62,000 as maintenance from March 2003 to September 2008, calculated at the rate of Rs 7000 p.m. Out of this amount Rs 1,86,000 had already been paid by the appellant. On 8-9-2008, when the matter was called for hearing, the appellant handed over a further sum of Rs 2 lakhs to respondent. Thus, a total sum of Rs 3,86,000 had already been paid by the appellant to the respondent and a further sum of Rs 76,000 remained to be paid by him.

Held :

In this situation, the High Court was not justified in rejecting the revision case only on the ground of non-payment of maintenance, as directed by it earlier at the rate of Rs 10,000 per month. Therefore, the impugned order is set aside and the High Court is requested to decide the civil revision case on merits and in accordance with law if, within a period of six weeks from today, the husband pays the balance amount of Rs 76,000 and also goes on paying the wife at the rate of Rs 7000 per month till the final order is passed by the High Court in the civil revision case. (Para 6). *Sanjay Narain* v. *Monika*, (2008) 16 SCC 503.

Bench Strength **2**. Coram: *Tarun Chatterjee* and *Aftab Alam*, JJ. [Date of decision: 15-9-2008]

[494] — S. 125 — Power of High Court to pass orders under, exercising its jurisdiction of superintendence under Art. 227 — *Held, if convinced of genuineness of case that a deserted person, repeatedly knocking at its doors, is on verge of destitution, High Court itself has jurisdiction to direct suitable amount of maintenance and to secure compliance with its directions if subordinate court has failed to grant or to enforce the same relief — While dismissing SLP, petitioner directed to approach the High Court — Constitution of India — Art. 227*

If convinced of the genuineness of the averments made by the petitioner and if convinced that a deserted woman, repeatedly knocking at its doors, is on the verge of destitution the High Court itself has jurisdiction to direct suitable amount of maintenance being awarded and to secure compliance with its directions, if the subordinate court has failed to grant or to enforce the same relief. May be that the High Court could have passed such order on the next date of hearing. But the petitioner has approached this Court probably impelled by impatience. (Para 3). *Shail* v. *Manoj Kumar*, (2004) 4 SCC 785: 2004 SCC (Cri) 1401: (2004) 3 MPLJ 336: (2004) 3 Mah LJ 503: 2004 All LJ 1876.

Bench Strength **3**. Coram: *R.C. Lahoti*, *Ashok Bhan* and *Arun Kumar*, JJ. [Date of decision: 29-3-2004]

Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675, followed

[495] — S. 125 — SLP against order of maintenance awarded by High Court not to be entertained — *Constitution of India — Article 136. Bihari Lal* v. *Kalyani*, (1986) 1 SCC 132: 1986 SCC (Cri) 63.

Bench Strength **2**. Coram: *O. Chinnappa Reddy* and *V. Balakrishna Eradi*, JJ. [Date of decision: 2-12-1985]

[496] — S. 125 — Supreme Court after deciding the law may itself determine the quantum of maintenance instead of remitting matter to trial court

As the record contains evidence regarding the earnings of the respondent the Court is in a position to determine the quantum of maintenance for the appellant in this appeal itself instead of remitting the matter to the trial court or the revisional court. Taking the factor of increase in his income since the emoluments of the husband were recorded four years back, the wife is entitled to Rs 300 per month and the maintenance of the child is increased to Rs 200 per month. *Begum Subanu* v. *A.M. Abdul Gafoor*, (1987) 2 SCC 285: 1987 SCC (Cri) 300: AIR 1987 SC 1103: 1987 Cri LJ 980.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 3-4-1987]

— Ch. X (Ss. 129 to 148) *See* S. 133 and Ch. X (Ss. 129 to 148)

See also Ss. 152, 149, 151, 129, 130, 133 and 144, Ch. X (Ss. 129 to 148) and Ch. XI (Ss. 149 to 153)

[497] **— Chs. X (Ss. 129 to 148) and XII (Ss. 154 to 176) — Police officer — Reserve Police Officer appointed under Bombay SRPF Act, 1951 is not a police officer within the meaning of S. 25** — *Hence a confession made to him is not inadmissible in evidence — He is officer-in-charge of a police station only for the purpose of maintaining public order and tranquillity and not for the purpose of investigation under Ch. XII of the CrPC, 1973 — Bombay State Reserve Police Force Act, 1951 (38 of 1951), Ss. 2(h), 10, 11 and 19 — Bombay Police Act, 1951 (22 of 1951) — CrPC, 1898, Ch. IX — Evidence Act, 1872, S. 25. State of Gujarat* v. *Anirudhsing*, (1997) 6 SCC 514: 1997 SCC (Cri) 946: AIR 1997 SC 2780: 1997 Cri LJ 3397.

Bench Strength **2**. Coram: *K. Ramaswamy* and *D.P. Wadhwa*, JJ. [Date of decision: 10-7-1997]

Balkishan A. Devidayal v. State of Maharashtra, (1980) 4 SCC 600: 1981 SCC (Cri) 62; Ramesh Chandra Mehta v. State of W.B., AIR 1970 SC 940: (1969) 2 SCR 461; K.I. Pavunny v. Asstt. Collector (HQ), Central Excise Collectorate, (1997) 3 SCC 721: 1997 SCC (Cri) 444; Raj Kumar Karwal v. Union of India, (1990) 2 SCC 409: 1990 SCC (Cri) 330, followed

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899, distinguished

— S. 129 *See* Ss. 11, 12, 13, 190, 129 and 151

See also Ss. 152, 129, 130, 133 and 144

See also Ss. 152, 149, 151, 129, 130, 133 and 144, Ch. X (Ss. 129 to 148) and Ch. XI (Ss. 149 to 153)

— S. 130 *See also* Ss. 129 and 130, Criminal Procedure Code, 1898, p. 978 in Vol. 2

— S. 130 *See* Ss. 152, 129, 130, 133 and 144

See also Ss. 152, 149, 151, 129, 130, 133 and 144, Ch. X (Ss. 129 to 148) and Ch. XI (Ss. 149 to 153)

[498] **— Ss. 130 and 131 — Held, S. 4 of 1958 Act cannot be challenged on the ground that alternative provisions under general law, viz., Ss. 130 and 131 CrPC being available, more drastic provisions contained in S. 4 of 1958 Act were discriminatory and violative of Art. 14** — *Ss. 130 and 131 CrPC deal with individual and isolated cases while S. 4 is concerned with a situation where whole or a part of a State is in a disturbed or dangerous condition — Ss. 130 and 131 CrPC cannot be treated as comparable and adequate to deal with the situation envisaged in S. 4 — Armed Forces (Special Powers) Act, 1958 — S. 4. Naga People's Movement of Human Rights* v. *Union of India*, (1998) 2 SCC 109: 1998 SCC (Cri) 514: AIR 1998 SC 431.

Bench Strength **3**. Coram: *J.S. Verma, C.J.* and *M.M. Punchhi* and **S.C. Agrawal**, JJ. [Date of decision: 27-11-1997]

— S. 131 *See* Ss. 130 and 131

— S. 132 *See* Ss. 197 and 132

See also Ss. 197(2) & (3) and 132

— S. 133 *See also* S. 133, Criminal Procedure Code, 1898, pp. 979 et seq. in Vol. 2

— S. 133 *See* Ss. 152, 129, 130, 133 and 144

See also Ss. 152, 149, 151, 129, 130, 133 and 144, Ch. X (Ss. 129 to 148) and Ch. XI (Ss. 149 to 153)

See also TORT LAW

[499] **— S. 133 — Remedy for public nuisance also lies under tort law apart from S. 133**

The dynamics of the judicial process has a new "enforcement" dimension not merely through some of the provisions of the Criminal Procedure Code (as here), but also through activated tort consciousness. The officers in charge and even the elected representatives will have to face the penalty of the law if what the Constitution and follow-up legislation direct them to do are defied or denied wrongfully. *Municipal Council, Ratlam* v. *Vardichan*, (1980) 4 SCC 162: 1980 SCC (Cri) 933: AIR 1980 SC 1622: 1980 Cri LJ 1075: (1980) 6 ALR 601.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *O. Chinnappa Reddy*, JJ. [Date of decision: 29-7-1980]

[500] **— S. 133 and Ch. X (Ss. 129 to 148) — Object of and considerations involved in exercise of power under** — *Held, provisions of Ch. X should be so worked as not to become themselves a nuisance to the community at large — Balancing of rights of individuals to free and full enjoyment of their property on the one hand, and their right to be free from nuisance on the other, stressed — Held,*

proceedings under S. 133 are not intended to settle private disputes but are intended to protect the public as a whole against inconvenience (Paras 13 and 10). *Kachrulal Bhagirath Agrawal* v. *State of Maharashtra*, (2005) 9 SCC 36: 2005 SCC (Cri) 1191: AIR 2004 SC 4818: 2004 Cri LJ 4634: (2005) 4 Mah LJ 963.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 22-9-2004]

[501] — Ss. 133 to 144 — Nuisance — Remedies for, both civil and criminal, discussed — *Penal Code, 1860, Ch. XIV (Ss. 268 to 294-A) — CPC, 1908 — S. 91 — Burden of proof on plaintiff — Held, plaintiffs need not prove that they have sustained any special damage*

The term "nuisance" as used in law is not a term capable of exact definition. (Para 12)

Nuisances are of two kinds i.e. (*i*) public; and (*ii*) private. "Public nuisance" or "common nuisance" as defined in Section 268 of the Penal Code, 1860 is an offence against the public either by doing a thing which tends to the annoyance of the whole community in general or by neglecting to do anything which the common good requires. It is an act or omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity. "Private nuisance" on the other hand, affects some individuals as distinguished from the public at large. (Para 10)

The remedies to nuisance are of two kinds — civil and criminal. The remedies under the civil law are of two kinds. One is under Section 91 CPC. Under it a suit lies and the plaintiffs need not prove that they have sustained any special damage. The second remedy is a suit by a private individual for a special damage suffered by him. There are three remedies under the criminal law. The first relates to the prosecution under Chapter XIV of IPC. The second provides for summary proceedings under Sections 133 to 144 CrPC, and the third relates to remedies under special or local laws. (Para 10). *Kachrulal Bhagirath Agrawal* v. *State of Maharashtra*, (2005) 9 SCC 36: 2005 SCC (Cri) 1191: AIR 2004 SC 4818: 2004 Cri LJ 4634: (2005) 4 Mah LJ 963.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 22-9-2004]

Halsbury's Laws of England, referred to

[502] — S. 133 — Applicability — Temporal nature of nuisance required for — *Held, there must be imminent danger to property and consequential nuisance to the public — It does not deal with all potential nuisance, and applies when the nuisance is in existence* (Para 13). *Kachrulal Bhagirath Agrawal* v. *State of Maharashtra*, (2005) 9 SCC 36: 2005 SCC (Cri) 1191: AIR 2004 SC 4818: 2004 Cri LJ 4634: (2005) 4 Mah LJ 963.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 22-9-2004]

[503] — S. 133 — Nature of duties of Magistrate under — *Held, it is the function of the Magistrate to conduct an enquiry and to decide whether there was reliable evidence or not to come to the conclusion to act under S. 133* (Para 11). *Kachrulal Bhagirath Agrawal* v. *State of Maharashtra*, (2005) 9 SCC 36: 2005 SCC (Cri) 1191: AIR 2004 SC 4818: 2004 Cri LJ 4634: (2005) 4 Mah LJ 963.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 22-9-2004]

[504] — S. 133 — Nature of proceedings under — *Held, are summary, and are more in the nature of civil rather than criminal proceedings* (Para 10). *Kachrulal Bhagirath Agrawal* v. *State of Maharashtra*, (2005) 9 SCC 36: 2005 SCC (Cri) 1191: AIR 2004 SC 4818: 2004 Cri LJ 4634: (2005) 4 Mah LJ 963.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 22-9-2004]

[505] — S. 133 — Nuisance — Definition of — *Held, "nuisance" as used in law, not a term capable of exact definition — Words and phrases — "Nuisance"* (Para 8). *State of M.P.* v. *Kedia Leather & Liquor Ltd.*, (2003) 7 SCC 389: 2003 SCC (Cri) 1642: AIR 2003 SC 3236.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 19-8-2003]

Halsbury's Laws of England, referred to

[506] — S. 133 — Nuisance — Kinds of — Public and private — *Meanings of, discussed — Penal Code, 1860 — S. 268* (Para 10). *Kachrulal Bhagirath Agrawal* v. *State of Maharashtra*, (2005) 9 SCC 36: 2005 SCC (Cri) 1191: AIR 2004 SC 4818: 2004 Cri LJ 4634: (2005) 4 Mah LJ 963.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 22-9-2004]

[507] — S. 133 — "Nuisance" — Meaning of — *Held, the term as used in law is not capable of exact definition — Words and phrases — "Nuisance" — Penal Code, 1860 — S. 268* (Para 12). *Kachrulal Bhagirath Agrawal* v. *State of Maharashtra*, (2005) 9 SCC 36: 2005 SCC (Cri) 1191: AIR 2004 SC 4818: 2004 Cri LJ 4634: (2005) 4 Mah LJ 963.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 22-9-2004]

[508] — S. 133 — Nuisance — Meaning of — *Penal Code, 1860 — S. 268*

Nuisance is an inconvenience which materially interferes with the ordinary physical comfort of human existence. It is not capable of precise definition. It may be public or private nuisance. As defined in Section 268 IPC, public nuisance is an offence against public either by doing a thing which tends to the annoyance of the whole community in general or by neglect to do anything which the common good requires. It is an act or omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy the property in the vicinity. On the alternative it causes injury, obstruction, danger or annoyance to persons who may have occasion to use public right. It is the quantum of annoyance or discomfort in contra distinction to private nuisance which affects an individual is the decisive factor. (Para 3). *Vasant Manga Nikumba* v. *Baburao Bhikanna Naidu*, 1995 Supp (4) SCC 54: 1996 SCC (Cri) 27.

Bench Strength **2**. Coram: *K. Ramaswamy* and *R.M. Sahai*, JJ. [Date of decision: 11-2-1994]

[509] — S. 133 — Object and purpose of — Applicability of — Nature and imminence of nuisance necessary to attract operation of — Nature of proceedings under

The object and purpose behind Section 133 of the Code is essentially to prevent public nuisance and involves a sense of urgency in the sense that if the Magistrate fails to take recourse immediately irreparable damage would be done to the public. To bring in application of Section 133 of the Code, there must be imminent danger to the property and consequential nuisance to the public. The nuisance is the concomitant act resulting in danger to the life or property due to likely collapse etc. It applies to a condition of the nuisance at the time when the order is passed and it is not intended to apply to future likelihood or what may happen at some later point of time. It does not deal with all potential nuisance, and on the other hand applies when the nuisance is in existence. (Para 8)

The provisions of Section 133 of the Code can be called in aid to remove public nuisance caused by discharge of effluents and air discharge causing hardship to the general public. (Para 12)

It has to be noted that sometimes there is confusion between Section 133 and Section 144 of the Code. While the latter is a more general provision the former is more specific. While the order under the former is conditional, the order under the latter is absolute. The proceedings are more in the nature of civil proceedings than criminal proceedings. One significant factor to be noticed is that the person against whom action is taken is not an accused within the meaning of Section 133 of the Code. He can give evidence on his own behalf and may be examined on oath. Proceedings are not the proceedings in respect of offences. (Paras 8 and 9). *State of M.P.* v. *Kedia Leather & Liquor Ltd.*, (2003) 7 SCC 389: 2003 SCC (Cri) 1642: AIR 2003 SC 3236.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 19-8-2003]

Vasant Manga Nikumba v. Baburao Bhikanna Naidu, 1995 Supp (4) SCC 54: 1996 SCC (Cri) 27, discussed

[510] — S. 133 — Power under — When to be exercised — Condition precedent — *Magistrate must exercise judicious discretion — Proceedings not intended to settle private disputes or a substitute for civil proceedings — In the circumstances of the case held, there was no imminent danger as to require the building to be demolished immediately*

The object and public purpose behind Section 133 is to prevent public nuisance that if the Magistrate fails to take immediate recourse to Section 133 irreparable damage would be done to the public. The exercise of the power should be one of judicious discretions objectively exercised on pragmatic consideration of the given facts and circumstances from evidence on record. The proceedings under Section 133 is not intended to settle private disputes or a substitute to settle civil disputes though the proceeding under Section 133 is more in the nature of civil proceedings in a summary nature. (Para 3)

Two options are open to the Executive Magistrate on considering whether structure, building etc. is in such a dilapidated condition which requires to be demolished immediately which brooks no delay to avert danger to the life and property of the neighbourhood or passers-by unless they could be suitably repaired or supported so as to avert danger to the public or have it removed, etc. The condition precedent to exercise the power under Section 133 is the imminent danger to the property and consequential nuisance to the public. The removal of the building is so urgently required as it is likely to fall and cause injury to persons living or carrying on business in the neighbourhood or passers-by. The nuisance is the concomitant act resulting in danger to the life or property due to likely collapse etc. The dangerous condition of the building is in praesenti but not in future. The section is limited to injuries likely to be caused to the passers-by or persons living or carrying on business in the neighbourhood. Each case has to be considered in the light of the facts and circumstances obtained in each case. (Para 4). *Vasant Manga Nikumba* v. *Baburao Bhikanna Naidu*, 1995 Supp (4) SCC 54: 1996 SCC (Cri) 27.

Bench Strength **2**. Coram: *K. Ramaswamy* and *R.M. Sahai*, JJ. [Date of decision: 11-2-1994]

T.K.S.M. Kalyanasundaram v. Kalyani Ammal, 1975 Cri LJ 1717: (1975) 2 MLJ 93 (Mad), approved

[511] — S. 133 — Applicability — Maintenance of public order and tranquillity — Removal of encroachment — Religious bookshop run by appellants in tin shed — Complaint filed by respondent for removal of — *Conditional order of Sub-Divisional Magistrate for removal of nuisance — Contention of appellants that orders for removal were without jurisdiction — Rejected by High Court — Sustainability — Upholding High Court's order, held, no interference warranted*

The appellants are tenants on a Plot No. 3/1120 since last 15-20 years where they had erected a tin shed and running a religious bookshop known as "R.K. Kitab Ghar". Shop licence and electric connection were obtained for the said shop. The Municipal Council has also recognised the shop of the appellants and had allowed the appellants to run the said shop for last many years. At the instigation of Respondent 2 i.e. *JK*, the Municipal Council tried to remove the shop of appellants and they filed a suit. The Sub-Divisional Magistrate issued a conditional order to remove the shop of the appellants on the basis of the complaint filed by the respondent. The appellants appeared before the Sub-Divisional Magistrate and made a request for dismissal of application filed by Respondent 2. The Sub-Divisional Magistrate directed the present appellants to remove the shop named as "R.K. Kitab Ghar". The appellants being aggrieved by the said order, filed criminal revision application before the Additional Sessions Judge, which was dismissed.

A writ petition was filed by the appellants against such order. The stand of the appellants was that Section 133 CrPC had no application to the facts of the present case. The High Court did not accept the plea. The High Court's directions for removal of the encroachment was stated to be without jurisdiction. The High Court did not accept the stand and dismissed the writ petition.

Dismissing the appeal,

Held :

In the background facts the order passed by the High Court does not suffer from any infirmity to warrant any interference. (Para 9). *Suhelkhan Khudyarkhan* v. *State of Maharashtra*, (2009) 5 SCC 586.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 15-4-2009]

Vasant Manga Nikumba v. Baburao Bhikanna Naidu, 1995 Supp (4) SCC 54: 1996 SCC (Cri) 27; State of M.P. v. Kedia Leather and Liquor Ltd., (2003) 7 SCC 389: 2003 SCC (Cri) 1642; Kachrulal Bhagirath Agrawal v. State of Maharashtra, (2005) 9 SCC 36: 2005 SCC (Cri) 1191, relied on

Halsbury's Laws of England, 3rd Edn., Vol. 28, Para 152, referred to

[512] — S. 133 — Public nuisance created by industries by water and air pollution — *Action taken under S. 133 by SDM held invalid by High Court on the ground that provisions of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 impliedly repeal the provisions of S. 133 CrPC so far as allegations of public nuisance by air and water pollution by industries or persons covered by the two Acts are concerned — No action taken by SDM despite High Court's order having been stayed as the matter was pending before Supreme Court — M.P. State Pollution Control Board and Central Pollution Control Board directed to inspect the premises and site of the units concerned so as to submit their report and take appropriate action under the Act. State of M.P.* v. *Kedia Leather & Liquor Ltd.*, (2002) 10 SCC 382.

Bench Strength **2**. Coram: *M.B. Shah* and *S.N. Variava*, JJ. [Date of decision: 11-9-2000]

[513] — S. 133 — Water (Prevention and Control of Pollution) Act, 1974 — Ch. V and Ss. 30, 32 & 33 — Air (Prevention and Control of Pollution) Act, 1981 — Ch. IV and Ss. 18, 20 & 22-A — Whether S. 133 CrPC impliedly repealed by the Water Act, 1974 and the Air Act, 1981 — *As S. 133 of the Code and the two Acts were mutually exclusive and there was no impediment to their existence side by side, held, the two Acts did not impliedly overrule S. 133 of the Code*

The Sub-Divisional Magistrate (the SDM) of the area concerned served orders in terms of Section 133 Criminal Procedure Code, 1973 directing the respondents, who owned industrial units, to close their industries on the allegation that serious pollution was being created by discharge of effluents from their respective factories and thereby a public nuisance was being caused. The preliminary issues and the proceedings initiated by the SDM were questioned by the respondents before the High Court under Section 397 CrPC. The main question arising in these appeals was whether, after the introduction of the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act) and the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act), there was an implied repeal of Section 133 of the Code of Criminal Procedure, 1973 (the Code).

Partly allowing the appeals,

Held :

The area of operation in the Code and the pollution laws in question are different with wholly different aims and objects, and though they alleviate nuisance, that is not of identical nature. They operate in their respective fields and there is no impediment for their existence side by side. While the provisions of Section 133 of the Code are in the nature of preventive measures, the provisions contained in the two Acts are not only curative but also preventive and penal. The provisions appear to be mutually exclusive and the question of one replacing the other does not arise. (Paras 15 and 16). *State of M.P.* v. *Kedia Leather & Liquor Ltd.*, (2003) 7 SCC 389: 2003 SCC (Cri) 1642: AIR 2003 SC 3236.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 19-8-2003]

[514] — **S. 133 — Magistrate can compel municipality to make drains and improve sewerage affecting the health and convenience of the residents** — *Financial stringency of the municipal body, held, is no defence — Order to abate the nuisance by affirmative action on a time-bound basis, held, justified — Tort action also possible — CrPC, 1898 — S. 133*

Section 133, CrPC, permits enforcement of civic rights under the municipal law where neglect has led to a public nuisance. The section permits affirmative action to abate the nuisance on a time-bound basis by issuing specific directives.

Judicial discretion, when facts for its exercise are present, has a mandatory import. Section 133, CrPC is categoric although reads discretionary. So when the Magistrate has before him information and evidence, which disclose the existence of a public nuisance and, on the materials placed, he considers that such unlawful obstruction or nuisance should be removed from any public place which may be lawfully used by the public, he shall act under S. 133, CrPC and order removal of such nuisance within a time to be fixed in the order. Failure to comply with the direction will be visited with a punishment contemplated by S. 188, IPC. The offence is aggravated if the disobedience tends to cause danger to human health or safety.

Providing drainage system in a working condition sufficient to meet the needs of the people, cannot be evaded by the municipality on ground of financial inability. Such a plea has no juridical basis.

The Magistrate must estimate the cost of the scheme, fix reasonable time-limits for its execution and even oversee the actual execution of the scheme.

In the present case, while upholding the Magistrate's order under S. 133, the Supreme Court tailored the Magistrate's directions to make it workable by giving certain pragmatic directions to the municipal council in this regard. *Municipal Council, Ratlam* v. *Vardichan*, (1980) 4 SCC 162: 1980 SCC (Cri) 933: AIR 1980 SC 1622: 1980 Cri LJ 1075: (1980) 6 ALR 601.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *O. Chinnappa Reddy*, JJ. [Date of decision: 29-7-1980]

[515] — S. 133 and Art. 21, Constitution of India — Health and Health care, right to — Hygienic, clean and safe environment, right to — Noise pollution, Right to freedom from — *Held, said right is a fundamental right protected by Art. 21, and noise pollution beyond permissible limits is an inroad into that right — Scope of said right discussed in detail — Deleterious effects of noise and its ubiquitousness in modern life, highlighted — Noise constitutes a real and present danger to people's health — Existing statutory scheme for controlling noise pollution and in law of tort, explained — Standards for permissible levels of noise pollution, laid down — Held, level of noise pollution is relative and depends upon a person and a particular place — The law will not take care of a super sensitive person but the standard is of an average and rational human being in society — Detailed directions given as to (1) need for framing a single specific and detailed legislation to deal with issue of noise pollution; (2) creation of civic awareness of the hazardous effects of sound, especially amongst children, the youth, civil administration, police and NGOs; (3) creation of effective mechanism and infrastructure for implementing laws relating to control of noise pollution; and (4) the taking of effective preventive measures to control noise pollution — Noise Pollution (Regulation and Control) Rules, 2000 — Penal Code, 1860 — Ss. 268, 290 and 291 — Air (Prevention and Control of Pollution) Act, 1981 — S. 2(a) [as amended by Act 47 of 1987, w.e.f. 1-4-1988] — Environment (Protection) Act, 1986 — S. 2(c) — Central Motor Vehicles Rules, 1989, Rr. 119 and 120 — Constitution of India — Art. 21*

Freedom from noise pollution is part of right to life under Art. 21 — Statutory protection

Treatment of the problem of noise pollution can be dealt with under the law of crimes and civil law. The civil law can be divided under two heads (*i*) the law of tort (*ii*) the general civil law. Cases regarding noise have not come before the law courts in large numbers. The reason behind this is that many people in India do not consider noise as a sort of pollution and they are not very conscious of the evil consequences of noise pollution. The level of noise pollution is relative and depends upon a person and a particular place. The law will not take care of a super sensitive person but the standard is of an average and rational human being in society. Careful reading of Section 95 IPC shows that only that harm is excused which is not expected to be complained of by a person of ordinary temper and sense. (Paras 93, 97 and 107)

Noise is defined as unwanted sound. Sound which pleases the listeners is music and that which causes pain and annoyance is noise. At times, what is music for some can be noise for others. The disturbance produced in our environment by undesirable sound of various kinds is called "noise pollution". Although there is no specific provision in the Environment (Protection) Act, 1986 to deal with noise pollution, the Act confers powers on Government of India to take measures to deal with various types of pollution including noise pollution, as noise was included in the definition of air pollutant in Section 2(*a*) of Air (Prevention and Control of Pollution) Act in 1987. Other statutory provisions dealing with noise pollution include the Noise Pollution (Regulation and Control) Rules, 2000, Sections 268, 290 and 291 IPC, Section 133 CrPC, 1973, Sections 89, 90 r/w Sch. III, Factories Act, 1948 and Rules 119 and 120 of the Central Motor Vehicles Rules, 1989. (Paras 14, 104, 103, 94 and 101). *Noise Pollution (V), In re*, (2005) 5 SCC 733: AIR 2005 SC 3136: (2005) 121 DLT 547.

Bench Strength 2. Coram: **R.C. Lahoti, C.J.** and *Ashok Bhan*, J. [Date of decision: 18-7-2005]

[516] — S. 133 — Noise — When actionable as a nuisance — *Held, any noise which has the effect of materially interfering with ordinary comforts of life, judged by the standards of a reasonable man, is nuisance — Nuisance created by noise becomes actionable depending on its degree, surrounding circumstances, the place and the time — Penal Code, 1860 — Ss. 268, 290 and 291*

Quietness and freedom from noise are indispensable to the full and free enjoyment of a dwelling-house. No proprietor has an absolute right to create noises upon his own land, because any right which the law gives is qualified by the condition that it must not be exercised to the nuisance of his neighbours or of the public. Any noise which has the effect of materially interfering with the ordinary comforts of life, judged by the standard of a reasonable man is nuisance. How and when a nuisance created by noise becomes actionable has to be answered by reference to its degree and the surrounding circumstances, the place and the time. Noise will create an actionable nuisance only if it materially interferes with the ordinary comfort of life, judged by ordinary, plain and simple notions, and having regard to the locality: the question being one of degree in each case. (Paras 102 and 10). *Noise Pollution (V), In re*, (2005) 5 SCC 733: AIR 2005 SC 3136: (2005) 121 DLT 547.

Bench Strength 2. Coram: **R.C. Lahoti, C.J.** and *Ashok Bhan*, J. [Date of decision: 18-7-2005]

[**Ed.**: *See also* 1994 Supp (2) SCC 689 and 1959 Supp (1) SCR 904: AIR 1959 SC 544.]

[517] — S. 133 — Public nuisance — Noise pollution — Manufacturing of brass utensils by appellants — *Creation of noise pollution due to, affecting the schools and the people of the area concerned and causing nuisance — Notice issued by Superintendent of Police directing appellants to stop their business — Dismissal of challenge thereto by High Court — Sustainability — Willingness of appellants to take ameliorative measures — Effect — Before the Supreme Court, appellants submitting that they should be given an opportunity to reduce the noise level and take remedial measures — In these circumstances, appellants directed to submit a concrete proposal before the authorities concerned stating how they would stick to the norms — The said proposal must be dealt with a decision to be taken within three months — The request, if any, made by appellants for making available an alternative site will be duly considered by the authorities — Noise Pollution (Regulation and Control) Rules, 2000, Rr. 3, 4 & 6 — Environment (Protection) Rules, 1986, R. 5 — Environment (Protection) Act, 1986 — Ss. 6(2)(b) & 3(2)(iii) — Noise pollution* (Paras 11 to 13). *Sk. Ikram Sheikh Israil* v. *State of Maharashtra*, (2007) 4 SCC 217.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 12-4-2007]

[518] — Ss. 133 and 138 — Non-compliance with the mandatory requirement of drawing up a preliminary order before proceeding under S. 133 — Effect — Held, vitiates the entire proceedings

The omission on the part of the Sub-Divisional Magistrate to draw up a preliminary order, which is a sine qua non for initiating proceedings under Section 133 CrPC and without following the procedure provided for by Section 138 CrPC, the order made by the Sub-Divisional Magistrate directing the appellant to permanently close the quarry operations is unsustainable and is vitiated. *C.A. Avarachan* v. *C.V. Sreenivasan*, (1996) 7 SCC 71: 1996 SCC (Cri) 174.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 23-3-1995]

[519] — Ss. 133 and 144 — Compared

It has to be noted that sometimes there is confusion between Section 133 and Section 144 of the Code. While the latter is a more general provision the former is more specific. While the order under the former is conditional, the order under the latter is absolute. (Para 9). *State of M.P.* v. *Kedia Leather & Liquor Ltd.*, (2003) 7 SCC 389: 2003 SCC (Cri) 1642: AIR 2003 SC 3236.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 19-8-2003]

[520] — Ss. 133 and 144 — Relative scope — Former is more specific and the latter more general — *Moreover order under S. 133 is conditional while that under S. 144 is absolute — Nature of proceedings also different*

A proceeding under Section 133 CrPC is of a summary nature. The proceedings under Section 133 are more in the nature of civil proceedings than of a criminal nature. (Para 10)

The object and purpose behind Section 133 CrPC is essentially to prevent public nuisance which involves a sense of urgency in the sense that if the Magistrate fails to take recourse immediately irreparable danger would be done to the public. The provisions of Chapter X CrPC should be so worked as not to become themselves a nuisance to the community at large. Although every person is bound to so use his property that it may not work legal damage or harm to his neighbour, yet on the other hand, no one has a right to interfere with the free and full enjoyment by such person of his property, except on clear and absolute proof that such use of it by him is producing such legal damage or harm. Therefore, a lawful and necessary trade ought not to be interfered with unless it is proved to be injurious to the health or physical comfort of the community. Proceedings under Section 133 are not intended to settle private disputes between different members of the public. They are in fact intended to protect the public as a whole against inconvenience. (Paras 13 and 10)

To bring in application of Section 133 CrPC, there must be imminent danger to property and consequential nuisance to the public. The nuisance is the concomitant act resulting in danger to life or property due to likely collapse etc. It applies to a condition of the nuisance at the time when the order is passed and it is not intended to apply to future likelihood or what may happen at some later point of time. It does not deal with all potential nuisances and on the other hand applies when the nuisance is in existence. (Para 13)

The public power of the Magistrate under the Code of Criminal Procedure is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present. "All power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs and all must exist." A conjoint reading of Sections 133 and 138 CrPC discloses that it is the function of the Magistrate to conduct an enquiry and to decide as to whether there was reliable evidence or not to come to the conclusion to act under Section 133 CrPC. (Para 11)

A comparison between the provisions of Sections 133 and 144 CrPC shows that while the former is more specific, the latter is more general. Therefore, nuisance specially provided for in the former section is taken out of the general provisions of the latter section. Moreover, while the order under the former is conditional, the order under the latter is absolute. (Paras 10 and 13). *Kachrulal Bhagirath Agrawal* v. *State of Maharashtra*, (2005) 9 SCC 36: 2005 SCC (Cri) 1191: AIR 2004 SC 4818: 2004 Cri LJ 4634: (2005) 4 Mah LJ 963.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 22-9-2004]

[521] — S. 133(1)(b) — Applicability — Temporal nature of nuisance required for — *Held, the conduct of the trade concerned must be injurious in praesenti to the health or physical comfort of the community — There must at any rate be an imminent danger*

The conduct of the trade must be injurious in praesenti to the health or physical comfort of the community. There must, at any rate, be an imminent danger to the health or the physical comfort of the community in the locality in which the trade or occupation is conducted. Unless there is such imminent danger to the health or physical comfort of that community or the conduct of the trade and occupation is in fact injurious to the health or the physical comfort of that community, an order under Section 133 CrPC cannot be passed. (Para 11). *Kachrulal Bhagirath Agrawal* v. *State of Maharashtra*, (2005) 9 SCC 36: 2005 SCC (Cri) 1191: AIR 2004 SC 4818: 2004 Cri LJ 4634: (2005) 4 Mah LJ 963.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 22-9-2004]

[522] — S. 133(1)(b) — Applicability — Word "community" occurring in — Connotation of — *Held, said provision deals with physical comfort of the community, and not with those acts which are not in themselves a nuisance, but in the course of which public nuisance is committed — In order to bring a trade or occupation within the operation of the said provision it must be shown that the interference with public comfort was considerable and a large section of the public was affected — The word "community" cannot be taken to mean residents of a particular house — It means something wider, that is, the public at large or the residents of an entire locality — It would however depend on the facts of each case and it would be hazardous to lay down any strait-jacket formula — Operation of godown for storage of dry chillies — Loading and unloading of said chillies affecting health and physical comfort of residents in the locality — Order under S. 133, upon consideration of evidence of witnesses, passed by SDM — High Court restoring order of SDM on it having been set aside by revisional court below — Supreme Court declining to interfere; however, allowing appellant to make any suggestion as to alternative arrangement to SDM, as was contemplated by S. 133 itself*

Appellant 1 being a wholesale dealer in dry chillies, everyday trucks loaded with dry chillies come to his godown and then the same were unloaded and stored in the godown. Similarly, loading of dry chillies also went on for distributing the same to his customers. This had been going on for several years and had become a routine thing. The applicants however made a grievance that on account of storing of dry chillies in the godown as well as the work of loading and unloading thereof the health and physical comfort of the residents in that locality were affected and it had become practically impossible for them to bear it any further. According to them, the loading and unloading of chillies cause pollution with the result that many residents in the locality suffer from sneezing, coughing, asthma, irritation of skin and burning sensation. The applicants, therefore, moved the Municipal Council for taking necessary action in this behalf. However, since the Municipal Council did not give any response, the applicants moved SDM, Gondia, under Section 133 of the Code. The SDM, after finding that there was a prima facie case against the appellants issued a conditional order dated 12-3-1985 under Section 133(1)(*b*) of the Code with a notice to him to show cause as to why the same should not be confirmed and made absolute. Pursuant to the said notice, the appellants appeared before learned SDM, Gondia, and filed reply.

SDM, Gondia, allowed the parties to lead evidence in support of their respective contentions. He recorded part of the evidence and thereafter the case was transferred to SDM, Sakoli, who completed the enquiry. SDM, Sakoli, upon consideration of the evidence of the witnesses held that the applicants had proved public nuisance and physical discomfort to them. Consequently, SDM, Sakoli, proceeded to pass an order under Section 133 of the Code.

Feeling aggrieved by this order, the appellants preferred revision application in the Court of the Sessions Judge. The Sessions Judge allowed the revision application. A criminal revision application was filed by some of the original applicants before the High Court, which set aside the order of the revisional court; hence the special leave petition.

Dismissing the appeal,

Held :

Section 133(1)(*b*) CrPC relates to trade or occupation which is injurious to health or physical comfort. It itself deals with physical comfort to the community and not with those acts which are not in themselves nuisance but in the course of which public nuisance is committed. In order to bring a trade or occupation within the operation of this section, it must be shown that the interference with public comfort was considerable and a large section of the public was affected injuriously. The word "community" in Section 133(1)(*b*) cannot be taken to mean residents of a particular house. It means something wider, that is, the public at large or the residents of an entire locality. The very fact that the provision occurs in a chapter with "public nuisance" is indicative of this aspect. It would, however, depend on the facts situation of each case and it would be hazardous to lay down any straitjacket formula. (Para 10)

Though the appeal is being dismissed, as provided for in Section 133 CrPC itself if any suggestion or alternative arrangement is brought to the notice of SDM, it shall be considered in its proper perspective in accordance with law. (Para

15). *Kachrulal Bhagirath Agrawal* v. *State of Maharashtra*, (2005) 9 SCC 36: 2005 SCC (Cri) 1191: AIR 2004 SC 4818: 2004 Cri LJ 4634: (2005) 4 Mah LJ 963.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 22-9-2004]

— Ss. 134 to 143 *See* Ss. 133 to 144

[523] **— S. 143 — Agitations, bandhs, hartals, etc. — Measures to prevent resultant large-scale destruction of public and private properties** — *Recommendation of Thomas Committee for (i) amending Prevention of Damage to Public Property Act, 1984 to incorporate provisions: (a) for drawing a rebuttable presumption of guilt against the accused person and accused leaders, (b) for restricting the court's discretion to grant bail only to cases in which it feels that there are reasonable grounds to presume that the accused is not guilty, (c) to empower the court to impose a fine equivalent to the market value of the property damaged, and (ii) its recommendation for not diluting the requirement of recording of "special reasons" for reducing the minimum sentence, approved — Detailed guidelines to effectuate the modalities for preventive action and to make the enquiry/investigation in such cases more effective, laid down — The said guidelines to cease to be operative on enactment of appropriate legislation consistent therewith or creation of any fast track mechanism by statute(s) — Public Property — Prevention of Damage to Public Property Act, 1984, Ss. 3, 4 and 5 — Amendments to the Act suggested by Thomas Committee, approved — Detailed guidelines laid down to be observed till enactment of appropriate legislation consistent therewith or creation of any fast track mechanism by statute(s) — Constitution of India, Arts. 19(1)(a) to (c) & (2) to (4) and 32 — CPC, 1908, S. 91 — Penal Code, 1860, Ss. 268, 290, 291 and 425 — Civil Defence Act, 1968, Ss. 2 and 3*

Taking a serious note of various instances of large-scale destruction of public and private properties in the name of agitations, bandhs, hartals and the like, suo motu proceedings were initiated by the Supreme Court in *Destruction of Public & Private Properties, In re case*, (2007) 4 SCC 474. After perusing the various reports filed, two committees were appointed; one headed by a retired Supreme Court Judge, Justice K.T. Thomas (K.T. Thomas Committee), and the other, headed by Mr F.S. Nariman, a senior member of the legal profession (Nariman Committee). Both the Committees submitted their reports separately (see paras 5 to 10 for recommendations of the Thomas Committee and paras 13 and 14 for recommendations of the Nariman Committee).

The K.T. Thomas Committee made the following recommendations:

(*i*) The Prevention of Damage to Public Property Act, 1984 (PDPP Act) should be amended to incorporate a rebuttable presumption (after the prosecution proved that public property was damaged in a direct action called by an organisation and that the accused also participated in such direct action) to the effect that the accused was guilty of the offence.

(*ii*) & (*iii*) The PDPP Act should contain an additional provision to the effect that specified categories of leaders of the organisation which had called for direct actions resulting in damage to public property, should be deemed to be guilty of abetment of the offence. However, the accused leader should not be liable to conviction if he proves that (*i*) he was in no way connected with the action called by his political party, or (*ii*) he had taken all reasonable measures to prevent causing damage to public property.

(*iv*) Specific measures (as given in para 10 of the judgment) should be adopted to enable the police officers to arrange videography of the activities damaging public property.

(*v*) Section 5 of the PDPP Act should be amended to restrict the discretion of the Court to grant bail to the offenders arrested for damaging public property, to cases where the court feels that there are reasonable grounds to presume that the accused was not guilty of the offence.

(*vi*) The discretion to reduce the minimum sentence on condition of recording special reasons need not be diluted.

(*vii*) Apart from the penalty of imprisonment, the court should be empowered to impose a fine equivalent to the market value of the property damaged on the day of the incident. In default of payment of fine, the offender should undergo imprisonment for a further period which should be sufficient enough to deter him from opting in favour of the alternative imprisonment.

After considering the reports of the two Committees and hearing the matter,

Held :

The recommendations of the Thomas Committee are wholesome and need to be accepted. (Paras 5 to 11)

To effectuate the modalities for preventive action and adding teeth to the enquiry/investigation, the following guidelines are to be observed:

As soon as there is a demonstration organised:

(*I*) The organiser should meet the police to review and revise the route to be taken and to lay down conditions for a peaceful march or protest;

(*II*) All weapons, including knives, lathis and the like should be prohibited;

(*III*) An undertaking should be provided by the organisers to ensure a peaceful march with marshals at each relevant junction;

(*IV*) The police and the State Government should ensure videography of such protests to the maximum extent possible;

(*V*) The person-in-charge to supervise the demonstration should be SP (if the situation is confined to the district) and the highest police officer in the State, where the situation stretches beyond one district;

(*VI*) In the event the demonstrations turn violent, the officer-in-charge should ensure that the events are videographed through private operators and also request such further information from the media and others on the incidents in question;

(*VII*) The police should immediately inform the State Government with reports on the events, including damage, if any, caused by the police; and

(*VIII*) The State Government should prepare a report on the police reports and other information that may be available to it and should file a petition including its report in the High Court or the Supreme Court as the case may be for the Court in question to take suo motu action. (Para 12)

The present case is one in which guidelines are necessary:

(*i*) to the police to enforce statutory duties under the Police Act, 1861 and CrPC, and (*ii*) to create a special purpose vehicle in respect of damages for riot cases. (Paras 28, 29 and 33). *Destruction of Public & Private Properties* v. *State of A.P.*, (2009) 5 SCC 212.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 16-4-2009]

Destruction of Public & Private Properties, In re, (2007) 4 SCC 474: (2007) 2 SCC (Cri) 351; Vishaka v. State of Rajasthan, (1997) 6 SCC 241: 1997 SCC (Cri) 932, referred to

— S. 144 *See also* S. 144, Criminal Procedure Code, 1898, pp. 980 et seq. in Vol. 2

— S. 144 *See* Ss. 20 and 144

See also Ss. 133 to 144

See also Ss. 133 and 144

See also Ss. 145, 144 and 5 & 482

See also Ss. 152, 129, 130, 133 and 144

See also Ss. 152, 149, 151, 129, 130, 133 and 144, Ch. X (Ss. 129 to 148) and Ch. XI (Ss. 149 to 153)

See also Ss. 176(3) and 144

See also Ss. 482, 144 and 145

[524] — S. 144 — Scope of

Section 144, Criminal Procedure Code, confers jurisdiction to direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management with the object, inter alia, of preventing a disturbance of the public tranquillity or a riot or an affray. Section 144(3) specifically lays down that the order under this section may be directed to a particular individual or to the public generally when frequenting or visiting a particular place. The kind of orders mentioned here are obviously intended to prevent dangers to life, health, safety or peace and tranquillity of the members of the public. They are only temporary orders which cannot last beyond two months from the making thereof. Questions of title cannot be decided here at all. It is the duty of the authorities to aid and protect those who are performing completely legal acts in a reasonably and perfectly legal manner or in accordance with what the law permits them to do. It is only where it is not practical to allow them to do something which is quite legal, having regard to state of excited feelings of persons living in an area or frequenting the locality, that action may be taken under the section which may interfere with what are otherwise completely legal and permissible conduct and speech. The Magistrate is not concerned with individual rights in performing his duty under the section but he has to determine what may be reasonably necessary or expedient in a situation of which he is the best judge. If any community or sect is disposed to transgress the rights of another in a particular property habitually, the remedy lies by way of a civil suit for an injunction. It is impossible to decide conflicting assertions on such questions for the first time either on a writ petition or in a proceeding under S. 144. If public peace and tranquillity or other objects mentioned there are not in danger, the Magistrate cannot act under the section. On the other hand, if the public safety, peace or tranquillity are in danger, it is left to him to take proper action under the section. No hard and fast rule can be laid down for guidance in exercising the power. It has to be judged on facts and circumstances existing at a particular place at a particular time. *Mohd. Gulam Abbas* v. *Mohd. Ibrahim*, (1978) 1 SCC 226: 1978 SCC (Cri) 106: AIR 1978 SC 422: 1978 Cri LJ 496: 1978 MLJ (Cri) 248: (1978) 2 SCR 419.

Bench Strength 3. Coram: **M.H. Beg, C.J.** and *P.N. Bhagwati* and *Jaswant Singh*, JJ. [Date of decision: 16-12-1977]

[525] — S. 144 — Object of

The legislative intention to preserve public peace and tranquillity without lapse of time, acting emergently, if warranted, giving thereby paramount importance to societal needs by even overriding temporarily private rights keeping in view public interest, is patently inbuilt in Section 144 of the Code. (Para 10). *State of Karnataka* v. *Dr. Praveen Bhai Thogadia*, (2004) 4 SCC 684: 2004 SCC (Cri) 1387: AIR 2004 SC 2081: (2004) 2 KLT 342: 2004 Cri LJ 1825.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 31-3-2004]

[526] — S. 144 — Order under, must be in aid of lawful exercise of established rights and against unauthorised interference with such exercise which may lead to breach of public peace — *General guidelines for proper exercise of power under, given*

The Shia Muslims of Varanasi, a religious minority, claimed their customary rights to perform religious ceremonies and functions on certain plots and structures. The entitlement of the Shias to such rights has been established and is the subject-matter of a judicial pronouncement and decree of civil court of competent jurisdiction as also by reason of these properties having been registered as Shia Wakfs for performance of their religious ceremonies and functions. Their customary rights having partaken of the character of fundamental rights under Arts. 25 and 26, they are desirous of freely practising their religious faith and perform their rites, practices, observances and functions without let or hindrance by members belonging to the majority sect of the community viz. Sunni Muslims. They filed the present petition under Art. 32 complaining that the power under S. 144 is being exercised in utter disregard of the lawful exercise of their legal rights and every time instead of exercising the power in aid of their rights it is being exercised in suppressing their rights under the pretext of imminent danger to peace and tranquillity of the locality.

Held :

The entire basis of action under S. 144 is provided by the urgency of the situation and power thereunder is intended to be availed of for preventing disorders, obstructions and annoyances with a view to secure the public weal by maintaining public peace and tranquillity. As such it may become necessary for the Executive Magistrate to override temporarily private rights and in a given situation the power must extend to restraining individuals from doing acts perfectly lawful in themselves, for, when there is a conflict between the public interest and private rights the former must prevail. Further, the section does not confer any power on the Executive Magistrate to adjudicate or decide disputes of civil nature or questions of title to properties or entitlements to rights but at the same time in cases where such disputes or titles or entitlements to rights have already been adjudicated and have become the subject matter of judicial pronouncements and decrees of civil courts of competent jurisdiction then in the exercise of his power under S. 144 the Executive Magistrate must have due regard to such established rights and subject of course to the paramount consideration of maintenance of public peace and tranquillity the exercise of power must be in aid of those rights and against those who interfere with the lawful exercise thereof and even in cases where there are no declared or established rights the power should not be exercised in a manner that would give material advantage to one party to the dispute over the other but in a fair manner ordinarily in defence of legal rights, if there be such and the lawful exercise thereof rather than in suppressing them. In other words, the magistrate's action should be directed against the wrong-doer rather than the wronged. Furthermore, it would not be a proper exercise of discretion on the part of the Executive Magistrate to interfere with the lawful exercise of the right by a party on a consideration than those who threaten to interfere constitute a large majority and it would be more convenient for the administration to impose restrictions which would affect only a minor section of the community rather than prevent a larger section more vociferous and militant.

In the circumstances of the present case the power under S. 144 must be exercised by the executive magistracy in defençe of such established rights of the petitioners and the Shia community and instead of prohibiting or suspending the exercise of such rights on concerned occasions on the facile ground of imminent danger to public peace and tranquillity of the locality the authorities must make a positive approach to the situation. If they are satisfied that the exercise of the rights is likely to create a riot or breach of peace it would be their duty to take from those from whom disturbance is apprehended security to keep the peace. It is only in an extremely extraordinary situation, when other measures are bound to fail, that a total prohibition or suspension of their rights may be resorted to as a last measure. *Gulam Abbas* v. *State of U.P.*, (1982) 1 SCC 71: 1982 SCC (Cri) 82: AIR 1981 SC 2198: (1982) 1 SCR 1077.

Bench Strength 3. Coram: **V.D. Tulzapurkar**, *D.A. Desai* and *A.P. Sen*, JJ. [Date of decision: 3-11-1981]

[527] — S. 144 — Condition of making "a written order stating the material facts of the case" — *Whether mandatory so that its non-compliance would render the order invalid — Question not decided. Acharya Jagdishwaranand Avadhuta* v. *Commr. of Police*, (1983) 4 SCC 522: 1984 SCC (Cri) 1: AIR 1984 SC 51.

Bench Strength 3. Coram: *P.N. Bhagwati*, *A.N. Sen* and **Ranganath Misra**, JJ. [Date of decision: 20-10-1983]

[528] — S. 144 — Ex parte intervention by High Court — Propriety — Actus curiae neminem gravabit — Limits of the extraordinary jurisdiction of High Court under Art. 226 — Private dispute — *Single Judge of High Court interfering with proceeding under S. 144 CrPC initiated in connection with a private dispute between landlord and tenant and issuing mandatory ex parte order on the basis of which tenant got evicted with police help by landlord without going through normal landlord-tenant proceedings in appropriate forum — Held, Single Judge exceeded jurisdiction under Art. 226 — Appeal court while setting aside the order of the Single Judge ought to have granted relief of putting back the tenant into possession — Principle of actus curiae neminem gravabit applicable — In absence of such relief matter remanded to the appeal court — Constitution of India — Art. 226*

In connection with a private dispute between landlord and tenant, the landlord after instituting proceedings under Section 144 CrPC in the Court of Executive Magistrate, moved the High Court by a writ petition under Article 226. A Single Judge of the High Court passed an ex parte order on 13-8-1993 without notice to the tenant directing the officer-in-charge of the police station to make an inquiry into the complaint and submit a report. The police report was submitted on 19-8-1993 and on that basis the writ petition was disposed of on 30-8-1993. The police authorities were directed to ensure that the free egress and ingress of the landlord to and from the disputed flat was not interfered with by the tenant. If necessary, the police authorities were directed to remove the obstruction to such free egress and ingress. All parties including the officer-in-charge of the police station, were directed to act on a signed copy of the minutes of the order. As a result of the order of the Court, the police evicted the tenant from the disputed premises and the landlord was able to resume possession immediately with police help. The appeal court on 14-10-1993 set aside the order of the Single Judge but did not grant any relief to the tenant to get back possession of the premises. A further application to the appeal court for necessary relief was also rejected on ground that the appeal having already been disposed of, the court had become functus officio. Allowing the appeal with costs,

Held :

A private dispute between a landlord and a tenant was taken up in writ jurisdiction and mandatory orders were passed directing the State and the police authorities on the basis of which the landlord with the help of police authorities evicted the tenant from his flat. Thus the landlord was able to get back possession of tenanted premises without having to go through the usual landlord and tenant proceedings before appropriate forum in accordance with law. The scope of writ jurisdiction of the court was lost sight of by the learned Judge and an extraordinary situation was brought about by an improper and unjust order passed without any affidavit in less than three weeks' time. No proper hearing was given to the respondents. A copy of the police report was not given to the respondents. No direction was given for filing of affidavits even to the State. There was no explanation why the proceedings were not allowed to be continued in the Court of the Executive Magistrate in accordance with law. It was most unfortunate that the court intervened in a proceeding under Section 144 of the Criminal Procedure Code which was actually being heard and a drastic order of this nature was passed by the court in such a manner without issuing a rule nisi and without any proper hearing. A procedure unknown to law was adopted for disposing of a landlord-tenant dispute.

The orders of the appeal court did not give any relief to the appellant, even though his appeal was allowed and the order under appeal was set aside. If the appellant was ejected from the disputed premises with police help pursuant to the order which was set aside, the possession should have been restored to him with police help, if necessary. Otherwise, even after succeeding in the appeal, the appellant will remain without remedy and out of possession as a result of the order passed by the trial court. *Actus curiae neminem gravabit* — An act of the court shall prejudice no man. It was the duty of the appeal court to restore status quo ante to passing of the order on 30-8-1993. It is not necessary to go into the contention that the appeal was being conducted in the name of the appellant who was not an interested party any more.

Accordingly the order passed by the appeal court is set aside and the case is remanded back to the appeal court, which will direct an inquiry as to whether the appellant was the person who was actually evicted from possession on the order passed on 30-8-1993 and if so, restore him back into the possession of the disputed premises. Before passing any order the Court must satisfy itself as to the true identity and the wish of the appellant. *Prasanna Kumar Roy Karmakar* v. *State of W.B.*, (1996) 3 SCC 403: AIR 1996 SC 1517.

Bench Strength **2**. Coram: *N.P. Singh* and **S.C. Sen**, JJ. [Date of decision: 26-3-1996]

[529] — S. 144 — Order under, held, executive in nature and therefore, amenable to writ jurisdiction under Art. 32 — *Having regard to the fact that unlike the old Code of Criminal Procedure, under the new Code the scheme of separation between the judicial functions and executive or administrative functions of magistrates as recommended by the Law Commission, has been implemented to a great extent, and on a comparison of relevant sections of the present Code with those of the old Code it is clear that an order issued under S. 144 of the new Code is an executive order passed in performance of an executive function where no lis as to any rights between rival parties is adjudicated but merely an order for preserving public peace is made and as such it will be amenable to writ jurisdiction under Art. 32 of the Constitution. The fact that the parties and particularly the aggrieved party are heard before such an order is made merely ensures fair play and observance of audi alteram partem rule which are regarded as essential in the performance of any executive or administrative function and the further fact that a revision lies against the order of the Executive Magistrate either to the Sessions Court or to the High Court removes the vice of arbitrariness, if any, pertaining to the section. These aspects cannot make the order a judicial or quasi-judicial order. The power conferred upon S. 144, CrPC, 1973 is comparable to that conferred on the Bombay Police under S. 37 of the Bombay Police Act, 1951. Gulam Abbas* v. *State of U.P.*, (1982) 1 SCC 71: 1982 SCC (Cri) 82: AIR 1981 SC 2198: (1982) 1 SCR 1077.

Bench Strength **3**. Coram: **V.D. Tulzapurkar**, *D.A. Desai* and *A.P. Sen*, JJ. [Date of decision: 3-11-1981]

[530] — S. 144 — Judicial review of orders passed under — Scope of — Law and order — Maintenance of — Scope of judicial review — *Held, courts normally not to interfere with matters relating to law and order — Administrative authorities are in best position to assess and handle the situation and their decision may involve to some extent an element of subjectivity — Since different fact situations warrant different approaches, no hard-and-fast guidelines which can have universal application can be laid down or envisaged — Interposition of courts justified only on the usual grounds for review of administrative action — Interference by courts as a matter of course and as though adjudicating an appeal, will defeat the very purpose of legislation and legislative intent — Moreover, scheme underlying the very provisions of CrPC, the avenue of remedies available under CrPC, and by way of judicial review, carry sufficient inbuilt safeguards to control and check any unwarranted exercise or abuse in any given case*

Courts should not normally interfere with matters relating to law and order which is primarily the domain of the administrative authorities concerned. They are by and large the best to assess and to handle the situation depending upon the peculiar needs and necessities within their special knowledge. Their decision may involve to some extent an element of subjectivity on the basis of materials before them. Past conduct and antecedents of a person or group or an organisation may certainly provide sufficient material or basis for the action contemplated on a reasonable expectation of possible turn of events, which may need to be avoided in public interest and maintenance of law and order. (Para 6)

At some such grave situation at least the decision as to the need and necessity to take prohibitory actions must be left to the discretion of those entrusted with the duty of maintaining law and order, and interposition of courts — unless a concrete case of abuse or exercise of such sweeping powers for extraneous considerations by the authority concerned or that such authority was shown to act at the behest of those in power, and interference as a matter of course and as though adjudicating an appeal, will defeat the very purpose of legislation and legislative intent. (Para 7)

The Court was not acting as an appellate authority over the decision of the official concerned. Unless the order passed is patently illegal and without jurisdiction or with ulterior motives and on extraneous considerations of political victimisation by those in power, normally interference should be the exception and not the rule. The court cannot in such matters substitute its view for that of the competent authority. (Para 8)

Since different fact situations warrant different approaches, no hard-and-fast guidelines which can have universal application can be laid down or envisaged. The situation peculiar to a particular place or locality vis-à-vis a particular individual or group behaving or expecting to behave in a particular manner at a particular point of time may not be the same in all such or other eventualities in another part of the country or locality or place even in the same State. The scheme underlying the very provisions carries sufficient inbuilt safeguards and the avenue of remedies available under the Code itself as well as by way of judicial review are sufficient safeguards to control and check any unwarranted exercise or abuse in any given case and courts should ordinarily give utmost importance and primacy to the view of the competent authority, expressed objectively also, in this case without approaching the issue, as though considering the same on an appeal, as of routine, keeping in view the fact that orders of the nature are more preventive in nature and not punitive in their effect and consequences. (Para 16)

The High Court should not have glossed over the basic requirements of interference discussed above, by saying that the people of the locality where the meeting was to be organised were sensible and not fickle-minded, to be swayed by the presence of any person in their midst or by his speeches. Such presumptive and wishful approaches at times may do greater damage than any real benefit to individual rights as also the need to protect and preserve law and order. (Para 8). *State of Karnataka* v. *Praveen Bhai Thogadia (Dr.)*, (2004) 4 SCC 684: 2004 SCC (Cri) 1387: AIR 2004 SC 2081: (2004) 2 KLT 342: 2004 Cri LJ 1825.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 31-3-2004]

[531] — S. 144 — Passing of prohibitory orders under, to preserve communal harmony — Imperativeness of — Preservation of communal harmony and public order — *Duty of State in regard to — Curbing of freedom of speech and expression in interest of — Speeches or actions likely to trigger communal antagonism and hatred — Held, authorities in charge of law and order, on finding that a person's speeches are of such a nature, to necessarily pass prohibitory orders to effectively avert such untoward happenings — Prohibitory orders to be passed irrespective of position assumed or claimed in public life by person(s) concerned — Constitution of India — Arts. 25 and 19(2)*

The valuable and cherished right of freedom of expression and speech may at times have to be subjected to reasonable subordination to social interests, needs and necessities to preserve the very core of democratic life — preservation of public order and rule of law. (Para 7)

It is imperative that if any individual or group of persons, by their action or caustic and inflammatory speech are bent upon sowing seeds of mutual hatred, and their proposed activities are likely to create disharmony and disturb the equilibrium, sacrificing public peace and tranquillity, strong action, and more so preventive actions are essentially and vitally needed to be taken. Any speech or action which would result in ostracisation of communal harmony would destroy all those high values which the Constitution aims at. Therefore, whenever the authorities concerned in charge of law and order find that a person's speeches or actions are likely to trigger communal antagonism and hatred resulting in fissiparous tendencies gaining a foothold, undermining and affecting communal harmony, prohibitory orders need necessarily to be passed, to effectively avert such untoward happenings. (Paras 9 and 6)

No person, however big he may assume or claim to be, should be allowed, irrespective of the position he may assume or claim to hold in public life, to either act in a manner or make speeches which would destroy secularism recognised by the Constitution. Communal harmony should not be made to suffer and be made dependent upon the will of an individual or a group of individuals, whatever be their religion, be it of a minority or that of the majority. Persons belonging to different religions must feel assured that they can live in peace with persons belonging to other religions. (Paras 6 and 7). *State of Karnataka* v. *Praveen Bhai Thogadia (Dr.)*, (2004) 4 SCC 684: 2004 SCC (Cri) 1387: AIR 2004 SC 2081: (2004) 2 KLT 342: 2004 Cri LJ 1825.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 31-3-2004]

Praveen Bhai Thogadia (Dr.) v. State of Karnataka, 2003 Cri LJ 1769 (Kant), reversed

[Ed.: *See also* Art. 19(2), '(*c*)(3)(*x*) Public order and religious sentiment' in Vol. 6, *Complete Digest of Supreme Court Cases*, pp. 134 et seq.]

[532] — S. 144 — Presumption regarding existence of written order authorising the police to take action under, when can be drawn

In an appropriate case, a presumption may well be drawn as to the existence of an executive order if it is found that the police are generally acting systematically according to a set and uniform pattern or are otherwise engaged in a large scale operation of any similar or sinister kind. But where there is want of acceptable evidence, Court would hesitate to draw such a presumption. *Rupinder Singh Sodhi* v. *Union of India*, (1983) 1 SCC 140: 1983 SCC (Cri) 136: AIR 1983 SC 65.

Bench Strength 2. Coram: *Y.V. Chandrachud, C.J.* and *A.N. Sen*, J. [Date of decision: 18-11-1982]

[533] — S. 144 — Repetitive orders under beyond the period of two months, held, invalid

Section 144 intends to meet an emergency. This postulates a situation temporary in character and, therefore, the duration of an order under S. 144 is not intended to be either permanent or semi-permanent in character. It is clear from the proviso to sub-section (4) of S. 144 that the life of an order under S. 144 should not remain in force beyond two months when made by a Magistrate. The scheme of S. 144 does not contemplate repetitive orders and in case the situation so warrants steps have to be taken under other provisions of the law such as S. 107 or S. 145 of the Code when individual disputes are raised and to meet a situation such as here, there are provisions to be found in the Police Act. If repetitive orders are made it would clearly amount to abuse of the power conferred by S. 144 of the Code. But it was not necessary on that ground to quash the impugned order of March 1982 as by efflux of time it had already ceased to be effective. *Acharya Jagdishwaranand Avadhuta* v. *Commr. of Police*, (1983) 4 SCC 522: 1984 SCC (Cri) 1: AIR 1984 SC 51.

Bench Strength 3. Coram: *P.N. Bhagwati*, *A.N. Sen* and **Ranganath Misra**, JJ. [Date of decision: 20-10-1983]

[Certain observations in *Gulam Abbas* v. *State of A.P.*, (1982) 1 SCC 71: 1982 SCC (Cri) 82 regarding the nature of the order under S. 144 of the Code — Judicial or executive — to the extent they run counter to the decision of the Constitution Bench in *Babulal Parate case*, may require reconsideration]

[534] — S. 144 — Rival questions regarding rights to property and religious practices and celebrations raised in the context of order made under S. 144 can be decided only by suit and not in writ petition — *Constitution of India — Article 226. Mohd. Ibrahim* v. *City Magistrate, Varanasi*, (1983) 2 SCC 153: 1983 SCC (Cri) 365.

Bench Strength 3. Coram: *A.N. Ray, C.J.* and *M.H. Beg* and *Jaswant Singh*, JJ. [Date of decision: 6-12-1976]

[535] — S. 144 — Regulation of acts in furtherance and practise of religion — Manner of exercise of power in respect of — Power of authorities concerned to determine integral and essential parts or practices of religion concerned — Freedom to act in furtherance of and practise religion — Scope and regulation of — Manner of exercise of said regulatory power — Power of authorities concerned to determine integral and essential parts or practices of religion concerned — *Held (per Dr. Ar. Lakshmanan, J.), in every case said power of regulation must be exercised with the consciousness that the subject of regulation is the fundamental right of religion, and so as not to unduly infringe the protection given by the Constitution — Moreover, in exercise of said power, the authorities cannot sit in judgment over the professed views of the adherents of the religion concerned and determine whether the practice is warranted by the religion or not — That is not their function — To allow any authority to judge the truth or falsity of a religious belief or practice is to destroy the guarantee of religious freedom in the Constitution — On facts, it was not for the Police Commissioner to have given his disapproval to a practice of a particular sect (Tandava dance in public procession by Ananda Margis) which in his opinion was not well established — Constitution of India — Arts. 25 and 26*

The freedom to act in furtherance of and practise religion can be subject to regulations; in our Constitution, subject to public order, health and morality and to other provisions in Part III of the Constitution. The State has got ample powers to regulate the secular activities associated with religious practices. Religious activities are protected under Article 25 of the Constitution. No doubt, such religious freedom is subject to health and subject to laws made for social welfare. However, in every case the power of regulation must be so exercised with the consciousness that the subject of regulation is the fundamental right of religion, and so as not to unduly infringe the protection given by the Constitution. Further, in the exercise of the power to regulate, the authorities cannot sit in judgment over the professed views of the adherents of the religion and to determine whether the practice is warranted by the religion or not. That is not their function. The Police Commissioner answers the charge of discrimination by stating that "activities of Ananda Margis cannot come within the scope of religious functions or practices as compared to *well-established practices* in festivals of Muslims and Sikhs". It is not for the Police Commissioner to give his disapproval to a practice of a particular sect which is in his opinion not well established. To allow any authority to judge the truth or falsity of a religious belief or practice is to destroy the guarantee of religious freedom in the Constitution. (Paras 57, 62, 60 and 59). *Commr. of Police* v. *Acharya Jagadishwarananda Avadhuta*, (2004) 12 SCC 770: AIR 2004 SC 2984.

Bench Strength 3. Coram: **S. Rajendra Babu**[1], **Dr. Ar. Lakshmanan**[2] and **G.P. Mathur**[1], JJ. [Date of decision: 11-3-2004]

[536] — S. 144 — Regulation of secular activities associated with religious practices — Scope of power of — Secular activities associated with religious practices — *Held (per Dr. Ar. Lakshmanan, J.), State has got ample powers to regulate the same — Constitution of India — Arts. 25 and 26* (Para 88). *Commr. of Police* v. *Acharya Jagadishwarananda Avadhuta*, (2004) 12 SCC 770: AIR 2004 SC 2984.

Bench Strength 3. Coram: **S. Rajendra Babu**[1], **Dr. Ar. Lakshmanan**[2] and **G.P. Mathur**[1], JJ. [Date of decision: 11-3-2004]

[537] — S. 144 — Tandava dance in processions or at public places by Ananda Margis carrying lethal weapons and human skulls, held, not essential religious rite and not 'matters of religion' — *Hence, order under S. 144, CrPC prohibiting such processions in the interest of 'public order' and 'morality', not open to challenge under Art. 32 — Constitution of India — Arts. 25, 26 & 32*

Courts have the power to determine whether a particular rite or observance is regarded as essential by the tenets of a particular religion.

Performance of Tandava dance in procession in the public streets or in gatherings in public places is not an essential religious rite of the followers of the Ananda Marga. Ananda Marga as a religious order is of recent origin and Tandava dance as a part of religious rites of that order is still more recent. Even conceding that Tandava dance has been prescribed as a religious rite for every follower of the Ananda Marga it does not follow as a necessary corollary that Tandava dance to be performed in the public is a matter of religious rite.

The impugned order under S. 144 of the Code did not ban processions or gatherings at public places even by Ananda Margis. The prohibition was with reference to the carrying of daggers, trishuls and skulls. Even performance of Tandava dance in public places, which is not an essential part of religious rites to be observed by Ananda Margis, without these, has not been prohibited.

Therefore, the claim that the petitioner has a fundamental right within the meaning of Art. 25 or 26 to perform Tandava dance in public streets and public places has to be rejected. In view of this finding it is no more necessary to consider whether the prohibitory order was justified in the interest of public order as provided in Art. 25. *Acharya Jagdishwaranand Avadhuta* v. *Commr. of Police*, (1983) 4 SCC 522: 1984 SCC (Cri) 1: AIR 1984 SC 51.

Bench Strength 3. Coram: *P.N. Bhagwati*, *A.N. Sen* and **Ranganath Misra**, JJ. [Date of decision: 20-10-1983]

See also Commr. of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770

[538] — S. 144 — Refusal of permission for performance of religious practice of particular sect in public (Tandava dance of Ananda Margis) — Reason justifying such refusal — Reference to order of Court containing prohibition — Reference to public order or morality — *Held (per Dr. Ar. Lakshmanan, J.), reason justifying refusal of permission should have appeared in the order refusing permission itself — Only reason given was Supreme Court's order, though said Court had never directed the same — Moreover, the given reason could not be modified or supplemented by way of an affidavit in legal proceedings*

Ananda Margis cannot be deprived of their right to practise their religion in the manner prescribed by their religious preceptor, except on the grounds of public order, morality and health. The authorities concerned can step in and take preventive measures in the interest of maintenance of law and order if such religious processions disturb law and order, are not peaceful or offend the religious sentiments of other people, who equally enjoy the fundamental right to exercise their religious freedom. It is not the case of the appellants that the permission for the performance of Tandava dance in public procession has been forbidden on the ground of health. The permission has been refused on the ground of public order and morality. However, in the orders by which the permission had been refused, the Police Authorities have refused permission in terms of the order of the Supreme Court. The Supreme Court had never directed the said authorities not to accede to the performance of the Tandava dance in public procession. It was, therefore, wrong for the State authorities to refuse permission purportedly in terms of the Supreme Court's orders. A close scrutiny of the order refusing permission shows that it does not contain any reference to public order or morality. However, the appellants, at the time of hearing of this appeal, tried to improve their case by affidavits which cannot at all be permitted. The reason justifying refusal of permission should have appeared in the order refusing permission itself.

The only reason given was the Supreme Court's order. These reasons cannot now be modified or supplemented by way of an affidavit in the proceedings. (Paras 46, 84 and 88). *Commr. of Police* v. *Acharya Jagadishwarananda Avadhuta*, (2004) 12 SCC 770: AIR 2004 SC 2984.

Bench Strength **3**. Coram: **S. Rajendra Babu**[1], **Dr. Ar. Lakshmanan**[2] and **G.P. Mathur**[1], JJ. [Date of decision: 11-3-2004]

[539] — S. 144 — Order passed by court under S. 144 ceasing to be operative e.g. by efflux of time — *Held, High Court not justified in dealing with the reference and pronouncing its views on such order as also giving its findings on rights, title, property etc. merely on ground of avoiding future complications. Mohd. Ibrahim* v. *City Magistrate, Varanasi*, (1983) 2 SCC 153: 1983 SCC (Cri) 365.

Bench Strength **3**. Coram: *A.N. Ray, C.J.* and *M.H. Beg* and *Jaswant Singh*, JJ. [Date of decision: 6-12-1976]

[540] — Ss. 144(1) and (2) — Public meeting likely to disturb public peace, tranquillity and orderliness — Duty of administration — *Held, administration has a duty, while permitting such a meeting, to find out who the speakers and participants are, taking into account their past record and antecedents, on basis whereof, prohibitory orders may be passed — Lengthy consideration of pros and cons and prior service of notice to persons concerned may be waived in interests of swift and effective action*

While permitting holding of a meeting organised by groups or an individual, which is likely to disturb public peace, tranquillity and orderliness, irrespective of the name, cover and methodology it may assume and adopt, the administration has a duty to find out who the speakers and participants are and also to take into account previous instances and the antecedents involving or concerning those persons. If they feel that the presence or participation of any person in the meeting or congregation would be objectionable, for some patent or latent reasons as well as the past track record of such happenings in other places involving such participants, necessary prohibitory orders can be passed. Quick decisions and swift as well as effective action necessitated in such cases may not justify or permit the authorities to give prior opportunity or consideration at length of the pros and cons. The imminent need to intervene instantly, having regard to the sensitivity and perniciously perilous consequences it may result in if not prevented forthwith, cannot be lost sight of. (Para 7). *State of Karnataka* v. *Praveen Bhai Thogadia (Dr.)*, (2004) 4 SCC 684: 2004 SCC (Cri) 1387: AIR 2004 SC 2081: (2004) 2 KLT 342: 2004 Cri LJ 1825.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 31-3-2004]

Madhu Limaye v. Sub-Divisional Magistrate, Monghyr, (1970) 3 SCC 746, relied on

Jagrupa Kumari v. Chotey Narain Singh, (1936) 37 Cri LJ 95 (Pat), approved

— S. 144(2) *See* Ss. 144(1) and (2)

— S. 145 *See also* S. 145, Criminal Procedure Code, 1898, pp. 985 et seq. in Vol. 2

— S. 145 *See* Ss. 146 and 145

See also Ss. 482, 144 and 145

[541] — Ss. 145 and 146 — Nature and scope of — Manner for disposal of proceedings indicated

In substance and in effect a proceeding under S. 145 of the Criminal Procedure Code is not for the purpose of evicting any person from any land but is primarily concerned with the prevention of the breach of peace by declaring the person found in possession to be entitled to remain in possession until evicted therefrom in due course of law. Section 145(6)*(a)* treats the party dispossessed within the period provided for in the proviso to sub-section (4) as being in possession of the disputed property on the date of the order under sub-section (1). Restoration of possession to the party wrongfully dispossessed attracting the proviso to sub-section (4) is in substance and in effect, putting back the party in possession for deciding his possession on the date of the preliminary order made under sub-section (1). Although the party who forcibly and wrongfully dispossessed the other party has to be factually and physically evicted from the property, by a legal fiction it is only for the purpose of treating the latter party in possession on the date of the preliminary order.

Therefore, the proceeding in the present case did not abate and it has to be disposed of by Magistrate in accordance with the provisions of law contained in Ss. 145 and 146. The Magistrate, if he is able to declare the possession of either party on consideration of evidence adduced or to be adduced before him, he should do so. In that event, the other party will be forbidden from creating any disturbance of the possession of the party declared in possession. The Magistrate will then have to withdraw the attachment in accordance with the proviso to S. 146(1), because, as per his order declaring a party in possession there would be no longer any likelihood of breach of the peace. If, however, the Magistrate decides that none of the parties was in possession on the date of the order under S. 145(1) or if he is unable to satisfy himself as to which of them was in possession he need not lift the attachment until a competent court had determined the rights of the parties as provided in S. 146(1). *Chandu Naik* v. *Sitaram B. Naik*, (1978) 1 SCC 210: 1978 SCC (Cri) 100: AIR 1978 SC 333: 1978 Cri LJ 356: (1978) 2 SCR 353.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and **N.L. Untwalia**, JJ. [Date of decision: 6-12-1977]

[542] — S. 145 — Nature and effect of proceedings under — *Proceedings under Ss. 192 to 195, Succession Act, 1925 (protection of property of deceased) — Nature and scope of — Held, are interlocutory and summary — An order under S. 194 can be passed only if the conditions embodied in S. 193 are fulfilled — Further held, like proceedings under S. 145 CrPC the said proceedings do not bar a regular suit — In such a summary proceedings there may be some, but not conclusive and detailed, consideration of genuineness of a Will — Succession Act, 1925 — Ss. 192 to 195, 208 and 209. Uma Devi Nambiar* v. *T.C. Sidhan*, (2004) 2 SCC 321: AIR 2004 SC 1772: (2004) 2 KLT 75: (2004) 2 CHN 56.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 11-12-2003]

Sharp v. Wakefield, 1891 AC 173: (1886-90) All ER Rep 651: 60 LJ MC 73: 64 LT 180 (HL); S.G. Jaisinghani v. Union of India, AIR 1967 SC 1427; Lee v. Bude Rly. Co., (1871) LR 6 CP 576: 24 LT 827; Morgan v. Morgan, (1869) LR 1 P&M 644, relied on

[543] — S. 145 — Dispute concerning house property, whether likely to cause breach of peace or simply a civil dispute in realty — Determination of — Relief — *Suit already filed by sons and daughters against their father Respondent 2 for permanent preventive injunction restraining defendant-Respondent 2 (who claimed to have divorced his wife) from dispossessing the plaintiffs from the house in question and also restraining the defendant from entering into any dealing relating to the property — Respondent 2 initiating proceedings under S. 145 complaining of apprehension of breach of peace occasioned by dispute as to possession over the house property — Held, a civil dispute, pure and simple, has been given colour of a criminal case — Proceedings under S. 145 quashed — Parties granted liberty to approach the civil court for interim relief, which may exercise its powers under Ss. 94 and 151 CPC and grant appropriate ad interim relief without being embarrassed by the limited scope of the suit which was for preventive injunction — CPC, 1908 — Ss. 94 and 151*

The house property, which is the subject-matter of these criminal proceedings is also the subject-matter of the civil suit pending in the civil court. The question as to possession over the property or entitlement to possession would be determined by the civil court. The criminal proceedings have remained pending for about a decade. There is no propriety behind allowing these proceedings to continue in view of the parties having already approached the civil court. Whichever way proceedings under Section 145 CrPC may terminate, the order of the criminal court would always be subject to decision by the civil court. Inasmuch as the parties are already before the civil court, it is proper to let the civil suit be decided and therein appropriate interim order be passed taking care of the grievances of the parties by making such arrangement as may remain in operation during the hearing of the civil suit. (Para 4)

Therefore, the criminal proceedings initiated under Section 145 CrPC are directed to be quashed. The parties are allowed liberty of approaching the civil court and of filing any application for interim relief therein although the suit is only for issuance of permanent injunction. The civil court would be the most appropriate forum to take care of the grievances of the parties and pass such interim order as would reasonably protect the interests of both the parties. The civil court may issue an ad interim injunction, may appoint a Commissioner or Receiver or may make any other interim arrangement as to possession or user of the property which is the subject-matter of proceedings in the civil court exercising the power conferred on it by Sections 94 and 151 of the CPC. Looking to the relationship of the parties, the civil court shall feel free to make such ad interim order as it deems fit consistently with the facts and circumstances of the case without feeling embarrassed by the limited scope of the suit which is a suit for permanent injunction and without regard to the fact whether the application for that purpose is moved by the plaintiffs or the defendant. Such an application as and when made, shall be heard and decided expeditiously. (Paras 5, 7 to 9). *Mahar Jahan* v. *State of Delhi*, (2004) 13 SCC 421.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and *G.P. Mathur* and *C.K. Thakker*, JJ. [Date of decision: 13-8-2004]

***Distinguished in** P. Swaroopa Rani v. M. Hari Narayana, (2008) 5 SCC 765*

[544] — Ss. 145 and 144 — Joint family property — Dispute between co-sharers in relation to their respective shares — *Sale of certain share by some co-sharers to third party — Threat to other co-sharers regarding their dispossession at the hands of vendor co-sharers or third party — Remedy available — Maintainability of proceedings under Ss. 144 and 145 CrPC — CPC, 1908, S. 9 and Or. 39 Rr. 1 & 2 — Specific Relief Act, 1963, Ss. 5, 6, 37 & 38*

One *S* had five sons i.e. *G*, *N*, *B*, *R* and *H*. Appellants 1 and 2 were grandsons of *G*. Legal proceedings were initiated by son of *H* i.e. *L* claiming partition of his 1/3rd share in the suit property. The said suit was decreed by the Additional Sub-Divisional Officer. However, aggrieved thereby *L* challenged that decision in an appeal before the Commissioner. Aggrieved by the order of the Commissioner, son of *R* filed an appeal before the Board of Revenue, which set aside the order passed by the Commissioner and affirmed the order of the Additional Sub-Divisional Officer. Aggrieved thereby, *L* preferred a writ petition before the High Court wherein Appellants 1 and 2 were not impleaded. The High Court, while issuing notice, stayed the operation of the order passed by the Board of Revenue.

Thereafter, a sale deed was executed by Appellants 1 and 2 in favour of Appellants 3 and 4 stating therein that they had one-third share in the joint property although, according to the respondent co-sharer, they were not entitled therefor. Subsequent thereto, the respondent co-sharer filed a suit for cancellation of the said deed. He also lodged an FIR against the appellants.

The appellants filed an application under Section 482 CrPC for quashing of FIR. The High Court, while dismissing the said application, directed the investigating officer to conclude the investigation within three months. After conclusion of the investigation, a charge-sheet was submitted before the Chief Judicial Magistrate concerned. The said Magistrate took cognizance of the offence. Questioning the legality of the said order, the appellants filed another application under Section 482 CrPC, which by reason of the impugned judgment had been dismissed. Hence, the present appeal.

Allowing the appeal,

Held :

It is now well settled that the High Court ordinarily would exercise its jurisdiction under Section 482 CrPC if the allegations made in the first information report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing. (Para 24)

A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out. (Para 27)

The fact that the appellants are co-sharers is not in dispute. The dispute between the parties is confined to the extent of their respective shares. It must be determined only in a civil suit. (Para 11)

If Appellants 1 and 2 had executed a deed of sale in favour of a third party stating that they have one-third share in the entire properties, the same would not be binding on the respondent complainant. If any cause of action arose by reason of a threat of dispossession at the hands of the co-sharer or at the hands of the third party, as was contended, recourse to legal action could always be taken. Even for that purpose, a proceeding under Sections 144 and 145 CrPC would be maintainable. The decision of a criminal court in a case of this nature would not be binding on the civil court. (Paras 11). *Devendra* v. *State of U.P.*, (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; Kamaladevi Agarwal v. State of W.B., (2002) 1 SCC 555: 2002 SCC (Cri) 200; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Mahesh Chaudhary v. State of Rajasthan, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332, considered

Shanti Kumar Panda v. Shakuntala Devi, (2004) 1 SCC 438: 2004 SCC (Cri) 320, relied on

[545] — S. 145 — Civil court passing injunction against order of eviction passed under S. 145 CrPC clarifying that it was against respondent from obtaining possession and not against Executive Magistrate — Legality — *Held, even where a court or a statutory authority may not be subjected to an order of injunction, a party can be injuncted from proceeding in the matter — CPC, 1908, Or. 39 Rr. 1 and 2. M.P. Peter* v. *State of Kerala*, (2009) 12 SCC 785: (2009) 2 KLT 698.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

[546] — S. 145 — Appellant against whom order of eviction passed (but also stayed by higher courts) raising construction over suit land — Remedies open to the other party, stated — Such remedies not availed by Respondent — Effect — *Eviction order under S. 145 CrPC against appellant stayed by High Court for six months (not interfered with by Supreme Court) — Appellant in meantime constructing house on suit premises and residing there with his family — Appellant filing title suit in civil court and applying for injunction against dispossession — Trial court not allowing injunction but first appellate court directing status quo — Sustainability — On facts, held, parties should continue to maintain status quo till decision of civil court, subject to specified terms and conditions — CPC, 1908, Or. 39 Rr. 1 and 2 — Specific Relief Act, 1963, Ss. 34, 5 and 6*

In certain Section 145 CrPC proceedings, by an order dated 9-10-1997, the Executive Magistrate directed the appellant to restore possession of the suit property to Respondent 3. In a revision filed thereagainst, the High Court maintained the Executive Magistrate's order but stayed its operation for six months. The appellant thereafter, filed a title suit in the Munsiff Court wherein his interim application seeking prohibitory injunction against dispossession was dismissed. An appeal preferred thereagainst was allowed by the first appellate court clarifying that status quo should be maintained and that the order was not against the Executive Magistrate but only against the respondent.

On or about 3-4-2008, the Executive Magistrate directed the appellant to hand over possession of the suit property to Respondent 3 within three days of the receipt of the said notice. The appellant's criminal miscellaneous petition thereagainst was dismissed by reason of the impugned order of the High Court. The appellant was before the Supreme Court thereagainst.

Allowing the appeal,

Held :

The parties should continue to maintain status quo till the decision of the civil court subject to specified conditions. The appellant should not transfer, alienate or create any third-party interest in the property. The very fact that a triable issue has been raised by the appellant, for the purpose of grant of injunction, was not noticed. It is not denied or disputed that the appellant constructed a house and is in possession of a house and has been residing therein with his family. It would not be practicable to dispossess the appellant upon demolishing the structure. Both balance of convenience as also irreparable injury lie in favour of the appellant-plaintiff. Apart from the fact that the civil court will have primacy over the decision of a criminal court even for the purpose of grant of injunction, it is a case where an exceptional case has been made out. Except at the first instance, the matter has not been considered on merit. The effect of the order refusing to grant injunction has not been considered by the courts below. (Paras 26 to 28, 12 and 20)

The proceeding under Section 145 CrPC indisputably remained pending for a long time. Admittedly during pendency of Section 145 CrPC proceedings, the appellant had constructed a house. Prima facie, when Respondent 3 stood thereby, he could have filed an application for attachment before the Magistrate. He could have also filed an application for appointment of a Receiver. (Paras 9 and 11)

It stands admitted that Respondent 3 is not entitled to the superstructure on the land in the suit. Hence, with a view to give full effect to the order passed by the Executive Magistrate, which provides for handing over of possession only on the land in question, the superstructure would be required to be demolished. Respondent 3 has been kept out of possession for a long time. In a case of this nature, interest of justice would have been subserved if an order of injunction would have been passed in favour of the appellant, subject to such terms as the court might have thought fit and proper to impose. (Paras 12, 13 and 20). *M.P. Peter* v. *State of Kerala*, (2009) 12 SCC 785: (2009) 2 KLT 698.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

Vishnu Dutt Sharma v. Daya Sapra, (2009) 13 SCC 729; Seth Ramdayal Jat v. Laxmi Prasad, (2009) 11 SCC 545, relied on

[547] — S. 145 — Eviction on the basis of title conflicting with civil courts status quo order — Effect — Issues of title and possession — Civil court vis-à-vis criminal court — Evidentiary value and prevailing order — *Executive Magistrate's order under S. 145 CrPC regarding issues of title and possession, held, is not binding on civil court — It is rather subject to ultimate decision of suit filed in civil court — CPC, 1908, Or. 39 Rr. 1 and 2 — Specific Relief Act, 1963, Ss. 34, 5 and 6*

An order passed by an Executive Magistrate in exercise of its jurisdiction under Section 145 CrPC is subject to the ultimate decision of the suit filed in the civil court. Executive Magistrate's decision on possession of the parties may have some evidentiary value but the same is not binding on a civil court. Despite an order passed under Section 145 CrPC, the civil court may in a suit pass an order of injunction. The question as to whether the constructions were raised only during pendency of the said proceeding would have to be considered in the suit by the civil court. In a proceeding under Section 145 CrPC, the Executive Magistrate is not entitled to go into a disputed, and in particular, complicated questions of title. (Paras 9 to 11)

If an order of injunction was passed against the respondent-defendant from obtaining possession, the question of Executive Magistrate's executing his own order dated 9-10-1997 would not arise. A clarification was sought for and by an order dated 11-4-2008, it was stated that the order was not against the Executive Magistrate but only against Respondent 3. (Paras 17 and 15)

Even where a court or a statutory authority may not be subjected to an order of injunction, a party can be injuncted from proceeding in the matter. In the suit, the Executive Magistrate was not a party. No order of injunction could have been passed against him but then that would not mean that the civil court could not pass an order of injunction against the respondent-defendant. (Paras 17 and 18). *M.P. Peter* v. *State of Kerala*, (2009) 12 SCC 785: (2009) 2 KLT 698.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, (2009) 11 SCC 545, relied on

[548] — S. 145 — Disputes as to immovable property — Applicability of Limitation Act, 1963 — *Held, provisions of the Limitation Act are applicable to proceedings under S. 145 CrPC — Hence, application for possession under S. 145(6) CrPC has to be made within 3 years from the date of the order under S. 145(4) CrPC in view of Art. 137 of the Limitation Act — High Court rightly applied Art. 137 of Limitation Act to the facts of the case — Limitation Act, 1963, Art. 137*

Article 137 of the Limitation Act is a residuary provision. Since no period of limitation is prescribed for making an application for implementation of the order passed under Section 145(4) CrPC, the same ought to have been filed within a period of three years from the date of the order. In the present case, while the final order in the proceedings under Section 145 CrPC was passed on 7-10-1994, the application for implementation of the same was made on 12-11-1997, which was beyond the period of limitation prescribed under the provisions of Article 137 of the Limitation Act. An application under Section 145(6) cannot be made as and when the person dispossessed chooses to do so. It is for such purpose that Article 137 has been pressed into service since no limitation has been prescribed in Section 145 itself to indicate as to within which time a party found to be entitled to possession can be put back in possession. In the present case, there is also no explanation forthcoming as to the cause of such delay. The bar under Article 137 of the Limitation Act cannot be avoided and the application made by the appellants for being restored to possession in terms of a declaration made more than three years before the making of the application has to be rejected. (Paras 28, 34 and 35)

An application under Section 145(6) cannot be made as and when the person dispossessed chooses to do so. It is for such purpose that Article 137 has been pressed into service since no limitation has been prescribed in Section 145 itself to indicate as to within which time a party found to be entitled to possession can be put back in possession. In the present case there is also no explanation forthcoming as to the cause of such delay. The bar under Article 137 of the Limitation Act cannot be avoided and the application made by the appellants for being restored to possession in terms of a declaration made more than three years before the making of the application has to be rejected. *Shakuntala Devi* v. *Chamru Mahto*, (2009) 3 SCC 310.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 10-2-2009]

Khudiram Mandal v. Jitendra Nath, AIR 1952 Cal 713, impliedly approved

[549] — S. 145 — Disputes as to immovable property under — Provisions of Specific Relief Act, 1963, whether applicable — *Held, the 1963 Act has no application to proceedings under S. 145 CrPC — On facts, High Court while setting aside the order passed by Sessions Judge under S. 145 for restoration of dispossessed land holding that appellants should have filed application within 6 months as provided under S. 6 of Specific Relief Act — Sustainability — Held, High Court erred in applying the provisions of the 1963 Act to proceedings under S. 145 CrPC — Specific Relief Act, 1963, Ss. 4 and 6*

The provisions of the Specific Relief Act have been misapplied by the High Court in holding that the appellants should have come for an order under Section 145(6) CrPC within six months from the date of dispossession as provided in Section 6 of the 1963 Act, as the Specific Relief Act, 1963 has no application to a proceeding under Section 145 CrPC. (Para 27). *Shakuntala Devi* v. *Chamru Mahto*, (2009) 3 SCC 310.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 10-2-2009]

[550] — S. 145 — Disputed properties attached by the Executive Magistrate and parties directed to go to the civil court and establish their rights — *Magistrate justified in passing the order even though suit for injunction had been filed by the appellant — Subsequently civil suit dismissed and appeal against dismissal of suit filed by the respondent in the court of Senior Sub-Judge — Supreme Court would not decide the question as to who was in possession of the disputed property — However, respondent permitted to continue to utilise the machinery in disputed property and run the factory during pendency of appeal — Advocate Commissioner appointed to make inspection of the sealed portion of the property, assess the condition of the machinery and its value and submit his report to the Senior Sub-Judge — CPC, 1908, Or. 39. Badri Prakash Soni* v. *Prahalad Soni*, 1994 Supp (3) SCC 469.

Bench Strength 2. Coram: *K. Ramaswamy* and *N. Venkatachala*, JJ. [Date of decision: 5-9-1994]

[551] — S. 145 — Initiation of a parallel proceeding under during pendency of a civil litigation involving the question of possession of the same property, not justified

When a civil litigation is pending for the same property wherein the question of possession is involved and the parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute, there is no justification for initiating a parallel criminal proceeding under S. 145, CrPC. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. Therefore, the parallel proceeding should not continue and the order of the Magistrate directing initiation of such a proceeding under S. 145, CrPC must be quashed. *Ram Sumer Puri Mahant* v. *State of U.P.*, (1985) 1 SCC 427: 1985 SCC (Cri) 98: AIR 1985 SC 472: 1985 Cri LJ 752.

Bench Strength 2. Coram: *D.A. Desai* and *Ranganath Misra*, JJ. [Date of decision: 17-12-1984]

[552] — S. 145 — Jurisdiction of Magistrate under S. 145 during pendency of civil suit — *Suit for declaration relating to property in question pending before civil court — Interim injunction granted in civil suit — Despite the applicant before the Magistrate having not been arrayed as party-defendant in civil suit, held, any appropriate relief in the matter concerned could be obtained through the civil court itself and the Magistrate has no jurisdiction to entertain the petition under S. 145 — CPC, 1908 — S. 92 — Pendency of suit under — Jurisdiction of Magistrate to entertain petition under S. 145 CrPC. Mahant Ram Saran Dass* v. *Harish Mohan*, (2001) 10 SCC 758.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 15-9-2000]

[553] — Ss. 145 and 144 — Decision of criminal court in proceeding under — Not binding on civil court — *Evidence Act, 1872, S. 43*

One *S* had five sons i.e. *G*, *N*, *B*, *R* and *H*. Appellants 1 and 2 were grandsons of *G*. Legal proceedings were initiated by son of *H* i.e. *L* claiming partition of his 1/3rd share in the suit property. The said suit was decreed by the Additional Sub-Divisional Officer. However, aggrieved thereby *L* challenged that decision in an appeal before the Commissioner. Aggrieved by the order of the Commissioner, son of *R* filed an appeal before the Board of Revenue, which set aside the order passed by the Commissioner and affirmed the order of the Additional Sub-Divisional Officer. Aggrieved thereby, *L* preferred a writ petition before the High Court wherein Appellants 1 and 2 were not impleaded. The High Court, while issuing notice, stayed the operation of the order passed by the Board of Revenue.

Thereafter, a sale deed was executed by Appellants 1 and 2 in favour of Appellants 3 and 4 stating therein that they had one-third share in the joint property although, according to the respondent co-sharer, they were not entitled therefor. Subsequent thereto, the respondent co-sharer filed a suit for cancellation of the said deed. He also lodged an FIR against the appellants.

The appellants filed an application under Section 482 CrPC for quashing of FIR. The High Court, while dismissing the said application, directed the investigating officer to conclude the investigation within three months. After conclusion of the investigation, a charge-sheet was submitted before the Chief Judicial Magistrate concerned. The said Magistrate took cognizance of the offence. Questioning the legality of the said order, the appellants filed another application under Section 482 CrPC, which by reason of the impugned judgment had been dismissed. Hence, the present appeal.

Allowing the appeal,

Held :

It is now well settled that the High Court ordinarily would exercise its jurisdiction under Section 482 CrPC if the allegations made in the first information report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing. (Para 24)

A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out. (Para 27)

The fact that the appellants are co-sharers is not in dispute. The dispute between the parties is confined to the extent of their respective shares. It must be determined only in a civil suit. (Para 11)

If Appellants 1 and 2 had executed a deed of sale in favour of a third party stating that they have one-third share in the entire properties, the same would not be binding on the respondent complainant. If any cause of action arose by reason of a threat of dispossession at the hands of the co-sharer or at the hands of the third party, as was contended, recourse to legal action could always be taken. Even for that purpose, a proceeding under Sections 144 and 145 CrPC would be maintainable. The decision of a criminal court in a case of this nature would not be binding on the civil court. (Paras 11). *Devendra* v. *State of U.P.*, (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; Kamaladevi Agarwal v. State of W.B., (2002) 1 SCC 555: 2002 SCC (Cri) 200; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Mahesh Chaudhary v. State of Rajasthan, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332, considered

Shanti Kumar Panda v. Shakuntala Devi, (2004) 1 SCC 438: 2004 SCC (Cri) 320, relied on

[554] — S. 145 — Pendency of proceedings and issuance of order under

Per Mukherji, J.

The pendency of the proceedings under S. 145 of Code of Criminal Procedure and order, if any, passed thereon does not in any way affect the title of the parties to the disputed premises though it reflects the factum of possession. *Sadhuram Bansal* v. *Pulin Behari Sarkar*, (1984) 3 SCC 410: AIR 1984 SC 1471.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**[1], **A. Varadarajan**[2] and **Sabyasachi Mukharji**[3], JJ. [Date of decision: 26-4-1984]

[555] — S. 145 — Proceedings under, during pendency of civil suit in respect of the same property when should not be allowed to continue — *Pursuant to preliminary order passed by Magistrate under S. 145(1), appellant filing application for dropping the proceedings under S. 145 on ground that a civil suit in respect of the same property was pending wherein order directing maintenance of status quo had already been passed — But respondent taking the stand that the property which formed the subject-matter of the civil suit was different from the property involved in proceedings under S. 145 — Appellant's application dismissed by SDM and revision and review preferred by him also dismissed — When proceedings under S. 145 resumed respondent in his statement admitting that civil suit was for possession and stay and the same was in respect of the same property in respect of which proceedings under S. 145 were adopted — Accordingly appellant filing application before the SDM for discontinuing/dropping the proceedings under S. 145 in view of pendency of civil proceedings in which order for maintenance of status quo had already been passed — Held, SDM was justified in dropping the proceedings under S. 145 — Earlier order of SDM dismissing the appellant's application for dropping the proceedings under S. 145 was an interim order, which even if confirmed by orders of higher courts in revision and review, would not become final, more so when the earlier orders were made on the basis that the civil suit related to different property and was between different parties*

In respect of the property concerned, the respondent having dispute with two persons *SP* and *SK*, filed a suit on 10-10-1990 for declaration of title, possession and injunction and on the same day an application was made on which an order for maintenance of status quo was passed by the Court. According to the appellant, on that very day *SP* and *SK* had executed a sale deed in favour of the appellant's mother and possession of the property was delivered to her. In the suit filed by the respondent, appellant's mother was impleaded as party defendant. While the suit was pending trial, on the basis of a police report that there was a dispute regarding possession of land likely to cause a breach of peace within his jurisdiction and for initiating proceedings under Section 145 CrPC, the SDM passed a preliminary order under Section 145(1). Pursuant to this preliminary order the appellant's mother appeared and filed a written statement stating that there was no dispute likely to cause breach of peace regarding possession of the said property. It was pointed out that the civil suit was pending in the court of civil jurisdiction and an order directing maintenance of status quo had already been passed. The 1st respondent also filed a written statement pursuant to the preliminary order claiming that the property which formed the subject-matter of the civil suit was different from the property in respect of which proceedings under Section 145 CrPC had been adopted. The appellant thereafter made an application that the proceedings under Section 145 be dropped as a civil suit in respect of the same property was pending. That application was rejected by the SDM. A criminal revision filed by the appellant was dismissed by the Addl. Sessions Judge and review application was also dismissed on 11-5-1993. Thereafter proceedings under Section 145 were resumed and statement of the parties were recorded. In the course of her statement the respondent admitted that the land in respect of which the proceedings under Section 145 was adopted were part of the properties in respect of which the civil suit for possession and stay had been filed. Thereupon an application was made by the appellant that the proceedings under Section 145 may be discontinued/dropped in view of the pending civil suit in which an order of maintenance of status quo had already been passed. By an order, the SDM dropped the proceedings under Section 145 by concluding that there was no propriety in continuing such proceedings when the civil court was in seisin of the matter and an order for maintaining status quo had already been passed. A criminal revision filed by the respondent against that order was allowed by the High Court on the ground that earlier an application for dropping the proceedings under Section 145 had been made and dismissed and that the revision against that order had also been dismissed by the Sessions Court by the order dated 11-5-1993 which had become final between the parties and was thus binding and that in view of that order the trial court could not have accepted the contention and should have rejected the application for dropping the proceedings. It was held that in view of that order the only option left to the Magistrate was to decide the proceedings under Section 145 between the parties on merit. It is this order which was assailed in this appeal. Allowing the appeal,

Held :

The High Court has committed an error in setting aside the order of the Magistrate on the basis that the earlier order was final and binding. The earlier orders were interim orders. They were passed before any evidence or statements had been recorded. Those orders were passed only on the basis of the contentions of the parties. It is settled law that interim orders, even though they may have been confirmed by the higher courts, never bind and do not prevent passing of contrary order at the stage of final hearing. Moreover, the earlier orders were passed on the footing that the civil proceedings related to different properties and were between different parties. Subsequently, when it became clear that the civil proceedings were in respect of the same properties and between the same parties even the factual position had changed. For that reason also the earlier order would not be binding. (Para 11)

The SDM was right in discontinuing the proceedings under Section 145. It is not that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate. (Paras 15 and 14)

It is not possible to accept the submission that the principles laid down in *Ram Sumer case* would only apply if the civil court has already adjudicated on the dispute regarding the property and given a finding. That case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil court and parties are in a position to approach the civil court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue. (Para 13)

The High Court was not justified in passing strictures against the SDM and directing the District Magistrate to transfer the proceedings from the SDM. It is hoped that in future the High Court would not pass such strictures. Two views are always possible. Merely because the High Court takes a different view it is no ground for passing strictures against the lower court. (Para 16). *Amresh Tiwari* v. *Lalta Prasad Dubey*, (2000) 4 SCC 440: 2000 SCC (Cri) 806: AIR 2000 SC 1504: 2000 Cri LJ 2226: 2000 All LJ 1095.

Bench Strength **3**. Coram: *K.T. Thomas*, *D.P. Mohapatra* and **S.N. Variava**, JJ. [Date of decision: 11-4-2000]

Jhummamal v. State of M.P., (1988) 4 SCC 452: 1988 SCC (Cri) 974, distinguished and limited

Ram Sumer Puri Mahant v. State of U.P., (1985) 1 SCC 427: 1985 SCC (Cri) 98 explained

[556] — S. 145 — Order passed under — Validity of — *No reasons given by Sub-Divisional Magistrate (SDM) for reaching the conclusion that the property was in possession of the respondent — That apart, the finding of actual possession of the respondent was with reference to the date of preliminary order which is not the relevant date that is contemplated by provisions of S. 145 — Hence, order of SDM not sustainable — Matter remitted to it for consideration afresh* (Para 4). *Shamim Alam* v. *Sajjid Hussain*, (2005) 10 SCC 551.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and *B.P. Singh*, JJ. [Date of decision: 15-4-2005]

[557] — Ss. 145, 146 and 397 & 401 — Magistrate's orders under Ss. 145(1) and 146(1) — Validity — Decision on title and right to possession of the property in dispute not germane for dealing with the proceedings under S. 145 — *Sale of land by power of attorney-holder — Suits filed by both the owner and the purchaser of the land seeking permanent injunction against each other pending before civil court — Petition under S. 145 filed by the purchaser before Magistrate — Preliminary order filed by Magistrate under S. 145 and thereafter order under S. 146(1) passed attaching the land — Held on facts, High Court in revision was justified in setting aside the orders passed under Ss. 145(1) and 146(1) — But while doing so High Court in revision was not justified in going into question of title and right of possession of the land as if it was exercising appellate jurisdiction*

The respondent, the owner of the land in dispute, gave a registered power of attorney in favour of his son-in-law *K*, who executed a sale deed transferring the land in favour of *H*. The respondent filed a suit seeking a decree of permanent injunction against *K* and *H*. The suit was dismissed as withdrawn by the trial court. Thereafter *H* transferred the land in favour of the appellant under a registered sale deed. On a petition filed by the respondent the order dismissing the suit as withdrawn was recalled and the suit was restored to file. The appellant thereupon filed a suit praying for a decree of permanent injunction against the respondent and on the same day, an order of ad interim injunction was passed in the suit. The appellant then filed a petition before the Sub-Divisional Magistrate seeking initiation of proceedings under Section 145 CrPC alleging that immediately after passing of the order of interim injunction, the respondent and his supporters forcibly dispossessed him (the appellant) and that in the circumstances there was an apprehension of breach of peace. About 3 years after filing of the said petition the Sub-Divisional Magistrate passed a preliminary order under Section 145(1) CrPC and after considering the application of the appellant under Section 146(1) CrPC, the land in dispute was attached and the local SDPO was given charge of the property. The respondent filed an application praying for recall/modification of the preliminary order passed under Section 145(1). That application was stated to be pending for consideration before the Sub-Divisional Magistrate. The respondent moved the High Court in revision by filing application under Section 397 read with Section 401 CrPC for setting aside the order passed by the Magistrate under Section 146(1) attaching the land in dispute. The High Court dealt with the developments in the case relating to the acquisition of title, the allegations of fraudulent transfers made by *K* and *H* and the circumstances in which the suit was dismissed as withdrawn. The High Court took the view that the orders under Section 145(1) as well as the proceedings under Section 146(1) were an abuse of the process of law and as such quashed the same. Disposing of the appeal,

Held :

In the context of the facts of this case, the order passed by the High Court setting aside the orders passed under Sections 145(1) and 146(1) CrPC is unassailable. (Para 7)

However, the High Court was in error in dealing with the revision petition as if it was exercising appellate jurisdiction. Keeping in view the limited scope of the proceeding under Section 145 CrPC the matters taken into consideration by the High Court in revision were not material for determination of the main issues in the case. The Court, while dealing with a proceeding under Section 145 CrPC, is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date; the court is not required to decide either title to the property or right of possession of the same. The question for determination before the High Court in the present case was one relating to the validity or otherwise of the preliminary order passed by the Sub-Divisional Magistrate under Section 145(1) CrPC and sustainability of the order of attachment passed under Section 146(1) CrPC. For deciding the questions it was neither necessary nor relevant for the High Court to have considered the matters relating to title to and right of possession of the property. Further, both the parties in the case have filed suits seeking decree of permanent injunction against each other and in the suit filed by the appellant an order of interim injunction has been passed and an objection petition has been filed by Respondent 1. The suits and the interim order are pending further consideration before the civil court.

In these circumstances, while maintaining the order of the High Court quashing the preliminary order passed by the Sub-Divisional Magistrate under Section 145(1) and the order of attachment of the property under Section 146(1) CrPC, leave should be granted to the parties to approach the civil court for appropriate interim order and the civil court should deal with the application for interim order without being influenced by the observations made/findings recorded by the High Court in the impugned judgment. (Paras 8 and 9). *Ranbir Singh* v. *Dalbir Singh*, (2002) 3 SCC 700: 2002 SCC (Cri) 700: AIR 2002 SC 1500.

Bench Strength 2. Coram: **D.P. Mohapatra** and *Brijesh Kumar*, JJ. [Date of decision: 20-3-2002]

[558] — Ss. 145 and 107 — In equity and justice also appellant having a stronger case — *Hence appellant given relief (appellant directed to be placed in possession of the indicated portion of the house) — Constitution of India — Art. 136. Prakash Chand Sachdeva* v. *State*, (1994) 1 SCC 471: 1994 SCC (Cri) 438: AIR 1994 SC 1436: 1994 Cri LJ 2117.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and **R.M. Sahai**, JJ. [Date of decision: 14-12-1993]

[559] — Ss. 145 and 107 — Applicability — When dispute involves question of possession and not title of a house by co-owner, which dispute is likely to cause breach of peace, Magistrate empowered to proceed under S. 145, notwithstanding pendency of civil suit for title — Proceedings under S. 145 cannot be dropped merely because of dropping of proceedings under S. 107 — *Dispute between appellant-father and respondent-son regarding possession of ancestral house — Both being co-owners, their right and title to the property not in dispute — But when son preventing father from entering into the house, father approaching criminal court under Ss. 107 and 145 apart from filing a civil suit for injunction — Proceedings under S. 107 dropped and on that basis proceedings under S. 145 also dropped — Held, High Court erred in dropping the proceedings under S. 145 taking the view that dropping of proceedings indicated absence of apprehension of breach of peace — In equity and justice also appellant having a stronger case, appellant directed to be placed in possession of the indicated portion of the house — Constitution of India — Article 136*

A suit or remedy in civil court for possession and injunction based on title normally prevents a person from invoking jurisdiction of the criminal court. But this normal rule cannot apply where there is no dispute about title. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law. Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognisance under S. 145 CrPC.

The proceedings under S. 107 are for public peace and tranquillity whereas under S. 145 relate to disputes regarding possession between parties concerning any land or water or boundaries thereof. Therefore, dropping of proceedings under S. 107 could not furnish foundation for dropping the proceedings under S. 145. The proceedings under S. 107 were rightly dropped in the present case as the nature of these proceedings, 'are of preventive justice'. It is to be invoked when any person is likely to commit a breach of peace or disturb public tranquillity.

In equity and justice the appellant has still stronger case. On own showing of the respondent the property is ancestral. The behaviour of the son is cruel and unjust. The counsel for the respondent during arguments stated that the son was willing to keep his father with him. In the light of the averments made by the son in the affidavit filed in this Court and the alleged misbehaviour by him and his family members this appears to be only an excuse for preventing the father from living in peace in the end of his life.

In the circumstances the order passed by the High Court and the Magistrate dismissing the application filed under S. 145 CrPC are set aside and it is directed that the appellant be placed in possession of the indicated portion of the house forthwith. *Prakash Chand Sachdeva* v. *State*, (1994) 1 SCC 471: 1994 SCC (Cri) 438: AIR 1994 SC 1436: 1994 Cri LJ 2117.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and **R.M. Sahai**, JJ. [Date of decision: 14-12-1993]

Ram Sumer Puri Mahant v. State of U.P., (1985) 1 SCC 427: 1985 SCC (Cri) 98: AIR 1985 SC 472, distinguished

[560] — Ss. 145 and 146 — Direction by the High Court to the Survey Department to demarcate the land, localise the same with the assistance of the Inspector of the Survey and Land Records and then the Magistrate to take action in pursuant to the report thereof according to law — *No interference by the Supreme Court called for. C.V. Raja Rao* v. *Mirza Basheer Baig*, (1996) 8 SCC 740.

Bench Strength 2. Coram: *K. Ramaswamy* and *G.B. Pattanaik*, JJ. [Date of decision: 30-4-1996]

[561] — Ss. 145 and 146 — Proceedings against order passed by executive Magistrate under — Held, competent court can pass interim order in the nature of injunction or arrangement, inconsistent with the order of the Magistrate, in suit or proceedings initiated by the party who was unsuccessful before the Magistrate — *At the stage of passing an interlocutory order court should keep in mind existence of a prima facie case, balance of convenience and irreparable injury and should have regard to the materials in the shape of affidavits, documents, pleadings and order of the Executive Magistrate — However, such inconsistent interim order should be passed only after recording reasons and only when a strong prima facie case is made out showing the findings of the Magistrate to be without jurisdiction or palpably wrong or self-inconsistent — CPC, 1908, Or. 39 Rr. 1, 2*

The appellant lodged a complaint with the police whereupon the police filed a report before SDM who made a preliminary order under Section 145(1) CrPC recording his satisfaction about existence of a dispute between the appellant and one *K* concerning the shop which was likely to cause breach of peace and requiring the parties to attend his court. The SDM also passed an order under Section 146(1) CrPC on the same day directing the shop to be attached. *K* appeared and stated that he had nothing to do with the shop and that the owner of the property was the respondent who was also in possession thereof. The respondent on becoming aware of the proceedings moved an application before the SDM praying that she being in peaceful possession of the shop and interested in the subject matter of the dispute, be impleaded as a party to the proceedings and be given an opportunity of being heard. But the SDM without giving her any opportunity to join in the proceedings and to file her own claims as to possession of the shop, finally disposed of the proceedings holding that the appellant was in possession over the disputed shop on the date of the passing of the preliminary order as also in the two months prior thereto. Having made that declaration the SDM directed that until the rights were determined by the competent court, the shop shall be released in favour of the appellant. The revision petitions filed by the respondent and *K* against the order of the SDM were dismissed.

The respondent then filed a civil suit based on title, seeking a permanent preventive injunction against the appellant and also an ad interim preventive injunction so as to protect possession over the shop. The Civil Judge observed that the proceedings under Sections 145/146 CrPC had proceeded in the absence of the respondent who was not even allowed an opportunity of being heard though she was the real person claiming possession and also title over the shop. The Civil Judge further observed that anti social elements had conspired to grab the shop by forcibly ejecting the respondent in which the administration had fully helped them. Therefore, the Civil Judge allowed the application filed by the respondent and directed the appellant to remain restrained from interfering with the possession of the respondent over the shop. The Civil Judge also directed a court officer to go to the site of the shop and after opening the locks to put the respondent in possession of the shop. However, in appeal the District Judge set aside the order of the Civil Judge, on ground that the proceedings under Section 145 CrPC having terminated in favour of the appellant the trial court was not justified in issuing the order of injunction unless and until the order of the SDM was superseded by a decree of the civil court and that no injunction can be granted when the disputed property is in *custodia legis*. The respondent preferred a petition under Article 227 of the Constitution. The High Court allowed the petition, set aside the order of the District Judge and restored the order passed by the Civil Judge. In the present appeal it was submitted on behalf of the appellant that an order of temporary injunction inconsistent with the order of the Magistrate under Sections 145/146 of the Code or superseding it cannot be passed by the civil court.

Dismissing the appeal,

Held :

In the present case, the trial court has felt strongly against the police action taken under Section 145(1) CrPC. The plaintiff, respondent herein was not allowed — in spite of her efforts — to participate in the proceedings under Section 145. The party proceeded against by the Executive Magistrate was not interested in contesting the proceedings. The first appellate court has not recorded any disagreement with the observations made by the Civil Judge but has proceeded on a different reasoning which reasoning has been found to be erroneous by the High Court. The High Court has agreed with the view taken by the Civil Judge. No case for interference with the order of the High Court is made out. (Para 24)

Possession is nine points in law. A dispute relating to any land etc. as defined in Section 145(2), CrPC having arisen, causing a likelihood of a breach of the peace, Section 145 authorizes the Executive Magistrate to take cognizance of the dispute and settle the same by holding an enquiry into possession as distinguished from right to possession or title. The proceedings under Sections 145/146 CrPC have been held to be quasi-civil, quasi-criminal in nature or an executive or police action. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution as between the parties disputing the question of possession over the property. (Para 10)

The party unsuccessful before the Magistrate may dispute the correctness of the finding arrived at by the Magistrate and is at liberty to show before the competent court that it had not dispossessed the successful party or that it is the unsuccessful party and not the successful party who was actually in possession and the finding to the contrary arrived at by the Magistrate was wholly or apparently erroneous and unsustainable in law. (Para 17)

A decision given under Section 145 CrPC has relevance and is admissible in evidence to show: (*i*) that there was a dispute relating to a particular property; (*ii*) that the dispute was between the particular parties; (*iii*) that such dispute led to the passing of a preliminary order under Section 145(1) or an attachment under Section 146(1), on the given date; and (*iv*) that the Magistrate found one of the parties to be in possession or fictional possession of the disputed property on the date of the preliminary order. The reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent court and the competent court is *not bound* by the findings arrived at by the Magistrate even on the question of possession though, as between the parties, the order of the Magistrate would be *evidence of possession*. The finding recorded by the Magistrate does not bind the court. In a civil action between different parties the finding of a criminal court cannot be treated as binding except to the extent of being evidence of the factum of a particular judgment having been delivered by the particular criminal court on a particular date. The competent court has jurisdiction and would be justified in arriving at a finding inconsistent with the one arrived at by the Executive Magistrate even on the question of possession. Sections 145 and 146 CrPC only provide for the order of the Executive Magistrate made under any of the two provisions being superseded by and giving way to the order or decree of a competent court. The effect of the Magistrate's order is that burden is thrown on the unsuccessful party to prove its possession or entitlement to possession before the competent court. (Paras 15 and 20)

At the stage of passing an interlocutory order such as on an application for the grant of ad interim injunction under Rule 1 or 2 of Order 39 CPC, the competent court shall have to form its opinion on the availability of a prima facie case, the balance of convenience and the irreparable injury — the three pillars on which rests the foundation of any order of injunction. At that stage material in the shape of affidavits, documents and pleadings is placed before the court for its consideration. The order of the Executive Magistrate may also be placed before it, who having held an enquiry, though summary in nature, has arrived at a finding on the question of possession which the Code intends to be sustained unless the court of competent jurisdiction by its judicial order supersedes the finding or the effect of such finding and till then all disturbances in possession of the successful party are intended by the Code to be forbidden. (Para 22)

The court will be loath to issue an order of interim injunction or to order an interim arrangement inconsistent with the one made by the Executive Magistrate. However, to say so is merely stating a rule of caution or restraint, on exercise of discretion by court, dictated by prudence and regard for the urgent/emergent executive orders made within jurisdiction by their makers; and certainly not a tab on the power of court. The court does have jurisdiction to make an interim order including an order of ad interim injunction inconsistent with the order of the Executive Magistrate. The jurisdiction is there but the same shall be exercised not as a rule but as an exception. Even at the stage of passing an ad interim order the party unsuccessful before the Executive Magistrate may on material placed before the court succeed in making out a strong prima facie case demonstrating the findings of the Executive Magistrate to be without jurisdiction, palpably wrong or self-inconsistent in which or the like cases the court may, after recording its reasons and satisfaction, make an order inconsistent with, or in departure from, the one made by the Executive Magistrate. The order of the court — final or interlocutory, would have the effect of declaring one of the parties entitled to possession and evicting therefrom the party successful before the Executive Magistrate within the meaning of Section 145(6), CrPC. (Paras 23 and 21). *Shanti Kumar Panda* v. *Shakuntala Devi*, (2004) 1 SCC 438: 2004 SCC (Cri) 320: AIR 2004 SC 115: 2004 Cri LJ 1249: 2003 All LJ 2839.

Bench Strength 2. Coram: **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 3-11-2003]

Bhinka v. Charan Singh, AIR 1959 SC 960: 1959 Cri LJ 1223; Jhummamal v. State of M.P., (1988) 4 SCC 452: 1988 SCC (Cri) 974; Anil Behari Ghosh v. Latika Bala Dassi, AIR 1955 SC 566, relied on

(1996) 2 AWC 953 (All), affirmed

[562] — Ss. 145 and 146 — Order of executive Magistrate under — Confined only to the factum of possession of the property in dispute — Order is temporary in nature and is subject to determination of rights and title by competent court (Paras 10, 16, 15 and 23). *Shanti Kumar Panda* v. *Shakuntala Devi*, (2004) 1 SCC 438: 2004 SCC (Cri) 320: AIR 2004 SC 115: 2004 Cri LJ 1249: 2003 All LJ 2839.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 3-11-2003]

Bhinka v. Charan Singh, AIR 1959 SC 960: 1959 Cri LJ 1223; Jhummamal v. State of M.P., (1988) 4 SCC 452: 1988 SCC (Cri) 974; Anil Behari Ghosh v. Latika Bala Dassi, AIR 1955 SC 566, relied on

(1996) 2 AWC 953 (All), affirmed

[563] — Ss. 145 and 146 — Order of Magistrate under — Value of, before the competent court — *At the stage of final adjudication by competent court, held, it has value only as a piece of evidence — Competent court is not bound by the findings arrived at by the Magistrate in proceedings under S. 145 — Order or decree passed by the competent court supersedes the order of Magistrate under Ss. 145/146*

A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. An order passed by the Executive Magistrate in proceedings under Sections 145/146 CrPC is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and weight before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the Magistrate is only one out of several pieces of evidence. (Para 23). *Shanti Kumar Panda* v. *Shakuntala Devi*, (2004) 1 SCC 438: 2004 SCC (Cri) 320: AIR 2004 SC 115: 2004 Cri LJ 1249: 2003 All LJ 2839.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 3-11-2003]

Anil Behari Ghosh v. Latika Bala Dassi, AIR 1955 SC 566, relied on

(1996) 2 AWC 953 (All), affirmed

[564] — Ss. 145 and 146(1) — Magistrate after preliminary order under S. 145(1) making emergency attachment under S. 146(1) — *Held, the Magistrate is not thereby precluded from proceeding with the enquiry as to possession under S. 145 — Both sections must be read together — Position same as under the 1898 Code prior to its amendment in 1955 — After enquiry order under S. 145(6) to be made and the emergency attachment withdrawn*

Sections 145 and 146 together constitute a single scheme and as such S. 146 must be read in the context of S. 145. The scheme of these sections is that the Magistrate on being satisfied about the existence of a dispute likely to cause a breach of the peace, issues a preliminary order stating the grounds of his satisfaction and calling upon the parties to appear before him and submit their written statements. A preliminary order is the basic requirement under S. 145 and it is by making this order that a Magistrate assumes jurisdiction to proceed under Ss. 145 and 146. A proceeding which begins with a preliminary order must be followed up by an enquiry and end with the Magistrate deciding in one of three ways and making consequential orders. Except for the reason that there is no dispute likely to cause a breach of the peace as provided by S. 146(5), a proceeding initiated by a preliminary order under S. 145(1) must run its full course. There is no question of stopping midway and leaving the parties to go to the Civil Court. It is, therefore, wrong to hold that the Magistrate's jurisdiction ends as soon as an attachment is made on the ground of emergency under S. 146(1). There is no such express stipulation in S. 146. If there is an emergency, which is the basis of attachment under S. 146(1), it cannot be said that there is no dispute likely to cause a breach of peace. The provisions of Ss. 145 and 146 of the 1973 Code are substantially the same as the corresponding provisions before the 1955 amendment.

In a situation such as in the present case the Magistrate at the termination of the proceeding, on finding that one of the parties was in possession must make an order as provided in S. 145(6) and withdraw the emergency attachment under S. 146(1). *Mathuralal* v. *Bhanwarlal*, (1979) 4 SCC 665: 1980 SCC (Cri) 9: AIR 1980 SC 242: 1980 Cri LJ 1: (1979) 16 ACC 325.

Bench Strength **2**. Coram: *D.A. Desai* and **O. Chinnappa Reddy**, JJ. [Date of decision: 13-9-1979]

[565] — Ss. 145 and 482 — Abuse of process of court — Rights of the parties in respect of the property in question settled by a compromise decree passed by civil court during pendency of civil proceedings inter-partes — *Inspite of civil proceedings having achieved finality, proceedings under S. 145 CrPC initiated — Proceedings under S. 145 CrPC, held, an abuse of process of court — If any party claims to be in possession and seeks its protection, it is for that party to approach the civil* *court and get an appropriate order — Proceedings under S. 145 CrPC cannot be allowed to continue — High Court not justified in rejecting appellant's petition under S. 482 for quashing the proceedings under S. 145 CrPC. Kunjbihari* v. *Balram*, (2006) 11 SCC 66.

Bench Strength 3. Coram: *R.C. Lahoti, C.J.* and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 26-10-2005]

[566] — Ss. 145 and 482 — Magistrate need not record a finding regarding continuance or existence of apprehension of breach of peace at the time of passing final order under S. 145 — *Contradictory statements regarding apprehension of breach of peace made by the parties in the written statements may itself imply existence of such an apprehension — Even if failure to record such a finding in the final order an error, it is curable and will not vitiate the entire proceedings — Where Magistrate passes final order declaring one of the parties to be in possession of the land in dispute, High Court not justified in interfering with that order under S. 482 on a technical ground of failure by Magistrate to record clear finding in the final order about existence of an apprehension of breach of peace.*

On the basis of a police report the Magistrate initiated proceedings under S. 145, CrPC, passed a preliminary order recording reasons for his being satisfied that a breach of peace existed, called upon the parties to file their written statements and then after full enquiry passed a final order declaring the appellant to be in possession of the land in dispute. The High Court, however, in a petition under S. 482 found that as there was no clear finding by the Magistrate in the final order that there was an apprehension of breach of peace the order was bad and accordingly allowed the petition and remitted the case to the Magistrate. Allowing the appeal the Supreme Court

Held :

Once a preliminary order drawn up by the magistrate sets out the reasons for holding that a breach of peace exists, it is not necessary that the breach of peace should continue at every stage of the proceeding. The proceeding has to be carried to its logical end culminating in the final order under S. 145(6), unless there is clear evidence to show that the dispute has ceased to exist so as to bring the case within the ambit of Section 145(5). It is, therefore, manifest that a finding of existence of breach of the peace is not necessary at the time when a final order is passed, though it may be proper for the Magistrate to give such a finding at that time. However, where in the written statements filed by the parties, the parties did not state that no dispute between them existed but took contradictory stands in regard to apprehension of breach of peace, it can be presumed that apprehension of breach of peace existed and if such a finding is implicit in the order of the Magistrate, it is not necessary for the Magistrate to repeat what he had said in the preliminary order and in the final order also. In such a case there is no question of the dispute having ended so as to lead to cancellation of the order under S. 145(5). Further, under S. 145 it is for the Magistrate to be satisfied regarding the existence of a breach of the peace and once he records his satisfaction in the preliminary order, the High Court in revision cannot go into the sufficiency or otherwise of the materials on the basis of which the satisfaction of the Magistrate is based.

Assuming, however, that there was an omission on the part of the Magistrate to mention in his final order that there was breach of the peace, that being an error of procedure would clearly fall within the domain of a curable irregularity which is not sufficient to vitiate the order passed by the Magistrate, particularly when there is nothing to show in the instant case that any prejudice was caused to any of the parties who had the full opportunity to produce their evidence before the court. The High Court, in the present case, was, therefore, not justified in interfering with the order of the Magistrate under Section 482 on a purely technical ground when the aggrieved party had a clear remedy in the civil court. *Rajpati* v. *Bachan*, (1980) 4 SCC 116: 1980 SCC (Cri) 927: AIR 1981 SC 18: (1980) 17 ACC 274: 1980 Cri LJ 1276.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.P. Sen*, JJ. [Date of decision: 28-7-1980]

[567] — Ss. 145 and 482 — Order under, which became final on dismissal of revision filed against it, cannot be quashed merely because the party against whom the order operates initiated a civil proceeding — *Order would remain operative till decision of civil court — Nature and effect of order under S. 145 stated — Civil court has jurisdiction to reach a conclusion different from the Magistrate — Rent Control and Eviction*

Although the Supreme Court in *Ram Sumer case* has held that a party should not be permitted to litigate before the criminal court when the civil suit is pending in respect of the same subject-matter, but that does not mean that a concluded order under S. 145, CrPC made by the Magistrate of competent jurisdiction should be set at naught merely because the unsuccessful party has approached the civil court. An order made under S. 145, CrPC deals only with the factum of possession of the party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision of the civil court. The unsuccessful party therefore must get relief only in the civil court. He may move the civil court with properly constituted suit. He may file a suit for declaration and prove a better right to possession. The civil court has jurisdiction to give a finding different from that which the Magistrate has reached. *Jhummamal* v. *State of M.P.*, (1988) 4 SCC 452: 1988 SCC (Cri) 974: AIR 1988 SC 1973: (1988) 3 Crimes 288: 1988 BBCJ 134: (1988) 2 Ker LJ 355.

Bench Strength 2. Coram: *M.H. Kania* and **K. Jagannatha Shetty**, JJ. [Date of decision: 25-8-1988]

Ram Sumer Puri Mahant v. State of U.P., (1985) 1 SCC 427: 1985 SCC (Cri) 98, explained and distinguished

[568] — S. 145 — Authority of court to grant relief to which plaintiff may be entitled, notwithstanding that such relief may not have been asked for — *Held, on facts, S. 209 was rightly invoked by Board of Revenue, the second appellate authority — Plaintiff-respondents filing suit for declaration that they were the recorded tenants and for injunction, alternatively for possession, if they were found not in possession — In previous proceedings under S. 145 CrPC appellant-defendants had been found in possession — Trial court and appellate court dismissing suit — In second appeal Board of Revenue holding that plaintiffs were entitled to be recorded as sah-khatedars — Also finding them not in possession, invoking S. 209 and decreeing suit — Held, High Court rightly dismissed writ petition of appellant-defendants — Rajasthan Tenancy Act, 1955 (3 of 1955) — S. 209* (Para 4). *Bhura Mogiya* v. *Satish Pagariya*, (2001) 9 SCC 385.

Bench Strength 2. Coram: *V.N. Khare* and *Doraiswamy Raju*, JJ. [Date of decision: 20-3-2000]

[569] — S. 145 — Ejectment suit under — Whether defendant-respondents acquired title by adverse possession — *During the period when land remained in custody of criminal court as a result of proceedings initiated under S. 145 CrPC, court must be deemed to have been holding possession on behalf of the person eventually found to be entitled to possession — Held on facts, respondents had matured their title by adverse possession and hence entitled to the status of rightful owners — Limitation Act, 1963, Art. 65 — U.P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) — S. 209. Ram Nath* v. *Director of Consolidation*, 1987 Supp SCC 683.

Bench Strength 2. Coram: *Sabyasachi Mukharji* and *G.L. Oza*, JJ. [Date of decision: 10-11-1987]

[570] — S. 145 — Writ petition against DM's and Appellate Board's order under S. 8-B PRB Act, 1867 — Relief — Jurisdiction of High Court — *Dispute among partners of firm regarding right of one partner against the other to file a declaration under S. 5, PRB Act, 1867 — District Magistrate, in exercise of his powers under S. 8-B, cancelling the declarations filed — Appellate Board upholding that order — Declarant filing a writ petition — High Court setting aside both the said orders and directing the Appellate Board to decide the matter afresh — Subsequently, on a review petition filed by the writ petitioner, High Court directing that the inquiry by District Magistrate should, if an application was filed before him, defer the inquiry till the right to possession of the press was decided by civil court — The conflicting rights of the parties involved in the present case, held, were required to be determined in accordance with law by the statutory authority — Hence, the subsequent direction issued by High Court in the review petition, held, was without jurisdiction — Moreover, such a direction was unsustainable for giving to one party to the lis an unfair advantage over the other in the matter of enforcement of statutory rights — Hence, not sustainable — Constitution of India — Art. 226 — Press and Registration of Books Act, 1867 — Ss. 8-C, 8-B and 5*

R s/o *D* and certain other members of a HUF were partners in *D*'s firm. Taking advantage of *D*'s ill health, *R* made an attempt to create a lease in relation to the right to publish the firm's newspaper *Dainik Bhaskar* from Bhopal in favour of a company of which *D*, *R* and another were members. *D* denied to have signed the lease deed dated 13-4-1984 and, in any event, insisted that the same could be applicable only for Bhopal and not for any other place. On 13-4-1985, a partition/family settlement deed was prepared but was not signed by *D* and one of his brothers. *R* also took alleged possession of the printing press which had been leased out by *D*'s firm to the said Company. *R* allegedly assaulted *D* and his daughters which led to initiation of proceedings under Section 145 CrPC. That proceedings culminated in an order for opening of the locks of the press but *D* was not permitted to run the press. Under Section 5 of the Press and Registration of Books Act, 1867 (for short "the Act") *R* and another filed three declarations each before the District Magistrate allegedly accepting the firm as the owner of the newspaper. *D* filed his objections. The District Magistrate in exercise of his power under Section 8-B of the Act cancelled the said declarations filed by *R*. The Appellate Board upheld that order. *R* filed a writ petition against the

Appellate Board's order. A Single Judge of the Gwalior Bench of M.P. High Court quashed the order of the District Magistrate and also the appellate order and directed the Appellate Board to consider the case afresh. However, on a review application filed by *R*, the same Judge directed that the inquiry by the District Magistrate should be deferred if an application was filed before him till the final outcome of the civil litigations by the parties. *D* alleging his alleged illegal dispossession from the printing press, filed a suit for eviction and permanent injunction, against *R* and also filed an application for temporary injunction against *R* restraining him from publishing the newspaper illegally and from taking possession of the printing press. *R* also filed a cross-suit for a permanent injunction restraining *D* from interfering with the working of the press at Gwalior and taking possession thereof. He also filed an application for temporary injunction. The civil court disposed of both the applications by a common order: (*i*) restraining *R* from interfering with the working of *D* in the matter of managing the affairs of the Company, and (*ii*) restraining *D* from interfering with the printing and publishing of the newspaper *Dainik Bhaskar* from Gwalior. Both the parties preferred cross-appeals before the High Court. Allowing *R*'s appeal and dismissing *D*'s, the High Court held that the suit for temporary injunction was barred under Section 10 of the Companies Act. *D* (since dead) had filed the instant appeals challenging the said orders. These appeals raised the following questions:

(*1*) Whether the order passed by the High Court on *R*'s review application was justified?

(2) Whether the civil court had any jurisdiction to entertain the suit?

Allowing the appeals with costs

Held :

When a disputed question as regards the right of one partner against the other to file a declaration in terms of the provisions of the Act had arisen for consideration, the High Court was not right in issuing a subsequent direction in the review petition. Such a jurisdiction the High Court did not have. The conflicting rights of the parties were required to be determined in accordance with law by the statutory authority. There was no justification in giving to a party to the lis such liberty as to file an application for stay of inquiry by the District Magistrate till the disposal of the civil suit, particularly when the High Court itself was of the opinion that the suit was not maintainable. There was no reason as to why one party to the lis should be given unfair advantage over another in the matter of enforcement of statutory rights under the Act. The impugned orders are, therefore, set aside with a direction to the Appellate Board to hear out and dispose of the appeal as expeditiously as possible but not later than three months from the date of communication of the order passed herein. (Para 17). *Dwarka Prasad Agarwal* v. *Ramesh Chander Agarwal*, (2003) 6 SCC 220: AIR 2003 SC 2696.

Bench Strength 3. Coram: *V.N. Khare, C.J.* and **S.B. Sinha** and *Dr. AR. Lakshmanan*, JJ. [Date of decision: 7-7-2003]

[571] — S. 145 — Territories of States of Bihar and U.P. — Lands on the borders of the two States — Position of three villages Nainijor 1845, Nainijor Nambrar and Nainijor Diare Paschim *— Minutes of meetings dated 19-10-1984 between representatives of the two States and directions contained in proceedings of Board of Revenue, U.P. dated 10-10-1985 and notification dated 26-7-1973 of U.P. Govt. — Held, within jurisdiction of the authorities but did not amount to adjudication on merits of existence of the said three villages or as to whether the land in the three villages was part of the land transferred from Bihar to U.P. under the 1968 Act — That question had to be decided by courts of competent jurisdiction and not by High Court in writ jurisdiction as lot of oral and documentary evidence to be adduced and considered — As regards the notification, held, boundaries have been fixed with reference to the survey of 1881-83 and that if the three villages or survey and physical verification were found to exist, it would have to be ascertained in which village of U.P., according to the survey of 1881-83, they lay — If in the notices/parchis on specific plots, names of persons and villages of both sides were recorded and notices were sent to both sides, there was nothing illegal or contrary in that action inasmuch as these entries were liable to correction, after adjudication, under S. 54(2) of the U.P. Land Revenue Act — When the entries in the records maintained by the U.P. and Bihar officials were conflicting and mistakes and disputes were apparent, they could be corrected and resolved only in the manner prescribed, as the case might be, under Ss. 54, 40, 41, 43 of the U.P. Land Revenue Act, 1901 — Assistant Records Officer could dispose of the matter under S. 54(6) of the said Act — Decision of the said officer was appealable under S. 210 of the U.P. Land Revenue Act, 1901 and there was also a revision to the Board of Revenue, U.P. under S. 219 — High Court also rightly allowed advocates to appear and the Assistant Records Officer to take oral evidence (even in a summary way) and rightly set aside that* *part of the orders of the Board of Revenue — High Court was also right in directing consolidation of the cases under S. 192-A of the Act to avoid multiplicity of the evidence/hearings and in rejecting the rest of the reliefs — As regards an order passed in proceedings under S. 145 CrPC by the Sub-Divisional Magistrate, Buxar on 22-8-1928 declaring the second party (the U.P. parties) to be in possession and raising certain doubts about the existence of certain Bihar villages, held, such an adjudication under S. 145 CrPC cannot be treated as equal to an adjudication on title by a civil court — It will be for the appropriate competent court to consider the relevance and admissibility of the observation made in the said order and adjudicate on the question of title after receiving oral and documentary evidence — High Court was right in not deciding issues of title or possession or the dates of changes in the course of River Ganga or on which side the land lay before the 1968 Act and also as to the existence of the three villages or as to whether the three villages stood transferred in 1968 to the State of U.P. — U.P. Land Revenue Act, 1901 (3 of 1901) — Ss. 54, 40, 41, 43 — Constitution of India — Art. 226 — Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968 (24 of 1968) — S. 3. Ram Badan Rai* v. *Union of India*, (1999) 1 SCC 705: AIR 1999 SC 166.

Bench Strength 2. Coram: *S.B. Majmudar* and **M. Jagannadha Rao**, JJ. [Date of decision: 9-11-1998]

[572] — Ss. 145, 144 and 5 & 482 — Applicability to Bihar Tenancy Act, 1885 — Criminal and civil proceedings — Bar on under Bihar Tenancy Act, 1885 (8 of 1885), Ss. 48-E(13) proviso and (1) — Scope and extent — Proceedings covered *— Held, if bataidari proceedings under S. 48-E(1) are finalised and rights are declared, criminal court is excluded from exercising its power as to disputes over the property — Further held, even during pendency of proceedings, no civil or criminal proceedings shall lie, except in case of breach of peace — Further, 1885 Act being special Act, in view of savings under S. 5 CrPC, CrPC is inapplicable to matters covered by 1885 Act — In the instant case, bataidari proceedings finalised and appellants declared as bataidars — Proceedings invoked under Ss. 144 and 145 CrPC disturbing rights obtained in bataidari proceedings — High Court refusing to interfere under S. 482 CrPC — Held, High Court did not examine ambit of S. 145 CrPC with reference to 1885 Act in proper perspective — Proceedings under S. 145 CrPC quashed — CPC, 1908, S. 9* (Paras 18 to 23, 25 and 28). *Bharat Prasad* v. *State of Bihar*, (2009) 6 SCC 698.

Bench Strength 2. Coram: *Dr. Arijit Pasayat* and **A.K. Ganguly**, JJ. [Date of decision: 6-5-2009]

Ajmer Singh v. Union of India, (1987) 3 SCC 340: 1987 SCC (Cri) 499; Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112, applied

[573] — Ss. 145 and 482 — S. 145 when may be had recourse to — Abuse of process of court — Bataidari proceedings under Bihar Tenancy Act, 1885 (8 of 1885), S. 48 — Rights of appellants as bataidars declared by appropriate authority — Proper forum for agitating disputes *— Without exhausting statutory remedy provided under the 1885 Act, initiating criminal proceedings under Ss. 144 and 145 CrPC, held, is abuse of process of court — Once rights of parties over disputed land adjudicated by a forum, proceedings under S. 145 CrPC not to be initiated to disturb the finding — CrPC, 1973, Ss. 145 and 482 — S. 145 when may be had recourse to — Abuse of process of court* (Paras 27 and 26). *Bharat Prasad* v. *State of Bihar*, (2009) 6 SCC 698.

Bench Strength 2. Coram: *Dr. Arijit Pasayat* and **A.K. Ganguly**, JJ. [Date of decision: 6-5-2009]

Kunjbihari v. Balram, (2006) 11 SCC 66: (2007) 1 SCC (Cri) 376, applied

[574] — S. 145 — Right to reference under S. 29(8), U.P. Wakfs Act, 1960 *— S. 29(8), U.P. Wakfs Act, 1960, held, vests in the aggrieved person an independent right to make a reference within the time specified therein — Where the case of the person making the reference that he came to know about the impugned registration in the course of a proceeding under S. 145 CrPC and thereafter referred the dispute to the Tribunal within the statutory time-limit was accepted by the Tribunal, held, such a finding of fact could not be disturbed in an appeal under Art. 136 — Constitution of India — Art. 136 — Findings of fact — General rule of no interference — Applied — U.P. Muslim Wakfs Act, 1960 (16 of 1960) — Ss. 29(8) & (7) and 8(1)*

The U.P. Shia Central Board of Wakfs (for short "the Shia Wakf Board") registered the mosque in question, its sehan and Imam Chowk on 30-10-1978. Aggrieved by the said registration, the Sunni Central Board of Wakf (for short "the Sunni Wakf Board") made a reference to the Muslim Wakf Tribunal in 1988 stating that the said property had been registered by it as a Sunni wakf in 1980. It further stated that in a proceeding under Section 145 CrPC initiated in 1988 it came to know about the action of the Shia Wakf Board in the matter and made the reference within 90 days from the date of knowledge about the order of registration. The Tribunal allowed the reference in respect of part of the property in question and dismissed the same in respect of the remaining part. Both the parties filed revision petitions before the High Court which dismissed the revision petition filed by the Shia Wakf Board and allowed that filed by the Sunni Wakf Board and remanded the matter to the Tribunal for fresh trial. The appellants including the Shia Wakf Board contended that: (*i*) the dispute was beyond the purview of Section 29(8) of the U.P. Muslim Wakfs Act, 1960 (for short "the Act") and, therefore, the reference was not maintainable, (*ii*) in the absence of any notification by the Commissioner under Section 6(4) of the Act a reference under Section 8(1) was not maintainable, and (*iii*) under the proviso to Section 8(1), the dispute was barred by limitation. Dismissing the appeals,

Held :

Section 29(8) of the Act vests an independent right in a person aggrieved by an order of the Board under Section 29(7) to make an application to refer the dispute to the Tribunal. Such an application is to be made within 90 days from the date of the order by which the applicant feels aggrieved. The case of the respondents that they came to know about the registration of the mosque, its sehan and the Imam Chowk by the Shia Wakf Board in course of a proceeding under Section 145 CrPC and within 90 days thereafter they filed a dispute before the Tribunal has been accepted by the Tribunal and confirmed by the High Court. There is little scope to disturb the findings of fact in the present appeals. Therefore, the appellant's contention that the dispute raised before the Tribunal under Section 29(8) of the Act was barred by limitation also cannot be accepted. (Paras 19 and 20). *U.P. Shia Central Board of Wakf* v. *U.P. Sunni Central Board of Wakf*, (2001) 5 SCC 162: AIR 2001 SC 2086.

Bench Strength 2. Coram: *S. Rajendra Babu* and **D.P. Mohapatra**, JJ. [Date of decision: 1-5-2001]

[575] — S. 145(4) proviso — Exercise of power under Art. 142, Constitution of India — When not justified — *Petitioner's claim for restoration of possession of disputed premises barred by limitation of two months provided under proviso to S. 145(4) of the CrPC, 1973 — Remedy under ordinary law for recovery of possession available to the petitioner — Held, on facts, there are no special circumstances justifying grant of relief to the petitioner in exercise of power under Art. 142 — Mere fact that the petitioner is an old lady and the respondents have been indulging in similar litigations not sufficient to grant relief to the petitioner — Constitution of India — Art. 142*

The petitioner herself permitted the first respondent to temporarily occupy the premises in question and subsequently the first respondent allowed the second respondent to occupy the property claiming that he was her husband and thereafter they constructed a wall dividing the said portion from the other portion occupied by the petitioner. On these facts there are no special circumstances which are different from ordinary cases where a person permits a licensee or a tenant to occupy the premises and upon termination of the licence or the lease, the licensee or the tenant, as the case may be, does not vacate the premises or makes some construction on the property. No doubt the petitioner is an old lady of 75 years and there is some material to show that Respondents have been indulging in similar litigations. But that is not sufficient for exercising power under Article 142. The petitioner has adequate remedies under the law for recovery of possession. *R.C. Patuck* v. *Fatima A. Kindasa*, (1997) 5 SCC 334: 1997 SCC (Cri) 679: AIR 1997 SC 2320: 1997 Cri LJ 2756.

Bench Strength **2**. Coram: *S.B. Majmudar* and **M. Jagannadha Rao**, JJ. [Date of decision: 6-5-1997]

Union Carbide Corpn. v. *Union of India*, (1991) 4 SCC 584, *distinguished*

[576] — S. 145(4) proviso — Dispossession of the petitioner found to be for a period in excess of two months next before the date of preliminary order under S. 145(1) — *Held, proviso to S. 145(4) does not apply and, therefore, no order for restoration of possession could be passed in favour of the petitioner — Conditions mentioned in the said proviso cannot be deemed to be satisfied on ground that the dispossession of the petitioner amounted to a continuing wrong*

In cases where the proviso to Section 145(4) applied, that is, if it appeared to the Magistrate that any party had been forcibly and wrongfully dispossessed, within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), the Magistrate might treat the party so dispossessed as if the said party had been in possession on the date of his order under sub-section (1). In other words, if the conditions mentioned in the proviso to sub-section (4) were satisfied, the Magistrate could deem a person to be in possession as on the date of the order under Section 145(1) notwithstanding the fact that he was not in fact in possession on that date, but lost possession earlier, within two months next before the order.

In the present case there is no material to show that any report of a police officer or other information was received by the Magistrate within the period contemplated by the proviso. On the other hand, the petitioner's admissions show that she lost possession much before the period mentioned in the said proviso. Therefore, the courts below were right in coming to the conclusion that no order for restoration of possession could be passed in favour of the petitioner under Section 145 of the CrPC. The contention that as the dispossession of the petitioner was continuing, and it amounted to a continuing wrong and, therefore, the proviso to sub-clause (4) must be deemed to be satisfied cannot be accepted. *R.C. Patuck* v. *Fatima A. Kindasa*, (1997) 5 SCC 334: 1997 SCC (Cri) 679: AIR 1997 SC 2320: 1997 Cri LJ 2756.

Bench Strength **2**. Coram: *S.B. Majmudar* and **M. Jagannadha Rao**, JJ. [Date of decision: 6-5-1997]

[577] — S. 145(6) — Retrieving Company's property wrongfully withheld by officer/employee — Criminal proceedings not barred by interim order in civil proceedings — *Where High Court, in a civil suit, directed the defendant Company not to dispossess the legal representatives of the deceased employee, of the flat allotted to the deceased, except by due process of law, held, the remedy available to the Company under S. 630 was nonetheless a proceedings taken in due process of law — High Court erred in holding that being penal in nature such proceedings were not one in due course of law — Words and phrases — "Due process of law", "such officer or employee", "property" — Specific Relief Act, 1963 — S. 6 — Companies Act, 1956 — S. 630*

Due process of law in the present context would ordinarily mean such an exercise of power by the parties as the settled principles of law permit and/or a course of legal proceedings, according to those rules and principles which have been established in the country's systems of jurisprudence for the enforcement and protection of private rights. Due process of law would in short mean a procedure established by law, which is a procedure fixed or laid down in law. When the High Court passed an order of injunction, in the aforesaid terms, it meant that the Company should not take forcible possession of the flat in question during the pendency of the suit and the Company was given liberty to take steps for possession as was permissible under law including the provisions of any statute giving right to obtain possession to the company in the facts and circumstances of the case. The company could prove unlawful possession of the property by the employee or his or her legal representative after the demise of the employee or an officer of the company. The company had the remedy to initiate action under Section 630(1) and on conviction by the competent criminal court it could approach the same court for directing delivery of possession which Section 630(2) provides. The remedy is provided in the statute itself and the High Court's order by no stretch of imagination could be read to mean that the Company had to necessarily approach the civil court only for obtaining possession of the flat in question and the remedy available under the Companies Act could not be resorted to. The decision of the High Court that Section 630 of the Companies Act being penal in nature, the proceeding thereunder could not be construed to be a proceeding taken in due process of law, cannot be sustained. Filing of civil suit for possession by the Company did not deprive the Company of the right to institute prosecution under the Companies Act and incidentally get an order for delivery of possession. (Para 17). *Shubh Shanti Services Ltd.* v. *Manjula S. Agarwalla*, (2005) 5 SCC 30: 2005 SCC (Cri) 993: AIR 2005 SC 2506: (2005) 125 Comp Cas 477: (2005) 107 FLR 7: (2005) 3 Mah LJ 340.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **P.P. Naolekar**, JJ. [Date of decision: 11-5-2005]

Shubh Shanti Services Ltd. v. Manjula S. Agerwalla, 2004 CLC 1438 (Bom), reversed

[578] — S. 145(6) — "Until evicted therefrom in due course of law" — *Means eviction of the party successful before the Magistrate consequent upon adjudication of title or right to possession by a competent court but it does not necessarily mean eviction decree — Party unsuccessful before the Magistrate can dispute correctness of the findings before competent court — Burden lies on him to prove before the competent court his possession or entitlement to possession — Relief which the unsuccessful party can seek before the competent court, stated*

The words "until evicted therefrom in due course of law" as occurring in Section 145(6), CrPC mean the eviction of the party successful before the Magistrate, consequent upon the adjudication of title or right to possession by a competent court; that does not necessarily mean a decree of eviction. The party unsuccessful before the Magistrate may dispute the correctness of the finding arrived at by the Magistrate and is at liberty to show before the competent court that it had not dispossessed the successful party or that it is the unsuccessful party and not the successful party who was actually in possession and the finding to the contrary arrived at by the Magistrate was wholly or apparently erroneous and unsustainable in law. (Para 17)

A party unsuccessful in an order under Section 145(1) CrPC would initiate proceedings in a competent court to establish its entitlement to possession over the disputed property against the successful party. Ordinarily, a relief of recovery of possession would be appropriate to be sought for. In legal proceedings initiated before a competent court consequent upon attachment under Section 146(1) CrPC it is not necessary to seek relief of recovery of possession. As the property is held *custodia legis* by the Magistrate for and on behalf of the party who would ultimately succeed from the court, it would suffice if only determination of the rights with regard to the entitlement to the possession is sought for. Such a suit shall not be bad for not asking for the relief of possession. (Para 23)

The effect of the Magistrate's order is that burden is thrown on the unsuccessful party to prove its possession or entitlement to possession before the competent court. (Para 15). *Shanti Kumar Panda* v. *Shakuntala Devi*, (2004) 1 SCC 438: 2004 SCC (Cri) 320: AIR 2004 SC 115: 2004 Cri LJ 1249: 2003 All LJ 2839.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 3-11-2003]

(1996) 2 AWC 953 (All), affirmed

— S. 146 *See also* S. 146, Criminal Procedure Code, 1898, pp. 989 et seq. in Vol. 2

— S. 146 *See* Ss. 145 and 146
See also Ss. 145, 146 and 397 & 401

[579] — Ss. 146 and 145 — Attachment order under — Comes to an end as soon as Civil Court passes even an interim order or appoints a receiver and accordingly magistrate must withdraw the attachment order in view of seizure of the matter by civil court — *Final determination of rights of the parties by the civil court not essential for cessation of the attachment order and its consequent withdrawal*

The determination by a competent court of the rights of the parties spoken of in S. 146(1) has not necessarily to be a final determination. The determination may be even tentative at the interim stage when the competent court passes an order of interim injunction or appoints a receiver in respect of the subject-matter of the dispute pending the final decision in the suit. The moment the competent court does so, even at the interim stage, the order of attachment passed by the Magistrate has to come to an end. Otherwise, there will be inconsistency between the order passed by the civil court and the order of attachment passed by the Magistrate. The proviso to sub-section (1) of S. 146 itself takes cognizance of such a situation. When a civil court passes an order of injunction or receiver, it is the civil court which is seized of the matter and any breach of its order can be punished by it according to law. Hence on the passing of the interlocutory order by the civil court, it can legitimately be said that there is no longer any likelihood of the breach of the peace with regard to the subject of dispute. The 'other incidental or consequential orders as may be just' in proviso (*b*) to sub-section (2) of S. 146 may include an order of withdrawal of the attachment in view of the seizure of the matter by the civil court and the consequent want of apprehension of breach of the peace. It is, therefore, not correct to say that the property continues to remain under attachment of the Magisterial order till the rights of the parties are decided finally by the competent court of law. The Magistrate can withdraw the order of attachment passed by him even during the pendency of the dispute in the civil court. *Dharampal* v. *Ramshri*, (1993) 1 SCC 435: 1993 SCC (Cri) 333: AIR 1993 SC 1361: (1993) 1 Crimes 304: (1993) 1 An WR 60 (SC): (1993) 1 BLJR 361.

Bench Strength **2**. Coram: **P.B. Sawant** and *R.M. Sahai*, JJ. [Date of decision: 7-1-1993]

Ram Sri v. Dhanpat, 1981 All Cri Cases 41, reversed

— S. 146(1) *See also* Ss. 145 and 146(1)

[580] — S. 146(1) — "Competent court" — *Does not necessarily mean civil court — It means court having jurisdictional competence to decide right or title of the parties as regards entitlement to possession of the property in question*

The words "competent court" as used in Section 146(1) CrPC do not necessarily mean a civil court only. A competent court is one which has the jurisdictional competence to determine the question of title or the rights of the parties with regard to the entitlement as to possession over the property forming the subject-matter of proceedings before the Executive Magistrate. (Para 23). *Shanti Kumar Panda* v. *Shakuntala Devi*, (2004) 1 SCC 438: 2004 SCC (Cri) 320: AIR 2004 SC 115: 2004 Cri LJ 1249: 2003 All LJ 2839.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 3-11-2003]

Bhinka v. Charan Singh, AIR 1959 SC 960: 1959 Cri LJ 1223, relied on

(1996) 2 AWC 953 (All), affirmed

— S. 148(3) *See* Ss. 482, 148(3), 342, 359, 357, 358 and 227

— Ch. XI (Ss. 149 to 153) *See* Ss. 152, 149, 151, 129, 130, 133 and 144, Ch. X (Ss. 129 to 148) and Ch. XI (Ss. 149 to 153)

— S. 149 *See* Ss. 152, 149, 151, 129, 130, 133 and 144, Ch. X (Ss. 129 to 148) and Ch. XI (Ss. 149 to 153)

[581] — Ss. 150, 154 and 155 and S. 2(h) — Crime detection and "investigation" of crimes — Distinction — DLaying of trap to ensnare committer of an apprehended crime, if part of 'investigation'HD — *Role of citizenry in crime detection and passing on of such information to the authorities concerned — If any information regarding the commission of any crime is known to any person, such information can be passed on to the police or any other competent authority for taking appropriate action and, held, the said collection and passing on of such information would not amount to an "investigation" within the meaning of S. 2(h) — Prevention of Food Adulteration Act, 1954 — S. 12 — Held, collection of samples and the sending of them for public analysis does not amount to "investigation" — Words and phrases — "Investigation"*

Every citizen is competent and entitled to detect crimes and report, and if any information regarding the commission of any crime is known to any person, such information can be passed on to the police or any other competent authority for taking appropriate action, for example, under the Food Adulteration Act, an ordinary citizen is competent to collect samples and send them for public analysis, and based on the report of the public analyst, the complaint can be filed before the appropriate authority. The collection of the samples and the analysis by the public analyst do not amount to investigation. If a crime is committed in the presence of any citizen, he can very well ascertain the truth of the fact and make all efforts to bring home the guilt of the accused. (Para 9). *State of Rajasthan* v. *Shambhoogiri*, (2004) 8 SCC 169: (2004) 3 KLT 520.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 12-10-2004]

— **S. 151** *See also* S. 151, Criminal Procedure Code, 1898, pp. 991 et seq. in Vol. 2

—**S. 151** *See* Ss. 11, 12, 13, 190, 129 and 151

See also Ss. 41, 151, 2(c), 156 and 157(1)

See also Ss. 41, 151, 156 and 157(1)

See also Ss. 41, 151, 157 and 172

See also Ss. 152, 149, 151, 129, 130, 133 and 144, Ch. X (Ss. 129 to 148) and Ch. XI (Ss. 149 to 153)

See also CRIMINAL LAW — 'Preventive Detention'

[582] — S. 151 — Held, not unconstitutional — Power conferred on police authorities to arrest a person without order of Magistrate and without warrant — *Conditions and guidelines for exercise of power are provided in the section itself — Those guidelines read with the requirements laid down by Supreme Court in* Joginder Kumar *v.* State of U.P., *(1994) 4 SCC 260 and* D.K. Basu *v.* State of W.B., *(1997) 1 SCC 416 ensure that power shall not be abused — Merely because the authority concerned may abuse the power, the provision cannot be held to be arbitrary and unreasonable — Constitution of India — Arts. 14, 21 and 22*

The provision cannot be said to be either arbitrary or unreasonable or infringing upon the fundamental rights of a citizen under Articles 21 and 22 of the Constitution. (Para 5)

Thus Section 151 CrPC itself makes provision for the circumstances in which an arrest can be made under that section and also places a limitation on the period for which a person so arrested may be detained. The guidelines are inbuilt in the provision itself. Those statutory guidelines have to be read with the requirements laid down in *Joginder Kumar* and *D.K. Basu cases*. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee. This Court has also cautioned that failure to comply with those requirements, shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court. The guidelines provided under Section 151 read with the requirements laid down in the aforesaid two cases provide an assurance that the power shall not be abused and in case of abuse, the authority concerned shall be adequately punished. Such a provision cannot be held to be unreasonable or arbitrary and, therefore, unconstitutional, merely because the authority vested with the power may abuse his authority. Since several cases of abuse of authority in matters of arrest and detention have come to notice the Supreme Court has laid down the requirements which have to be followed in all cases of arrest and detention. (Paras 10 and 9)

Therefore, there is no substance in the contention that Section 151 CrPC is unconstitutional and ultra vires the constitutional provisions. (Para 11). *Ahmed Noormohmed Bhatti* v. *State of Gujarat*, (2005) 3 SCC 647: 2005 SCC (Cri) 794: AIR 2005 SC 2115: (2005) 2 KLT 769: 2005 Cri LJ 2157: (2005) 2 Guj LR 1402.

Bench Strength **2**. Coram: *N. Santosh Hegde*, **B.P. Singh** and *S.B. Sinha*, JJ. [Date of decision: 16-3-2005]

Joginder Kumar v. State of U.P., (1994) 4 SCC 260: 1994 SCC (Cri) 1172; D.K. Basu v. State of W.B., (1997) 1 SCC 416: 1997 SCC (Cri) 92, applied

[583] — Ss. 151, 155 and 156 — "Arrest" — Meaning and origin, stated — *Constitution of India — Arts. 20 to 22*

The term "arrest" has neither been defined in CrPC nor in IPC nor in any other enactment dealing with offences. The word "arrest" is derived from the French word "arrater" meaning "to stop or stay". It signifies a restraint of a person. "Arrest" is thus a restraint of a man's person, obliging him to be obedient to law. "Arrest" then may be defined as "the execution of the command of a court of law or of a duly authorised officer". (Para 20). *Union of India* v. *Padam Narain Aggarwal*, (2008) 13 SCC 305: (2008) 231 ELT 397.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 3-10-2008]

[584] — Ss. 151/117 — Preventive Detention — Detention order — Detenu already in jail or custody, Order of detention passed while detenu in jail custody under proceedings under Ss. 151/117, CrPC, held, not improper

The petitioner was in jail custody in proceedings under S. 151, CrPC. That custody was obviously of a short duration. The mere service of the detention order on the petitioner in jail would not therefore invalidate the order. On the basis of the antecedent activities of the petitioner in the proximate past, the detaining authority could reasonably reach its subjective satisfaction about his tendency or inclination to act in a manner prejudicial to the maintenance of public order, after his release on the termination of the security proceedings under the Code. *Ramakrishna Rawat (Dr.)* v. *Distt. Magistrate*, (1975) 4 SCC 164: 1975 SCC (Cri) 457: AIR 1975 SC 90: 1975 Cri LJ 46.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *A.C. Gupta*, JJ. [Date of decision: 11-10-1974]

Rameshwar Shaw v. District Magistrate, (1964) 4 SCR 921: AIR 1964 SC 334: 1964 (1) Cri LJ 257 and Makhan Singh Tarsikka v. State of Punjab, (1964) 4 SCR 932: AIR 1964 SC 1120: 1964(2) Cri LJ 217, distinguished.

[**Ed.**: In both of these cases the petitioners were in jail as undertrial prisoners. That was why it was held that it could not be rationally postulated that if they were not detained they would act in a prejudicial manner.]

[585] — S. 151(2) — Period of detention under S. 151 cannot exceed 24 hours and in absence of anything else, after expiry of that period the detainee must be released — *However, if before 24 hours of detention the detainee is found to be required to be detained under any other provision of the Code or under any other law, his detention would continue under that provision or law instead of under S. 151*

The conditions under which a police officer may arrest a person without an order from a Magistrate and without a warrant, have been laid down in Section 151 CrPC. He can do so only if he has come to know of a design of the person concerned to commit any cognizable offence. A further condition for the exercise of such power, which must also be fulfilled, is that the arrest should be made only if it appears to the police officer concerned that the commission of the offence cannot be otherwise prevented. Section 151, therefore, expressly lays down the requirements for the exercise of the power under it. If these conditions are not fulfilled and a person is arrested under Section 151 CrPC, the arresting authority may be exposed to proceedings under the law. Sub-section (2) lays down the rule that normally a person so arrested shall be detained in custody not for a period exceeding 24 hours. It, therefore, follows that in the absence of anything else, on expiry of 24 hours, he must be released. The release, however, is not insisted upon only when his further detention is required or authorised under any other provision of the Code or of any other law for the time being in force. It, therefore, follows that if before the expiry of 24 hours of detention it is found that the person concerned is required to be detained under any other provision of the Code of Criminal Procedure, or of any other law for the time being in force, he may not be released and his detention may continue under such law or such provision of the Code. The detention thereafter is not under Section 151 but under the relevant provision of the Code or any other law for the time being in force as the case may be. Section 151, therefore, only provides for arrest of a person to prevent the commission of a cognizable offence by him. (Para 5). *Ahmed Noormohmed Bhatti* v. *State of Gujarat*, (2005) 3 SCC 647: 2005 SCC (Cri) 794: AIR 2005 SC 2115: (2005) 2 KLT 769: 2005 Cri LJ 2157: (2005) 2 Guj LR 1402.

Bench Strength **2**. Coram: *N. Santosh Hegde*, **B.P. Singh** and *S.B. Sinha*, JJ. [Date of decision: 16-3-2005]

[586] — Ss. 152, 129, 130, 133 and 144 — Guidelines issued by Supreme Court to police officers to enforce statutory duties under CrPC — Power of Supreme Court, held, extends to laying down directions or orders where the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power

to implement the same — *Albeit, it cannot give any direction for amending the Act or statutory rules — Moreover, it cannot give a direction contrary to the Act and Rules — Case law on situations in which a positive mandamus can be issued, discussed — In the present case, issuance of guidelines to Police to enforce statutory duties under Police Act, 1861 and CrPC, 1973 and to create a special purpose vehicle in respect of damages for riot cases found necessary — Hence, such guidelines issued — However, guidelines to determine the role of media during agitations, bandhs, hartals resulting in destruction of public and private properties not issued at this stage, and the matter left to appropriate authorities — Police Act, 1861, Ss. 30, 30-A and 31*

The power of the Supreme Court extends to laying down guidelines. The Supreme Court cannot give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules. However, when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Supreme Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted. (Para 17)

The Supreme Court has issued directions in a large number of cases to meet urgent situations. (Para 18)

The situations in which a positive mandamus to do a particular act in a particular way, may be broadly classified in the following manner. First are the broad mandamus cases where it has been held that the Court may issue a positive mandamus to enforce the law. Thus, in *Vineet Narain case*, (1998) 1 SCC 226 detailed orders were passed for the investigation of the Hawala transaction cases. It was laid down that positive directions can be issued where there is a power coupled with a duty. The situations under which this can happen are numerous. In a sense, the guidelines in *Vineet Narain case* also purported to be to enforce the statute, without more, even though the constitutional right to a corruption-free government under Article 21 was involved. (Paras 19 and 24)

In *K.S. Jagannathan case*, (1986) 2 SCC 679 the Court explored the need to issue a positive mandamus where a power was coupled with a duty. (Para 21)

In *D.K. Basu case*, (1997) 1 SCC 416 detention guidelines were issued. The purpose of the said guidelines was to effectuate a constitutional right within the framework of a statute. (Paras 22 and 23)

There are also several cases showing that guidelines may become necessary in the absence of a statutory framework. (Para 25)

The present case is one in which guidelines are necessary:

(*i*) to the police to enforce statutory duties under the Police Act, 1861 and CrPC, and (*ii*) to create a special purpose vehicle in respect of damages for riot cases. (Paras 28, 29 and 33). *Destruction of Public & Private Properties* v. *State of A.P.*, (2009) 5 SCC 212.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 16-4-2009]

Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294; Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307, reiterated

Lakshmi Kant Pandey v. Union of India, (1984) 2 SCC 244; Vishaka v. State of Rajasthan, (1997) 6 SCC 241: 1997 SCC (Cri) 932; Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307; State of W.B. v. Sampat Lal, (1985) 1 SCC 317: 1985 SCC (Cri) 62; K. Veeraswami v. Union of India, (1991) 3 SCC 655: 1991 SCC (Cri) 734; Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584; Delhi Judicial Service Assn. v. State of Gujarat, (1991) 4 SCC 406; DDA v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622; Dinesh Trivedi v. Union of India, (1997) 4 SCC 306; Common Cause v. Union of India, (1996) 1 SCC 753; Supreme Court Advocates-on-Record Assn. v. Union of India, (1993) 4 SCC 441; Comptroller and Auditor-General of India v. K.S. Jagannathan, (1986) 2 SCC 679: 1986 SCC (L&S) 345: (1986) 1 ATC 1; Commr. of Police v. Gordhandas Bhanji, AIR 1952 SC 16; Julius v. Lord Bishop of Oxford, (1880) 5 AC 214: (1874-80) All ER Rep 43 (HL); D.K. Basu v. State of W.B., (1997) 1 SCC 416: 1997 SCC (Cri) 92, relied on

Comyns's Digest, Mandamus (A); Halsbury's Laws of England, 4th Edn., Vol. I, Para 89, referred to

[**Ed.**: *See also* Art. 32, '(e)(6)(x) Executive or Legislative action/inaction or gaps — Orders/directions redressing/filling', pp. 579 et seq. in **Vol. 7**, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

[587] — Ss. 152, 149, 151, 129, 130, 133 and 144, Ch. X (Ss. 129 to 148) and Ch. XI (Ss. 149 to 153) — Preventive action by police — Maintenance of public order and tranquillity — Protection of public and private property — Duty of officers/police authorised under Chs. X and XI — Dereliction of — Suo motu action by Supreme Court — *Caste-based rioting and disorder by Gujjars to protest against their non-inclusion in list of Scheduled Tribes leading to large-scale destruction of public and private property — No preventive action taken nor any action taken against the offenders — Supreme Court taking suo motu cognizance on basis of* *media coverage and directing TV channels concerned to provide footage of the telecasts to the police for appropriate action and Directors General of Police of States of Haryana, Rajasthan and U.P. and Commissioner of Police, Delhi directed to file affidavits in the Supreme Court within ten days of this order, as to what action had been taken or was proposed to be taken against the offenders, including an indication if no action has been taken and the reason therefor — Constitution of India — Arts. 32 and 142*

In the last one week there has been large-scale destruction of public and private properties and no preventive action appears to have been taken and unfortunately it does not prima facie appear that any action has been taken against the offenders who were responsible for destruction of such properties. The Directors General of Police of the States of Haryana, Rajasthan and Uttar Pradesh and the Commissioner of Police, Delhi are directed to file affidavits in this Court as to what actions have been taken and/or are proposed to be taken against the offenders. *Destruction of Public & Private Properties, In re*, (2007) 4 SCC 474: (2007) 2 SCC (Cri) 351.

Bench Strength **2**. Coram: *Dr. Arijit Pasayat* and *D.K. Jain*, JJ. [Date of decision: 5-6-2007]

— Ch. XII (Ss. 154 to 176) *See* S. 6 and Chapter XII

See also Chs. X (Ss. 129 to 148) and XII (Ss. 154 to 176)

See also Ss. 156, 157, 154, 190 and Ch. XII

See also S. 156(3) and Ch. XII

See also Ss. 167, 2(h), 4(2), 26(b) and Ch. XII (Ss. 154 to 176)

[588] — Ch. XII (Ss. 154 to 176) and Ss. 162 and 174 — Investigation under — Provision of S. 162 mandatory — Applies during inquest under S. 174 — *CrPC, 1898, Ch. XIV (Ss. 154 to 176)*

While it is true that the receipt and registration of an FIR is not the sine qua non to the setting in motion of the machinery of criminal investigation, the investigating officer must follow the procedure laid down in Part V, Chapter XIV.

Even a statement of a witness recorded by the investigator during the inquest under S. 174 would be within the inhibition of S. 162. Behind this provision is a wholesome rule of public policy that witnesses at the trial should be free to tell the truth, unhampered by anything they might have been made to say to the police. *Razik Ram* v. *Jaswant Singh Chouhan*, (1975) 4 SCC 769: AIR 1975 SC 667.

Bench Strength **2**. Coram: *A. Alagiriswami* and **R.S. Sarkaria**, JJ. [Date of decision: 11-2-1975]

[589] — Ch. XII (Ss. 154 to 176) and S. 173(2) — Where investigation conducted by CBI, Ch. XII would apply — *"Police" referred to therein would apply to the officers under Delhi Police Establishment Act — After conclusion of investigation, report has to be filed by CBI under S. 173(2) to Special Judge who takes the place of Magistrate, when offence falls under Prevention of Corruption Act*

Though the investigation was conducted by CBI the provisions under Chapter XII of the Code would apply to such investigation. The police referred to in the Chapter, for the purpose of investigation, would apply to the officer/officers of the Delhi Police Establishment Act. On completion of the investigation the report has to be filed by CBI in the manner provided in Section 173(2) of the Code, with the exception that the Magistrate referred to in the section would be understood as a Special Judge when the offence involved is under the Prevention of Corruption Act, 1988. (Para 13). *Hemant Dhasmana* v. *CBI*, (2001) 7 SCC 536: 2001 SCC (Cri) 1280: AIR 2001 SC 2721.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 17-8-2001]

[590] — Ch. XII (Ss. 154 to 176) — Investigation — Powers of police — *Held, do not include torturing a person to extract information, be he an accused or a witness — Duty to investigate should be discharged within four corners of law — Constitution of India — Art. 21*

It is the duty of the police, when a crime is reported, to collect evidence to be placed during trial to arrive at the truth. That certainly would not include torturing a person, be he an accused or a witness, to extract information. The duty should be done within four corners of law. Law enforcers cannot take the law into their hands in the name of collecting evidence. (Para 10). *Munshi Singh Gautam* v. *State of M.P.*, (2005) 9 SCC 631: 2005 SCC (Cri) 1269: AIR 2005 SC 402: 2005 Cri LJ 320.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-11-2004]

Sahadevan v. State, (2003) 1 SCC 534, relied on

[591] — Ch. XII (Ss. 154 to 176) — Delay in investigation and trial — Charge of waging war against the State — *Investigation involving complex problems of sensitive and political nature — Accused capable of asserting their rights but never raising objections as to the delay before — Held on facts, delay not unreasonable and unfair — Hence Art. 21 not violated — Penal Code, 1860, S. 124-A — Constitution of India — Art. 21*

The delay in investigation and trial in this case was the outcome of the nature of the case and the general situation prevailing in the country. If the investigating agency suspected a conspiracy to wage war, it was its bounden duty to search for evidence wherever it could be found and not content itself by reading the letters and examining the recipients of the letters. When the facts are to be discovered or unearthed, particularly in cases of suspected conspiracies bristling with all manner of complexities and complications including those of a sensitive, political nature, where the investigating agency has to tread warily and with circumspection, the investigating agency cannot be blamed for the slow progress that they made in investigating a case of this nature. There was nothing sinister in the lulls in the investigation. Investigation of this case was not the only task of the investigating agency.

There must have been other cases and tasks. The police are also incharge of law and order.

Further, the accused in the present case were capable of asserting their rights whenever and whenever necessary and they did in fact assert their rights as and when necessary, as was evident from the number of petitions filed before the Magistrate, and the Special Judge, from time to time. This does not mean that the ability of the accused to assert their rights should penalise them. But one of the factors to be considered in determining whether as accused persons has been deprived of his right is the responsibility of the accused for asserting his rights. Until the filing of the petitions before the Supreme court, there was no serious protest by the accused about any delay, whereas after the charge-sheet was filed, at least on two occasions the prosecuting agency expressed an anxiety to have the case disposed of as expeditiously as possible.

In the circumstances, a direction that the trial should start soon and proceed from day to day was all that was called for in the instant case. *Raghubir Singh* v. *State of Bihar*, (1986) 4 SCC 481: 1986 SCC (Cri) 511: AIR 1987 SC 149.

Bench Strength **2** . Coram: **O. Chinnappa Reddy** and *M.M. Dutt*, JJ. [Date of decision: 19-9-1986]

[592] — Chs. XII (Ss. 154 to 176), IV-A (S. 36), V to VII (Ss. 41 to 105) — Crime detection — Scope of — Various steps involved in, enumerated — Delegable and non-delegable steps in, differentiated — *The authority responsible for each step, held (per curiam), is the officer in charge of the police station, though he might have delegated some steps*

Under CrPC, investigation consists of proceeding to the spot, ascertainment of the facts and circumstances of the case, discovery and arrest of the suspected offender, collection of evidence and formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge-sheet under Section 173. The scheme of CrPC shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for each one of the above steps is that of the officer in charge of the police station. The final step in the investigation, namely, the formation of the opinion as to whether or not there is a case to place the accused on trial is to be of the officer in charge of the police station and this function cannot be delegated and can be performed by no other authority. The formation of the opinion of the police on the material collected during the investigation as to whether judicial scrutiny is warranted or not is entirely left to the officer in charge of the police station. There is no provision for delegation of the above function regarding formation of the opinion but only a provision entitling the superior officers to supervise or participate under Section 36 CrPC. (Paras 20, 21 and 31). *M.C. Mehta (Taj Corridor scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264: AIR 2007 SC 1087: (2007) 53 AIC 192 (SC).

Bench Strength **3** . Coram: **S.B. Sinha** ^{2}, **S.H. Kapadia** ^{1} and *D.K. Jain*^{1}, JJ. [Date of decision: 27-11-2006]

[593] — Ch. XII (Ss. 154 to 176) — Cross-examination — Right of — During investigation or inquiry accused does not have any right to cross-examine the witnesses — *Evidence Act, 1872, Ss. 137 and 138. State of H.P.* v. *Surinder Mohan*, (2000) 2 SCC 396: 2000 SCC (Cri) 400: AIR 2000 SC 1862: 2000 Cri LJ 1429.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 7-2-2000]

[594] — Ch. XII (Ss. 154 to 176) and Ss. 162 and 174 — Investigation under — Provision of S. 162 mandatory — Applies during inquest under S. 174 — *CrPC, 1898, Ch. XIV (Ss. 154 to 176)*

While it is true that the receipt and registration of an FIR is not the sine qua non to the setting in motion of the machinery of criminal investigation, the investigating officer must follow the procedure laid down in Part V, Chapter XIV.

Even a statement of a witness recorded by the investigator during the inquest under S. 174 would be within the inhibition of S. 162. Behind this provision is a wholesome rule of public policy that witnesses at the trial should be free to tell the truth, unhampered by anything they might have been made to say to the police. *Razik Ram* v. *Jaswant Singh Chouhan*, (1975) 4 SCC 769: AIR 1975 SC 667.

Bench Strength **2**. Coram: *A. Alagiriswami* and **R.S. Sarkaria**, JJ. [Date of decision: 11-2-1975]

[595] — Ch. XII (Ss. 154 to 176) and S. 173(2) — Where investigation conducted by CBI, Ch. XII would apply — *"Police" referred to therein would apply to the officers under Delhi Police Establishment Act — After conclusion of investigation, report has to be filed by CBI under S. 173(2) to Special Judge who takes the place of Magistrate, when offence falls under Prevention of Corruption Act*

Though the investigation was conducted by CBI the provisions under Chapter XII of the Code would apply to such investigation. The police referred to in the Chapter, for the purpose of investigation, would apply to the officer/officers of the Delhi Police Establishment Act. On completion of the investigation the report has to be filed by CBI in the manner provided in Section 173(2) of the Code, with the exception that the Magistrate referred to in the section would be understood as a Special Judge when the offence involved is under the Prevention of Corruption Act, 1988. (Para 13). *Hemant Dhasmana* v. *CBI*, (2001) 7 SCC 536: 2001 SCC (Cri) 1280: AIR 2001 SC 2721.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 17-8-2001]

[595-A] — Ch. XII (Ss. 154 to 176) and S. 190 — Officers of Department of Revenue Intelligence (DRI) invested with powers of officer-in-charge of police station under S. 53, NDPS Act, 1985 — *Held, are not police officers within the meaning of S. 25, Evidence Act, 1872 — Consequently confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible as evidence. Raj Kumar Karwal* v. *Union of India*, (1990) 2 SCC 409: 1990 SCC (Cri) 330: AIR 1991 SC 45: (1990) 48 ELT 496.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 21-3-1990]

[**Ed.**: For complete note *see* **§2927** at p. 987.]

[596] — Ch. XII (Ss. 154 to 176) — Investigation — Powers of police — *Held, do not include torturing a person to extract information, be he an accused or a witness — Duty to investigate should be discharged within four corners of law — Constitution of India — Art. 21*

It is the duty of the police, when a crime is reported, to collect evidence to be placed during trial to arrive at the truth. That certainly would not include torturing a person, be he an accused or a witness, to extract information. The duty should be done within four corners of law. Law enforcers cannot take the law into their hands in the name of collecting evidence. (Para 10). *Munshi Singh Gautam* v. *State of M.P.*, (2005) 9 SCC 631: 2005 SCC (Cri) 1269: AIR 2005 SC 402: 2005 Cri LJ 320.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-11-2004]

Sahadevan v. State, (2003) 1 SCC 534, relied on

[597] — Ch. XII (Ss. 154 to 176) — Delay in investigation and trial — Charge of waging war against the State — *Investigation involving complex problems of sensitive and political nature — Accused capable of asserting their rights but never raising objections as to the delay before — Held on facts, delay not unreasonable and unfair — Hence Art. 21 not violated — Penal Code, 1860, S. 124-A — Constitution of India — Art. 21*

The delay in investigation and trial in this case was the outcome of the nature of the case and the general situation prevailing in the country. If the investigating agency suspected a conspiracy to wage war, it was its bounden duty to search for evidence wherever it could be found and not content itself by reading the letters and examining the recipients of the letters. When the facts are to be discovered or unearthed, particularly in cases of suspected conspiracies bristling with all manner of complexities and complications including those of a sensitive, political nature, where the investigating agency has to tread warily and with circumspection, the investigating agency cannot be blamed for the slow progress that they made in investigating a case of this nature. There was nothing sinister in the lulls in the investigation. Investigation of this case was not the only task of the investigating agency. There must have been other cases and tasks. The police are also incharge of law and order.

Further, the accused in the present case were capable of asserting their rights whenever and whenever necessary and they did in fact assert their rights as and when necessary, as was evident from the number of petitions filed before the Magistrate, and the Special Judge, from time to time. This does not mean that the ability of the accused to assert their rights should penalise them. But one of the factors to be considered in determining whether as accused persons has been deprived of his right is the responsibility of the accused for asserting his rights. Until the filing of the petitions before the Supreme court, there was no serious protest by the accused about any delay, whereas after the charge-sheet was filed, at least on two occasions the prosecuting agency expressed an anxiety to have the case disposed of as expeditiously as possible.

In the circumstances, a direction that the trial should start soon and proceed from day to day was all that was called for in the instant case. *Raghubir Singh* v. *State of Bihar*, (1986) 4 SCC 481: 1986 SCC (Cri) 511: AIR 1987 SC 149.

Bench Strength 2. Coram: **O. Chinnappa Reddy** and *M.M. Dutt*, JJ. [Date of decision: 19-9-1986]

[598] — Chs. XII (Ss. 154 to 176), IV-A (S. 36), V to VII (Ss. 41 to 60) — Crime detection — Scope of — Various steps involved in, enumerated — Delegable and non-delegable steps in, differentiated — *The authority responsible for each step, held (per curiam), is the officer in charge of the police station, though he might have delegated some steps*

Under CrPC, investigation consists of proceeding to the spot, ascertainment of the facts and circumstances of the case, discovery and arrest of the suspected offender, collection of evidence and formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge-sheet under Section 173. The scheme of CrPC shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for each one of the above steps is that of the officer in charge of the police station. The final step in the investigation, namely, the formation of the opinion as to whether or not there is a case to place the accused on trial is to be of the officer in charge of the police station and this function cannot be delegated and can be performed by no other authority. The formation of the opinion of the police on the material collected during the investigation as to whether judicial scrutiny is warranted or not is entirely left to the officer in charge of the police station. There is no provision for delegation of the above function regarding formation of the opinion but only a provision entitling the superior officers to supervise or participate under Section 36 CrPC. (Paras 20, 21 and 31). *M.C. Mehta (Taj Corridor scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264: AIR 2007 SC 1087: (2007) 53 AIC 192 (SC).

Bench Strength 3. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

Section 154 — FIR

— S. 154 *See also* S. 154, Criminal Procedure Code, 1898, pp. 991 et seq. in Vol. 2

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(1) Generally

(i) Nature, Object and effect of FIR

See also Section 154, '(2) Value, evidentiary value and use of FIR', and

'(3) Reliability and Validity of FIR', below

[599] — S. 154 — FIR — Object of — Held, is only to set the criminal law in motion (Para 13). *Bhagwan Singh* v. *State of M.P.*, (2002) 4 SCC 85: 2002 SCC (Cri) 736: AIR 2002 SC 1621.

Bench Strength 2. Coram: **R.P. Sethi** and *K.G. Balakrishnan*, JJ. [Date of decision: 22-3-2002]

[600] — S. 154 — FIR — Object and value of — Denial of, by person by whom lodged — Effect — *Reiterated, FIR not a substantive piece of evidence — However, cannot be given a complete go-by — Can be used to corroborate evidence of person lodging it — In present case, due to discrepancies in evidence and no secondary evidence led to ascertain veracity of FIR, the same cannot be wholly relied on — Evidence Act, 1872, Ss. 145 and 157* (Paras 24 and 25). *C. Magesh* v. *State of Karnataka*, (2010) 5 SCC 645.

Bench Strength 2. Coram : **V.S. Sirpurkar and Deepak Verma**, JJ. [Date of decision : 30-4-2010]

Baldev Singh v. State of Punjab, (1990) 4 SCC 692: 1991 SCC (Cri) 61, relied on

[601] — S. 154 — FIR — Nature, object and contents of

The first information report is a report giving information of the commission of a cognizable crime which may be made by the complainant or by any other person knowing about the commission of such an offence. It is intended to set the criminal law in motion. It is not the requirement of law that the minute details be recorded in the FIR lodged immediately after the occurrence. The fact of the state of mental agony of the person making the FIR who generally is the victim himself, if not dead, or the relations or associates of the deceased victim apparently under the shock of the occurrence reported has always to be kept in mind. The object of insisting upon lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed. (Para 15). *Ravi Kumar* v. *State of Punjab*, (2005) 9 SCC 315: AIR 2005 SC 1929: 2005 Cri LJ 1742.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 4-3-2005]

[602] — S. 154 — Effect of filing FIR — *Held, registration of an FIR involves only the process of entering the substance of the information relating to commission of the cognizable offence in a book kept by the officer in charge of the police station*

Any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) CrPC. But if he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) CrPC that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII CrPC only thereafter. (Para 11). *Mohd. Yousuf* v. *Afaq Jahan*, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460: AIR 2006 SC 705: (2006) 1 KLT 939: (2006) 2 Guj LR 1742: (2006) 38 AIC 70 (SC): 2006 Cri LJ 788.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 2-1-2006]

Suresh Chand Jain v. State of M.P., (2001) 2 SCC 628: 2001 SCC (Cri) 377, relied on

Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986: (1961) 2 Cri LJ 39; Narayandas Bhagwandas Madhavdas v. State of W.B., (1960) 1 SCR 93: AIR 1959 SC 1118: 1959 Cri LJ 1368, considered

(ii) What amounts to and requirements of FIR

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1. Generally

See also Section 154, '(2) Value, evidentiary value and use of FIR', and

'(3) Reliability and Validity of FIR', below

[603] — S. 154 — FIR — Dispute as to which of the two informations recorded in a case is FIR — *Held, is a matter which the court trying the accused has jurisdiction to decide*

The question as to whether the GD entry, or the FIR formally recorded on 20-10-1990, is the FIR in the case, is a matter which may be agitated before the trial court. Where two informations are

(1)(ii)1. What amounts to and requirements of FIR - Generally *(contd.)*

recorded and it is contended before the court that the one projected by the prosecution as the FIR is not really the FIR but some other information recorded earlier is the FIR, that is a matter which the court trying the accused has jurisdiction to decide. (Para 23). *CBI* v. *Tapan Kumar Singh*, (2003) 6 SCC 175: 2003 SCC (Cri) 1305: AIR 2003 SC 4140: 2003 Cri LJ 2322.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 10-4-2003]

[604] — S. 154 — FIR — Message or communication when qualifies as FIR

In order for a message or communication to be qualified to be an FIR, there must be something in the nature of a complaint or accusation or at least some information of the crime given with the object of setting the police or criminal law into motion. It is true that an FIR need not contain the minutest details as to how the offence had taken place nor it is required to contain the names of the offenders or the witnesses. But it must at least contain some information about the crime committed as also some information about the manner in which the cognizable offence has been committed. A cryptic message recording an occurrence cannot be termed as an FIR. (Para 16). *Patai* v. *State of U.P.*, (2010) 4 SCC 429.

Bench Strength **2**. Coram : **Dr. M.K. Sharma** and *A.K. Patnaik*, JJ. [Date of decision : 30-3-2010]

Ramsinh Bavaji Jadeja v. State of Gujarat, (1994) 2 SCC 685: 1994 SCC (Cri) 609, relied on

[605] — S. 154 — FIR — Nature and requirements of — *Must disclose the commission of a cognizable offence — But mentioning of all details about the occurrence in FIR, held, not necessary* (Para 14). *Hem Raj* v. *State of Punjab*, (2003) 12 SCC 241: AIR 2003 SC 4259: 2003 Cri LJ 4987.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 9-9-2003]

[606] — S. 154 — FIR — What is — Earliest information when not FIR — *Held, earliest information in regard to commission of a cognizable offence is to be treated as FIR which sets criminal law in motion and investigation commences on that basis — There can be no second FIR — However, information given to police to rush to place of incident to control the situation, held, need not necessarily amount to the FIR* — [**Ed.**: *See* Shortnote *D in SCC*; §**[608]** herein] (Paras 34 and 38). *Pandurang Chandrakant Mhatre* v. *State of Maharashtra*, (2009) 10 SCC 773: (2009) 83 AIC 38 (SC).

Bench Strength **2**. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 8-10-2009]

T.T. Antony v. State of Kerala, (2001) 6 SCC 181: 2001 SCC (Cri) 1048; Ramesh Baburao Devaskar v. State of Maharashtra, (2007) 13 SCC 501: (2009) 1 SCC (Cri) 212, followed

[607] — Ss. 154, 157, 2(h) and 174 — Investigation, inquest and FIR — Validity, authenticity and evidentiary value — Telephonic information being basis of investigation and inquest — Formal FIR being lodged afterwards — *Held, investigation and inquest can start with telephonic information even prior to lodging of formal FIR and it would not affect trial and evidence in court — Submission that FIR loses its authenticity if lodged after inquest is a general proposition and cannot be universally applied — Prosecution case cannot be dismissed only because there is discrepancy in inquest report — Neither FIR, nor inquest report nor post-mortem report can be regarded as substantive pieces of evidence — FIR or inquest report may only be used to contradict or corroborate the maker thereof — Non-mention of accused in inquest report, held, may not mean that FIR was non-existent prior to inquest*

Submission that FIR loses its authenticity if it is lodged after the inquest report is recorded is a general proposition and cannot be universally applied. No doubt the inquest report was prepared by PW 8 at 9.30 p.m. and the formal FIR was lodged by PW 1 at 11.30 p.m. But it is also relevant that the investigation was started by PW 8 after receipt of telephonic information from PW 3 at 6:30 pm that the deceased was lying in a serious condition. And thereafter inquest report was prepared. (Paras 21 and 20)

The principle of law in Sections 2(*h*) and 157 CrPC is that when information regarding a cognizable offence is furnished to the police that information will be regarded as the FIR and all enquiries held by the police subsequent thereto would be treated as investigation, even though the formal registration of the FIR takes place only later. (Paras 26 to 31)

Neither FIR, nor inquest report nor post-mortem can be regarded as substantive pieces of evidence. FIR or inquest report may only be used to contradict or corroborate the maker thereof. Therefore, there is no merit in the submission of the counsel for the appellants. Any discrepancy occurring in the inquest report can neither be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. Assuming that some report was made on telephone and that was the real first information report, this by itself would not affect the appreciation of evidence made by the Sessions Judge and the conclusions of fact drawn by him. (Paras 31, 23 and 25)

The object of the inquest proceedings under Section 174 CrPC is to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what the cause of death is. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is foreign to the ambit and scope of the proceedings under Section 174 CrPC. Mention of the name of the accused and eyewitness in the inquest report is not necessary. Due to non-mentioning of the name of the accused in the inquest report, it cannot be inferred that FIR was not in existence at the time of inquest proceedings. (Paras 22 and 24). *Sambhu Das* v. *State of Assam*, (2010) 10 SCC 374: AIR 2010 SC 3300.

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **H.L. Dattu**, JJ. [Date of decision: 15-9-2010]

Maha Singh v. State (Delhi Admn.), (1976) 1 SCC 644: 1976 SCC (Cri) 135; State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 SC 221: (1964) 1 Cri LJ 140; Pedda Narayana v. State of A.P., (1975) 4 SCC 153: 1975 SCC (Cri) 427; George v. State of Kerala, (1998) 4 SCC 605: 1998 SCC (Cri) 1232; Suresh Rai v. State of Bihar, (2000) 4 SCC 84: 2000 SCC (Cri) 764, relied on

Balaka Singh v. State of Punjab, (1975) 4 SCC 511: 1975 SCC (Cri) 601; Ramesh Baburao Devaskar v. State of Maharashtra, (2007) 13 SCC 501: (2009) 1 SCC (Cri) 212, considered

[608] — Ss. 154 and 162 — FIR — Contents of FIR — Information when to be treated as FIR — Earliest information of incident when not FIR — *Held, FIR, is not expected to be encyclopaedia of events, but must contain some essential and relevant details of the incident — Cryptic information about commission of a cognizable offence irrespective of the nature and details of such information may not be treated as FIR — In the instant case, information (Ext. 61) given by PW 5 that several persons armed with deadly weapons were attacking members of his political party, was entered in General Diary based on which PW 18 IO immediately left for place of occurrence — No FIR could thus be recorded as first priority of IO was to control the incident since by that time none had died — It would have been rather unusual for IO to insist on taking down entire incident by way of FIR, rather than rushing to place of incident — Moreover, it cannot be said that moment PW 18 left the police station, investigation had commenced — Purpose of information then was only to request officer in charge of police station to reach place of occurrence — Besides, neither was any inquest carried out, nor were any steps towards investigation taken before registering FIR — In such circumstances FIR (A-31) not affected by any legal infirmity* (Paras 38 to 41). *Pandurang Chandrakant Mhatre* v. *State of Maharashtra*, (2009) 10 SCC 773: (2009) 83 AIC 38 (SC).

Bench Strength 2. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 8-10-2009]

Vikram v. State of Maharashtra, (2007) 12 SCC 332: (2008) 1 SCC (Cri) 362, relied on

[609] — Ss. 154 and 162 — FIR — What amounts to — Initiation of investigation without recording FIR — Whether a case of — Investigation — What amounts to — *Pursuant to very cryptic information regarding death of a person at about 8.30 p.m. to 8.45 p.m. residing within jurisdiction of his police station, PW 21 IO going to place of occurrence without making a GD entry or getting an FIR lodged — Held, merely going to place of occurrence and making some survey would not amount to making an investigation in absence of any evidence to show that at that point of time PW 21 had seized any articles or interrogated any witnesses or took any other action in initiating or in furtherance of investigation — Further held, even assuming that PW 21 could have entered said information in the GD, yet said entry could not be treated as FIR because he had no details about the incident in question then — Besides, place of occurrence was in total darkness, and even complainants were unavailable, therefore bringing them to police station where there was sufficient light and thereafter recording complaint, cannot in any manner cast doubt on veracity of prosecution case — Hence, it cannot be said that FIR was hit by S. 162* (Paras 22 to 27). *Satish Narayan Sawant* v. *State of Goa*, (2009) 17 SCC 724: 2009 Cri LJ 4655: (2010) 1 ECrN 464: (2009) 82 AIC 89 .

Bench Strength **2**. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 14-9-2009]

State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 SC 221: (1964) 3 SCR 71; Animireddy Venkata Ramana v. Public Prosecutor, High Court of A.P., (2008) 5 SCC 368: (2008) 2 SCC (Cri) 600, followed

H.N. Rishbud and Inder Singh v. State of Delhi, AIR 1955 SC 196, cited

[610] — S. 154 — FIR — What is — Purpose and contents of — Evidentiary value — State of mind of complainant or victim making the complaint should be kept in mind — *Evidence Act, 1872, Ss. 161 and 145*

The first information report is a report giving information of the commission of a cognizable crime which may be made by the complainant or by any other person knowing about the commission of such an offence. It is intended to set the criminal law in motion. Any information relating to the commission of a cognizable offence is required to be

(1)(ii)1. What amounts to and requirements of FIR - Generally *(contd.)*

reduced to writing by the officer in charge of the police station which has to be signed by the person giving it and the substance thereof is required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf. It has been held time and again that the FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 161 of the Evidence Act or to contradict him under Section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused nor to corroborate or contradict other witnesses. It is not the requirement of law that the minutest details be recorded in the FIR lodged immediately after the occurrence. The fact of the state of mental agony of the person making the FIR who generally is the victim himself, if not dead, or the relations or associates of the deceased victim apparently under the shock of the occurrence reported has always to be kept in mind. (Para 5). *Bijoy Singh* v. *State of Bihar*, (2002) 9 SCC 147: AIR 2002 SC 1949: 2002 Cri LJ 2623.

Bench Strength **2**. Coram: **R.P. Sethi** and *D.M. Dharmadhikari*, JJ. [Date of decision: 17-4-2002]

Meharaj Singh (L/Nk.) v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391: 1995 Cri LJ 457, relied on

But see Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450

[611] — S. 154 — FIR — Requirements of — Cryptic information from somebody who does not disclose any authentic knowledge about commission of cognizable offence would not be sufficient to register an FIR

Under Section 154 of the Code the information must unmistakably relate to the commission of a cognizable offence and it shall be reduced to writing (if given orally) and shall be signed by its maker. The next requirement is that the substance thereof shall be entered in a book kept in the police station in such form as the State Government has prescribed. First information report (FIR) has to be prepared and it shall be forwarded to the magistrate who is empowered to take cognizance of such offence upon such report. The officer in charge of a police station is not obliged to prepare FIR on any nebulous information received from somebody who does not disclose any authentic knowledge about commission of the cognizable offence. It is open to the officer-in-charge to collect more information containing details about the occurrence, if available, so that he can consider whether a cognizable offence has been committed warranting investigation thereto. *Binay Kumar Singh* v. *State of Bihar*, (1997) 1 SCC 283: 1997 SCC (Cri) 333: AIR 1997 SC 322: 1997 Cri LJ 362.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 31-10-1996]

Tapinder Singh v. State of Punjab, (1970) 2 SCC 113: 1970 SCC (Cri) 328; Soma Bhai v. State of Gujarat, (1975) 4 SCC 257: 1975 SCC (Cri) 515; State of U.P. v. P.A. Madhu, (1984) 4 SCC 83: 1984 SCC (Cri) 598, relied on

2. When, where and how FIR to be recorded

See also Section 154, '(3)(ii)6. Embellishments/Improvements in FIR', below

[612] — Ss. 154 and 172 — FIR to be recorded first and then entries to be made in daily diary (Para 16). *Paramjit Singh* v. *State of Punjab*, (2007) 13 SCC 530: AIR 2008 SC 441: (2008) 61 AIC 142 (SC).

Bench Strength **2**. Coram: *P.P. Naolekar* and **B. Sudershan Reddy**, JJ. [Date of decision: 31-10-2007]

[613] — Ss. 154 and 172 — Provision in Punjab Police Rules for entering substance of FIR in police station daily diary — Effect of, vis-à-vis CrPC — *Rules do not override provisions of the Code but are meant for guidance of police officers in the State and supplement provisions of the Code but do not supplant them — Punjab Police Rules, 1934 — If override provisions of CrPC* (Para 18). *Paramjit Singh* v. *State of Punjab*, (2007) 13 SCC 530: AIR 2008 SC 441: (2008) 61 AIC 142 (SC).

Bench Strength **2**. Coram: *P.P. Naolekar* and **B. Sudershan Reddy**, JJ. [Date of decision: 31-10-2007]

[614] — S. 154 — FIR — When and where to be recorded — Police arriving at place of occurrence soon after its having taken place — *PW 1 claiming to have given his statement, but it not being taken note of by police — Not known whether appellant-accused named in this purported first version of the occurrence — No explanation furnished by prosecution as to why police did not record said statement at place of occurrence itself — Held, as police was there, statement given by PW 1 should have been taken by police and forwarded to police station for recording FIR and there could have been no reason for PW 1 to go to police station for lodging FIR — PW 1 naming other persons whom he had informed of the occurrence soon after, and one of them even accompanying him to police station to lodge FIR — None of these persons examined — In light of the above, evidence of PW 1, sole testimony on which conviction was based, vitiated and could not be relied upon — Acquittal ordered* (Para 4). *Dorai* v. *State of T.N.*, (2004) 11 SCC 742.

Bench Strength **2**. Coram: *B.N. Agrawal* and *H.K. Sema*, JJ. [Date of decision: 20-7-2004]

[615] — S. 154 — FIR — Information about the incident given to Police Patel — FIR thereafter prepared and promptly lodged in police station — *On facts held, non-production of a report signed by the complainant and given to the Police Patel would not go against the prosecution case. Patil Hari Meghji* v. *State of Gujarat*, (1983) 2 SCC 270: 1983 SCC (Cri) 378: AIR 1983 SC 488: 1983 MLJ (Cri) 509: 1983 Cri LJ 826.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and *O. Chinnappa Reddy*, JJ. [Date of decision: 10-2-1983]

[616] — S. 154 — FIR — Information to the Police Station Officer that there was a bomb attack on a jeep resulting in death of two persons and injuries to others — Police Station Officer not registering the case but sending information to his superior officer — After arrival of that superior officer a written complaint filed by the complainant — *Held, on facts, it could not be said that the said written report was not an FIR or that for preparing the same the said police officer had taken any undue interest or monitored the same. Uppari Venkataswamy* v. *Public Prosecutor, High Court of A.P.*, (1996) 7 SCC 232: 1996 SCC (Cri) 284.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S.B. Majmudar**, JJ. [Date of decision: 8-12-1995]

[617] — S. 154 — First informant going straight to the Police Station which was 18 kms away for lodging the FIR instead of lodging report to the sarpanch of the local panchayat which was at a distance of only one mile — *Held, decision of the first informant cannot be said to be unusual one — Every person reacts in his own way. State of Karnataka* v. *Moin Patel*, (1996) 8 SCC 167: 1996 SCC (Cri) 632: AIR 1996 SC 3041.

Bench Strength 2. Coram: **M.K. Mukherjee** and *B.N. Kirpal*, JJ. [Date of decision: 22-2-1996]

[618] — S. 154 — Failure of informant to correctly recall the type of paper used for recording the FIR held, on facts, not fatal. *Sone Lal* v. *State of U.P.*, (1978) 4 SCC 302: 1978 SCC (Cri) 587: AIR 1978 SC 1142: 1978 Cri LJ 1122: 1978 ALJ 530.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 6-4-1978]

3. Who can lodge FIR

[619] — Ss. 154, 190 and 200 — Locus standi of complainant irrelevant — Any person can file complaint irrespective of his motive or prejudice

Per Bhagwati, C.J. & Oza, J.

A criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book.

Locus standi of the complainant is a concept foreign to criminal jurisprudence. Any citizen can lodge a first information report or file a complaint and set the machinery of the criminal law in motion and his locus standi to do so cannot be questioned, oppose such withdrawal. If he can be a complainant or initiator of criminal prosecution, he should equally be entitled to oppose withdrawal of the criminal prosecution which has already been initiated at his instance. If the offence for which a prosecution is being launched is an offence against the society and not merely an individual wrong, any member of the society must have locus to initiate a prosecution as also to resist withdrawal of such prosecution, if initiated. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[620] — Ss. 154 and 162 — Complaint details recorded by police at hospital from eyewitness and not the injured who was conscious — Held, not improper — Hence, not a good reason to record acquittal

PW 1, the complainant eyewitness stated that when PW 2, the victim was taken to the hospital, he was in an unconscious state and after admitting the victim in the hospital, while PW 3 was giving PW 2 treatment PW 7 came and at that time, he was informed by PW 1 that PW 2 was not in a position to give statement, since he was unconscious. Even assuming that PW 2 was conscious at that time, the nine serious injuries found on various parts of the body of the victim would clearly show that he could not have given full details to PW 7. Under those circumstances, obtaining of Ext. P-1, complaint from PW 1 is quite proper. (Para 14)

Merely because PW 2 was conscious at that time, it cannot be said that the statement should not have been recorded from PW 1 and the same is doubtful. No law prohibits the police officer from recording complaint relating to the occurrence, that too, from an eyewitness. The ground of acquittal as

(1)(ii)3. What amounts to and requirements of FIR - Who can lodge FIR *(contd.)*

recorded by the trial court is not at all a proper ground. (Para 15). *Murugan* v. *State*, (2008) 16 SCC 40: AIR 2009 SC 72: (2008) 71 AIC 201 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 30-9-2008]

[621] — S. 154 — FIR — Reliability of FIR — *FIR if a concocted document because informant PW 1 seriously injured and was not in a position to give statement; and that accused had been implicated falsely at instance of PW 1's group leader who was with PW 1 in PW 1 hospital room — Held, though PW 1 was grievously injured, but on the face of clear, categorical and unambiguous endorsement made by doctor (PW 10) attending him that he was in a fit and proper condition to give statement, and the fact that PW 11 recorded his statement in presence of PW 10, there cannot be even slightest doubt about authenticity of FIR. Annareddy Sambasiva Reddy* v. *State of A.P.*, (2009) 12 SCC 546: AIR 2009 SC 2661: (2009) 78 AIC 222 (SC).

Bench Strength 2. Coram: *D.K. Jain* and **R.M. Lodha, JJ.** [Date of decision: 21-4-2009]

[622] — S. 154 — FIR — Who can lodge — *Held, person not witnessing the occurrence can also be an informant — But mentioning of all details about the occurrence in FIR, held, not necessary*

In the instant case, soon after the occurrence PW 3 rushed to PW 6 (SI), who was then present in front of a cinema hall on routine patrolling duty, and informed him about the assault on deceased *T*. When the police party reached the hospital, it found that *T* was lying dead. PW 6 recorded the statement of PW 2 in the hospital and sent that information to police station where on its basis the formal FIR was drawn up. The High Court observed that the first information as to the manner in which the occurrence had taken place was given by PW 2 and not by PW 3, and, therefore, the trial court was not justified in holding that the first information report was really the report made earlier by PW 3.

Held :

Since it is not clear from the record as to what was the nature of information given by PW 3 to PW 6 as the same was not recorded, it is not possible to hold categorically that the information given by PW 3 must be treated as FIR. However, the High Court was not right in holding that unless the manner in which the occurrence took place is stated in the report, the same cannot be treated as FIR. The law is very clear and well settled that a report which discloses the commission of a cognizable offence must be treated as FIR. It does not matter whether the person lodging the report had witnessed the commission of the offence or not, nor is it necessary that all details should be mentioned in the report about the manner of occurrence, the participants in the crime, the time and place of occurrence etc. The requirement of Section 154 CrPC is only this that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action. (Para 21). *Hem Raj* v. *State of Punjab*, (2003) 12 SCC 241: AIR 2003 SC 4259: 2003 Cri LJ 4987.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 9-9-2003]

[623] — S. 154 — FIR lodged by deceased's sister — *Considering her inexperience of life, the promptness with which she gave the FIR and the details she mentioned therein, held, contents of the FIR credible. Dudh Nath Pandey* v. *State of U.P.*, (1981) 2 SCC 166: 1981 SCC (Cri) 379: AIR 1981 SC 911: (1981) 2 SCR 771: 1981 Cri LJ 618: 1981 ALJ 228.

Bench Strength 2. Coram: **Y.V. Chandrachud, C.J.** and *A.P. Sen*, J. [Date of decision: 11-2-1981]

[624] — S. 154 — Personal knowledge of incident not necessary for lodging FIR

Section 154 does not require that the report must be given by a person who has personal knowledge of the incident reported. The section speaks of an information relating to the commission of a cognizable offence given to an officer in charge of a police station. *Hallu* v. *State of M.P.*, (1974) 4 SCC 300: 1974 SCC (Cri) 462: AIR 1974 SC 1936: (1974) 3 SCR 652: 1974 Cri LJ 1385.

Bench Strength 2. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 19-3-1974]

4. FIRs in Cross-cases

See also Section 154, '3.(ix) Multiple FIRs/Cases', below

[625] — S. 154 — FIR lodged by party of accused earlier than the victims — *Immaterial when the cross-case set up by them held untrue. Gajendra Singh* v. *State of U.P.*, (1975) 4 SCC 241: 1975 SCC (Cri) 499: AIR 1975 SC 1703: 1975 Cri LJ 1494.

Bench Strength 2. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 25-4-1975]

[626] — S. 154 — FIR — Cross-version in FIR — Direction to register separate FIR on basis of such cross-version, although earlier FIR having mention of incident as well as retaliation — Propriety — *In peculiar circumstances, impugned order modified with direction that complaint case* *shall be taken to its logical end and court concerned shall deal with the matter on basis of evidence laid before it — Penal Code, 1860, Ss. 302, 307 r/w S. 34* (Paras 8 and 9). *Balbir Singh* v. *State of Punjab*, (2009) 15 SCC 219.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 8-5-2009]

5. Dying declaration when can be treated as FIR

See also CRIMINAL TRIAL — 'Dying declaration' in Vol. 3

See also under CRIMINAL PROCEDURE CODE, 1973 — 'S. 164', below

[627] — S. 154 — Dying declarations not recorded by the Magistrate — Effect — Held, by itself cannot be a ground to reject the whole prosecution case — *It would depend upon the facts and circumstances of each case and no hard-and-fast rule can be laid down therefor — However, where the declaration is wholly inconsistent or contradictory statements are made or if it appears from the records that the dying declaration is not reliable, a question may arise as to why the Magistrate was not called for, but ordinarily the same may not be insisted upon — Further held, statement of the injured, in event of her death may also be treated as FIR — Evidence Act, 1872, S. 32* (Paras 15, 18, 20, 21, 22 and 23). *Balbir Singh* v. *State of Punjab*, (2006) 12 SCC 283: (2007) 1 SCC (Cri) 715: AIR 2006 SC 3221: 2006 Cri LJ 4646: (2006) 47 AIC 600 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 26-9-2006]

State of Karnataka v. Shariff, (2003) 2 SCC 473: 2003 SCC (Cri) 561; Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517: 1998 SCC (Cri) 1085; Laxman v. State of Maharashtra, (2002) 6 SCC 710: 2002 SCC (Cri) 1491, relied on

Kamla v. State of Punjab, (1993) 1 SCC 1: 1993 SCC (Cri) 1, considered

[628] — S. 154 — FIR — Admissibility of as dying declaration — *Report of occurrence dictated by injured, recorded by police officer at police station — Injured dying thereafter — FIR destroyed not brought on record — Treatment of such report as dying declaration — Conviction on basis of — Legality — Held, the report dictated by the deceased fully satisfied all the ingredients for being made admissible as a dying declaration — It contains a narrative by the deceased as to the cause of his death, completely corroborated from the testimony of eyewitnesses and the medical evidence on record — Despite best efforts, the original FIR could not be produced as the registers relating to non-cognizable offences were destroyed after a lapse of two years — Evidence Act, 1872, S. 32(1)* (Paras 16 and 17). *Dharam Pal* v. *State of U.P.*, (2008) 17 SCC 337: AIR 2008 SC 920: (2008) 62 AIC 65 (SC): (2008) 1 All LJ 721: 2008 Cri LJ 1016.

Bench Strength 2. Coram: *C.K. Thakker* and **Tarun Chatterjee**, JJ. [Date of decision: 4-1-2008]

State of H.P. v. Mast Ram, (2004) 8 SCC 660, followed

6. Telephone message if FIR

See also Section 154, '(1)(ii)2. When, where and how FIR to be recorded', above

[629] — S. 154 — Telephonic message to police that gunshots were being fired — *Such cryptic information sent at the moment of utter chaos and confusion during the occurrence is not an FIR — Non-mention of assailant's name therefore cannot discredit the prosecution case. State of U.P.* v. *P.A. Madhu*, (1984) 4 SCC 83: 1984 SCC (Cri) 598: AIR 1984 SC 1523: 1984 Cri LJ 1438.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**, *A. Varadarajan* and *Sabyasachi Mukharji*, JJ. [Date of decision: 17-7-1984

[630] — S. 154 — Information about commission of cognizable offence given "in person" at police station and given "on telephone" — Differential treatment — Rationale for — *Held, information given on telephone to police is not for purpose of lodging FIR but rather to request police to reach place of occurrence, whereas information given in person is for lodging FIR — Furthermore, merely because information given on phone is prior in time would not mean that same would be treated as FIR* (Paras 113 and 114). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength 2. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

Ramesh Baburao Devaskar v. State of Maharashtra, (2007) 13 SCC 501: (2009) 1 SCC (Cri) 212, relied on

[631] — S. 154 — FIR — What constitute/does not constitute an FIR, restated — Cryptic telephonic message of a cognizable offence received by the police agency would not constitute an FIR

Where the information is only one which required the police to move to the place of occurrence and as a matter of fact the detailed statement was recorded after going to the place of occurrence, the said statement is to be treated as FIR. But some cryptic or anonymous oral message which did not in terms clearly specify a cognizable offence cannot be treated as FIR. The mere fact that the information was the first in point of time does not by itself clothe it with the character of FIR. A cryptic telephonic

(1)(ii)6. What amounts to and requirements of FIR - Telephone message if FIR *(contd.)*

message of a cognizable offence received by the police agency would not constitute an FIR. (Para 10). *State of A.P.* v. *V.V. Panduranga Rao*, (2009) 15 SCC 211: 2009 Cri LJ 2972: (2009) 2 APLJ 171 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 4-5-2009]

Ramsinh Bavaji Jadeja v. State of Gujarat, (1994) 2 SCC 685, relied on

[632] — S. 154 — FIR — What is — *Held, mere information received on phone by a police officer without any details as regards identity of accused or nature of injuries caused by victims as well as the name of the culprits may not be treated as FIR* (Para 32). *Ravishwar Manjhi* v. *State of Jharkhand*, (2008) 16 SCC 561: AIR 2009 SC 1262.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 12-12-2008]

[633] — Ss. 154 and 157 — FIR — What is — Cryptic telephonic messages — Investigation — When commences — *Held, cryptic telephonic messages cannot be treated as FIR as their object is only to get police to scene of offence and not to register FIR — Further held, investigation commences when information relating to offence is given to an officer in charge of a police station and is recorded under S. 154 — Phone call made immediately after occurrence to police constitutes FIR only when it is not vague and cryptic — In instant case, object of persons sending telephonic messages (at around 2.25 a.m.) including PW 70 was only to bring police to scene of offence and not register FIR — FIR was properly lodged as per statement of PW 2 around 3.40 a.m. on basis whereof investigation commenced* [Paras 100 to 110 and 303(3)]. *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength 2. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: 1955 Cri LJ 526: (1955) 1 SCR 1150, applied

State of U.P. v. P.A. Madhu, (1984) 4 SCC 83: 1984 SCC (Cri) 598; Tapinder Singh v. State of Punjab, (1970) 2 SCC 113: 1970 SCC (Cri) 328; Damodar v. State of Rajasthan, (2004) 12 SCC 336: 2004 SCC (Cri) Supp 265; Ramsinh Bavaji Jadeja v. State of Gujarat, (1994) 2 SCC 685: 1994 SCC (Cri) 609, relied on

State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 SC 221: (1964) 1 Cri LJ 140; King Emperor v. Khwaja Nazir Ahmad, (1943-44) 71 IA 203: AIR 1945 PC 18; CBI v. Tapan Kumar Singh, (2003) 6 SCC 175: 2003 SCC (Cri) 1305, distinguished on facts

Mehr Vajsi Deva v. State of Gujarat, AIR 1965 Guj 143, overruled

[634] — Ss. 154 and 162 — FIR — Telephonic message — If could be treated as FIR — *DD entry showing that an unknown person had given information on telephone about a vehicle hitting the deceased — Said information, held, did not constitute FIR — Hence, written report lodged by eyewitness PW 15, held, was not hit by S. 162 CrPC* (Paras 10 to 12). *Damodar* v. *State of Rajasthan*, (2004) 12 SCC 336: AIR 2003 SC 4414: 2003 Cri LJ 5014.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-9-2003]

Ramsinh Bavaji Jadeja v. State of Gujarat, (1994) 2 SCC 685: 1994 SCC (Cri) 609, followed

[635] — Ss. 154 and 162 — FIR — What is — Telephonic information received by IO — Later FIR recorded — *Held, telephonic information not in the nature of FIR*

A first information report was recorded at about 3 o'clock in the night. In the aforementioned situation, it cannot be said that the information received by the investigating officer on the telephone was of such a nature and contained such details which would amount to a first information report so as to attract Section 162 CrPC. (Para 12). *Animireddy Venkata Ramana* v. *Public Prosecutor, High Court of A.P.*, (2008) 5 SCC 368: (2008) 2 SCC (Cri) 600: AIR 2008 SC 1603: 2008 Cri LJ 2038.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

[636] — S. 154 — FIR — Telephonic conversation, being a cryptic information received and recorded in the daily diary regarding commission of offence, cannot be treated as an FIR (Para 9). *Mundrika Mahto* v. *State of Bihar*, (2002) 9 SCC 183: AIR 2002 SC 2042: 2002 Cri LJ 2810.

Bench Strength 2. Coram: *U.C. Banerjee* and **Y.K. Sabharwal**, JJ. [Date of decision: 29-4-2002]

[637] — S. 154 — FIR — Telephonic message about murder — *Record of information cryptic for which no explanation furnished — In circumstances held, possibility of a design by leaving the report vague to fill in the blanks later not ruled out.* *Surinder Pal Jain* v. *Delhi Admn.*, 1993 Supp (3) SCC 681: 1993 SCC (Cri) 1096: AIR 1993 SC 1723: 1993 Cri LJ 1871.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *N.P. Singh*, JJ. [Date of decision: 5-3-1993]

[638] — S. 154 — Investigation, inquest and FIR — Validity, authenticity and evidentiary value — Telephonic information being basis of investigation and inquest — Formal FIR being lodged afterwards — *Held, investigation and inquest can start with telephonic information even prior to lodging of formal FIR and it would not affect trial and evidence in court — Submission that FIR loses* *its authenticity if lodged after inquest is a general proposition and cannot be universally applied — Prosecution case cannot be dismissed only because there is discrepancy in inquest report — Neither FIR, nor inquest report nor post-mortem report can be regarded as substantive pieces of evidence — FIR or inquest report may only be used to contradict or corroborate the maker thereof — Non-mention of accused in inquest report, held, may not mean that FIR was non-existent prior to inquest*

Submission that FIR loses its authenticity if it is lodged after the inquest report is recorded is a general proposition and cannot be universally applied. No doubt the inquest report was prepared by PW 8 at 9.30 p.m. and the formal FIR was lodged by PW 1 at 11.30 p.m. But it is also relevant that the investigation was started by PW 8 after receipt of telephonic information from PW 3 at 6:30 pm that the deceased was lying in a serious condition. And thereafter inquest report was prepared. (Paras 21 and 20)

The principle of law in Sections 2(*h*) and 157 CrPC is that when information regarding a cognizable offence is furnished to the police that information will be regarded as the FIR and all enquiries held by the police subsequent thereto would be treated as investigation, even though the formal registration of the FIR takes place only later. (Paras 26 to 31)

Neither FIR, nor inquest report nor post-mortem can be regarded as substantive pieces of evidence. FIR or inquest report may only be used to contradict or corroborate the maker thereof. Therefore, there is no merit in the submission of the counsel for the appellants. Any discrepancy occurring in the inquest report can neither be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. Assuming that some report was made on telephone and that was the real first information report, this by itself would not affect the appreciation of evidence made by the Sessions Judge and the conclusions of fact drawn by him. (Paras 31, 23 and 25)

The object of the inquest proceedings under Section 174 CrPC is to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what the cause of death is. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is foreign to the ambit and scope of the proceedings under Section 174 CrPC. Mention of the name of the accused and eyewitness in the inquest report is not necessary. Due to non-mentioning of the name of the accused in the inquest report, it cannot be inferred that FIR was not in existence at the time of inquest proceedings. (Paras 22 and 24). *Sambhu Das* v. *State of Assam*, (2010) 10 SCC 374: AIR 2010 SC 3300.

Bench Strength 2. Coram: *Dr. M.K. Sharma* and **H.L. Dattu**, JJ. [Date of decision: 15-9-2010]

Maha Singh v. State (Delhi Admn.), (1976) 1 SCC 644: 1976 SCC (Cri) 135; State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 SC 221: (1964) 1 Cri LJ 140; Pedda Narayana v. State of A.P., (1975) 4 SCC 153: 1975 SCC (Cri) 427; George v. State of Kerala, (1998) 4 SCC 605: 1998 SCC (Cri) 1232; Suresh Rai v. State of Bihar, (2000) 4 SCC 84: 2000 SCC (Cri) 764, relied on

Balaka Singh v. State of Punjab, (1975) 4 SCC 511: 1975 SCC (Cri) 601; Ramesh Baburao Devaskar v. State of Maharashtra, (2007) 13 SCC 501: (2009) 1 SCC (Cri) 212, considered

[639] — S. 154 — Telephonic message — When constitutes an FIR — *Cryptic message given on telephone by a Head Constable that in a fight a person had died and his dead body had been brought to the hospital — Police officer having received the said message reaching the hospital and recording the statement of the brother of the deceased — Held; statement of the brother of the deceased and not the telephonic message of the Head Constable constituted the FIR*

The question as to at what stage the investigation commences has to be considered and examined on the facts of each case, especially, when the information of a cognizable offence has been given on telephone. Any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as first information report. So if the telephonic message is cryptic in nature and the officer in charge, proceeds to the place of occurrence on basis of that information to find out the details of the nature of the offence itself, then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be first information report. The object and purpose of giving such telephonic message is not to lodge the first information report, but to request the officer in charge of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on basis of that information, the officer in charge, is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including about the participants, shall be deemed to be a statement made by a person to the police officer "in the course of investigation", covered by S. 162 of the Code.

(1)(ii)6. What amounts to and requirements of FIR - Telephone message if FIR *(contd.)*

In the present case the I.O. having received the telephonic message, immediately reached the hospital and recorded the statement of the brother of the deceased. This statement must be treated as FIR. There is no dispute that in that statement the name of the appellant was mentioned by the brother of the deceased and details of the occurrence as disclosed by him in court were stated by him. This is apparent because during the cross-examination of the brother of the deceased, his attention has not been drawn to his statement recorded by the I.O., saying that he did not name the appellant as the assailant of his brother during his statement to the I.O. As such it has to be held that the witness (brother of the deceased) immediately after the occurrence, made a statement before the I.O. and named the appellant, as the person who gave a knife blow in the chest of the deceased. The Sessions Judge as well as the High Court were in error in treating the cryptic message given on the telephone by the Head Constable to the officer in charge, as FIR. *Ramsinh Bavaji Jadeja* v. *State of Gujarat*, (1994) 2 SCC 685: 1994 SCC (Cri) 609: 1994 Cri LJ 3067: (1994) 2 Punj LR 671: (1994) 1 MWN (Cri) 130: (1994) 1 GLH 329.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **N.P. Singh**, JJ. [Date of decision: 1-3-1994]

[640] — Ss. 154 and 162 — Vague and indefinite telephonic message making the investigating agency only to rush to the scene of occurrence — Does not constitute FIR — *In circumstances of the case statement of mother of the victim recorded by the I.O. after reaching the spot rightly treated as FIR by the prosecution and the trial court.* *Dhananjoy Chatterjee* v. *State of W.B.*, (1994) 2 SCC 220: 1994 SCC (Cri) 358.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *N.P. Singh*, JJ. [Date of decision: 11-1-1994]

[641] — Ss. 154 and 161 — FIR — Telephonic information recorded in daily diary book — If an FIR — *Murder — PW 1, eyewitness and one of the victims, giving details of the incident to PW 3, his nephew, when he arrived at the site soon after the incident — PW 3 reporting the incident to police over phone — On the basis of it police arriving at the scene and recording the statement of PW 1 — Held, the telephonic information given to police by PW 3, though he did not mention the names of the assailants, did disclose a cognizable offence and it was on the basis of such information recorded in the daily diary that the police started the investigation — It must therefore be treated as the FIR in the case and the statement made by PW 1 to police when it arrived at the site of occurrence must be treated as one recorded under S. 161 of CrPC — The High Court erred in treating the latter as the FIR.* *Sunil Kumar* v. *State of M.P.*, (1997) 10 SCC 570: 1997 SCC (Cri) 879: AIR 1997 SC 940: 1997 Cri LJ 1183.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *B.N. Kirpal*, JJ. [Date of decision: 28-1-1997]

[642] — Ss. 154 and 162 — Complainant reaching police station and giving information to PSI, regarding a murder — *PSI contacting main police station on phone for seeking instructions — PSI, then recording the FIR — The telephone call to the main police station does not constitute the FIR, so that the FIR, recorded by the PSI, was hit by S. 162 — CrPC, 1898, Ss. 154 and 162*

It is true that under S. 154 of the Code the first information is the earliest report made to the police officer with a view to his taking action in the matter. In the instant case, the complainant had made the report regarding the occurrence having taken place to the PSI, who, however, before reducing it into writing, by way of abundant caution, tried to seek further instructions from the main police station. The message given to the main police station was too cryptic to constitute a first information report within the meaning of S. 154 of the Code and was meant to be only for the purpose of getting further instructions. Therefore the FIR was not rendered inadmissible. *Soma Bhai* v. *State of Gujarat*, (1975) 4 SCC 257: 1975 SCC (Cri) 515: AIR 1975 SC 1453: 1975 Cri LJ 1201.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 30-4-1975]

7. Daily Diary/General Diary entry

[643] — S. 154 — FIR — Daily Diary entry — If an FIR — *On receiving telephonic message about the incident SI making entry in daily diary report that after receiving the information he was proceeding to spot along with other constables — Held, that was not an FIR — Hence, non-mentioning of the names of the assailants in that entry, held, could not have any bearing*

PW 4 has stated that he gave telephonic message about the incident. The entry in DDR was made by SI that after receiving the aforesaid information he was proceeding to the spot along with some other police constables. This was not a first information report of the incident but merely an entry made regarding the departure of the police personnel to the place of occurrence and, therefore, the non-mention of the names of the assailants in this entry cannot have any bearing. (Para 19). *Thaman Kumar* v. *State of UT, Chandigarh*, (2003) 6 SCC 380: 2003 SCC (Cri) 1362: AIR 2003 SC 3975: 2003 Cri LJ 3070.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 6-5-2003]

[644] — S. 154 — FIR — General Diary entry — Treatment of, as FIR — *Held, GD entry may be treated as FIR in an appropriate case, where it discloses the commission of a cognizable offence* (Para 16). *CBI* v. *Tapan Kumar Singh*, (2003) 6 SCC 175: 2003 SCC (Cri) 1305: AIR 2003 SC 4140: 2003 Cri LJ 2322.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 10-4-2003]

[645] — S. 154 — FIR — What is — General diary noting — *Held, general diary containing noting of a report regarding cognizable offence, cannot be treated as FIR*

Where the IO was informed about commission of a cognizable offence, a report to that effect might have been noted in the general diary but the same could not be treated as FIR. (Para 11). *Animireddy Venkata Ramana* v. *Public Prosecutor, High Court of A.P.*, (2008) 5 SCC 368: (2008) 2 SCC (Cri) 600: AIR 2008 SC 1603: 2008 Cri LJ 2038.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

8. Information if first information or statement of witness under S. 161, etc.

See also Ss. 161 and 162, below

See also Section 154, '(1)(ii)6. Telephone message if FIR', above, and

'(3)(ix) Multiple FIRs/Cases', below

[646] — Ss. 157, 154 and 162 & 2(h) — Investigation when commences — Telephonic FIR

The question as to at what stage the investigation commences has to be considered and examined on the facts of each case, especially, when the information of a cognizable offence has been given on telephone. If the information given on telephone is not cryptic and on basis of that information, the officer in charge, is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including about the participants, shall be deemed to be a statement made by a person to the police officer "in the course of investigation", covered by S. 162 of the Code. *Ramsinh Bavaji Jadeja* v. *State of Gujarat*, (1994) 2 SCC 685: 1994 SCC (Cri) 609: 1994 Cri LJ 3067: (1994) 2 Punj LR 671: (1994) 1 MWN (Cri) 130: (1994) 1 GLH 329.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **N.P. Singh**, JJ. [Date of decision: 1-3-1994]

[647] — Ss. 154 and 161 — FIR — Oral statement given to police disclosing cognizable offence — *Police starting investigation on its basis — Written report given immediately thereafter cannot be treated as the FIR — It must be treated as a statement recorded under S. 161 and cannot be used for the purpose of corroboration of the evidence of its maker. Golla Jalla Reddy* v. *State of A.P.*, (1996) 8 SCC 565: 1996 SCC (Cri) 713: AIR 1996 SC 3244.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 25-4-1996]

[648] — Ss. 154 and 162 — Statement furnishing detailed particulars of the accused recorded at police station long after investigation commenced on receipt of telephonic information about the crime — *Statement, held, not FIR but one recorded during investigation. Somappa Vamanappa Madar* v. *State of Mysore*, (1980) 1 SCC 479: 1979 SCC (Cri) 910: AIR 1979 SC 1831: 1979 Cri LJ 1358.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **P.S. Kailasam**, JJ. [Date of decision: 24-4-1979]

[649] — Ss. 154 and 162 — On facts and circumstances held, FIR recorded prior to recording of statements of witnesses — *Hence, FIR not hit by S. 162. Pattad Amarappa* v. *State of Karnataka*, 1989 Supp (2) SCC 389: 1990 SCC (Cri) 179: AIR 1989 SC 2004: 1989 Cri LJ 2167: (1989) 3 Crimes 39.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 25-7-1989]

[650] — S. 154 — More than one FIR — Permissibility — Test of sameness — Two FIRs in respect of same transaction — *Subsequent to registration of an FIR, any further complaint in connection with the same or connected offence relating to the same incident or incidents which are parts of the same transaction, reiterated, not permissible — But if two FIRs pertain to two different incidents/crimes, second FIR is permissible*

A first information report (FIR) was lodged by the Sub-Inspector of Police concerned, and a case CR No. I-154 of 2008 was registered at 1730 hours in Bavla Police Station regarding an altercation/incident which took place between two communities viz. Bharwad and Koli Patel at Village Dhedhal of District Ahmedabad, Gujarat. According to the SI, by the time he reached the place of occurrence upon receiving information at 10 a.m. the mob had dispersed. However, some of the witnesses stated that the clash was going on when the police arrived and the police resorted to force to disperse the mob. Thereafter, the SI received information that a clash was going on between the said communities in village Dhedhal near a pond.

(1)(ii)8. What amounts to and requirements of FIR - Information if first information or statement of witness under S. 161, etc. *(contd.)*

He summoned extra police force and reached the place where he found about 2000-3000 persons from both the communities, all with sticks, dhariyas, swords, etc., attacking each other. The police resorted to tear gas shells as well as to lathi charge to disperse the crowd. Several rounds of firing were resorted to in order to disperse the mob. In the incident, more than 20 persons were injured and three houses of members of the Bharwad community were set on fire. One person also died. No person was named in the said FIR. Another FIR being CR No. I-155 of 2008 was registered at Bavla Police Station on the same date at 2235 hours by a person belonging to Koli Patel community, alleging that an incident took place on the same day at 9.15 a.m. near the same pond in village Dhedhal in which two persons belonging to Koli Patel community died and 18 persons were named as accused. On completion of investigation, charge-sheet was filed against 12 accused persons and the case was committed to the Sessions Court. The accused in both the cases filed special criminal applications before the High Court — one for investigation of CR No. I-154 of 2008 by an independent agency like CBI and the other for quashing of CR No. I-154 of 2008 and CR No. I-155 of 2008. During pendency of the applications, three applications were made to quash and set aside the proceedings undertaken by the Sessions Court. The High Court quashed the FIR registered as CR No. I-155 of 2008 and clubbed the investigation of the FIR along with the investigation of the other FIR bearing CR No. I-154 of 2008 to the extent it was feasible. The court transferred the investigation to the State CID Crime Branch and directed the new investigating officer to investigate Bavla Police Station CR No. I-154 of 2008 as it stood prior to the deletion of Section 302 IPC with a further clarification that quashing of the FIR registered by Bavla Police Station i.e. CR No. I-155 of 2008 could not mean that the accused in respect of the said FIR had been discharged of the offences as they would face the charges in CR No. I-154 of 2008 and the accused who stood arrested in connection with CR No. I-155 of 2008 would stand arrested in connection with case CR No. I-154 of 2008. Hence, these appeals.

Disposing of the appeals,

Held :

An FIR under Section 154 CrPC is a very important document. It is the first information of a cognizable offence recorded by the officer in charge of the police station. It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. Thus, it is quite possible that more than one piece of information be given to the police officer in charge of the police station in respect of the same incident involving one or more than one cognizable offences. In such a case, he need not enter each piece of information in the diary. All other information given orally or in writing after the commencement of the investigation into the facts mentioned in the first information report will be statements falling under Section 162 CrPC. (Para 20)

In case of a subsequent FIR, the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted. (Para 21)

In the present case, while comparing both the FIRs there is no doubt that both the incidents had occurred at the same place in close proximity of time. Therefore, they are two parts of the same transaction. More so, the death of one of the deceased persons has been mentioned in both the FIRs. Further, houses of the Bharwads were inside the village in contiguous areas and the offence had spread over the entire area as was evident from the panchnama of the scene of offence drawn in CR No. I-155 of 2008 as well as from the contents of the said FIR. Same situation regarding the place of occurrence appears from the panchnama of the scene of incident in CR No. I-154 of 2008. Panchnama of the scene of incident of CR No. I-154 of 2008 includes the scene of occurrence of CR No. I-155 of 2008 which makes it clear that both the FIRs pertain to the two crimes committed in the same transaction. The scene of offence panchnamas establish clearly that the incidents in both the cases could not be distinct and independent of each other. (Paras 25 and 26)

Therefore, the High Court reached the correct conclusion and the second FIR CR No. I-155 of 2008 was liable to be quashed. (Para 27)

It is further clarified that those persons who were arrested in connection with CR No. I-155 of

2008 would not stand arrested in connection with CR No. I-154 of 2008. However, if during the fresh investigation, any incriminating material against any person is discovered, the investigating authority may proceed in accordance with law. It shall be open to the accused to approach the appropriate forum for any interim relief as per law. (Para 47). *Babubhai* v. *State of Gujarat*, (2010) 12 SCC 254.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 26-8-2010]

Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479; T.T. Antony v. State of Kerala, (2001) 6 SCC 181: 2001 SCC (Cri) 1048; Upkar Singh v. Ved Prakash, (2004) 13 SCC 292: 2005 SCC (Cri) 211; Rameshchandra Nandlal Parikh v. State of Gujarat, (2006) 1 SCC 732: (2006) 1 SCC (Cri) 481; Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441: (2009) 1 SCC (Cri) 523, relied on

[651] — Ss. 154, 161(3) and 162 — Investigation started by the police on the night — Report of the incident lodged by the witness on the following morning could only be treated as a statement under S. 161(3) and not as an FIR — *Such report can be excluded from consideration in view of S. 162 — But on that score alone the evidence of the witness cannot be held to be inadmissible* (Paras 37, 38 and 39). *Ranbir Yadav* v. *State of Bihar*, (1995) 4 SCC 392: 1995 SCC (Cri) 728: AIR 1995 SC 1219: 1995 Cri LJ 2665.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 21-3-1995]

[652] — Ss. 154 and 161 — Previous statement of a witness — Use of, for contradicting the maker — *FIR not a substantive piece of evidence — It can be used only to corroborate or contradict the maker thereof — But where the witness not confronted with his alleged inconsistent statements contained in the FIR or in his case diary statement under S. 161 CrPC no reliance could be placed on such statements — Evidence Act, 1872, Ss. 145 and 157. State of U.P.* v. *Babul Nath*, (1994) 6 SCC 29: 1994 SCC (Cri) 1585.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 12-8-1994]

[653] — Ss. 154 and 162 — Applicability of S. 162 — *Complaint (Ext. P-1) recorded in hospital at about 10.35 a.m. at behest of PW 1 — However, requisition (Ext. P-10) received by duty doctor at 9.30 a.m. which showed that information had reached police before — Hence held, complaint (Ext. P-1) which was supposed to be FIR hit by S. 162 — Requisition (Ext. P-10) should become an FIR and not Ext. P-1* (Para 23). *Boddella Babul Reddy* v. *Public Prosecutor*, (2010) 3 SCC 648.

Bench Strength **2**. Coram : **V.S. Sirpurkar** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-1-2010]

[654] — Ss. 154 and 162 — Complaint lodged by a neighbour about occurrence inside house of deceased — *Where police already had information about the occurrence, the complaint which was treated as FIR would be hit by S. 162 — But that would not affect the testimony of the inmates of the house, being the material witnesses, who had seen the entire occurrence inside the house — Utility of such FIR explained*

Any statement recorded during the investigation is covered by S. 162 CrPC. In the instant case the vague information received by police was about the communal riots and violence. Even if entry to that effect was made, the question is whether the investigation commenced on that basis in the strict sense. However, even assuming that the complaint was hit by S. 162 CrPC that by itself does not make any difference. A statement of that nature can be used to contradict the witness and if any material discrepancies are there they can be taken note of. The complainant was also cross-examined with reference to the contents of his complaint. He was not an eye witness to the occurrence inside the house. Therefore, even assuming that there were some omissions and discrepancies in his evidence, they would not affect the evidence of the material witnesses who were inmates of the house. *Paresh Kalyandas Bhavsar* v. *Sadiq Yakubbhai Jamadar*, (1993) 3 SCC 95: 1993 SCC (Cri) 612: AIR 1993 SC 1544: 1993 Cri LJ 1857.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 24-3-1993]

[655] — Ss. 154 and 174 — FIR — When case diary shows that fardbeyan was recorded earlier than inquest, held the inquest cannot be treated as FIR (Para 9). *Mundrika Mahto* v. *State of Bihar*, (2002) 9 SCC 183: AIR 2002 SC 2042: 2002 Cri LJ 2810.

Bench Strength **2**. Coram: *U.C. Banerjee* and **Y.K. Sabharwal**, JJ. [Date of decision: 29-4-2002]

9. Other

[656] — S. 154 — 'Dehati nalish' cannot be read in evidence as a report under S. 154. *Baiju* v. *State of M.P.*, (1978) 1 SCC 588: 1978 SCC (Cri) 142: AIR 1978 SC 522: 1978 Cri LJ 646: 1978 MLJ (Cri) 300: (1978) 26 BLJR 54.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **P.N. Shinghal**, JJ. [Date of decision: 19-1-1978]

[657] — S. 154 — FIR lodged in respect of offence under S. 307 IPC — *Death of the victim thereafter in the hospital — Information conveyed by the doctor to the police regarding death of the victim and, therefore, offence under S. 307 IPC converted*

(1)(ii)9. What amounts to and requirements of FIR - Other *(contd.)*

into an offence under S. 302 IPC — Held, information conveyed by the doctor does not constitute FIR. State of Gujarat v. *Anirudhsing*, (1997) 6 SCC 514: 1997 SCC (Cri) 946: AIR 1997 SC 2780: 1997 Cri LJ 3397.

Bench Strength 2. Coram: *K. Ramaswamy* and *D.P. Wadhwa*, JJ. [Date of decision: 10-7-1997]

[658] — Ss. 154 to 157 and 482 — Complaint — Documents accompanying if to be read as part of *— Complaint petition — E-mails between couple and parents forming part of — Evidentiary value and importance of — Non-consideration of, by High Court — Effect — Whether correspondence showed any allegation of dowry demand or misappropriation of respondent's wife's stridhan — Held, complaint petition must also be read with several other documents which form part of the complaint petition — In none of them had any allegation with regard to cruelty or breach of trust been made — Allegations made for first time in complaint petition and application for grant of maintenance — Correspondence exchanged between the spouses and between the husband and his in-laws did not disclose any allegation which would amount to criminal misconduct on part of appellants — It was evident that the couple had developed incompatibility — Evidence Act, 1872, S. 3 — Penal Code, 1860, Ss. 498-A, 406 and 34. Bhaskar Lal Sharma* v. *Monica*, (2009) 10 SCC 604: (2009) 161 DLT 739.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 27-7-2009]

[659] — S. 154 — Report sent by village sarpanch returned by Head Constable as not being on printed form and not signed by village munsiff *— Head Constable giving this information to Sub-Inspector on his arrival — Sub-Inspector proceeding from police station for investigation — Held, the information given to the Sub-Inspector constituted the FIR. Kodali Purnachandra Rao* v. *Public Prosecutor*, (1975) 2 SCC 570: 1975 SCC (Cri) 678: AIR 1975 SC 1925: 1975 Cri LJ 1671.

Bench Strength 3. Coram: *Y.V. Chandrachud*, *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 2-9-1975]

(iii) FIR Book

[660] — S. 154 — An officer in charge of a police station should not carry FIR book with him to the place of occurrence — FIR book is supposed to remain at police station at all times *— Even if the police officer is not satisfied with the information given about commission of cognizable offence, he should make an entry in the general diary, proceed to the place of occurrence and record a complaint there from someone who is in a position to give such report about the commission of the offence. Sevi* v. *State of T.N.*, 1981 Supp SCC 43: 1981 SCC (Cri) 679: AIR 1981 SC 1230: 1981 Cri LJ 736: (1981) 1 MLJ 7 (SC): 1981 MLJ (Cri) 613.

Bench Strength 2. Coram: **O. Chinnappa Reddy** and *Baharul Islam*, JJ. [Date of decision: 3-3-1981]

[661] — S. 154 — FIR book — Non-availability of FIR book before court — If testimony of eyewitnesses is corroborated by other evidence, same cannot be ignored merely because FIR book could not be produced

Considering the unprecedented nature of this prosecution, the chaos that it caused in the otherwise peaceful life of the village and the enormousness of the whole affair, the number of persons murdered, the number of witnesses collected and the enormousness of the investigation, the investigating agency and the prosecution cannot be blamed for not being able to trace out the FIR book. There are always wheels within the wheels and, therefore, there can also be possibility of some interested person, secreting the said FIR book, though in the absence of any concrete or positive evidence, the court would not be justified in so holding. The non-availability of the FIR book, by itself, will not persuade the court to throw out the whole prosecution case. The evidence of eyewitnesses, which included injured eyewitnesses, was supported and corroborated by the other witnesses and such evidence could not be disturbed or ignored for the mere reason that the FIR book was not produced or that there was doubt regarding the names of the accused persons, which were to be found in the complaint lodged by PW 1. (Paras 30 and 41). *Alagarsamy* v. *State*, (2010) 12 SCC 427: AIR 2010 SC 849: 2010 Cri LJ 29: (2010) 2 ECrN 88: (2009) 84 AIC 192 .

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 22-10-2009]

(2) Value, evidentiary value and use of FIR

See also Ss. 161 and 162, below

[662] — S. 154 — FIR — Nature and use of

The FIR is not a substantive piece of evidence and has a limited use. It is also not an encyclopedia of the prosecution case. It is from the nature of the FIR and other surrounding circumstances to be seen whether there was any scope for any confusion at the time when the informant gave it or was it a version which merited explanation at the eventual trial. *Ramesh Maruti Patil* v. *State of Maharashtra*, 1995 SCC (Cri) 149: AIR 1994 SC 28: 1994 Cri LJ 8.

Bench Strength **2**. Coram: *M.M. Punchhi* and *S.C. Agrawal*, JJ. [Date of decision: 1-5-1992]

[663] — S. 154 — FIR — Nature of — Not a substantive piece of evidence — Useful for corroborating or contradicting the maker

First Information Report is not an encyclopaedia of the entire case and is even not a substantive piece of evidence. It has value, no doubt, but only for the purpose of corroborating or contradicting the maker. *Surjit Singh* v. *State of Punjab*, 1993 Supp (1) SCC 208: 1993 SCC (Cri) 161: AIR 1992 SC 1389.

Bench Strength **2**. Coram: **M.M. Punchhi** and *B.P. Jeevan Reddy*, JJ. [Date of decision: 28-4-1992]

[664] — S. 154 — FIR — *Held, FIR is not substantive evidence and cannot be used for contradicting testimony of the eyewitnesses except that it may be used for the purpose of contradicting maker of the report — Hence, non-naming of one or few of the accused persons in the FIR is no reason to disbelieve the testimony of crucial witnesses — Evidence Act, 1872, Ss. 145 and 157* (Paras 11 to 12). *Kirender Sarkar* v. *State of Assam*, (2009) 12 SCC 342: AIR 2009 SC 2513: (2009) 78 AIC 99 (SC): 2009 Cri LJ 3727.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 27-4-2009]

[**Ed.**: *See also* (1972) 4 SCC 773; (1997) 6 SCC 514: 1997 SCC (Cri) 946.]

[665] — S. 154 — FIR — Evidentiary value — *Held, FIR is not a substantive piece of evidence and it can be used only to discredit testimony of maker thereof and it cannot be utilised for contradicting or discrediting testimony of other witnesses* (Para 38). *Pandurang Chandrakant Mhatre* v. *State of Maharashtra*, (2009) 10 SCC 773: (2009) 83 AIC 38 (SC).

Bench Strength **2**. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 8-10-2009]

Dharma Rama Bhagare v. State of Maharashtra, (1973) 1 SCC 537, followed

[666] — S. 154 — FIR — Nature and purpose — Principles reiterated — *Should contain basic prosecution case — Mention of minute details of prosecution case or evidence on which prosecution proposes to rely at trial not necessary — Non-mentioning of motive in FIR not significant, more so where FIR filed by a rustic man and filed promptly, ruling out chances of false implication of accused*

The FIR need not be an encyclopaedia of all the facts and circumstances on which the prosecution relies. The main purpose of the FIR is to enable a police officer to satisfy himself as to whether commission of cognizable offences is indicated so that further investigation can be undertaken by him. The purpose of the FIR is to set the criminal law in motion and it is not customary to mention every minute detail of the prosecution case in the FIR. FIR is never treated as a substantive piece of evidence and has a limited use i.e. it can be used for the corroborating or contradicting the maker of it. (Para 66)

The law requires FIR to contain basic prosecution case and not minute details. Even if an accused is not named in the FIR he can be held guilty if prosecution leads reliable and satisfactory evidence which proves his participation in crime. Similarly, the witnesses whose names are not mentioned in the FIR but examined during the course of trial can be relied upon for the purpose of basing conviction against the accused. Non-mentioning of motive in the FIR cannot be regarded as omission to state important and material fact. As a principle, omission to give details in the FIR as to manner in which weapon was used by the accused is not a material omission amounting to contradiction. Further, this is a case wherein FIR was filed by a rustic man and, therefore, non-mentioning of motive in the FIR cannot be attached much importance. Moreover, in this case FIR regarding gruesome murder of six persons was filed promptly and without any avoidable delay and, therefore, false implication of any of the respondent-accused in such a grievous case stands ruled out. There is nothing on the record to show that FIR was the result of deliberation by the first informant with other persons. As the FIR was lodged promptly, the informant's evidence containing minor variations not affecting the substratum of prosecution story cannot be discarded on the ground that motive which prompted the respondents to kill six persons was not mentioned in the FIR. (Paras 67, 69, 72 and 73). *State of U.P.* v. *Krishna Master*, (2010) 12 SCC 324: AIR 2010 SC 3071: 2010 Cri LJ 3889: (2010) 94 AIC 257 (SC): (2010) 5 All LJ 423.

Bench Strength **2**. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 3-8-2010]

CBI v. Tapan Kumar Singh, (2003) 6 SCC 175: 2003 SCC (Cri) 1305, relied on

(2) Value, evidentiary value and use of FIR *(contd.)*

[667] — S. 154 — FIR — Evidentiary value of FIR, discussed

The fundamental object of an FIR is that it acts as a safeguard against embellishment, exaggeration and forgetfulness. True, that it is not the requirement of law that every minute detail of the occurrence needs to be recorded in the FIR but it must disclose the commission of an offence. Though it is trite that the FIR does not constitute substantive evidence and can, strictly speaking, be only used as a previous statement for the purpose of either corroborating or contradicting its maker, yet omission of material facts pertaining to the crime is undoubtedly relevant in judging the veracity of prosecution case. The FIR is a report relating to the commission of an offence, given to the police and recorded by it under Section 154 CrPC. Though, recording of an FIR is not a condition precedent to the setting in motion of the criminal investigation yet from the viewpoint of the investigating authorities it conveys to them earliest information regarding the circumstances in which the crime was committed; the names of the culprits and the role played by them as well as the names of the witnesses present at the scene of occurrence, so vital for effective and meaningful investigation. The information about an occurrence can be given by any person knowing about the commission of such an offence and not necessarily by an eyewitness. (Paras 26 and 24). *State of Maharashtra* v. *Ahmed Shaikh Babajan*, (2009) 14 SCC 267: (2009) 73 AIC 178 (SC): (2009) 1 ECrN 637 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 24-10-2008]

[668] — S. 154 — FIR — Use of — *Held, FIR can be used only for the purpose of corroborating or contradicting the maker thereof. Babu Singh* v. *State of Punjab*, (1996) 8 SCC 699: 1996 SCC (Cri) 730: AIR 1996 SC 3250.

Bench Strength **2**. Coram: *Faizan Uddin* and **G.B. Pattanaik**, JJ. [Date of decision: 24-4-1996]

[669] — S. 154 — FIR — Use of — *Held, it can be used either to corroborate or for contradiction of its maker — It cannot be used as substantive evidence or corroborating a statement of third party. State of M.P.* v. *Surbhan*, (1996) 9 SCC 46: 1996 SCC (Cri) 919: AIR 1996 SC 3345.

Bench Strength **2**. Coram: *K. Ramaswamy* and *G.B. Pattanaik*, JJ. [Date of decision: 15-4-1996]

[670] — S. 154 — FIR — Use of — Not a substantive piece of evidence — *Where version given in FIR is found to be suspicious, evidence of first informant completely falling in line with such a version also becomes suspicious, particularly, in a case arising out of acute enmity — Occurrence taking place in dark night at some distance from lantern — FIR giving minutest detail of occurrence, in the circumstances, becomes suspicious — Consequently evidence of first informant repeating the same in a parrot-like manner also creates some amount of suspicion — In such circumstances evidence of chance-witness does not merit acceptance*

No doubt, FIR is not substantive evidence. However, when the author of the report consistently speaks with a version given in FIR, then the Court can look into the evidence as well as the earlier version, not for the purpose of mere scrutiny of the evidence, but to examine whether the very version given by this witness could be accepted and if the Court finds the earliest version given is suspicious and if the witness completely falls in line with such a version, then such evidence also becomes suspicious, particularly, in case of this nature arising out of acute enmity.

In the present case the first informant describes part played by each of the accused as though they attacked one after the other. What is more important is that he also described each blow given by each of the accused on each part of the body and how they happened to inflict these injuries on each of the three deceased. It is rather surprising that he has also mentioned the blows dealt on the hands of the deceased, on the lower limbs of the deceased and other parts of the deceased total numbering to 18-20 blows. First of all the presence of the lantern itself is a doubtful factor. Even assuming there was a lantern, it is highly unbelievable that the witness could have given so many details of the occurrence. When the interested witness falls in line verbatim and repeats the same in a parrot-like manner, naturally that creates some amount of suspicion about his veracity. If first informant's evidence becomes doubtful then the evidence of the chance-witness does not merit acceptance. *State of Punjab* v. *Mohri Ram*, 1994 Supp (1) SCC 632: 1994 SCC (Cri) 737.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 7-4-1993]

[671] — S. 154 — FIR — Use of — Statement contained in the FIR lodged by the accused cannot be used against the co-accused — It cannot be used against its maker if it is inculpatory in nature — *Nor can it be used for the purpose of corroboration or contradiction unless its maker offers himself as a witness — It can be used as an admission under S. 21, Evidence Act unless the admission does not amount to confession — Evidence Act, 1872, Ss. 145, 157 and 21*

A statement in an FIR can normally be used only to contradict its maker as provided in Section 145 of the Evidence Act, 1872 or to corroborate his evidence as envisaged in Section 157 of the Act. Neither is possible in a criminal trial as long as its maker is an accused in the case, unless he offers himself to be examined as a witness.

A statement contained in the FIR furnished by one of the accused in the case cannot, in any manner, be used against another accused. Even as against the accused who made it, the statement cannot be used if it is inculpatory in nature nor can it be used for the purpose of corroboration or contradiction unless its maker offers himself as a witness in the trial. The very limited use of it is as an admission under Section 21 of the Evidence Act against its maker alone unless the admission does not amount to confession. *Bandlamuddi Atchuta Ramaiah* v. *State of A.P.*, (1996) 11 SCC 133: 1997 SCC (Cri) 128: AIR 1997 SC 496.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 26-9-1996]

Nisar Ali v. State of U.P., AIR 1957 SC 366: 1957 SCR 657: 1957 Cri LJ 550, followed

[672] — S. 154 — FIR — Value of — It is not a substantive piece of evidence — Absence of minute details immaterial — *Non-mention of or vague reference to some facts not fatal — FIR lodged by the deceased's wife soon after the occurrence when she was in a disturbed state of mind — FIR mentioning that one of the accused fired from his pistol which struck deceased's chest while in court she deposing that the shot fired by the accused did not hit the deceased — She did not state in the FIR that the deceased died as a result of pistol shot — Accused dying due to the injuries inflicted by other accused — Held, in the circumstances of the case, there was no contradiction or variation in her deposition in court from what she stated in the FIR — Her statement in the FIR could only be what she inferred*

The FIR is not a substantive piece of evidence, it is only relevant in judging the veracity of prosecution case and the value to be attached to it depends on the facts of each case. Only the essential or broad picture need be stated in the FIR and all minute details need not be mentioned therein. It is not a verbatim summary of the prosecution case. It need not contain details of the occurrence as if it were an "encyclopaedia" of the occurrence. It may not be even necessary to catalogue the overt acts therein. Non-mentioning of some facts or vague reference to some others are not fatal. (Para 10). *Baldev Singh* v. *State of Punjab*, (1995) 6 SCC 593: 1995 SCC (Cri) 1132: AIR 1996 SC 372.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **K.S. Paripoornan**, JJ. [Date of decision: 13-10-1995]

[673] — S. 154 — FIR is not a substantial evidence. *Baldev Singh* v. *State of Punjab*, (1990) 4 SCC 692: AIR 1991 SC 31.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 18-9-1990]

[674] — S. 154 — FIR is not substantive evidence *— It may be used to corroborate the informant under S. 157 of Evidence Act or contradict him under S. 145 of Evidence Act if the informant appears as a witness. Bheru Singh* v. *State of Rajasthan*, (1994) 2 SCC 467: 1994 SCC (Cri) 555: (1994) 1 Crimes 630: (1994) 1 ALT (Cri) 695: (1994) 31 ACC 240.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 4-2-1994]

[675] — S. 154 — FIR lodged by a person stating that the information was conveyed to him by accused himself — *Held, this admission is not only a relevant fact under S. 8 of Evidence Act as res gestae but an important circumstance against the accused — Evidence Act, 1872, S. 8. Ganeshlal* v. *State of Maharashtra*, (1992) 3 SCC 106: 1992 Cri LJ 1545.

Bench Strength 2. Coram: *N.M. Kasliwal* and **K. Ramaswamy**, JJ. [Date of decision: 10-4-1992]

[676] — S. 154 — Use of FIR — *Apprehension of the accused on the spot, his identity and name, and being brought by the witnesses given in the FIR — Evidence of the first informant that he brought the accused from the scene of offence and handed him over to the police to record the FIR gets corroboration from the FIR. State of Gujarat* v. *Anirudhsing*, (1997) 6 SCC 514: 1997 SCC (Cri) 946: AIR 1997 SC 2780: 1997 Cri LJ 3397.

Bench Strength 2. Coram: *K. Ramaswamy* and *D.P. Wadhwa*, JJ. [Date of decision: 10-7-1997]

[677] — S. 154 — Use of FIR — *FIR is not a substantial piece of evidence — It can only be used for corroborating or contradicting its maker — It cannot be used to corroborate or contradict other witnesses — Statement of a Reserved Police Officer regarding alleged confession of the accused not allowed to be recorded by the trial court on an erroneous view that such statement was hit by S. 25 Evidence Act — Statement in the FIR lodged by another officer that the accused made a confession to such Reserved Police Officer cannot be used to corroborate the evidence of that Reserved Police Officer — Evidence Act, 1872, Ss. 25, 145 and 157. State of Gujarat* v. *Anirudhsing*, (1997) 6 SCC 514: 1997 SCC (Cri) 946: AIR 1997 SC 2780: 1997 Cri LJ 3397.

Bench Strength 2. Coram: *K. Ramaswamy* and *D.P. Wadhwa*, JJ. [Date of decision: 10-7-1997]

Nisar Ali v. State of U.P., AIR 1957 SC 366: 1957 SCR 657; Dharma Rama Bhagare v. State of Maharashtra, (1973) 1 SCC 537: 1973 SCC (Cri) 421, followed

(2) Value, evidentiary value and use of FIR *(contd.)*

[678] — S. 154 — Use of FIR — Death of informant — *Non-examination of the first informant during the trial as he had died — FIR cannot be used as substantive piece of evidence — Contents of the FIR could have been used for the purpose of corroborating or contradicting its maker if he had been examined — Evidence Act, 1872, Ss. 145 and 154. Harkirat Singh* v. *State of Punjab*, (1997) 11 SCC 215: 1997 SCC (Cri) 1068: AIR 1997 SC 3231.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S. Saghir Ahmad*, JJ. [Date of decision: 24-7-1997]

[679] — S. 154 — Where FIR is the earliest statement, it is of importance in appreciating evidence of such witnesses, though it is not a substantive evidence — *When no overt act attributed by the witnesses to some of the accused persons in a mass attack, held, they would be entitled to benefit of doubt — But when part played by other accused specifically mentioned in FIR and that is the consistent version of the witnesses which is corroborated by medical evidence also, held, prosecution case against them can be safely accepted. Ladha Shamji Dhanani* v. *State of Gujarat*, 1993 Supp (1) SCC 20: 1993 SCC (Cri) 97: AIR 1992 SC 956.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *R.C. Patnaik*, JJ. [Date of decision: 11-3-1992]

[680] — S. 154 — Held, FIR being the first version of the incident, statements made therein must be given due weight (Para 15). *Kalyan* v. *State of U.P.*, (2001) 9 SCC 632: AIR 2001 SC 3976.

Bench Strength 2. Coram: *M.B. Shah* and **R.P. Sethi**, JJ. [Date of decision: 28-9-2001]

[681] — S. 154 — FIR — Evidentiary value of — *Evidence Act, 1872, Ss. 145 and 161*

The FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 161 of the Evidence Act, 1872 or to contradict him under Section 145 of that Act. It can neither be used as evidence against the maker at the trial if he himself becomes an accused nor to corroborate or contradict other witnesses. (Para 15). *Ravi Kumar* v. *State of Punjab*, (2005) 9 SCC 315: AIR 2005 SC 1929: 2005 Cri LJ 1742.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 4-3-2005]

[682] — S. 154 — FIR — Evidentiary value of — Held, FIR in a criminal case and particularly in murder case is a vital and valuable piece of evidence for the purpose of appreciating evidence led by the prosecution at the trial — *It is the earliest information regarding the circumstances under which the crime was committed, including the names of the actual culprits and the part played by them, the weapons, if any, used as also the names of the eyewitnesses, if any — Delay in lodging FIR may result in embellishment, which is a creature of an afterthought* (Para 9). *Mahmood* v. *State of U.P.*, (2007) 14 SCC 16: AIR 2008 SC 515: 2008 Cri LJ 696: (2008) 1 All LJ 248: (2008) 61 AIC 203 (SC).

Bench Strength 2. Coram: *Altamas Kabir* and **B. Sudershan Reddy**, JJ. [Date of decision: 15-11-2007]

Budh Singh v. State of U.P., (2006) 9 SCC 731: (2006) 3 SCC (Cri) 377, followed

[683] — S. 154 — FIR — Evidentiary value of — Where examination of the first informant dispensed by consent, FIR would become part of prosecution evidence — Pre-existing fact stated in FIR — Relevance of. *Malkiat Singh* v. *State of Punjab*, (1991) 4 SCC 341: 1991 SCC (Cri) 976.

Bench Strength 3. Coram: *A.M. Ahmadi, V. Ramaswami* and **K. Ramaswamy**, JJ. [Date of decision: 10-4-1991]

[684] — S. 154 — FIR — Held, by itself cannot be the basis to decide the culpability of the assailants in every case

Five persons were tried for committing murder. The trial Judge relying on the FIR acquitted accused A-2, A-4 and A-5 on the ground that their names were not mentioned therein and convicted accused A-1 and A-3 holding that their names were mentioned in the FIR. The High Court convicted all the five accused who faced the trial. On appeal

Held :

No doubt the FIR is an important document but that by itself cannot be the basis to decide the culpability of the assailants in every case. In the present case the eyewitnesses have deposed that accused A-1, A-2 and A-4 inflicted injuries and to that extent their veracity cannot be doubted. So far as accused A-3 and A-5 are concerned, there is vague allegation and they were also running along with the other accused A-1 pelting stones. It is not safe to convict accused A-3 and A-5 by applying S. 149 IPC. Accordingly conviction of accused A-1, A-2 and A-4 under Ss. 302/149 IPC is confirmed while conviction and sentence of accused A-3 and A-5 are set aside. *Shrimant Yankappa Dharamatti* v. *State of Karnataka*, 1994 Supp (3) SCC 332: 1994 SCC (Cri) 1723.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 24-11-1993]

[685] — S. 154 — FIR — What is — Purpose and contents of — Evidentiary value — State of mind of complainant or victim making the complaint should be kept in mind — *Evidence Act, 1872, Ss. 161 and 145*

The first information report is a report giving information of the commission of a cognizable crime which may be made by the complainant or by any other person knowing about the commission of such an offence. It is intended to set the criminal law in motion. Any information relating to the commission of a cognizable offence is required to be reduced to writing by the officer in charge of the police station which has to be signed by the person giving it and the substance thereof is required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf. It has been held time and again that the FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 161 of the Evidence Act or to contradict him under Section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused nor to corroborate or contradict other witnesses. It is not the requirement of law that the minutest details be recorded in the FIR lodged immediately after the occurrence. The fact of the state of mental agony of the person making the FIR who generally is the victim himself, if not dead, or the relations or associates of the deceased victim apparently under the shock of the occurrence reported has always to be kept in mind. (Para 5). *Bijoy Singh* v. *State of Bihar*, (2002) 9 SCC 147: AIR 2002 SC 1949: 2002 Cri LJ 2623.

Bench Strength 2. Coram: **R.P. Sethi** and *D.M. Dharmadhikari*, JJ. [Date of decision: 17-4-2002]

Meharaj Singh (L/Nk.) v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391: 1995 Cri LJ 457, relied on

But see Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450

[686] — Ss. 154, 157 and 174 — FIR — Value of — Delay in lodging — Effect

FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. *Meharaj Singh (L/Nk.)* v. *State of U.P.*, (1994) 5 SCC 188: 1994 SCC (Cri) 1391.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 21-4-1994]

But see Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450

[687] — S. 154 — Evidentiary value of FIR — Manner in which required to be proved — *Held, mere production of documents is not enough — Contents of documentary evidence has to be proved by examining witnesses — Further held, FIR in itself is not an evidence without actual proof of facts stated therein*

The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence. (Para 14). *Roop Singh Negi* v. *Punjab National Bank*, (2009) 2 SCC 570.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 19-12-2008]

[688] — S. 154 — FIR — Value and importance of — *Held, FIR is a very vital material as it is the first information about the incident and has less chances of altering the version and improvement* (Para 11). *Sujoy Sen* v. *State of W.B.*, (2007) 6 SCC 32: (2007) 3 SCC (Cri) 47: (2007) 54 AIC 1 (SC): 2007 Cri LJ 3727.

Bench Strength 2. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 8-5-2007]

Manoj v. State of Maharashtra, (1999) 4 SCC 268: 1999 SCC (Cri) 533, distinguished

[689] — S. 154 — FIR — Role of — *Held, FIR in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the time of trial* (Para 29). *Bathula Nagamalleswara Rao* v. *State*, (2008) 11 SCC 722: (2008) 3 SCC (Cri) 898.

Bench Strength 2. Coram: *P.P. Naolekar* and **L.S. Panta**, JJ. [Date of decision: 22-4-2008]

Meharaj Singh v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391; Anil Sharma v. State of Jharkhand, (2004) 5 SCC 679: 2004 SCC (Cri) 1706; Bhimapa Chandappa Hosamani v. State of Karnataka, (2006) 11 SCC 323: (2007) 1 SCC (Cri) 456; S. Sudershan Reddy v. State of A.P., (2006) 10 SCC 163: (2006) 3 SCC (Cri) 503; Salim Sahab v. State of M.P., (2007) 1 SCC 699: (2007) 1 SCC (Cri) 425; State of Punjab v. Jagir Singh, (1974) 3 SCC 277: 1973 SCC (Cri) 886; Lehna v. State of Haryana, (2002) 3 SCC 76: 2002 SCC (Cri) 526; Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381: 2003 SCC (Cri) 32, relied on

(2) Value, evidentiary value and use of FIR *(contd.)*

[690] — S. 154 — FIR — Meaning and value of — *Held, FIR is only a report about information as to commission of an offence — It is not a substantive evidence as the police has yet to investigate the offence — Exaggerated version in FIR — Testimony of informant (PW 2) not believable — Defence contention that in such case whole FIR became doubtful — Held, the said contention was perhaps right if PW 2's was the only testimony in support of the prosecution — Prosecution also relied on two dying declarations — In view of the above, the said contention, held, unacceptable*

It is contended that if testimony of PW 2 (informant) is not believable, then the whole of the FIR becomes doubtful and the case against the accused necessarily collapses. This contention cannot be accepted. It may be probable that PW 2 might have given information to the police which was exaggerated and added things which, probably, he did not learn from deceased *K* on 1-4-1996. It is possible that seeing *K* in the hospital, after suffering extensive burns to the extent of 80 per cent, PW 2 might have suspected the in-laws of *K* as having murdered her. (Para 10)

The first information report is only a report about the information as to the commission of an offence; it is not a substantive evidence, as the police has yet to investigate the offence. If PW 2's was the only testimony in support of the prosecution, then perhaps the counsel (raising the said contention) was right. It is found, however, that the prosecution strongly relied on two declarations, one made to Naib Tahsildar (PW 6) on 2-4-1996 as well as the statement made by *K* under Section 161 CrPC recorded on 7-4-1986 by ASI, both of which can be treated as dying declarations. (Para 10). *Sohan Lal* v. *State of Punjab*, (2003) 11 SCC 534: 2004 SCC (Cri) 226: AIR 2003 SC 4466.

Bench Strength 2. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 14-10-2003]

[691] — S. 154 — FIR — Held, can be utilised for the purposes of corroborating or contradicting only the maker thereof — FIR cannot be used to discredit testimony of any other person — *FIR lodged by PW 1 who was not an eyewitness — Testimony of PW 3, the eyewitness, held, cannot be discredited for any statement made in the FIR — There was nothing in the cross-examination of PW 3 to impeach his testimony, which also received corroboration from PW 2 — Held, courts below were therefore, justified in relying upon the testimony of PW 3 to come to the conclusion that the prosecution case had been proved beyond reasonable doubt — Therefore, appellant's conviction under S. 302 upheld — Evidence Act, 1872, Ss. 145 and 157 — Penal Code, 1860, S. 302. Andrews* v. *State of Kerala*, (2002) 10 SCC 126.

Bench Strength 2. Coram: *G.B. Pattanaik* and *M.B. Shah*, JJ. [Date of decision: 16-3-1999]

[692] — S. 154 — If FIR is not proved — Effect — *Held, (per B.N. Agrawal, J.) it would not be a ground for acquittal, but the case would depend upon the evidence led by the prosecution* (Para 35). *Krishna Mochi* v. *State of Bihar*, (2002) 6 SCC 81: 2002 SCC (Cri) 1220: AIR 2002 SC 1965: 2002 Cri LJ 2645.

Bench Strength 3. Coram: **M.B. Shah**[3], **B.N. Agrawal**[1] and **Arijit Pasayat**[2], JJ. [Date of decision: 15-4-2002]

[693] — S. 154 — FIR — Importance and evidentiary value

The importance of FIR cannot be underestimated as it is first version on the basis of which the investigation proceeds. But FIR is not a be-all and end-all of the matter, even though it is a very important document. In most of the cases, FIR provides corroboration to the evidence of the maker thereof. It provides a direction to the investigating officer and the necessary clues about the crime and the perpetrator thereof. (Paras 20 and 39). *Alagarsamy* v. *State*, (2010) 12 SCC 427: AIR 2010 SC 849: 2010 Cri LJ 29: (2010) 2 ECrN 88: (2009) 84 AIC 192.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 22-10-2009]

[694] — Ss. 154 and 164 — Evidentiary value of FIR — *Prosecutrix naming Accused 4 in FIR but neither identifying him in Court nor naming him in her deposition — Held, the allegations, made in FIR are not evidence — Penal Code, 1860 — Ss. 375 and 376 — Evidence Act, 1872, Ss. 145 and 9*

The prosecutrix, a coolie, was gang raped while on her way back from a movie at about 10.00 p.m. on 20-11-1994. Her brother, *P* who was slapped, ran for help and when he returned with other villagers, found her sister lying unconscious and naked. FIR was lodged at about 7.00 p.m. on 21-11-1994 after the victim regained her consciousness. The conviction of six accused persons under Section 376(2)(*g*) IPC was upheld by the High Court.

Allowing the appeal of Accused 4 to 6 and dismissing the appeal of Accused 1 to 3,

Held :

The allegations made in the first information report are not evidence. Naming some of the accused persons in the first information report and not naming them in the course of deposition casts a serious doubt. The prosecutrix might have named four persons, namely, Accused 1 to 4 in the FIR, but, she named only Accused 1 to 3 in her deposition. She neither named nor identified Accused 4 to 6. On what basis, therefore, their guilt is said to have been established is not known. Both, the learned trial Judge as also the High Court, in their judgments did not deal with this aspect of the matter. (Paras 16 and 18). *Viswanathan* v. *State*, (2008) 5 SCC 354: (2008) 2 SCC (Cri) 593: AIR 2008 SC 2222.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 29-4-2008]

Devinder Singh v. State of H.P., (2003) 11 SCC 488: 2004 SCC (Cri) 185, relied on

[695] — S. 154 — FIR — Not substantial evidence and cannot contradict testimony of the eyewitness but may contradict its maker — *Evidence Act, 1872, S. 145* (Para 18). *Asharam* v. *State of M.P.*, (2007) 11 SCC 164: AIR 2007 SC 2594: (2007) 56 AIC 180 (SC).

Bench Strength **2**. Coram: **S.H. Kapadia** and *B. Sudershan Reddy*, JJ. [Date of decision: 25-4-2007]

Dharma Rama Bhagare v. State of Maharashtra, (1973) 1 SCC 537: 1973 SCC (Cri) 421, relied on

[696] — S. 154 — FIR — Evidentiary value of FIR — *Held, FIR is not substantive evidence but it can be used for corroboration* (Para 32). *Sunder Singh* v. *State of Uttaranchal*, (2010) 10 SCC 611.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *A.K. Patnaik*, JJ. [Date of decision: 16-9-2010]

[697] — S. 154 — FIR — Evidentiary value — *FIR by itself, held, not a substantive piece of evidence — Can be used to contradict or corroborate the maker thereof in the manner provided under the Evidence Act — Hence, conviction for misappropriation of property on the basis of allegations contained in the FIR which were not substantiated by oral evidence, held, not sustainable — Prevention of Corruption Act, 1947, S. 5(1)(c) — Penal Code, 1860, S. 477-A — Evidence Act, 1872, Ss. 155(3) and 145. Madhusudan Singh* v. *State of Bihar*, (1996) 11 SCC 248: 1997 SCC (Cri) 187: AIR 1995 SC 1437.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision: 12-1-1995]

[698] — S. 154 — FIR lodged by accused — Can be used by prosecution to show motive and presence of accused at the scene of occurrence. (Para 6). *Thakarda Lalaji Gamaji* v. *State of Gujarat*, (1974) 3 SCC 639: 1974 SCC (Cri) 169: AIR 1974 SC 1351: 1974 Cri LJ 612.

Bench Strength **2**. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 22-11-1973]

[699] — S. 154 — FIR made part of motor vehicles claim petition — Admissibility of — *Held, ordinarily Supreme Court would not have entered into realm of appreciation of evidence but as High Court failed and/or neglected to do so, no other option exists — Ordinarily allegations made in FIR not admissible in evidence per se but as the allegation made in FIR had been made a part of the claim petition, Tribunal and the appellate courts entitled to look into the same — Furthermore, an admission made in the pleadings is admissible in evidence proprio vigore — Evidence Act, 1872, S. 58 — Motor Vehicles Act, 1988 — Ss. 147 and 173(1). National Insurance Co. Ltd.* v. *Rattani*, (2009) 2 SCC 75.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 18-12-2008]

New India Assurance Co. Ltd. v. Asha Rani, (2003) 2 SCC 223: 2003 SCC (Cri) 493, relied on

[700] — Ss. 154 and 161 — Previous statement of a witness — Use of, for contradicting the maker — *FIR not a substantive piece of evidence — It can be used only to corroborate or contradict the maker thereof — But where the witness not confronted with his alleged inconsistent statements contained in the FIR or in his case diary statement under S. 161 CrPC no reliance could be placed on such statements — Evidence Act, 1872, Ss. 145 and 157. State of U.P.* v. *Babul Nath*, (1994) 6 SCC 29: 1994 SCC (Cri) 1585.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 12-8-1994]

[701] — Ss. 154 and 162 — Complaint lodged by a neighbour about occurrence inside house of deceased — *Where police already had information about the occurrence, the complaint which was treated as FIR would be hit by S. 162 — But that would not affect the testimony of the inmates of the house, being the material witnesses, who had seen the entire occurrence inside the house — Utility of such FIR explained*

Any statement recorded during the investigation is covered by S. 162 CrPC. In the instant case the vague information received by police was about the communal riots and violence. Even if entry to that effect was made, the question is whether the investigation commenced on that basis in the strict sense. However, even assuming that the complaint was hit by S. 162 CrPC that by itself does not make any difference. A statement of that nature can be used to contradict the witness and if any material discrepancies are there they can be taken note of. The complainant was also cross-examined with reference to the contents of his complaint. He was not an eye witness to the occurrence inside the house.

(2) Value, evidentiary value and use of FIR *(contd.)*

Therefore, even assuming that there were some omissions and discrepancies in his evidence, they would not affect the evidence of the material witnesses who were inmates of the house. *Paresh Kalyandas Bhavsar* v. *Sadiq Yakubbhai Jamadar*, (1993) 3 SCC 95: 1993 SCC (Cri) 612: AIR 1993 SC 1544: 1993 Cri LJ 1857.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 24-3-1993]

[702] — Ss. 154, 161(3) and 162 — Investigation started by the police on the night — Report of the incident lodged by the witness on the following morning could only be treated as a statement under S. 161(3) and not as an FIR — *Such report can be excluded from consideration in view of S. 162 — But on that score alone the evidence of the witness cannot be held to be inadmissible* (Paras 37, 38 and 39). *Ranbir Yadav* v. *State of Bihar*, (1995) 4 SCC 392: 1995 SCC (Cri) 728: AIR 1995 SC 1219: 1995 Cri LJ 2665.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 21-3-1995]

[703] — Ss. 154 and 162 — FIR — When can be treated as statement under S. 162 — *Police Officer deliberately not recording FIR on receipt of information about cognizable offence — FIR prepared after reaching the spot and after due deliberations, consultations and discussion — Held, such a complaint could not be treated as FIR — It would be a statement made during the investigation of a case and hit by S. 162 — Consequently it would be unsafe to rely on such a tainted investigation. State of A.P.* v. *Punati Ramulu*, 1994 Supp (1) SCC 590: 1994 SCC (Cri) 734: AIR 1993 SC 2644: 1993 Cri LJ 3684.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 19-2-1993]

[704] — S. 154 — Whether accused alone or accused along with other inflicted injuries — Test is whether name of the accused mentioned in the earliest report. *Nallamsetty Yanadaiah* v. *State of A.P.*, 1993 Supp (3) SCC 177: 1993 SCC (Cri) 892: AIR 1993 SC 1175: 1993 Cri LJ 408.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 16-9-1992]

[705] — S. 154 — FIR — Informant turning hostile — Use of such FIR to corroborate or discredit — *FIR lodged by a PW who later turning hostile and testifying that he had not made any statement to the police and had rather signed on dotted lines — Such an FIR, held, could not be used to corroborate the first informant or to discredit other prosecution witnesses before whom the deceased had made the dying declaration — Reasons given by trial court for acting to the contrary, on facts, found patently wrong and opposed to principles of criminal justice, therefore evidence adduced by the prosecution to corroborate the dying declaration, reassessed by Supreme Court — S. 32 — Penal Code, 1860 — Ss. 302, 449 & 34 — Evidence Act, 1872, Ss. 145 and 157*

The trial court had given the following reasons for discarding the dying declaration made by the deceased before PW 3 and PW 4: (*i*) The first informant had stated that the FIR was a suspicious document and that, therefore, the allegation of the dying declaration having been made in the presence of the first informant (PW 1), PWs 3 and 4 was also suspicious, (*ii*) that the neighbours accompanying PW 4 to the spot had stated the deceased had not spoken when PW 1 (the first informant) addressed the deceased in their presence, and (*iii*) PW 3 had not disclosed about the deceased's dying declaration to any of the persons who had assembled at the spot. Finding these reasons to be patently wrong and opposed to principles of criminal jurisprudence, the Supreme Court reappraised the evidence and

Held:

The trial court could not rely upon the contents of the FIR lodged by PW 1, and that too for the purpose of discarding the evidence of PWs 3 and 4. PW 1 turned hostile and testified that he did not make any statement before the police but signed on the dotted lines. It is trite that an FIR is not substantive evidence [unless of course it is admitted under Section 32(1) of the Evidence Act] and can be used to corroborate or contradict the maker thereof; and, therefore, the question of corroborating PW 1 by his purported statements, as contained in the FIR could not arise. In spite thereof the trial court observed: "... the first informant's statement is further supported by the evidence of PW 1" and used the statements contained in the FIR as substantive evidence to discredit PWs 3 and 4. It must, therefore, be said that the approach of the trial court in dealing with the FIR was legally impermissible. *George* v. *State of Kerala*, (1998) 4 SCC 605: AIR 1998 SC 1376: 1998 Cri LJ 2034.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 18-3-1998]

[706] — S. 154 — FIR — Mention of name of accused in FIR — *Participation of named and unnamed persons — Omnibus allegation made by witnesses against several persons of having participated in the crime — Test to determine who among them actually participated — One of the tests to be applied is whether their names mentioned in FIR. Rajaram* v. *State of M.P.*, (1992) 3 SCC 634: 1992 SCC (Cri) 790: AIR 1994 SC 846.

Bench Strength **3**. Coram: *P.B. Sawant*, **K. Jayachandra Reddy** and *N.P. Singh*, JJ. [Date of decision: 31-7-1992]

[707] — S. 154 — Statement recorded in FIR discarded by court without reason — Effect — *Petition seeking transfer of custody of minor children from father (appellant) to mother (respondent) — Mother having sustained burn injuries, admitted in hospital where her statement was recorded by SI police and FIR was registered on that basis — Held, High Court in habeas corpus petition was not justified in directing the Metropolitan Sessions Judge and Secretary of High Court Services Legal Aid Committee to record the statement of the injured and discarding the previous statement as being made under threat — Constitution of India — Art. 226*

No reason has been given by the High Court in the order as to why the previous statement recorded by the police officer should be discarded. Since the information about the incident had already reached the police and on getting the said information the police officer visited the hospital and recorded the statement and FIR had already been registered on the basis of that statement, that is to be treated as the FIR in the case and any subsequent statement made by the informant/complainant can only be taken as a statement in course of the investigation. No reason is stated and it is not clear why the High Court felt that the unusual and extraordinary step of asking the Metropolitan Sessions Judge accompanied by another Judicial Officer, the Secretary of the Andhra Pradesh High Court Legal Services Committee, should be directed to record the statement of the injured. The case was one relating to custody of children for disposal of which neither was it necessary for the High Court to take such an unusual step nor was the matter relating to investigation into the criminal case relevant for deciding the case. (Para 12). *Syed Saleemuddin* v. *Dr. Rukhsana*, (2001) 5 SCC 247: 2001 SCC (Cri) 841: AIR 2001 SC 2172.

Bench Strength **2**. Coram: **D.P. Mohapatra** and *Brijesh Kumar*, JJ. [Date of decision: 19-4-2001]

[708] — S. 154 — FIR — Withholding the FIR lodged — *Incident occurring at about 10 a.m. — Injured admitted in hospital not in a position to give statement — FIR lodged at 7 p.m. on the basis of statement made by PW 1 — Defence contention that according to PW 1 she had first gone to the police station where the victim had made a report of the incident and then they proceeded to the hospital — Trial court holding that the said statement of PW 1, a rustic village woman, appeared to have been made in a state of confusion — Defence failing to ask question regarding the above contention from the police witnesses, especially the one who proved the FIR — Hence, adverse inference cannot be drawn against the prosecution for withholding the FIR lodged by the victim herself*

The incident occurred at about 10 a.m. on 8-7-1994. As the injured was not in a position to give a statement, the Head Constable recorded the statement of PW 1 which was sent to the police station and registered as FIR of the incident on 8-7-1994 at 7 p.m. It was submitted on behalf of the appellant that according to PW 1 she had first gone to the police station where the victim had made a report of the incident and then they had proceeded to the hospital and, therefore, an adverse inference ought to be drawn against the prosecution for withholding the FIR lodged by the victim herself. It has been pointed out by the trial court that the witness is a rustic village woman and such a statement appears to have been made by her in a state of confusion. If it was so as is being suggested then the police officers who have appeared as witnesses, especially the one who has proved the FIR, should have been asked whether there was any report of the incident, other than the one originating in the statement of PW 1, made at the police station and that too by the injured herself. (Paras 2, 4 and 9). *Pothakamuri Srinivasulu* v. *State of A.P.*, (2002) 6 SCC 399: 2002 SCC (Cri) 1337: AIR 2002 SC 2780.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Brijesh Kumar*, JJ. [Date of decision: 26-7-2002]

(3) Reliability and Validity of FIR

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(i) Anonymous complaint

[709] — Ss. 154, 156 & 157 — Anonymous complaint — Preliminary inquiry, held, permissible in case of — No need to lodge FIR and initiate investigative process immediately upon receiving complaint — *Registration of case is a sine qua non for starting investigation — Question as to whether empowered officer had made investigation or caused the same to be made in a cognizable offence within the meaning of S. 157 CrPC or had not initiated investigation on the basis of an information which would not come within the meaning of S. 154 CrPC has to be determined in the fact situation obtaining in each case — Anonymous complaint made to CBI alleging corrupt practices and financial irregularities on the part of some officers of railway department — In view of the above and considering provisions of CBI manual, held, it was within the province of CBI to commence a preliminary inquiry — CBI did not find any reason to convert the preliminary inquiry into a regular case — It recommended to hold departmental proceedings against the officers concerned — Hence, decision of CBI, held, not liable to be interfered with — CBI Manual, Para 9 — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), S. 2*

Although ordinarily in terms of Section 154 CrPC, when a report is received relating to the cognizable offence, a first information report should be lodged, to carry out a preliminary inquiry even under the CrPC is not unknown. When an anonymous complaint is received, no investigating officer would initiate investigative process immediately thereupon. It may for good reasons carry out a preliminary inquiry to find out the truth or otherwise of the allegations contained therein. (Paras 18 and 19)

Registration of a case is a *sine qua non* for starting investigation. Only when an FIR is lodged, the officer in charge of the police station is statutorily liable to report thereabout to a Magistrate who is empowered to take cognizance in terms of Section 157(1) CrPC. Proviso (*b*) appended thereto empowers the investigating officer not to investigate where it appears to him that there is no sufficient ground for entering into an investigation. The question, therefore, as to whether an empowered officer had made investigation or caused the same to be made in a cognizable offence within the meaning of Section 157 CrPC or had not initiated an investigation on the basis of an information which would not come within the meaning of Section 154 CrPC is essentially required to be determined in the fact situation obtaining in each case. (Paras 24 and 22)

The CBI Manual provides for a preliminary inquiry. By reason thereof a distinction has been made between a preliminary inquiry and a regular case. A preliminary inquiry in terms of para 9.1 of the CBI Manual may be converted into a regular case as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence. Undisputedly the provisions of the Criminal Procedure Code are applicable in relation to the said inquiries. (Para 11)

Only an anonymous complaint was made in June 2004. Evidently it was within the province of CBI to commence a preliminary inquiry. The procedure laid down in the CBI Manual and in particular when it was required to inquire into the allegation of the corruption on the part of some public servants, recourse to the provisions of the Manual cannot be said to be unfair. It did not find any reason to convert the preliminary inquiry into a regular case. (Para 25)

The first respondent (CBI) is a statutory authority. It has a statutory duty to carry out investigation in accordance with law. Ordinarily, it is not within the province of the court to direct the investigative agency to carry out investigation in a particular manner. A writ court ordinarily again would not interfere with the functioning of an investigative agency. Only in exceptional cases, it may do so. No such case has been made out by the appellant herein. (Para 30)

So far as the decision of the first respondent herein, not to register a regular case so as to take up an investigation into the allegation against the officers concerned, is concerned, the appellant may have to pursue his own remedy keeping in view the fact that the first respondent before the Supreme Court has furnished the details of its findings in the preliminary inquiry as also the result of the departmental proceedings initiated against the delinquent officers. (Para 32). *Shashikant* v. *CBI*, (2007) 1 SCC 630: (2007) 1 SCC (Cri) 406: AIR 2007 SC 351: (2007) 49 AIC 292 (SC): 2007 Cri LJ 995: (2007) 103 Cut LT 511.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 7-11-2006]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; P. Sirajuddin v. State of Madras, (1970) 1 SCC 595: 1970 SCC (Cri) 240; Mohindro v. State of Punjab, (2001) 9 SCC 581: 2002 SCC (Cri) 1087; State of U.P. v. Bhagwant Kishore Joshi, (1964) 3 SCR 71: AIR 1964 SC 221: (1964) 1 Cri LJ 140; Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307, relied on

Velayudhan v. State of Kerala, (1998) 1 Crimes 510 (Ker); Hemant Dhasmana v. CBI, (2001) 7 SCC 536: 2001 SCC (Cri) 1280, distinguished on facts

(ii) Contents of FIR

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1. Generally

[710] — S. 154 — FIR — Held, must be read in its entirety (Para 7). *Dhananjay* v. *State of Bihar*, (2007) 14 SCC 768: 2007 Cri LJ 1440: (2007) 2 KLJ 294 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 2-2-2007]

2. Form and language of FIR

See also Section 154, '(1)(ii)2. When, where and how FIR to be recorded', above, and '(3)(v) Falsity of/Fabricated FIR', below

[711] — S. 154 — FIR — Language of — There is no necessity for employment of any particular language in the FIR. *Hari Om* v. *State of U.P.*, 1993 Supp (2) SCC 1: 1993 SCC (Cri) 396: 1993 Cri LJ 1383: (1993) 1 Crimes 294.

Bench Strength 2. Coram: *P.B. Sawant* and **S. Mohan**, JJ. [Date of decision: 8-1-1993]

[712] — S. 154 — Neatly written and detailed FIR alleged to have been written within an hour of the murder, held, makes doubtful such fact of early reporting — *Absence of entry in FIR, as to when it was sent to Magistrate concerned, held, assumes great significance and supports the defence plea that the FIR was drawn up much later than alleged. Datar Singh* v. *State of Punjab*, (1975) 4 SCC 272: 1975 SCC (Cri) 530: AIR 1974 SC 1193: 1974 Cri LJ 908: (1974) 11 ACC 262.

Bench Strength 2. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 19-12-1973]

[713] — S. 154 — Very detailed FIR of murder and dacoity lodged soon after by son of one of the deceased — *Held, makes it doubtful. Ram Lakhan Singh* v. *State of U.P.*, (1977) 3 SCC 268: 1977 SCC (Cri) 474: AIR 1977 SC 1936: 1977 Cri LJ 1566.

Bench Strength 3. Coram: **P.K. Goswami**, *A.C. Gupta* and *P.N. Shinghal*, JJ. [Date of decision: 6-5-1977]

[714] — S. 154 — FIR — Credible/acceptable mode and manner of naming persons in FIR — Names, parentage and complete addresses of unknown accused given in FIR — Effect — *Police identifying accused only on the basis of a known co-accused calling four unknown accused by their names during a gun battle in an isolated area on a dark night — Effect — Held, only because SA (the know co-accused) allegedly called the other accused by their names, which appears to be wholly unlikely, they could not have been identified particularly in view of the fact that the incident had taken place in an isolated area and that too on a dark night*

(3)(ii)2. Reliability and Validity of FIR - Contents of FIR - Form and language of FIR *(contd.)*

During the night intervening 24-12-1999 and 25-12-1999, allegedly on the basis of a secret information regarding five accused/dacoits, policemen went to the place concerned in plain clothes. Allegedly on recognising the policemen, the accused persons opened fire and a gun battle ensued. Accused *SA* and Constable *L* died of bullet injuries on the spot. The other accused fled away. PW 2 Constable also received a gunshot injury. PW 10, Inspector who had received the secret information lodged an FIR. All the accused persons were arrested from different places in the month of January 2000. Accused 3, from whom a pistol had been recovered and in respect of whom a different FIR had been lodged, was acquitted of offences under the Arms Act. After completion of the investigation, charge-sheet was filed against A-3, A-2, A-1 (the appellants herein) and A-4. The trial court, after examining a large number of witnesses, convicted the accused for offences under Sections 302, 307 and 353 IPC read with Section 34 IPC. However, A-2 was acquitted in respect of the charge under Section 25 of the Arms Act. Criminal appeals preferred thereagainst were dismissed by the High Court by reason of the impugned judgment.

Allowing the appeals,

Held :

Although test identification for the first time in court is permissible in law, the principle should be applied having regard to the facts and circumstances of the case. The accused persons having been identified for the first time in the court, it is difficult for any court to rely upon the same and that too after such a long time. The appellants were not known to the police officers. The appellant-accused were not involved in any other case. (Paras 19 and 21)

Although it is not in dispute that none of the prosecution witnesses or police knew any of the appellant-accused except *SA* (deceased), it is beyond anybody's comprehension as to how in the FIR, not only their names, but also their parentage and complete addresses were stated. Only because *SA* allegedly called them by their names, which appears to be wholly unlikely, they could not have been identified particularly in view of the fact that the incident had taken place in an isolated area and that too on a dark night. Even two persons, namely. A-4 and A-2 were called by their first names. How the officer-in-charge could even ascertain their actual names has not been disclosed. In the present case, PWs 1, 2 and 3 in their depositions admitted that they had not been knowing the accused from before. Why despite the same, after their arrest, test identification parade was not held has not been explained. The appellants were identified only in the court. (Paras 12, 18, 17 and 21)

The impugned judgment of the High Court convicting the appellants cannot be upheld. The appellants are directed to be set at liberty unless wanted in connection with any other case. (Para 26). *Hem Singh* v. *State of Haryana*, (2009) 6 SCC 748.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

[715] — S. 154 — FIR — Genuineness of — Doubt as to — Factors to be considered — Form and language of FIR

The subsequent statement may not be a part of the first information report being a statement under Section 161 of the Code; but the defence is entitled to show that improvements have been made therein vis-à-vis the allegations made in the first information report. That there exists some improvement is not in dispute. Immediately, a purported statement was taken after the first information report was lodged. A further statement was recorded that PW 1, the victim complainant had himself written the first information report. But the contents of the first information report clearly demonstrate that the same has been drafted by a person who is well versed in legal language. A bare perusal of the first information report itself shows that it cannot be in the handwriting of a student studying in Class IX i.e. the victim. It was in very good handwriting. It was written systematically. There was no mistake. There was no hesitation in writing. It was absolutely neat and clean. (Para 23). *Gowrishankara Swamigalu* v. *State of Karnataka*, (2008) 14 SCC 411.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

[716] — S. 154 — FIR — Genuineness — *Complaint of injured witness, giving graphic details of the incident, recorded in hospital by Police Inspector and without wasting time, sent to police station where FIR was registered on that basis and copy thereof sent to Magistrate immediately — In the circumstances, held, FIR cannot be said to be a bogus or concocted document*

The accused persons, belonging to upper caste, were inimical to the deceased persons belonging to a Scheduled Caste community as one of the deceased was elected to the post of Pradhan of the village. It was alleged that while the persons belonging to the SC community including the Pradhan and other office-bearers were returning to their village by a bus, the appellant-accused, fully armed, formed an unlawful assembly, stopped the bus and attacked the deceased party as a result of which six persons including the Pradhan died. The Pradhan was beheaded and his head was carried by Accused 1. PWs 1, 2 and 3, who were also injured in the same incident, managed to reach the hospital on bicycle. They were given first aid and were provided transport for being taken to another government hospital. When the incident came to the knowledge of the Inspector of Police PW 47, he reached the hospital, recorded the statement of PW 1 and on the basis of the same, registered criminal cases against the accused persons. The trial court convicted the appellant-accused under Section 302 read with Section 34 and or Section 149 IPC. The appeals preferred thereagainst were dismissed by the High Court.

On behalf of the appellants, several irregularities in the FIR were pointed out. The defence all through contended that everything was not alright with the FIR. It was the basic contention of the defence before the High Court, as also before the Supreme Court that the FIR in this case was not a genuine document. This was based on the contention that the FIR book was not made available to the defence, though was asked for. The Supreme Court directed the respondent State to place before it FIR diary. However, counsel for the respondent admitted that the FIR book was not available. Question was whether the whole prosecution case should be discarded on the basis of the alleged irregularities in FIR.

Dismissing the appeal of the accused, the Supreme Court held as above.

The fear-stricken witness, who had seen 6 persons being slaughtered ruthlessly, had with great difficulty managed to run away in an injured condition to the hospital and getting the cue of the whole incident, the investigating officer went and recorded his complaint there in the hospital itself barely within one-and-half hours from the incident. That certainly would have taken some time and without wasting any further time, the FIR was sent not only to the police station, but the copies thereof were sent immediately to the Magistrate. It cannot be imagined that in such a short time, a fake FIR can be prepared with graphic description, not only of the incident, but the occurrences which took place prior to the incident and subsequent thereto also, with the names of the accused persons, the weapons handled by them and the role played by them, individually, as well as, collectively. Thus, the witness had certainly written the complaint, duly signed by him, which complaint, without any waste of time, was sent to the police station, on the basis of which the printed FIR was registered and then a copy thereof was sent to the Magistrate instantaneously. It completely rules out the FIR being a bogus document or a doctored document. (Paras 27 and 28). *Alagarsamy* v. *State*, (2010) 12 SCC 427: AIR 2010 SC 849: 2010 Cri LJ 29: (2010) 2 ECrN 88: (2009) 84 AIC 192 .

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 22-10-2009]

3. Detail required/Details omitted/ Omissions in FIR

See also Section 154, '(3)(ii)4. Discrepancies/Inconsistencies/Contradictions in or vis-à-vis FIR',

'(3)(ii)5. Corrections/Overwriting/Interpolation in FIR', and

'(3)(ii)6. Embellishments/Improvements in FIR', below

[717] — S. 154 — FIR — Contents of FIR — It is not necessary that the FIR must disclose all facts and details relating to the offence reported — *What is required is that the information given must disclose the commission of a cognizable offence and must provide a basis for the police officer to suspect the commission of such an offence — If it is so, the police officer is bound to record the information and conduct an investigation — Mentioning of all the ingredients of the offence in the FIR, held, not essential — Where the facts stated in the General Diary entry recorded on the basis of a telephonic information were (i) that the respondent was a corrupt official and was in the habit of accepting illegal gratifications, (ii) that he had demanded and accepted cash to the tune of rupees one lakh approximately, and (iii) that he would be carrying with him the said amount while going to a particular place by a particular mode on a particular date, held, a cognizable offence under S. 13 of the Prevention of Corruption Act, 1988 was clearly made out — Hence, the SP, CBI rightly proceeded to intercept the respondent and investigate the case — Prevention of Corruption Act, 1988, S. 13*

(3)(ii)3. Reliability and Validity of FIR - Contents of FIR - Detail required/Details omitted/Omissions in FIR *(contd.)*

The parties did not dispute the legal position that a GD entry may be treated as a first information report in an appropriate case, where it discloses the commission of a cognizable offence. (Para 16)

The information recorded in the GD entry does make a categoric assertion that the respondent has accepted a sum of rupees one lakh by way of illegal gratification, and that he was carrying the said amount with him while going to Nagpur by *Gitanjali Express* on 17-10-1990. If these assertions are accepted on their face value, clearly an offence of criminal misconduct under Section 13 of the Prevention of Corruption Act, 1988 is made out. The said offence is a cognizable offence. (Para 18)

A first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. (Para 20)

The law does not require the mentioning of all the ingredients of the offence in the FIR. It is only after a complete investigation that it may be possible to say whether any offence is made out on the basis of evidence collected by the investigating agency. (Para 22)

The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not furnish all the details, the police officer concerned must find out those details in the course of investigation and collect all the necessary evidence. (Para 20)

In the instant case, the information received by the Superintendent of Police, CBI clearly spells out the offence of criminal misconduct under Section 13 of the Prevention of Corruption Act, 1988. The allegation certainly gives rise to a suspicion that a cognizable offence may have been committed by the respondent, which the Superintendent of Police, CBI was empowered to investigate. Therefore if the Superintendent of Police, CBI proceeded to intercept the respondent and investigate the case, he did only that which he was in law obliged to do. His taking up the investigation, therefore, cannot be faulted. (Para 21). *CBI* v. *Tapan Kumar Singh*, (2003) 6 SCC 175: 2003 SCC (Cri) 1305: AIR 2003 SC 4140: 2003 Cri LJ 2322.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 10-4-2003]

[718] — S. 154 — FIR — Genuineness of — Factors relevant — Detail required — *Held, FIR need not be encyclopaedic — Each and every detail need not be stated — Court has to ascertain about possibility of false implication of accused — Probable physical and mental condition of informant is relevant*

In the first information report all the accused persons were named and overt acts on their part were also stated at some length. Each and every detail of the incident was not necessary to be stated. A first information report is not meant to be encyclopaedic. While considering the effect of some omissions in the first information report on the part of the informant, a court cannot fail to take into consideration the probable physical and mental condition of the first informant. One of the important factors which may weigh with the court is as to whether there was a possibility of false implication of the appellants. Only with a view to test the veracity of the correctness of the contents of the report, the court applies certain well-known principles of caution. Once, however, a first information report is found to be truthful, only because names of some accused persons have been mentioned, against whom the prosecution was not able to establish its case, the entire prosecution case would not be thrown away only on the basis thereof. If furthermore the purported entry in the general diary, which had not been produced, is not treated to be a first information report, only because some enquiries have been made, the same by itself would not vitiate the entire trial. Enquiries are required to be made for several reasons; one of them is to ascertain the truth or otherwise of the incident and the second to apprehend the accused persons. Arrest of accused persons, as expeditiously as possible, leads to a better investigation. (Paras 13 and 14). *Animireddy Venkata Ramana* v. *Public Prosecutor, High Court of A.P.*, (2008) 5 SCC 368: (2008) 2 SCC (Cri) 600: AIR 2008 SC 1603: (2008) 65 AIC 136 (SC): 2008 Cri LJ 2038.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

[719] — S. 154 — Details of the incident given in FIR — *If the informant had not been an eyewitness he could not have given all the particulars in the earliest report. Balram* v. *State of U.P.*, 1994 SCC (Cri) 37: (1993) 1 Crimes 1195: 1993 Cri LR (SC) 268.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 24-3-1993]

[720] — S. 154 — FIR need not be an encyclopaedia of evidence — Basic prosecution case needs to be given in it (Para 4). *Manoj* v. *State of Maharashtra*, (1999) 4 SCC 268: 1999 SCC (Cri) 533: AIR 1999 SC 1620: 1999 Cri LJ 2284.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 8-4-1999]

[721] — S. 154 — FIR — Contents — *Held, FIR is not an encyclopaedia of the facts concerning the crime — But, it must contain some definite information vis-à-vis the crime* (Para 13). *Gorle S. Naidu* v. *State of A.P.*, (2003) 12 SCC 449: AIR 2004 SC 1169: 2004 Cri LJ 924.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 15-12-2003]

See also (2003) 11 SCC 271: 2004 SCC (Cri) 135

[722] — S. 154 — FIR — Contents of — *Held, though FIR is not intended to be an encyclopaedia of the background scenario, it must disclose the commission of an offence* (Para 12). *State of A.P.* v. *Golconda Linga Swamy*, (2004) 6 SCC 522: 2004 SCC (Cri) 1805: AIR 2004 SC 3967.

Bench Strength **2**. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 27-7-2004]

[723] — S. 154 — FIR — Held, need not be encyclopaedic i.e. need not contain all details of the incident (Paras 34 and 45). *Bishna* v. *State of W.B.*, (2005) 12 SCC 657.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

[724] — Ss. 154 and 162 — FIR — Contents of FIR — Information when to be treated as FIR — Earliest information of incident when not FIR — *Held, FIR, is not expected to be encyclopaedia of events, but must contain some essential and relevant details of the incident — Cryptic information about commission of a cognizable offence irrespective of the nature and details of such information may not be treated as FIR — In the instant case, information (Ext. 61) given by PW 5 that several persons armed with deadly weapons were attacking members of his political party, was entered in General Diary based on which PW 18 IO immediately left for place of occurrence — No FIR could thus be recorded as first priority of IO was to control the incident since by that time none had died — It would have been rather unusual for IO to insist on taking down entire incident by way of FIR, rather than rushing to place of incident — Moreover, it cannot be said that moment PW 18 left the police station, investigation had commenced — Purpose of information then was only to request officer in charge of police station to reach place of occurrence — Besides, neither was any inquest carried out, nor were any steps towards investigation taken before registering FIR — In such circumstances FIR (A-31) not affected by any legal infirmity* (Paras 38 to 41). *Pandurang Chandrakant Mhatre* v. *State of Maharashtra*, (2009) 10 SCC 773: (2009) 83 AIC 38 (SC).

Bench Strength **2**. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 8-10-2009]

Vikram v. State of Maharashtra, (2007) 12 SCC 332: (2008) 1 SCC (Cri) 362, relied on

[725] — S. 154 — FIR — Scope of FIR — Held, FIR is not supposed to be an encyclopaedia of the entire event and cannot contain the minutest details of the events — *In the instant case all essential material facts were disclosed in the first information report* (Paras 20 and 21). *Budh Singh* v. *State of M.P.*, (2007) 10 SCC 496: (2008) 1 SCC (Cri) 64: (2007) 57 AIC 134 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 18-5-2007]

[726] — S. 154 — FIR — Contents of — Held, FIR should at least mention the broad story of the prosecution — *Not mentioning of material and vital facts may affect credibility of FIR* (Para 16). *Arulvelu* v. *State*, (2009) 10 SCC 206: (2009) 83 AIC 253 (SC).

Bench Strength **2**. Coram: **Dalveer Bhandari** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 7-10-2009]

[727] — S. 154 — FIR — Contents of FIR — Held, FIR is not supposed to be encyclopaedia of all details — *There can be no hard-and-fast rule that names of witnesses, more particularly,*

(3)(ii)3. Reliability and Validity of FIR - Contents of FIR - Detail required/Details omitted/Omissions in FIR *(contd.)*

eyewitnesses should be indicated in FIR — In the instant case, though name of PW 2 was not specifically mentioned in FIR, but it cannot be lost sight of that he is son of deceased and the incident took place in his house — His presence is natural considering the time when the incident took place i.e. about 6.30 a.m. — So mere non-mention of name of PW 2 does not render prosecution version fragile (Paras 9 and 12). *Gunnana Pentayya* v. *State of A.P.*, (2009) 16 SCC 59.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 20-8-2008]

State of M.P. v. Mansingh, (2003) 10 SCC 414: (2007) 2 SCC (Cri) 390, followed

[728] — S. 154 — FIR — It is not always necessary to mention all the accused persons in FIR — FIR may not be encyclopaedic (Para 23). *State of Maharashtra* v. *Mohd. Sajid Husain Mohd. S. Husain*, (2008) 1 SCC 213: (2008) 1 SCC (Cri) 176: AIR 2008 SC 155: (2007) 59 AIC 15(SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 10-10-2007]

Vinod G. Asrani v. State of Maharashtra, (2007) 3 SCC 633: (2007) 2 SCC (Cri) 129; State of U.P. v. Pappu, (2005) 3 SCC 594: 2005 SCC (Cri) 780, relied on

[729] — S. 154 — FIR — Purpose, significance and contents of — Although FIR need not be encyclopaedic but it should not be so sketchy as to render initiation of investigation impossible

An information received by the officer in charge of a police station for commission of a cognizable offence must be reduced to writing so as to enable him to start investigation. Lodging of a first information report is necessary for setting the criminal law in motion. It can be lodged by anybody. It, however, should not be too sketchy so as to make initiation of investigation on the basis thereof impossible. Only information in regard to commission of an offence may not for all intent and purport satisfy the requirement of the first information report. When, however, the first information report is lodged by a person who claims himself to be aware of not only the commission of the offence, the name of the deceased and at least one of the accused who had committed the same, could have been recorded on the basis thereof. It may, however, be another thing to say that any information in regard to the commission of an offence is given by way of a telephone or by a person who does not disclose his identity and such message is so cryptic that it may not satisfy the requirement of Section 154 CrPC. (Paras 12 and 15). *Ramesh Baburao Devaskar* v. *State of Maharashtra*, (2007) 13 SCC 501: 2008 Cri LJ 372: (2007) 59 AIC 54(SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

Om Prakash v. State of Uttaranchal, (2003) 1 SCC 648: 2003 SCC (Cri) 412; Mundrika Mahto v. State of Bihar, (2002) 9 SCC 183: 2003 SCC (Cri) 1163, relied on

[730] — S. 154 — Not necessary to state the minutest detail of the crime in the FIR — *Enough, if a broad picture presented by the prosecution was revealed in the FIR — Where FIR was lodged soon after the murder by the companion of the victim, minute details could not be expected. Pedda Narayana* v. *State of A.P.*, (1975) 4 SCC 153: 1975 SCC (Cri) 427: AIR 1975 SC 1252: 1975 Cri LJ 1062: (1975) 12 ACC 201: 1975 Cr LR (SC) 335.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 8-4-1975]

[731] — S. 154 — FIR — Omissions in FIR — Effect — Omission of material facts pertaining to the crime, held, is relevant in judging veracity of prosecution case though FIR does not constitute substantive evidence

The Anand family (the deceased, his brothers, sisters and parents) were staying in the house of the accused under a leave and licence agreement which was to expire on 27-4-1989. About two weeks prior to the date of incident and again on 24 to 26-4-1989, the accused persons (A-1 owner, A-3 estate agent, and A-2) approached PW 4 (the father of the deceased) and demanded delivery of vacant possession of the licensed flat by 27-4-1989 and did not listen to the difficulties explained by PW 4.

On 27-4-1989 at about 7.30 p.m., the deceased was standing in front of the shop of Accused A-3 on the ground floor in the same society, three buildings away from the building in which the deceased resided, waiting for his mother and sister, who were scheduled to return from Hyderabad in the evening. He had the keys of the flat with him. His father (PW 4), who was in the flat till evening later left the house for bringing food for the family, instructing the deceased to wait on the road. PW 1 (a brother of the deceased) also left the house at about 7.00 p.m. for paying obeisance at the gurudwara. While the deceased was standing in front of the shop of Accused A-3, Accused A-1 and A-3 came near him and started beating him. The beating of the deceased was witnessed by his brother, PW 1 who was returning from the gurudwara. He rushed to save his brother, who, by that time had fallen down on the ground and was stifling. The incident drew attention of the public and the two accused were apprehended. PW 2, a police constable (off-duty) and a family friend of the Anands, also happened to be at the spot and he too accosted the two accused. He along with PW 1 took the victim to the clinic of PW 8 (doctor) situated on the ground floor of the same building in which the Anands resided. Finding the victim in a serious condition, PW 8 advised his removal to a bigger hospital. In the meanwhile, he also contacted the police control room. In a short while the police mobile van arrived and the deceased was removed to Cooper Hospital. PW 1 also accompanied him. The deceased was examined by the doctors on duty and was declared brought dead.

High Court by the impugned order affirmed the order passed by the Sessions Judge acquitting Accused A-1 to A-3 of the charge under Section 302 read with Section 34 IPC but the High Court set aside the order of the trial court convicting Accused A-1 to A-3 for offence under Section 456 read with Section 109 IPC. The High Court also set aside the conviction of Respondents 4 and 5 for offences under Section 456 IPC.

Dismissing the appeals,

Held:

The fundamental object of an FIR is that it acts as a safeguard against embellishment, exaggeration and forgetfulness. True, that it is not the requirement of law that every minute detail of the occurrence needs to be recorded in the FIR but it must disclose the commission of an offence. Though it is trite that the FIR does not constitute substantive evidence and can, strictly speaking, be only used as a previous statement for the purpose of either corroborating or contradicting its maker, yet omission of material facts pertaining to the crime is undoubtedly relevant in judging the veracity of prosecution case. The FIR is a report relating to the commission of an offence, given to the police and recorded by it under Section 154 CrPC. Though, recording of an FIR is not a condition precedent to the setting in motion of the criminal investigation yet from the viewpoint of the investigating authorities it conveys to them earliest information regarding the circumstances in which the crime was committed; the names of the culprits and the role played by them as well as the names of the witnesses present at the scene of occurrence, so vital for effective and meaningful investigation. The information about an occurrence can be given by any person knowing about the commission of such an offence and not necessarily by an eyewitness. (Paras 26 and 24). *State of Maharashtra* v. *Ahmed Shaikh Babajan*, (2009) 14 SCC 267: (2009) 73 AIC 178 (SC): (2009) 1 ECrN 637 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 24-10-2008]

[732] — S. 154 — FIR — Omission in FIR — *FIR need not contain exhaustive account of the incident — When PW had given all the essential and relevant details of the incident naming the accused, merely because of non-mention of certain further particulars in FIR which were stated by the PW before the court, deposition of the PW cannot be said to be improvement over the version in the FIR — Evidence Act, 1872, S. 145*

It is not possible to accept the contention that the alleged cries of her husband — "Raja, why are you doing this?" did not find mention in the FIR, nor was it mentioned in the FIR that the accused replied to PW 1 saying "you have lodged complaint against me" and that these remarks attributed to the husband of PW 1 and the accused cannot be true, as they were not mentioned in the FIR. The FIR need not contain an exhaustive account of the incident. The report was given to the police within one-and-a-half hours after the incident. PW 8, a known person, had drafted the report that she dictated. She had given all essential and relevant details of the incident naming the accused as culprit. A person injured and overtaken by grief cannot be expected to give better particulars. The possibility of PW 1 inventing a story at that juncture trying to implicate the accused is absolutely ruled out. The contents of the FIR, broadly and in material particulars, conform to the version given by PW 1 in her deposition. (Para 10). *Om Prakash* v. *State of Uttaranchal*, (2003) 1 SCC 648.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **P. Venkatarama Reddi**, JJ. [Date of decision: 5-12-2002]

[733] — S. 154 — FIR — Credibility of — *PW 1 omitting to state in FIR about obtaining loan from a bank, nature of arms possessed by each accused, and manner in which deceased was hacked to death, and others had sustained injuries — Held, would not affect credibility of his evidence since at the time of recording of FIR he was in grievously injured condition — Hence, it was not expected of him to give a detailed version in that condition, and more so, when many accused were involved —*

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Despite that he had named all the accused and his testimony was corroborated by PW 3 and medical evidence. Annareddy Sambasiva Reddy v. *State of A.P.*, (2009) 12 SCC 546: AIR 2009 SC 2661: (2009) 78 AIC 222 (SC).

Bench Strength **2**. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 21-4-2009]

[734] — S. 154 — Scheme of, compared with the scheme of S. 23, Maharashtra Control of Organised Crime Act, 1999 — Prosecution — Validity *— Name of petitioner not included in approval granted under S. 23(1)(a) but included in the sanction granted under S. 23(2) after his complicity in the activities of the other accused persons as part of an organised crime syndicate was established — In such circumstances, prosecution of the petitioner, held, valid — Non-inclusion of his name in approval under S. 23(1)(a), held, inconsequential — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999), Ss. 23(1)(a) & (2)*

The petitioner herein and certain others filed writ petitions before the Bombay High Court challenging their prosecution under the Maharashtra Control of Organised Crime Act, 1999 (for short "the MCOCA"). The contention of the petitioner herein before the High Court was that his name was not included in the approval granted under Section 23(1)(*a*) of MCOCA but was subsequently included in the sanction granted by the Commissioner of Police under Section 23(2) thereof. That in the absence of the prior approval the investigating officer could not have proposed to charge-sheet the petitioner. The High Court dismissed all the said writ petitions but only the petitioner herein filed the present SLP.

Reiterating the submissions made by him before the High Court, the petitioner contended before the Supreme Court that if the very initiation of the investigation stood vitiated by the failure to obtain approval under Section 23(1)(*a*), the subsequent sanction granted under Section 23(2) also stood vitiated and the proceedings before the Special Court on the basis thereof were liable to be quashed.

On the other hand, comparing the complaint under Section 3 of MCOCA, with an information given under Section 154, CrPC, the State submitted that the non-inclusion of the petitioner's name in the approval granted under Section 23(1)(*a*) was of no consequence since during investigation his complicity was established and thereafter sanction was sought to prosecute him along with the others under Section 23(2).

Dismissing the SLP,

Held :

The non-inclusion of the petitioner's name in the approval under Section 23(1)(*a*) of MCOCA was not fatal to the investigation. On the other hand, his name was included in the sanction granted under Section 23(2) after the stage of investigation into the complaint where his complicity was established. The offences allegedly committed by the petitioner have a direct bearing and/or link with the activities of the other accused as part of the *C* gang which was an organised crime syndicate. (Para 8)

The scheme of CrPC makes it clear that once the information of the commission of an offence is received under Section 154 thereof, the investigating authorities take up the investigation and file charge-sheet against whoever is found during the investigation to be involved in the commission of such offence. There is no hard-and -fast rule that the first information report must always contain the names of all persons involved in the commission of an offence. Very often the names of the culprits are not even mentioned in the FIR and they surface only at the stage of the investigation. The scheme under Section 23 of MCOCA is similar and Section 23(1)(*a*) provides a safeguard that no investigation into an offence under MCOCA should be commenced without the approval of the authorities concerned. Once such approval is obtained, an investigation is commenced. Those who are subsequently found to be involved in the commission of the organised crime can very well be proceeded against once sanction is obtained against them under Section 23(2) of MCOCA. (Para 9). *Vinod G. Asrani* v. *State of Maharashtra*, (2007) 3 SCC 633: (2007) 2 SCC (Cri) 129: AIR 2007 SC 1253.

Bench Strength **2**. Coram: *Dr. Ar. Lakshmanan* and **Altamas Kabir**, JJ. [Date of decision: 21-2-2007]

Kari Choudhary v. *Sita Devi, (2002) 1 SCC 714: 2002 SCC (Cri) 269, followed*

[735] — S. 154 r/w R. 24.1, Punjab Police Rules — Entry in daily diary — Held, what is required to be mentioned in the daily diary is substance of the information received and not the repository of everything *— Factum of murder of deceased by four accused including appellants had been specifically entered — Mere non-disclosure of names of eyewitnesses in the daily diary and mortuary regis-*

ter — Effect of — Held, not fatal, more so when their names disclosed in FIR itself and there was no other circumstance to otherwise create doubt regarding veracity of the prosecution case — Punjab Police Rules, 1934, R. 24.1 (Para 11). *Gurpreet Singh* v. *State of Punjab*, (2005) 12 SCC 615.

Bench Strength 2. Coram: **B.N. Agrawal** and *A.K. Mathur*, JJ. [Date of decision: 9-11-2005]

[736] — S. 154 — That missing details in FIR later provided by the complainant in her evidence, on facts, held of no consequence. *State of Haryana* v. *Harpal Singh*, (1978) 4 SCC 465: 1979 SCC (Cri) 86: AIR 1978 SC 1530: 1978 Cri LJ 1603.

Bench Strength 2. Coram: *R.S. Sarkaria* and **P.S. Kailasam**, JJ. [Date of decision: 22-8-1978]

[737] — S. 154 — S. 161 IPC— Illegal gratification — Trap — FIR — Omission in FIR about time and place of complainant's future meeting with accused for offering the bribe — *Where complainant unwilling to give bribe but accused persisting in his demand on threat, question of arrangement for any time and place would not arise — Moreover, accused himself admitting as to when and where the complainant followed by the raiding party met him — In the circumstances, held, the omission in the FIR not significant — Prevention of Corruption Act, 1947 — S. 5. Kishan Chand Mangal* v. *State of Rajasthan*, (1982) 3 SCC 466: 1983 SCC (Cri) 92: AIR 1982 SC 1511.

Bench Strength 2. Coram: **D.A. Desai** and *A.P. Sen*, JJ. [Date of decision: 14-10-1982]

[738] — S. 154 — Minor details not indicated in FIR — Later on elaborated in court — Effect — *In such case, criticism that the case originally presented had been abandoned to be substituted by another one, held, not justified — There cannot be exact and precise reproduction in any mathematical manner — What needs to be seen is whether the version presented in the court was substantially similar to what was stated during investigation — It is only when exaggerations fundamentally change the nature of the case, the court has to consider whether the witness was telling the truth or not* (Para 10). *Sunil Kumar* v. *State Govt. of (NCT of Delhi)*, (2003) 11 SCC 367.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 15-10-2003]

[739] — S. 154 — FIR — When vitiated — Detail required — Informant not expected to disclose all minute details of the occurrence — *In FIR informant stated that he had seen accused giving blows with their respective weapons to deceased — How many blows were inflicted by each accused not significant*

The trial court also disbelieved the witnesses on the ground that they have made improvements in the course of their deposition with a view to make the prosecution evidence consistent with the medical evidence. There is no basis in support of this conclusion. Even in FIR it was clearly stated that the informant had witnessed Appellants 1 and 2 giving blows with their respective weapons to the deceased. When cross-examined in court, he stated that Appellant 1 gave one or two blows with his weapon. It is not expected of an informant to disclose all minute details of the occurrence in his report. It was implicit in his statement that several blows were given, whether each one of them gave two or more blows is hardly significant. The trial court appears to have unnecessarily suspected the veracity of the eyewitnesses. There is no reason to disbelieve their evidence. (Para 23). *Mahadeo Laxman Sarane* v. *State of Maharashtra*, (2007) 12 SCC 705: (2008) 2 SCC (Cri) 791: 2007 Cri LJ 3209: (2007) 56 AIC 140 (SC).

Bench Strength 2. Coram: *B.P. Singh* and *H.S. Bedi*, JJ. [Date of decision: 3-5-2007]

[740] — S. 154 — FIR — Contents — Murder at night — Failure to mention about existence of electric light in the FIR — *Held, was not of much consequence and was not fatal to the case of the prosecution particularly when on site inspection an electric bulb was found in front of the gate of the house* (Para 9). *Chittarmal* v. *State of Rajasthan*, (2003) 2 SCC 266: 2003 SCC (Cri) 514: AIR 2003 SC 796: 2003 Cri LJ 889.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 8-1-2003]

[741] — S. 154 — FIR — Fifteen persons named in FIR while 39 persons put on trial — *Held, though the FIR need not contain all the details, but in a case of this nature it is expected that the incident would be narrated in some detail as otherwise it will be difficult for the trial Judge to find out the truth particularly having regard to the fact that both the PWs made omnibus statements — PW 1 undoubtedly made improvements in his deposition before the court and attributed overt acts not only to those who were allegedly responsible for causing the death of Deceased 1 but also who had allegedly caused the death of Deceased 2 — If he was an eyewitness and had seen the entire occurrence from a close proximity and indeed suffered an injury himself, there was no reason as to why the*

(3)(ii)3. Reliability and Validity of FIR - Contents of FIR - Detail required/Details omitted/Omissions in FIR *(contd.)*

first information report would lack the details of the offence involving all the accused persons (Para 16). *Sabbi Mallesu* v. *State of A.P.*, (2006) 10 SCC 543: (2007) 1 SCC (Cri) 142: AIR 2006 SC 2747: 2006 Cri LJ 4038.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 12-7-2006]

[742] — Ss. 154 and 174 — Non-mention of a proved fact in FIR — Effect, if any — *Accused injuring the victim and fleeing away leaving behind his vehicle — Victim dying on the spot — Notwithstanding non-mention of the vehicle being left behind by the accused, in the FIR, in view of other evidence, the prosecution charge, held, proved beyond doubt — Accused, held, liable to conviction — Penal Code, 1860, Ss. 300 and 302*

The accused coming in a tractor, gave a few handle blows to the victim who died on the spot. The accused, leaving the tractor on the spot, fled away. The police seized the tractor from the spot and recovered the blood-stained handle, on the disclosure made by the accused in presence of independent witnesses. The report of serologist and chemical examiner stated that the handle was stained with human blood and the post-mortem report declared the injuries on the person of the deceased, sufficient to cause death in the ordinary course of nature. The High Court of Punjab and Haryana held that the recovery of the tractor was of no help to the prosecution case as in the FIR it was not mentioned that the accused had left the tractor on the spot. It acquitted the accused. Reversing the High Court's decision

Held :

An FIR is not expected to contain all the details. This finding of the appellate court is wholly erroneous inasmuch as it is evident from the inquest report made on the date of the occurrence, that the tractor was seized on that date from the place of the occurrence vide the recovery memo by the Sub-Inspector. There is no room for doubt that the tractor was left at the place of occurrence by the accused while running away with the handle of the tractor.

In view of the facts of the case the prosecution case has been proved beyond reasonable doubt. The judgement and order of acquittal passed by the High Court is therefore, set aside and the order of conviction and sentence passed by the court under S. 302, IPC is being affirmed. *Jagtar Singh* v. *State of Punjab*, (1988) 1 SCC 712: 1988 SCC (Cri) 254: AIR 1988 SC 628: 1988 Cri LJ 866.

Bench Strength 2. Coram: **B.C. Ray** and *K. Jagannatha Shetty*, JJ. [Date of decision: 27-1-1988]

[743] — S. 154 — FIR — Evidence of injured eyewitness cannot be rejected merely because his name was not mentioned in the FIR as one of those present during the incident — *The condition of the maker of the FIR and whether he was in a position to reproduce the vivid details of the occurrence, should be borne in mind — Appreciation of evidence. State of Rajasthan* v. *Ani*, (1997) 6 SCC 162: 1997 SCC (Cri) 851: AIR 1997 SC 1023: 1997 Cri LJ 1529.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 13-1-1997]

[744] — S. 154 — FIR — Visibility in night — *Where direct testimony shows that torchlight was burning at the scene of occurrence, held, mere non-mention of torchlight in FIR or in the statements of the witnesses before police, will not disprove identification of the accused in the torchlight. Shakti Patra* v. *State of W.B.*, 1981 Supp SCC 24: 1981 SCC (Cri) 644: AIR 1981 SC 1217: 1981 Cri LJ 645.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**, *Baharul Islam* and *A. Varadarajan*, JJ. [Date of decision: 25-3-1981]

[745] — S. 154 — FIR — Lacerated wounds would be the result if spear is used as a lathi — *Non-mention of such minute detail regarding wielding of the spear in the FIR, held, not fatal. State of U.P.* v. *Hari Ram*, (1983) 4 SCC 453: 1983 SCC (Cri) 861: AIR 1983 SC 1081: 1983 Cri LJ 1638.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *M.P. Thakkar*, JJ. [Date of decision: 7-9-1983]

[746] — S. 154 — FIR — Detail required — Illegal gratification — Trap — FIR — *Failure to mention name of accused in FIR — Held, not fatal where instead, his official designation mentioned, the complainant not being aware of his name — Penal Code, 1860, S. 161 — Prevention of Corruption Act, 1947, S. 5. Kishan Chand Mangal* v. *State of Rajasthan*, (1982) 3 SCC 466: 1983 SCC (Cri) 92: AIR 1982 SC 1511.

Bench Strength 2. Coram: **D.A. Desai** and *A.P. Sen*, JJ. [Date of decision: 14-10-1982]

[747] — S. 154 — FIR — Appellant not named in FIR — Plea of false implication — Sustainability — *Appellant, resident of another village **J** which was at a distance of 45 kms from the place of occurrence — No money proved to have passed hands — He arrested after about 11 days of occurrence — Hence, contention that he was falsely implicated — Informant categorically stating in the FIR that he could identify the assailants — In the site plan prepared by the IO their names specifically mentioned — Moreover, Accused 1 to 3 had been residents of village **J** and appellant and accused **B** were seen visiting them many times — Presence of PW 3 at place of occurrence not disputed and he categorically stating that he had disclosed the names of the appellant and **B** to the IO — In such circumstances, held, **B** and the appellant could not be said to be falsely implicated* (Paras 17 and 19). *Kulwinder Singh* v. *State of Punjab*, (2006) 12 SCC 538: (2007) 2 SCC (Cri) 115: (2007) 51 AIC 614 (SC): (2007) 2 KLJ 304 (SC): 2007 Cri LJ 766.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 5-12-2006]

[748] — S. 154 — Details to be expected — Conspiracy — Proof of — Starting point of conspiracy — Need to mention precisely in FIR/charge-sheet — *Held, the same is not necessary since it is difficult to spell out with exactitude the details relating to the starting point of conspiracy — Penal Code, 1860, Ss. 120-B and 120-A*

It is difficult to spell out with exactitude the details relating to the starting point of conspiracy. (Para 25)

It cannot be said that if instead of mentioning "the first week of December 2001" the wording "before December 2001" is employed, the prosecution should fail merely for that reason. (Para 25). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Esher Singh v. State of A.P., (2004) 11 SCC 585: 2004 SCC (Cri) Supp 113; H.P. Admn. v. Om Prakash, (1972) 1 SCC 249: 1972 SCC (Cri) 88; Prakash Chand v. State (Delhi Admn.), (1979) 3 SCC 90: 1979 SCC (Cri) 656; H.P. Admn. v. Om Prakash, (1972) 1 SCC 249: 1972 SCC (Cri) 88, relied on

[749] — S. 154 — FIR — Absence of details — Submission that non-mention about the source of light in FIR for identification of accused was fatal to prosecution — *Held, FIR is not an encyclopaedia of facts concerning the crime and hence non-mention about the source of light therein was inconsequential — Not necessary that minutest details should be stated in FIR — For lodging the FIR, in a criminal case and more particularly in a murder case, the stress must be on prompt lodging of the FIR and it is sufficient if a broad picture is presented and the FIR contains broad features* (Para 18). *S. Sudershan Reddy* v. *State of A.P.*, (2006) 10 SCC 163: (2006) 3 SCC (Cri) 503: AIR 2006 SC 2716: 2006 Cri LJ 4033.

Bench Strength 2. Coram: **Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 20-7-2006]

Bollavaram Pedda Narsi Reddy v. State of A.P., (1991) 3 SCC 434: 1991 SCC (Cri) 586, distinguished on facts

[750] — S. 154 — FIR — Non-mentioning of the name of a prosecution witness in FIR — Effect of, on the statement made by that witness during the trial — *Held, there is no requirement of law for mentioning the names of all the witnesses in the FIR — Hence, the statement made by PW 7 cannot be discarded on the ground that her name was not mentioned in the FIR*

Merely because PWs 7, 12 and 22 happen to be the relations of the deceased, cannot be made a ground to discard their evidence. PW 7 had no reason to involve innocent persons in the commission of the crime. On facts, the High Court has rightly found these witnesses to be natural witnesses of the occurrence. (Para 13). *Bhagwan Singh* v. *State of M.P.*, (2002) 4 SCC 85: 2002 SCC (Cri) 736: AIR 2002 SC 1621.

Bench Strength 2. Coram: **R.P. Sethi** and *K.G. Balakrishnan*, JJ. [Date of decision: 22-3-2002]

[751] — S. 154 — FIR need not contain minute details of the occurrence — *Merely because the informant mentioned in the FIR that the assailants were armed with lathis possibility of kanta (a stick with a knife-like portion at the end) being used by the assailants cannot be ruled out — Criminal Trial — Appreciation of evidence — Contradictions, inconsistencies, exaggerations or embellishments — Effect of discrepancy in FIR on entire evidence*

FIR is not a chronicle of the exhaustive details of the occurrence, nor is it a catalogue of everything including minor particulars of the events which took place. Picking out an insignificant discrepancy regarding description of one of the weapons for jettisoning an otherwise sturdy account of the eyewitness is not a commendable approach in the evaluation of evidence. It is understood that *kanta* without sharp projection at the end would be a mere stick or lathi. If the informant mentioned in the FIR that the assailants were armed with lathis and guns there is no

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reason to conclude that the informant when he gave first information had ruled out the possibility of *kanta* being used by the assailants. *State of U.P.* v. *Harban Sahai*, (1998) 6 SCC 50: 1998 SCC (Cri) 1412.

Bench Strength **3**. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas** and *S. Rajendra Babu*, JJ. [Date of decision: 20-4-1998]

[752] — S. 154 — FIR — Contents of FIR — Benefit of doubt — Not naming accused in FIR — Effect

PW 2 informant was attacked by the appellant and 3 others with khukries (a sharp-edged weapon) near his college gate. PW 2 suffered five incised injuries from which blood came out, three injuries on head (two muscle deep and one skin deep) and two muscle deep injuries on the left hand fingers. The trial court convicted all the four accused persons. The High Court by the impugned judgment acquitted three of the co-accused by granting benefit of doubt but convicted the appellant.

Dismissing the appeal,

Held :

Although the High Court extended benefit of doubt to three of the co-accused and acquitted them, it does not mean that on the same analogy, a judgment of acquittal should have been recorded in favour of the appellant also. As the other accused had not been named in the FIR and no test identification parade was held, the High Court thought it fit to extend the benefit of doubt. But the appellant was named in the FIR and specific overt act was attributed to him by PW 2 in his deposition. (Paras 15, 16 and 6)

Keeping in view the place of occurrence, it will not be hazardous to presume that the incident had taken place within a very short time. PW 2 in his evidence stated that three persons came from behind. He might not have been able to remember their names at the time when the FIR was lodged. Though PW 1 eyewitness, claimed to have identified the three co-accused, he turned hostile and undisputedly he and one *S* had brought PW 2, informant to the hospital. (Paras 16 and 7)

The contention that the FIR did not disclose that the appellant was also armed with khukri had not been raised before the courts below. The only suggestion given to the investigating officer was that it was written that all the accused were shown having khukri in their hands and not the appellant alone. (Para 14). *Subhash Kumar* v. *State of Uttarakhand*, (2009) 6 SCC 641.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Subhash Kumar v. State, Criminal Appeal No. 150 of 2003 decided on 27-8-2008, affirmed

[753] — S. 154 — Appellant-accused not named in FIR — *Held, not by itself sufficient to reject the prosecution case against him when he had been specifically identified and his role narrated by PW* (Para 6). *Tika Ram* v. *State of M.P.*, (2007) 15 SCC 760.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 14-1-2003]

[754] — S. 154 — FIR — Non-mentioning of names of some accused in FIR — Effect, if any — FIR, nature of — Principles reiterated — *Complainant not aware of names of all accused persons — Hence, non-mentioning of appellants' names in FIR, held, not fatal* (Paras 24 and 25). *Jarnail Singh* v. *State of Punjab*, (2009) 9 SCC 719.

Bench Strength **2**. Coram: *H.S. Bedi* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 26-8-2009]

Sachchey Lal Tiwari v. State of U.P., (2004) 11 SCC 410: 2004 SCC (Cri) Supp 105; Satbir v. Surat Singh, (1997) 4 SCC 192: 1997 SCC (Cri) 538; Harjinder Singh v. State of Punjab, (2004) 11 SCC 253: 2004 SCC (Cri) Supp 28; Acharaparambath Pradeepan v. State of Kerala, (2006) 13 SCC 643: (2008) 1 SCC (Cri) 241; Sarvesh Narain Shukla v. Daroga Singh, (2007) 13 SCC 360: (2009) 1 SCC (Cri) 188; Shankarlal v. State of Rajasthan, (2004) 10 SCC 632: 2005 SCC (Cri) 579; Thangaiya v. State of T.N., (2005) 9 SCC 650: 2005 SCC (Cri) 1284, relied on

[755] — S. 154 — FIR — Non-naming of accused person(s) — Effect of — *Held, FIR is not supposed to be an encyclopaedia of the entire events — It cannot contain the minutest details of the events — When essentially material facts are disclosed, that is sufficient — Importance of naming the accused persons cannot be ignored — But, non-naming of one or few of the accused persons in the FIR is no reason to disbelieve the testimony of crucial witnesses — Yet names of the accused persons have to be named at the earliest possible opportunity — Whether a person was impleaded by way of afterthought or not must be judged having regard to the entire factual scenario in each case* (Paras 11 to 13). *Kirender Sarkar* v. *State of Assam*, (2009) 12 SCC 342: AIR 2009 SC 2513: (2009) 78 AIC 99 (SC): 2009 Cri LJ 3727.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 27-4-2009]

[**Ed.**: *See also* (1972) 4 SCC 773; (1997) 6 SCC 514: 1997 SCC (Cri) 946]

[756] — S. 154 — FIR — When immaterial — Highly disturbed mental state of informant due to ghastliness/shocking nature of incident — Murder trial — *Though omission of names of A-2 and A-3 in FIR registered by PW 1 (father of B, one of the murdered victims) is significant, however, held, much importance cannot be given to this omission, as FIR was given by a person who had seen dead body of his young son (B) having been brutally murdered — He had also seen dead body of his brother-in-law and had also come to know that three other members of brother-in-law's family were also seriously injured in the incident — Such a witness is bound to be excited and some scope has to be given to mental state of witness at that time — Herein, courts below rightly did not attach much importance to this omission — Penal Code, 1860, Ss. 302, 307, 452 and 34* (Para 27). *Dilip Premnarayan Tiwari* v. *State of Maharashtra*, (2010) 1 SCC 775.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 10-12-2009]

Rampal Pithwa Rahidas v. State of Maharashtra, 1994 Supp (2) SCC 73: 1994 SCC (Cri) 851, relied on

[757] — S. 154 — FIR — Contents of FIR — Omission regarding details of incident — Effect — Nature and circumstances of such omission entitling benefit of doubt — *Injured informant becoming unconscious after assault and omitting to give details at the earliest point of time — Effect — Injured informant becoming unconscious after attack by four persons and lodging FIR after gaining consciousness in hospital — PW 4 Police SI deposing about the non-recording of informant's statement on the day of assault because of informant again becoming unconscious, because of which, it was recorded the next day — Court below relying on credible evidence by injured informant PW 2 — Proved/Admitted facts that more than one person assaulting informant with a sharp-edged weapon — Effect — Held, although the effect of a statement made in the FIR at the earliest point of time should be given primacy, it would not be proper to accept that all the particulars in regard to commission of offence must be furnished in detail — FIR is not to be treated as an encyclopaedia*

FIR, as is well known, is not to be treated as an encyclopaedia. Although the effect of a statement made in the FIR at the earliest point of time should be given primacy, it would not probably be proper to accept that all the particulars in regard to commission of offence must be furnished in detail. (Para 12)

The testimony of PW 2 the informant had been relied upon by both the courts below on the issue as to whether the appellant was also armed with khukri. No case is made out to take a different view. The finding of fact arrived at by both the courts below that the informant received injuries inflicted on him by "khukri(s)" is not in dispute. It also stands admitted that the first informant was assaulted with a sharp-edged weapon by more than one person. The prosecution has brought on record that four persons assaulted the injured. PW 2 felt unconscious because of the serious injuries and regained consciousness for some time. After he was brought to the hospital then he could get the FIR lodged. (Paras 14, 16, 6 and 13)

If the deposition of PW 4 police SI is to be believed, the prosecution must be held to have proved that PW 2 (informant) became unconscious again as a result whereof his statement could not be recorded on 31-1-2000 (the day of assault). From the evidence of PW 4, it appears that he had gone to record the statement of the informant in the hospital on 31-1-2000; when he reached the hospital, the informant had become unconscious and was in a serious condition. His statement could be recorded only on 1-2-2000. It was on that date the other accused persons were named. (Paras 13 and 10). *Subhash Kumar* v. *State of Uttarakhand*, (2009) 6 SCC 641.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

[758] — S. 154 — FIR — Non-mention of name in the FIR will not justify rejection of the evidence of the eyewitness (Para 7). *Chittar Lal* v. *State of Rajasthan*, (2003) 6 SCC 397: 2003 SCC (Cri) 1377: AIR 2003 SC 3590: 2003 Cri LJ 3548.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 21-7-2003]

Shri Bhagwan v. State of Rajasthan, (2001) 6 SCC 296: 2001 SCC (Cri) 1095, relied on

[**Ed.**: *See* in this context *State of U.P.* v. *Lalla Singh*, (1978) 1 SCC 142: 1978 SCC (Cri) 70; *Babu Singh* v. *State of Punjab*, (1996) 8 SCC 699.]

[759] — S. 154 — Failure to mention in the FIR that the accused had wrapped a parna around the neck of the deceased and dragged him — *But this fact was mentioned in the inquest report which was prepared soon after the occurrence — Medical evidence indicating that the deceased had a circular and horizontal reddish contusion around his neck — Held, in the circumstances of the case, non-mention of this fact in the FIR is of no consequence. State of Haryana* v. *Jinder Singh*, (1997) 4 SCC 180: 1997 SCC (Cri) 532.

Bench Strength **2**. Coram: *M.M. Punchhi* and **Faizan Uddin**, JJ. [Date of decision: 24-1-1997]

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[760] — S. 154 — FIR — Non-mention of all the persons accompanying the deceased at the time of the attack, held, not fatal. *Rameshwar Dayal* v. *State of U.P.*, (1978) 2 SCC 518: 1978 SCC (Cri) 311: AIR 1978 SC 1558: 1978 ALJ 1011: (1978) 15 ACC 276.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 15-2-1978]

[761] — S. 154 — FIR lodged by widow of the deceased within half an hour of the occurrence — Non-mention of places of residence of each accused separately inconsequential — *Omission to give surname of the accused also not material particularly when the same had been given in the dying declaration. Jai Singh* v. *State of Maharashtra*, 1996 SCC (Cri) 672.

Bench Strength 2. Coram: *G.N. Ray* and **B.L. Hansaria**, JJ. [Date of decision: 24-4-1996]

[762] — S. 154 — FIR — Contents of — Eyewitness' account of incident not incorporated in complaint lodged with police — Whether fatal to prosecution — *Held, not fatal since complainant and eyewitness had not talked with each other prior to filing of FIR — Penal Code, 1860, Ss. 376(2)(g), 302, 201 and 120-B* (Paras 13 to 15). *State of Rajasthan* v. *Hanif Khan*, (2009) 3 SCC 549.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 23-2-2009]

[763] — S. 154 — Valid FIR — Nature and contents

The appellant filed an FIR under Section 154 CrPC alleging commission of offence punishable under Section 3(1)(*xi*) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. A petition under Section 482 CrPC for quashing the FIR was filed by the respondent-accused. The basic stand was that in the FIR the caste of the accused was not mentioned and therefore the proceedings could not be continued and deserved to be quashed. The High Court by the impugned order placing reliance on earlier decisions of the High Court allowed the petition of the respondent.

Allowing the appeal,

Held :

During investigation or at the time of framing of charge or at the time of trial it is open to the respondent-accused to show that he either belongs to SC or ST so that applicability of S. 3(1)(*xi*) of the Act is ruled out. It needs no reiteration that the FIR is not expected to be an encyclopdia. After ascertaining the facts during the course of investigation it is open to the IO to record that the accused either belongs to or does not belong to SC or ST. After final opinion is formed, it is open to the court to either accept the same or take cognizance. Even if the charge-sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the court that the materials do not show that the accused does not belong to Scheduled Caste or Scheduled Tribe. Even if charge is framed at the time of trial, materials can be placed to show that the accused either belongs or does not belong to SC or ST. (Paras 14,10 and 12)

The scope for interference on the basis of an application under Section 482 CrPC is well known. (Paras 8, 9 and 13). *Ashabai Machindra Adhagale* v. *State of Maharashtra*, (2009) 3 SCC 789.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *Dr. M.K. Sharma* and *H.L. Dattu*, JJ. [Date of decision: 12-2-2009]

CBI v. Tapan Kumar Singh, (2003) 6 SCC 175: 2003 SCC (Cri) 1305; Masumsha Hasanasha Musalman v. State of Maharashtra, (2000) 3 SCC 557: 2000 SCC (Cri) 722; Dinesh v. State of Rajasthan, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310, relied on

[764] — S. 154 — Absence of details about the part played by each accused in commission of the crime — *FIR lodged by the Chowkidar who was not an eyewitness — Deceased's father being in a remorseful mood could not give details except to request the Chowkidar to lodge a report — Hence absence of details in the FIR was of no consequence. Mohan Singh* v. *State of M.P.*, (1999) 2 SCC 428: 1999 SCC (Cri) 261: AIR 1999 SC 883: 1999 Cri LJ 1334.

Bench Strength 2. Coram: *G.B. Pattanaik* and **A.P. Misra**, JJ. [Date of decision: 28-1-1999]

[765] — S. 154 — Absence of mention of essential facts about certain accused by complainant eyewitness casts doubt about their complicity. *Raman Kalia* v. *State of Gujarat*, (1979) 4 SCC 641: 1980 SCC (Cri) 153: AIR 1979 SC 1261: 1979 Cri LJ 1074.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 31-1-1979]

[766] — S. 154 — Absence of particulars in FIR, lodged immediately after the incident regarding the complicity of the co-accused — *Held, raises doubt regarding the story of participation by such co-accused. Jagdip Singh* v. *State of Haryana*, (1975) 3 SCC 133: 1974 SCC (Cri) 757: AIR 1974 SC 1978.

Bench Strength 2. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 27-2-1974]

[767] — S. 154 — Accused persons not named in FIR although they were known to the informant, for which no explanation furnished by prosecution — *Held, on this ground alone these accused entitled to benefit of doubt — Penal Code, 1860 — Ss. 302/149* (Para 24). *Mallanna* v. *State of Karnataka*, (2007) 8 SCC 523: (2007) 3 SCC (Cri) 731: (2007) 59 AIC 197 (SC).

Bench Strength **2**. Coram: **B.N. Agrawal** and *P.P. Naolekar*, JJ. [Date of decision: 18-9-2007]

[768] — S. 154 — Train robbery — Accused not named in FIR — *Held, is insignificant in such cases — Prosecution can prove its case on the basis of recovery of articles which are the subject-matter of offence and identification of culprits in TI parade*

The value to be attached to a test identification parade depends on the facts and circumstances of each case and no hard-and-fast rule can be laid down. The court has to examine the facts of the case to find out whether there was sufficient opportunity for the witnesses to identify the accused. The court has also to rule out the possibility of their having been shown to the witnesses before holding a test identification parade. Though it is desirable to hold the test identification parade at the earliest-possible opportunity, no hard-and-fast rule can be laid down in this regard. Where there is an inordinate delay in holding a test identification parade, the court must adopt a cautious approach so as to prevent miscarriage of justice. If the delay is inordinate and there is evidence probabilising the possibility of the accused having been shown to the witnesses, the court may not act on the basis of such evidence. Where the witness had only a fleeting glimpse of the accused at the time of occurrence, delay in holding a test identification parade has to be viewed seriously. Where, however, the court is satisfied that the witnesses had ample opportunity of seeing the accused at the time of the commission of the offence and there is no chance of mistaken identity, delay in holding the test identification parade may not be held to be fatal. It all depends upon the facts and circumstances of each case. Cases where the conviction is based not solely on the basis of identification in court, but on the basis of other corroborative evidence, such as recovery of looted articles, stand on a different footing and the court has to consider the evidence in its entirety. (Paras 28 and 43). *Lal Singh* v. *State of U.P.*, (2003) 12 SCC 554: AIR 2004 SC 299: 2004 Cri LJ 378.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 4-11-2003]

[769] — S. 154 — Failure to mention some names of known accused in the FIR may justify their acquittal. *Juwarsingh* v. *State of M.P.*, 1980 Supp SCC 417: 1981 SCC (Cri) 357: AIR 1981 SC 373: 1980 Cri LJ 1418.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 18-9-1980]

[770] — S. 154 — FIR — Absence of details — *Oral statement reduced to writing as FIR containing no details — Hence detailed version recorded subsequently — In the circumstances lack of details in the FIR not material. State of Maharashtra* v. *Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550: 1990 SCC (Cri) 210: AIR 1990 SC 658: 1990 Cri LJ 889.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 18-1-1990]

[771] — S. 154 — FIR — Absence of minute details in — *Effect on value of testimony of witnesses, if any — Murder case — FIR mentioning only the number of handle blows struck by the accused — Informant's deposition, before the court, of the parts of the victim's body so hit, did not amount to an improvement on the FIR so as to vitiate the deposition — Penal Code, 1860, Ss. 300 and 302. Jagtar Singh* v. *State of Punjab*, (1988) 1 SCC 712: 1988 SCC (Cri) 254: AIR 1988 SC 628: 1988 Cri LJ 866.

Bench Strength **2**. Coram: **B.C. Ray** and *K. Jagannatha Shetty*, JJ. [Date of decision: 27-1-1988]

[772] — S. 154 — FIR — Absence of names of accused persons in FIR — *On facts, did not prove fatal*

Though names of A-7 and A-8 do not appear in the first information report, but in the statements of witnesses recorded immediately after occurrence their names were indicated. In the first information report and the clarificatory statement appended thereto, some names were given and it was clearly stated that some other persons were also the assailants. This being the position, mere absence of names of A-7 and A-8 would not make any difference. Merely because the names were not specifically mentioned but were spoken by the witnesses immediately thereafter, that cannot be sufficient by itself to create suspicion. (Para 7). *Goura Venkata Reddy* v. *State of A.P.*, (2003) 12 SCC 469.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 19-11-2003]

(3)(ii)3. Reliability and Validity of FIR - Contents of FIR - Detail required/Details omitted/Omissions in FIR *(contd.)*

[773] — S. 154 — Failure to mention name of accused in the FIR filed by person known to him — Non-examination of the scribe of the FIR — Effect — *Defence contending that the appellant was not named in FIR and that if the scribe of the FIR, who knew the complainant PW 1 as well as the appellant, would have been examined by the prosecution, then the appellant would have proved that he was not present at the time of the incident — Since the said scribe was not an eyewitness to the incident and as the PWs could not have named the appellant in the FIR as they did not know him prior to the incident, held, on facts, no prejudice caused to the appellant and no adverse inference could be drawn against the prosecution due to the non-examination of the said scribe* (Para 7). *Anil Kumar* v. *State of U.P.*, (2003) 3 SCC 569: 2003 SCC (Cri) 770: AIR 2003 SC 1596: 2003 Cri LJ 1524.

Bench Strength 2. Coram: **S.N. Variava** and *B.N. Agrawal*, JJ. [Date of decision: 13-2-2003]

[774] — S. 154 — FIR not mentioning the two persons who acted in exercise of right of private defence on the side of the victims and inflicted injuries on the party of the accused — *Held, evidence given by prosecution witnesses in regard to the incident cannot be accepted on its face value — It cannot be relied upon implicitly for the purposes of founding the conviction. Mitter Sen* v. *State of U.P.*, (1976) 1 SCC 723: 1976 SCC (Cri) 190: AIR 1976 SC 1156: 1976 Cri LJ 857.

Bench Strength 2. Coram: **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 4-9-1975]

[775] — S. 154 — FIR — Eyewitness — Non-inclusion of his name in the FIR does not necessarily lead to the conclusion that he did not witness the murders — *The Court can considering the facts and circumstances rely upon him. Nirpal Singh* v. *State of Haryana*, (1977) 2 SCC 131: 1977 SCC (Cri) 262: AIR 1977 SC 1066: (1977) 2 SCR 901: 1977 Cri LJ 642.

Bench Strength 2. Coram: *P.N. Bhagwati* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 1-2-1977]

[776] — S. 154 — FIR — Fact that one of the deceased having walked a few yards from the cot on which he fell down after receiving the bullet injuries, was not mentioned in the FIR — *Where broad features of the case were mentioned, held, if there was some omission in a matter of detail that, by itself, would not be sufficient to rebut the prosecution case*

Much significance could not have been attached by the High Court to the fact that one of the deceased having walked a few yards from the cot had not been mentioned in the FIR. Broad features of the case had been mentioned as to the manner in which the incident took place and who shot dead the two deceased. In fact, if there is some omission in a matter of detail that, by itself, may not be sufficient to rebut the prosecution case. (Para 11). *State of Haryana* v. *Ram Sarup*, (2002) 7 SCC 250: 2002 SCC (Cri) 1691: AIR 2002 SC 3114.

Bench Strength 2. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 4-9-2002]

[777] — S. 154 — FIR — Failure to mention in FIR about the injuries on accused — *Where FIR was lodged by PW 6 who was not an eyewitness to the incident and the fact of injuries on accused D was disclosed by the witnesses at the first opportunity to the investigating agency in the statement under S. 161 CrPC, held on facts, there was no question of suppression of the injuries caused to D by the prosecution*

It is true that the FIR does not mention about the injuries of *D* but the fact cannot be lost sight of that the FIR was lodged by PW 6 who was not an eyewitness to the incident. There is no question of suppression of the injuries of *D* by the prosecution as the said fact was disclosed by the witnesses at the first opportunity to the investigating agency in the statement under Section 161 CrPC. (Para 20). *Dharminder* v. *State of H.P.*, (2002) 7 SCC 488: 2003 SCC (Cri) 58: AIR 2002 SC 3097.

Bench Strength 2. Coram: *R.C. Lahoti* and **Brijesh Kumar**, JJ. [Date of decision: 3-9-2002]

[778] — S. 154 — FIR — Failure to mention names of some of the accused in FIR is a circumstance in favour of those accused — *Prosecution must explain the failure — But the mere failure would not entitle the accused to acquittal especially where the injured witnesses deposed presence and participation of the accused in the crime and their testimony is corroborated by recovery evidence. Darshan Singh* v. *State of Punjab*, (1983) 2 SCC 411: 1983 SCC (Cri) 523: AIR 1983 SC 554: 1983 Cri LJ 985.

Bench Strength 2. Coram: **Y.V. Chandrachud, C.J.** and *O. Chinnappa Reddy*, J. [Date of decision: 31-3-1983]

[779] — S. 154 — FIR — Failure to report discovery of empty cartridges from the spot — *Particular posture of deceased before being shot at also not recorded — Held, falsifies the prosecution* *case as to place of occurrence and manner of attack.. Ram Narain Singh* v. *State of Punjab*, (1975) 4 SCC 497: 1975 SCC (Cri) 571: AIR 1975 SC 1727: 1975 Cri LJ 1500: (1975) 12 ACC 273.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 15-7-1975]

[780] — S. 154 — FIR — Fardbeyan — Non-mentioning of crime number on ***fardbeyan*** *— Effect — IO deposing that he did not think it necessary to write the crime number on* ***fard*** — Such laxity on the part of IO, held, would not disprove the prosecution case (Para 25). *State of U.P.* v. *Nawab Singh*, (2005) 9 SCC 84: 2005 SCC (Cri) 33: AIR 2004 SC 1511: 2004 Cri LJ 1367.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **S.B. Sinha**, JJ. [Date of decision: 3-2-2004]

[781] — S. 154 — FIR — FIR lodged after knowing about the extra-judicial confession — Omission to mention about this vital fact in FIR — Effect — *Held, in a given circumstance, omission to mention about a particular aspect may not render the prosecution version suspicious — But when circumstances in the instant case are taken in their entirety, held, the alleged extra-judicial confession was not believable* (Para 20). *State of Haryana* v. *Jagbir Singh*, (2003) 11 SCC 261: 2004 SCC (Cri) 126: AIR 2003 SC 4377.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 26-9-2003]

[782] — S. 154 — FIR — Information by the village chowkidar that there was commotion in the village as firing and brickbatting was going on recorded in police diary — Names of assailants or victims not given — *Held, such a cryptic statement cannot be treated to be an FIR — Fard bayan which formed the basis of the formal FIR rightly relied upon by the courts below as an FIR and a piece of corroborative evidence* (Para 7). *Sk. Ishaque* v. *State of Bihar*, (1995) 3 SCC 392: 1995 SCC (Cri) 534: 1995 Cri LJ 2682.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *K.S. Paripoornan*, JJ. [Date of decision: 10-3-1995]

[783] — S. 154 — FIR — Lack of details — Effect — Testimony of eyewitness for offence under S. 302 IPC — Whether could be rejected merely for non-disclosure of certain details in FIR — *Eyewitness himself severely injured and High Court finding that he might not have been in a mood to narrate the incident in great detail — Even otherwise, the FIR containing all material facts relating to the incident — In such circumstances, held, High Court should not have brushed aside the evidence of the said witness exclusively on the ground that the manner of assault had not been mentioned in the FIR*

The High Court although accepted the claim of PWs 1 and 2 that they witnessed the incident found it unsafe to rely on their evidence so far as it sought to implicate A-3 to A-6 in the murder of Buchi Reddi principally on the ground that in the FIR, PW 1 had not stated about the manner in which they assaulted the deceased though he had stated about the specific overt acts of A-1 and A-2 in the murder. According to the High Court, non-disclosure of such details led to the irresistible conclusion that either PW 1 had not seen the participation of A-3 to A-6 in the attack or that he had improved his version while tendering evidence in the Court by attributing specific overt acts to A-3 to A-6 as well.

Held :

Some of the observations made by the High Court in that regard stand contradicted by its other observations. For example, having observed that it was quite aware of the fact that PW 1 was severely injured and he might not have been in a mood to narrate the incident in great detail the High Court could not have expected of PW 1 — nor was it necessary — to give the graphic details in the FIR of the roles played by each of the accused in the murder.

Moreover, in the FIR after giving the background of the enmity between their family and that of the accused PW 1 stated that on the date of the incident at or about 5.00 p.m. when he, his father and coolies were in their field the six accused persons came there armed with knives and spears and suddenly attacked his father. A-1 hacked him with a knife on the head and A-2 with a spear on the neck and then the other accused assaulted him (the deceased) with knives and spears indiscriminately. This was followed by a statement as to the manner of assault on him by some of the accused. Lastly he stated that PW 2 witnessed the incident and PW 4 had brought him to the hospital. It would thus be seen that all the material facts relating to the incident find place in the FIR; and, therefore, the High Court was not at all justified in brushing aside the prosecution case regarding participation of A-3 to A-6 in the murder on the sole ground that the manner in which they actually assaulted the deceased was not mentioned therein. Absence of the names of A-3 and A-4 in the FIR should not also have been made one of the grounds to discard their evidence when it was specifically mentioned therein that coolies were working with them in their field at the time of the assault (which necessarily meant that they were witnesses to the incident) and when

(3)(ii)3. Reliability and Validity of FIR - Contents of FIR - Detail required/Details omitted/Omissions in FIR *(contd.)*

admittedly PWs 3 and 4 work as coolies. Incidentally, the name of PW 4 does find place in the FIR as the person who took PW 1 to the hospital. *Kovvuri Surya Bhaskara Reddy* v. *State of A.P.*, (1998) 9 SCC 504: 1998 SCC (Cri) 1047: AIR 1998 SC 1570.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 3-3-1998]

[784] — S. 154 — FIR — Material omission in FIR remaining unexplained in a case based on circumstantial evidence held against the prosecution. *Chandmal* v. *State of Rajasthan*, (1976) 1 SCC 621: 1976 SCC (Cri) 120: AIR 1976 SC 917: 1976 Cri LJ 679.

Bench Strength 2. Coram: *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 7-11-1975]

[785] — S. 154 — FIR — Mere absence of name of PW 3 — *Not fatal to prosecution case — The mental condition of a person losing a near relative cannot be lost sight of — Held, the evidence of the witness having been closely scrutinized and nothing having been found to be infirm, the trial court and High Court rightly relied upon it* (Para 7). *Dhirajbhai Gorakhbhai Nayak* v. *State of Gujarat*, (2003) 9 SCC 322: 2003 SCC (Cri) 1809: AIR 2003 SC 2855: 2003 Cri LJ 3723.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 25-7-2003]

Shri Bhagwan v. State of Rajasthan, (2001) 6 SCC 296: 2001 SCC (Cri) 1095, relied on

[786] — S. 154 — FIR — Minute details — Omission of — Merely because minutest details of the occurrence were not mentioned in FIR, held, the same cannot make the prosecution case doubtful — *FIR is not the repository of everything*

The High Court has drawn adverse inference against the prosecution for not mentioning in the FIR that as the accused persons were advancing towards them in the bus, they having apprehended danger to their lives, got down from the bus. It may be stated that in the FIR it was enumerated that members of the prosecution party got down from the bus as they apprehended danger to their lives at the hands of the accused persons, who were armed with weapons, but the reason for apprehension that a accused persons were advancing towards them in the bus was not enumerated. But this is a mere omission as it is well settled that a first information report is not the repository of everything and merely because minutest details of the occurrence were not mentioned, the same cannot make the prosecution case doubtful. (Para 11). *Kamma Otukunta Ram Naidu* v. *Chereddy Pedda Subba Reddy*, (2003) 11 SCC 293: 2004 SCC (Cri) 155: AIR 2003 SC 3342.

Bench Strength 2. Coram: **B.N. Agrawal** and *B.N. Srikrishna*, JJ. [Date of decision: 19-9-2003]

[787] — S. 154 — FIR — Name of prosecution witness not mentioned in FIR — His alleged eyewitness account, held, not acceptable (Para 12). *State of M.P.* v. *Mishrilal*, (2003) 9 SCC 426: 2003 SCC (Cri) 1829: AIR 2003 SC 4089: 2003 Cri LJ 2312.

Bench Strength 2. Coram: *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision: 2-4-2003]

[788] — S. 154 — FIR — Names of witnesses not appearing in FIR — *Held, that by itself cannot be a ground to doubt their evidence — There is no requirement of mentioning the names of all the witnesses in FIR* (Para 10). *Raj Kishore Jha* v. *State of Bihar*, (2003) 11 SCC 519: 2004 SCC (Cri) 212: AIR 2003 SC 4664.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 7-10-2003]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Chittar Lal v. State of Rajasthan, (2003) 6 SCC 397: 2003 SCC (Cri) 1377, relied on

[789] — S. 154 — FIR — Non-mention of name of a witness in FIR — Effect — *Held, there is no hard-and-fast rule that the names of all witnesses, more particularly eyewitnesses, should be indicated in the FIR — On facts, non-mention of name of PW 8 in the FIR, held, was a natural consequence of the events* (Para 9)

There can be no hard-and-fast rule that the names of all witnesses, more particularly eyewitnesses, should be indicated in the FIR. (Para 10)

It is nobody's case that PW 8 was an eyewitness. The High Court failed to notice that the evidence of PWs 4 and 7 was to the effect that they left the deceased in an injured condition and rushed to the police station. The arrival of PW 8 near the deceased, according to the prosecution, was thereafter. His presence could not have been noted by PW 4 who lodged the FIR and, therefore, non-mention of his name in the FIR is the natural consequence. (Para 11). *State of M.P.* v. *Mansingh*, (2003) 10 SCC 414.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 13-8-2003]

Chittar Lal v. State of Rajasthan, (2003) 6 SCC 397; Shri Bhagwan v. State of Rajasthan, (2001) 6 SCC 296: 2001 SCC (Cri) 1095, relied on

[790] — S. 154 — FIR — Non-mention of weapon (knife) in FIR — Effect on testimony of injured witness

The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. (Para 9)

Merely because there was no mention of a knife in the FIR, that does not wash away the effect of the evidence tendered by the injured witnesses PWs 4 and 7. (Para 9). *State of M.P.* v. *Mansingh*, (2003) 10 SCC 414.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 13-8-2003]

[791] — S. 154 — FIR — Not necessary to give minute details therein — *Non-mention of manner of user of weapon (axe) not fatal to the prosecution case* (Para 9). *Sat Pal* v. *State of Punjab*, 1995 Supp (4) SCC 1: 1996 SCC (Cri) 11.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *K.S. Paripoornan*, JJ. [Date of decision: 20-10-1995]

[792] — S. 154 — FIR — Omission in — *Details which emerged at the trial could not be considered as omissions when the part played by each accused had been broadly stated in the FIR*

The omissions in the report relied upon by the High Court pertain to minor details and cannot amount to contradictions. The part played by each accused has been broadly stated and it is not expected that all the details of how, and from what distance the assault took place and where the gunshots landed could be mentioned in the FIR. *State of U.P.* v. *Sughar Singh*, (1978) 1 SCC 178: 1978 SCC (Cri) 83: AIR 1978 SC 191: 1978 Cri LJ 141: 1978 ALJ 466.

Bench Strength **2**. Coram: *P.K. Goswami* and **V.D. Tulzapurkar**, JJ. [Date of decision: 8-12-1977]

[793] — S. 154 — FIR — Omission of names of eyewitnesses in when may not affect its evidentiary value

The omission of the names of these two witnesses from the FIR is not of much significance, as they might have seen the occurrence from a different place, and the third eyewitness, who gave the FIR, might not have noticed them. *Ashok Kumar* v. *State (Delhi Admn.)*, (1977) 2 SCC 233: 1977 SCC (Cri) 303: AIR 1977 SC 1304: (1977) 3 SCR 143: 1977 Cri LJ 814.

Bench Strength **2**. Coram: **P.K. Goswami** and *P.S. Kailasam*, JJ. [Date of decision: 7-3-1977]

[794] — S. 154 — FIR — Omission of vital details in FIR — *Held on facts, first informant was falsely introduced as an ocular witness. Govind Narain* v. *State of Rajasthan*, 1993 Supp (3) SCC 343: 1993 SCC (Cri) 1012: AIR 1993 SC 2457: 1993 Cri LJ 2598.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 31-3-1993]

[795] — S. 154 — FIR — Omission to give minute details not fatal. *Rai Saheb* v. *State of Haryana*, 1994 Supp (1) SCC 74: 1994 SCC (Cri) 239.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 16-3-1993]

[796] — S. 154 — FIR — Omission to mention eyewitness who saw the assailant running and who appeared on the site of murder and met the complainant not inconsequential. *Badri* v. *State of Rajasthan*, (1976) 1 SCC 442: 1976 SCC (Cri) 60: AIR 1976 SC 560: (1976) 2 SCR 339: 1976 Cri LJ 496.

Bench Strength **2**. Coram: *M.H. Beg* and **P.K. Goswami**, JJ. [Date of decision: 6-11-1975]

[797] — S. 154 — FIR — Omissions in — FIR lodged within half an hour of the incident by the injured witness who was upset at the incident of killing of his close relation — *In such circumstances, omission to mention the fact that the co-accused who were holding the deceased by his arms had let go of them just at the time of firing is of no consequence. Behari Prasad* v. *State of Bihar*, (1996) 2 SCC 317: 1996 SCC (Cri) 271: AIR 1996 SC 2905.

Bench Strength **2**. Coram: **G.N. Ray** and *G.T. Nanavati*, JJ. [Date of decision: 9-1-1996]

[798] — S. 154 — FIR — Omissions in — Incident of murder witnessed by a number of persons — First informant not an eyewitness — FIR lodged after talking to the witnesses present on the spot — *Held, in the circumstances, non-mention of name of one of the eyewitnesses in the FIR not fatal. Krishna Pal (Dr.)* v. *State of U.P.*, (1996) 7 SCC 194: 1996 SCC (Cri) 249: AIR 1996 SC 733.

Bench Strength **2**. Coram: *G.N. Ray* and *G.T. Nanavati*, JJ. [Date of decision: 30-11-1995]

[799] — S. 154 — FIR — Omissions in FIR — Omission to mention that PW 1 was lying unconscious at the place of occurrence — Held, inconsequential — *It was a fact which was found correct — Moreover, it is now well settled that FIR need not be encyclopaedic* (Para 32). *Umar Mohammad* v. *State of Rajasthan*, (2007) 14 SCC 711: 2008 Cri LJ 816: (2008) 61 AIC 52 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-12-2007]

Krishna Mochi v. State of Bihar, (2002) 6 SCC 81: 2002 SCC (Cri) 1220, followed

(3)(ii)3. **Reliability and Validity of FIR - Contents of FIR - Detail required/Details omitted/Omissions in FIR** *(contd.)*

[800] — S. 154 — FIR — Place of occurrence near a tree — Non-mentioning of the said tree in the FIR — *Held, was irrelevant for establishing the place of occurrence in view of the fact that bloodstains collected from the said place of occurrence clearly established that the first occurrence had taken place near the said tree* (Para 10). *Gaya Yadav* v. *State of Bihar*, (2003) 9 SCC 122: AIR 2003 SC 1759: 2003 Cri LJ 1564.

Bench Strength 2. Coram: *Y.K. Sabharwal* and **H.K. Sema**, *JJ.* [Date of decision: 18-2-2003]

[801] — S. 154 — FIR — Presence of assailant established by evidence of eyewitnesses — Non-mention of his name in FIR inconsequential — *Information about occurrence and assailants given by an illiterate woman to a Head Constable — Head Constable not fully recording the same nor reading it out to her — He mentioned only one name though several persons participated in the occurrence — Held, FIR cannot be given much importance. Pagoti Sreeramulu* v. *State of A.P.*, 1994 Supp (1) SCC 555: 1994 SCC (Cri) 714.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *N. Venkatachala*, JJ. [Date of decision: 25-11-1993]

[802] — S. 154 — FIR — Serious omission in naming the assailant — Delayed FIR casting doubt on the prosecution case. *Bhagirath Singh* v. *State of Bihar*, (1976) 1 SCC 614: 1976 SCC (Cri) 112: AIR 1976 SC 924: 1976 Cri LJ 685.

Bench Strength 2. Coram: *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 31-10-1975]

[803] — S. 154 — FIR Failure of informant, father of deceased, to mention in FIR that his associates resisted the attack and there was a fight — Effect of — *Prosecution evidence found reliable — Defence version not believable — Held, the said omission should not be given undue importance — Penal Code, 1860, Ss. 302, 307 and Ss. 148, 323 and 324 r/w S. 149* (Para 21). *Dashrath Singh* v. *State of U.P.*, (2004) 7 SCC 408: 2004 SCC (Cri) 1932: 2004 All LJ 3256.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 13-8-2004]

[804] — S. 154 — FIR given by a rustic laywoman — Mere omission to mention an incidental fact cannot nullify an otherwise prompt and proper report — *Such FIR cannot be treated as or equated to the summary of the entire prosecution case. Gurnam Kaur* v. *Bakshish Singh*, 1980 Supp SCC 567: 1981 SCC (Cri) 496: AIR 1981 SC 631: 1981 Cri LJ 34.

Bench Strength 2. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 3-10-1980]

[805] — S. 154 — FIR mentioning names of accused, witnesses, weapons used, place of occurrence, etc. — *Omission to give details of some of the overt acts not material. Ch. Madusudhana Reddy* v. *State of A.P.*, 1994 SCC (Cri) 275: 1994 Cri LJ 2203: (1994) 1 Crimes 37.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 8-12-1993]

[806] — S. 154 — FIR need not contain details of the occurrence — *Omission in the FIR that the informant, before leaving for police station for lodging the report, informed anybody of the village about the occurrence, held, is an omission of details and not a contradiction — Further, the informant, who witnessed the murder of her close relations (husband and brother-in-law) must have been dazed and could not be expected to give all the details. State of Haryana* v. *Sher Singh*, (1981) 2 SCC 300: 1981 SCC (Cri) 421: AIR 1981 SC 1021: 1981 Cri LJ 714.

Bench Strength 2. Coram: *O. Chinnappa Reddy* and **Baharul Islam**, JJ. [Date of decision: 24-2-1981]

[807] — S. 154 — FIR need not contain every detail of the occurrence — Omitted fact(s) whether never occurred has to be considered along with other evidence — *Omission regarding wresting of the gun from the assailant, held, inconsequential when there was overwhelming evidence that the gun was lying near the dead body*

Criminal courts should not be fastidious with mere omissions in the first information statement, since such statements cannot be expected to be a chronicle of every detail of what happened, nor to contain an exhaustive catalogue of the events which took place. The person who furnishes first information to authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing therefrom. Some may miss even important details in a narration. Quite often the police officer, who takes down the first information, would record what the informant conveys to him without resorting to any elicitatory exercise. It is voluntary narrative of the informant without interrogation which usually goes into such statement. So any omission therein has to be considered along with the other evidence to determine whether the fact so omitted never happened at all. *Rattan Singh* v. *State of H.P.*, (1997) 4 SCC 161: 1997 SCC (Cri) 525: AIR 1997 SC 768: 1997 Cri LJ 833.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 11-12-1996]

[808] — S. 154 — Omission to mention vital facts — *FIR filed after four hours by father of the deceased — Serious infirmities in FIR, of important facts affecting the probabilities of the case, held, are relevant under S. 11 of Evidence Act in judging the veracity of the prosecution case — Failure to mention persons alleged to be eyewitnesses in the FIR held detrimental — Failure to mention dying declaration also fatal. Ram Kumar Pandey* v. *State of M.P.*, (1975) 3 SCC 815: 1975 SCC (Cri) 225: AIR 1975 SC 1026: (1975) 3 SCR 519: 1975 Cri LJ 870.

Bench Strength 2. Coram: **M.H. Beg** and *A. Alagiriswami*, JJ. [Date of decision: 11-2-1975]

[809] — S. 154 — Informant (PW 2) claiming to have received injuries in the incident but not mentioning it in FIR — *Also not stating about injuries on PW 3 — Held, said omissions reflect on the credibility of PW 2 — Fact that said injuries were simple, held, not a ground to discard this omission, particularly when PW 2 remained admitted in hospital for three days and PW 3 for about fifteen days*

The fact that PW 2 while lodging the FIR did not mention about the injuries caused to him, even though simple in nature, was certainly a relevant fact to be taken into consideration while appreciating the evidence on record and judging the credibility of the witness. It is difficult to believe that a person injured in the course of the same incident would fail to mention to the police officer in his report that he was also injured. Apart from this omission, he also failed to mention that PW 3 had also suffered injuries. These omissions certainly reflect on the credibility of the witness. The fact that injuries suffered by PWs 2 and 3 were simple in nature is no ground to discard this omission, particularly, when according to PW 2, he had to remain admitted in the hospital for three days while according to PW 3 he had to remain admitted in the hospital for about fifteen days. (Para 24). *Hem Raj* v. *State of Punjab*, (2003) 12 SCC 241: AIR 2003 SC 4259: 2003 Cri LJ 4987.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 9-9-2003]

[810] — S. 154 — Name of one of the accused-appellants included in FIR along with eleven others in an omnibus manner without attributing any particular part to him — *Prosecution evidence should not be accepted wholly without examining the case of each of the accused — On facts and in the circumstances held, the accused-appellant must be acquitted — Penal Code, 1860 — S. 149. Ram Manorath* v. *State of U.P.*, (1981) 2 SCC 654: 1981 SCC (Cri) 581: (1981) 3 SCR 195.

Bench Strength 2. Coram: **Y.V. Chandrachud, C.J.** and *A.P. Sen*, J. [Date of decision: 10-3-1981]

[811] — S. 154 — Informant, though stating about PW 9 telling him prior to lodging of complaint that PWs 2 and 3 had seen the deceased in the company of accused, but not mentioning the said fact and names of PWs 2 and 3 in FIR — Effect — *Held, it was a glaring omission creating doubt as to the said fact* (Paras 14 and 18). *Mousam Singha Roy* v. *State of W.B.*, (2003) 12 SCC 377.

Bench Strength 2. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 21-8-2003]

[812] — S. 154 — Minor omissions reasonably explained — Held, not to affect the conviction. *Natthu Singh* v. *State of U.P.*, (1977) 4 SCC 293: 1977 SCC (Cri) 571: AIR 1977 SC 2096: 1977 Cri LJ 1578: 1977 Cri LR (SC) 378.

Bench Strength 2. Coram: *A.C. Gupta* and **P.N. Shinghal**, JJ. [Date of decision: 11-8-1977]

[813] — S. 154 — Misdescriptions/omissions in FIR regarding name of principal accused bearing an alias and about the number of shots fired explained — *On facts, acquittal based on discrepancies in the FIR in the face of direct evidence was improper. Surjit Singh* v. *State of Punjab*, 1993 Supp (1) SCC 208: 1993 SCC (Cri) 161: AIR 1992 SC 1389.

Bench Strength 2. Coram: **M.M. Punchhi** and *B.P. Jeevan Reddy*, JJ. [Date of decision: 28-4-1992]

[814] — S. 154 — Names of all the witnesses not required to be mentioned in FIR — Non-mention of names of all the witnesses by itself cannot be a ground to doubt their evidence (Para 7). *State of M.P.* v. *Dharkole*, 2005 SCC (Cri) 225: (2004) 3 KLT 776.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 29-10-2004]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Chittar Lal v. State of Rajasthan, (2003) 6 SCC 397: 2003 SCC (Cri) 1377; State of M.P. v. Mansingh, (2003) 10 SCC 414, relied on

[815] — S. 154 — Names of all the witnesses not required to be mentioned in FIR — Non-mention of names of all the witnesses by itself cannot be a ground to doubt their evidence (Para 7). *State of M.P.* v. *Dharkole*, (2004) 13 SCC 308: 2005 SCC (Cri) 225: AIR 2005 SC 44: 2005 Cri LJ 108.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 29-10-2004]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Chittar Lal v. State of Rajasthan, (2003) 6 SCC 397: 2003 SCC (Cri) 1377; State of M.P. v. Mansingh, (2003) 10 SCC 414, relied on

(3)(ii)3. Reliability and Validity of FIR - Contents of FIR - Detail required/Details omitted/Omissions in FIR *(contd.)*

[816] — S. 154 — Non-mention of accused's name in — Effect — Offences under Ss. 302/149 and 148 — Confession — Retracted judicial confession — Reliance on — *On facts, held, did not substantiate the said offence — Accused confessing about a conspiracy to commit murder of the deceased but not confessing that he was a party to the murder — Such a confessional statement, held, exculpatory — Hence, in view of his having already been acquitted of the charge under S. 120 IPC, held, there was no substantive evidence to connect him with the said offences — More so, when his name was not mentioned in the FIR — Evidence Act, 1872, S. 24. Shabad Pulla Reddy* v. *State of A.P.*, (1997) 8 SCC 495: AIR 1997 SC 3087: 1997 Cri LJ 3753.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S. Saghir Ahmad*, JJ. [Date of decision: 20-8-1997]

[817] — S. 154 — Non-mention of name of appellant-accused in FIR — *FIR lodged by member of the victim family who was accompanied by witness who had last seen the accused with one of the deceased — Held, not material as the relative under severe psychic trauma on murder of five members of his family* (Para 7). *Shri Bhagwan* v. *State of Rajasthan*, (2001) 6 SCC 296: 2001 SCC (Cri) 1095: AIR 2001 SC 2342.

Bench Strength 2. Coram: *M.B. Shah* and **K.G. Balakrishnan**, JJ. [Date of decision: 10-5-2001]

A. Devendran v. State of T.N., (1997) 11 SCC 720: 1998 SCC (Cri) 220, relied on

[818] — S. 154 — Non-mention of names of two eyewitnesses on whose testimony the whole prosecution case rested — *Name of assailant not mentioned by these witnesses to the first informant because of serious threats given by the accused and other villagers not to intermeddle in the matter — Hence the witnesses cannot be disbelieved on the mere ground that their names had not been indicated in the FIR. Pralhad* v. *State of Maharashtra*, 1981 Supp SCC 26: 1981 SCC (Cri) 646: AIR 1981 SC 1241: 1981 Cri LJ 752: 1981 MLJ (Cri) 628.

Bench Strength 3. Coram: *S. Murtaza Fazal Ali, Baharul Islam* and *A. Varadarajan*, JJ. [Date of decision: 24-3-1981]

[819] — S. 154 — Not necessary that names of all witnesses be mentioned in the FIR — *Non-mention of name in the FIR will not justify rejection of the evidence of the eyewitness. State of U.P.* v. *Lalla Singh*, (1978) 1 SCC 142: 1978 SCC (Cri) 70: AIR 1978 SC 368: 1978 Cri LJ 359: 1978 ALJ 147.

Bench Strength 2. Coram: *A.C. Gupta* and **P.S. Kailasam**, JJ. [Date of decision: 28-11-1977]

[820] — S. 154 — Omission of accused's name in the FIR in the circumstances of the case, held, fatal. *A.R. Singh* v. *Govt. of Manipur*, (1976) 3 SCC 465: 1976 SCC (Cri) 423: AIR 1976 SC 2191: 1976 Cri LJ 1712.

Bench Strength 2. Coram: *R.S. Sarkaria* and **P.N. Shinghal**, JJ. [Date of decision: 7-4-1976]

[821] — S. 154 — Omission of an important material fact repels the argument that the FIR was written after due deliberation and consultation. *Soma Bhai* v. *State of Gujarat*, (1975) 4 SCC 257: 1975 SCC (Cri) 515: AIR 1975 SC 1453: 1975 Cri LJ 1201.

Bench Strength 2. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 30-4-1975]

[822] — S. 154 — Omission of name of assailant when claimed to have been seen by husband of the deceased — *Reasonable explanation of husband having become unconscious owing to shock and injuries — Evidence corroborated — Conviction sustained. Bishan Dass* v. *State of Punjab*, (1975) 3 SCC 700: 1975 SCC (Cri) 145: AIR 1975 SC 573: 1975 Cri LJ 461.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *R.S. Sarkaria*, JJ. [Date of decision: 10-1-1975]

[823] — S. 154 — Omission to mention about dying declaration in FIR — *Held, cannot by itself make the witness deposing about the dying declaration unbelievable — Evidence of the witness has to be tested on its own strength or weakness — Evidence Act, 1872, S. 32*

If there be material departure in the prosecution case as unfolded in the FIR, which would be so if material facts not mentioned in the FIR are deposed to by prosecution witnesses in the court, the same would cause dent to the edifice on which the prosecution case is built, as the substratum of the prosecution case then gets altered. It is apparent that prosecution cannot project two entirely different versions of a case. This is entirely different from thinking that some omission in the FIR would require disbelieving of the witnesses who depose about the fact not mentioned in the FIR. Evidence of witnesses has to be tested on its own strength or weakness. While doing so, if the fact deposed be a material part of prosecution case, about which, however, no mention was made in the FIR, the same would be borne in mind while deciding about the credibility of the evidence given by the witness in question.

Evidence of the witnesses about the dying declaration cannot be disbelieved, only because the FIR has not mentioned about it. It is settled law that FIRs are not taken as encyclopaedia and omission of a fact therein, even if material, cannot by itself make the witness deposing about that fact unbelievable at that point. *State of M.P.* v. *Dhirendra Kumar*, (1997) 1 SCC 93: 1997 SCC (Cri) 54: AIR 1997 SC 318.

Bench Strength 2. Coram: *G.N. Ray* and **B.L. Hansaria**, JJ. [Date of decision: 5-11-1996]

Ram Kumar Pandey v. State of M.P., (1975) 3 SCC 815: 1975 SCC (Cri) 225, explained

[824] — S. 154 — Omission to mention dying declaration inconsequential where report lodged by an eyewitness who also carried the deceased to the police station. *Bhagwati* v. *State of U.P.*, (1976) 3 SCC 235: 1976 SCC (Cri) 388: AIR 1976 SC 1449: 1976 Cri LJ 1171.

Bench Strength 2. Coram: *R.S. Sarkaria* and **P.N. Shinghal**, JJ. [Date of decision: 8-4-1976]

[825] — S. 154 — Omission to mention names of all the accused by deceased — Effect, if any, on prosecution case — *FIR based on dying declaration showing that the deceased had stated the names of some (4 in this case) of the accused persons — However, in the same statement the deceased further mentioning that there was an assembly of 15 to 17 persons — In such circumstances, non-mentioning of the names of the remaining accused by the deceased, held, not fatal to the prosecution case — Penal Code, 1860 — Ss. 302, 307, 326, 324, 323, 342, 452 and 149* (Para 16). *Ramanbhai Naranbhai Patel* v. *State of Gujarat*, (2000) 1 SCC 358: 2000 SCC (Cri) 113: 1999 Cri LJ 5013.

Bench Strength 2. Coram: **S.B. Majmudar** and *U.C. Banerjee*, JJ. [Date of decision: 30-11-1999]

[826] — S. 154 — Omissions in FIR — *FIR not required to contain graphic details — But non-disclosure of names and identities of miscreants who were known to the informant cannot be equated with graphic details — FIR lodged within 3 hours of the incident by the eyewitness but names of appellants not given therein — Interpolation in list of the miscreants submitted by the IO to the Magistrate 2 days after the incident — Held, in the circumstances of the case, the appellants are entitled to the benefit of doubt. K. Ashokan* v. *State of Kerala*, (1998) 3 SCC 570: AIR 1998 SC 1974.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 19-2-1998]

[827] — S. 154 — Omissions in FIR — *First informant not claiming to have seen the culprits — Absence of description of features and particulars of culprits in the FIR is of no consequence* (Para 18). *Suraj Pal* v. *State of Haryana*, (1995) 2 SCC 64: 1995 SCC (Cri) 313.

Bench Strength 2. Coram: *G.N. Ray* and **Faizan Uddin**, JJ. [Date of decision: 9-11-1994]

[828] — S. 154 — Omissions in FIR — *Non-mention of details and meticulous particulars not a ground to reject the prosecution case. State of U.P.* v. *Nahar Singh*, (1998) 3 SCC 561: 1998 SCC (Cri) 850: AIR 1998 SC 1328.

Bench Strength 2. Coram: *G.T. Nanavati* and **S.S.M. Quadri**, JJ. [Date of decision: 18-2-1998]

[829] — S. 154 — Omissions in FIR — *Non-mention of name of A-2 in FIR though accused known to the first informant from before — Held, in the circumstances, evidence of the first informant would not come in aid of prosecution to prove complicity of A-2 in the crime — Evidence Act, 1872, S. 155. Raju* v. *State of Maharashtra*, (1998) 1 SCC 169: 1998 SCC (Cri) 296: AIR 1998 SC 275: 1998 Cri LJ 493: (1998) 1 GCD 604.

Bench Strength 2. Coram: **M.K. Mukherjee** and *K.T. Thomas*, JJ. [Date of decision: 22-10-1997]

[830] — S. 154 — Omissions in FIR — *Non-mention of names of the eyewitnesses in FIR — Their evidence cannot be rejected on that ground — However, the fact that their names did not appear in the FIR is a relevant circumstance — Hence their evidence is required to be appreciated on their own merits. State of Bihar* v. *Ram Padarath Singh*, (1998) 6 SCC 240: 1998 SCC (Cri) 1436: AIR 1998 SC 2606.

Bench Strength 2. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 21-7-1998]

[831] — S. 154 — Omissions in FIR — *Omission of reference to burning lamp at the place of incident — Trial court not justified in using the FIR against the witnesses who were not responsible for it. Rajendra Mahton* v. *State of Bihar*, (1998) 9 SCC 315: 1998 SCC (Cri) 1013: AIR 1998 SC 1546: 1998 Cri LJ 1254.

Bench Strength 2. Coram: *M.M. Punchhi* and **M. Srinivasan**, JJ. [Date of decision: 9-12-1997]

Betal Singh v. State of M.P., (1996) 8 SCC 205: 1996 SCC (Cri) 571, relied on

[832] — S. 154 — Omissions in FIR — *Skeletal facts revealed in FIR found consistent with the detailed narration of the eyewitnesses in the evidence — Held, in the circumstances, non-mention of the details of the occurrence inconsequential. Ram Gopal* v. *State of Rajasthan*, (1998) 6 SCC 441: 1998 SCC (Cri) 1464: AIR 1998 SC 2598.

Bench Strength 2. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas**, J. [Date of decision: 28-7-1998]

(3)(ii)3. Reliability and Validity of FIR - Contents of FIR - Detail required/Details omitted/Omissions in FIR *(contd.)*

[833] — S. 154 — Omissions in FIR — Non-mention of name of in the FIR — *Evidence of such an eyewitness who is found independent and reliable cannot be discarded on that score. Babu Singh* v. *State of Punjab*, (1996) 8 SCC 699: 1996 SCC (Cri) 730: AIR 1996 SC 3250.

Bench Strength 2. Coram: *Faizan Uddin* and **G.B. Pattanaik**, JJ. [Date of decision: 24-4-1996]

[834] — S. 154 — Omissions in the FIR — *Incident taking place in a shop at about 8 p.m. — Non-mention of source of light in the FIR not fatal to the prosecution case. State of Karnataka* v. *Moin Patel*, (1996) 8 SCC 167: 1996 SCC (Cri) 632: AIR 1996 SC 3041.

Bench Strength 2. Coram: **M.K. Mukherjee** and *B.N. Kirpal*, JJ. [Date of decision: 22-2-1996]

[835] — S. 154 — Omission to mention motives as spoken of by complainant in cross-examination — *Held, elaboration of enmity between deceased and accused during cross-examination can hardly be a reason to contend that what is stated in complaint is either different from what is stated in the evidence in regard to the motives or the witness has made improvements in regard to motives of accused to commit the crime* (Para 21). *Jaishree Yadav* v. *State of U.P.*, (2005) 9 SCC 788: AIR 2004 SC 4443: 2004 Cri LJ 4826.

Bench Strength 3. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 12-8-2004]

[836] — S. 154 — Parentage of accused not mentioned in FIR but mentioned in General Diary — *Held, could have been added after ascertaining it from the informant. Sone Lal* v. *State of U.P.*, (1978) 4 SCC 302: 1978 SCC (Cri) 587: AIR 1978 SC 1142: 1978 Cri LJ 1122: 1978 ALJ 530.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 6-4-1978]

[837] — S. 154 — Promptly lodged, having regard to entry made in General Diary — FIR mentioning names of most of the accused persons — *Held, on facts, High Court erred in rejecting it merely on ground that its contents did not fully accord with the evidence of two of the eyewitnesses regarding the 'sequence' of event — Evidence Act, 1872, S. 35. State of U.P.* v. *Ranjha Ram*, (1986) 4 SCC 99: 1986 SCC (Cri) 374: AIR 1986 SC 1959: 1986 Cri LJ 1906.

Bench Strength 2. Coram: *M.P. Thakkar* and **S. Natarajan**, JJ. [Date of decision: 19-8-1986]

[838] — Ss. 154 and 161 — Name of the appellant not disclosed in FIR by PW 1 — *However, he categorically named by PWs 1 and 6 (mother of the deceased and the accused, as well as an injured witness) in their statements before the police and specific overt act attributed to him by PW 1 before the court — Held, the FIR is not an encyclopaedia of the entire case and need not contain all the details — Though the importance of naming an accused in FIR cannot be ignored, but in the instant case he had been named at the earliest possible opportunity — Question as to whether a person was implicated by way of an afterthought or not must be judged having regard to the entire factual scenario obtaining in the case — However, non-naming of the appellant by PW 1 is no reason to disbelieve the testimony of PW 6 who was a crucial witness* (Paras 14, 21, 22 and 23). *Rotash* v. *State of Rajasthan*, (2006) 12 SCC 64: (2007) 2 SCC (Cri) 382: (2007) 50 AIC 374 (SC): 2007 Cri LJ 758.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 6-12-2006]

[839] — Ss. 154 and 161 — FIR — Midnight occurrence — Omission to mention about light in the FIR or in the statement of prosecution witnesses recorded under S. 161 — *Held on facts, was wholly inconsequential* (Para 6). *State of U.P.* v. *Premi*, (2003) 9 SCC 12: AIR 2003 SC 1750: 2003 Cri LJ 1554.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *H.K. Sema*, JJ. [Date of decision: 20-2-2003]

[840] — Ss. 154 and 161 — FIR — Non-mentioning of names of eyewitnesses (PWs 1 and 5) in FIR and delay in examining the said witnesses — Effect of — *Complaint not containing the names of the eyewitnesses apart from PW 2, but referring to other unnamed witness as being present — That apart, it was only in the course of investigation that the IO came to know that PWs 1 and 5 were also eyewitnesses — In these circumstances, held, adverse inference could not be drawn merely because the names of PWs 1 and 5 were not mentioned in FIR or their statements were recorded belatedly* (Para 5). *Pramod Mahto* v. *State of Bihar*, (2003) 9 SCC 215.

Bench Strength 2. Coram: *N. Santosh Hegde* and *B.P. Singh, JJ.* [Date of decision: 31-7-2002]

[841] — Ss. 154 and 162 — FIR — Names of assailants not given in FIR — Appellants named in supplementary statement of the first informant recorded during investigation — *Held, such supplementary statement was hit by S. 162 and the trial court erred in relying upon the same as a part of the FIR. Husna* v. *State of Punjab*, (1996) 7 SCC 382.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *G.T. Nanavati*, JJ. [Date of decision: 23-1-1996]

4. Discrepancies/Inconsistencies/Contradictions in or vis-à-vis FIR

See also CRIMINAL TRIAL — 'Appreciation of Evidence' — Contradictions, inconsistencies, exaggerations or embellishments, in Vol. 3

See also Section 154, '(3)(ii)3. Detail required/Details omitted/Omissions in FIR', above and

'(3)(ii)5. Corrections/Overwriting/Interpolation in FIR',

'(3)(ii)6. Embellishments/Improvements in FIR',

'(3)(iii) FIR and other evidence', below

[842] — S. 154 — Discrepancies in FIR — When fatal to the prosecution case — *Eighteen persons put for trial for offences arising out of murder of two persons — According to prosecution case incident took place on afternoon of May 9, 1966, but three persons lodged FIRs separately on the next morning with different versions — Son of one of the deceased lodged FIR, mentioning names of ten persons who according to him participated in the assault but the names of none of the eighteen accused finding place in that list — Then another information about a minor and totally different incident lodged, without referring to the instant case of murder, by a person who had appeared as eyewitness in the instant case — Kotwar of the village thereafter at 10 a.m. reporting that incident took place on night of May 10, 1966, i.e., in early hours of May 10 and that he did not know who assaulted the deceased persons — Two eyewitnesses claimed to have seen the incident on the supposition that it happened on afternoon of the 9th — Medical evidence falsifying eyewitnesses' account that the two men were attacked with lathis, spears and axes — Held, discrepancies in three reports lodged with Police tend to knock down the prosecution case*

The discrepancies in the three reports lodged with the police have a fundamental importance for they tend to falsify the evidence to the eyewitnesses and show that the incident happened under cover of darkness and was in all probability not witnessed by anyone. It is obvious that if the incident had taken place at night the whole prosecution case must fall. *Hallu* v. *State of M.P.*, (1974) 4 SCC 300: 1974 SCC (Cri) 462: AIR 1974 SC 1936: (1974) 3 SCR 652: 1974 Cri LJ 1385.

Bench Strength 2. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 19-3-1974]

[843] — S. 154 — Discrepancy between FIR and evidence given in court — Effect, if any — *Appellants' submitting that in the FIR it was mentioned that after the first shot deceased had fallen down there, while evidence given in court was that deceased had first tried to run away and that all accused surrounded him, which is an improvement and so should not be believed — Tenability — Held, an FIR is not a substantive piece of evidence — At the most it can be used to corroborate or contradict the informant — An FIR can never be used to contradict other witnesses — Herein, apart from evidence of informant PW 5, there was also evidence of PWs 1 and 3 (eyewitnesses) — Evidence of PWs 1 and 3 was very categorical on this point, which was believed by both the courts below — Nothing was put to these witnesses that they had made any contradictory statement at any other stage — No reason to disbelieve evidence of these witnesses — Evidence given in court by PW 5 was consistent with that of PWs 1 and 3 — Hence, mere fact that in the FIR it was not so stated, does not cast any doubt or destroy evidence given in court* (Paras 8 and 9). *Harendra Nath Mishra* v. *State of Bihar*, (2009) 17 SCC 542.

Bench Strength 2. Coram: *S.N. Variava* and *B.N. Agrawal*, JJ. [Date of decision: 26-11-2002]

[844] — S. 154 — Discrepancy as regards time of lodging of FIR — Effect — *PW 1 (informant) stating that it was lodged at 9 p.m., doctor treating PW 1 stating that his statement was recorded by IO at 11 p.m., while IO deposing that it was lodged at 11.45 p.m. — PW 1 was an injured witness who had suffered large number of injuries in the occurrence — Hence held, possibility of him as injured losing track of time by reason of sufferance of grave injuries could not be ruled out — Further held, it was also possible that statement of PW 1 was recorded at 11 p.m. but FIR lodged at about 11.45 p.m., which would not mean that the recording of the statement of PW 1 had also started at that point of time — Hence, purported discrepancy in respect of the time of actual lodging of FIR was not such which would prove to be fatal to the entire prosecution case, particularly when the ocular evidence was corroborated by medical evidence* (Paras 9 and 10). *Santosh* v. *State of Maharashtra*, (2007) 13 SCC 457: (2007) 54 AIC 36 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 9-5-2007]

[845] — S. 154 — FIR not signed by first informant — Effect, if any — *FIR not signed by PW 1 (first informant and eyewitness) — It was scribed by one **R** on his dictation — Fact that report received by SHO and FIR lodged immediately thereafter —*

(3)(ii)4. Reliability and Validity of FIR - Contents of FIR - Discrepancies/Inconsistencies/Contradictions in or vis-à-vis FIR *(contd.)*

Relevance — Held, in such circumstances it is of no consequence whether FIR contained first informant's signature or not — Penal Code, 1860 — Ss. 302, 307 and 147 to 149 (Para 16.4). *Surendra Pal* v. *State of U.P.*, (2010) 9 SCC 399.

Bench Strength 2. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 16-9-2010]

Suresh Rai v. State of Bihar, (2000) 4 SCC 84: 2000 SCC (Cri) 764; Eqbal Baig v. State of A.P., (1986) 2 SCC 476: 1986 SCC (Cri) 232, relied on

[846] — S. 154 — FIR — Controversy as to whether FIR was lodged at 4.45 a.m. or 4.45 p.m. on 16-8-1979 — *Typed copy thereof showing that it was lodged at 4.45 p.m. — But IO stating that it was lodged at 9.30 p.m. on that day — FIR scribed by one G who was brother of PW 1 and was not a resident of the village where occurrence had taken place but was residing 10 km away — Prosecution failing to examine him although his son had been examined as an eyewitness — If he was residing at the relevant time in the village where the incident had taken place, it was expected that either he had witnessed the occurrence or had reached the place of occurrence immediately after the accused fled away — PW 3, Head Constable attached to the police station stating in his evidence that FIR was lodged at 4.45 a.m. and the special reports were sent by 6.00 a.m. — Prosecution failing to explain as to why FIR was sent to the Court of the Chief Judicial Magistrate on 17-8-1979 and why the dead body was not sent for post-mortem on 16-8-1979 itself — Moreover, if FIR was lodged early in the morning, there was absolutely no reason as to why investigation did not start immediately thereafter — In such circumstances conviction of appellant unsustainable* (Paras 6, 15, 18 and 19). *Om Prakash* v. *State of U.P.*, (2008) 17 SCC 249: AIR 2009 SC 944: (2009) 1 All LJ 657: (2009) 2 ECrN 14 (SC): 2009 Cri LJ 782: (2009) 75 AIC 257 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 12-12-2008]

[847] — S. 154 — Change in place and change of version of prosecution story by the first informant — Time and place of incident also changed — *Held, in view of the vital omissions and contradictions, the evidence of the first informant cannot be relied upon — Trial court and High Court committed manifest error in relying upon the testimony of first informant as eyewitness — Penal Code, 1860, S. 302 (Paras 8 to 10). Prem Narain* v. *State of M.P.*, (2007) 15 SCC 485.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 29-11-2006]

[848] — S. 154 — FIR — Contradiction relating to lodging of FIR — Murder — Contradiction regarding the place of lodging of the report — *According to eyewitness (PW 3), she had gone to the police station where after making some inquiries from her the FIR was lodged — Investigating officer also stating that complaint was given by PW 3 on the basis of which a case was registered in the police station — But in cross-examination the IO stating that he came straightaway to the village of occurrence where report was written in the house of PW 3 who was present there and the report was forwarded to the police station for registration of the case — Held, though there was a contradiction regarding lodging of FIR but that did not discredit the main prosecution case which was otherwise reliable and trustworthy*

The High Court considered the question regarding contradiction about lodging of the FIR in detail taking into account all the discrepancies in regard to this point and came to the conclusion that otherwise reliable statement of the complainant (PW 3) could not be discarded or discredited and that even though there had been any fault or negligence in conducting the investigation, that too by itself, was not sufficient to dislodge the prosecution case as a whole. It observed that for an uneducated village person, it is not unlikely that one may make some embellishment in the statement saying that the FIR was recorded at the police station since normally it is recorded there.

Held :

There is definitely a contradiction about the lodging of the FIR but the effect of such contradiction or discrepancy may have to be viewed in the light of the facts and circumstances of each case. There may be cases where such a discrepancy may prove fatal to the prosecution case whereas in other cases it may not have the same effect. The consequences of such discrepancies or defective or doubtful investigation is not necessarily only one leading to discredit the main prosecution case if the prosecution evidence inspires confidence and circumstances lead to such a conclusion and the prosecution story rings true. No doubt in that event it would be necessary to evaluate as to what extent such faulty investigation or discrepant statement on certain facts relating thereto, shall cause damage to the prosecution case as a whole. The trial court and the High Court have rightly placed implicit reliance upon the statement of PW 3 despite the infirmities which crept in due to careless investigation and contradiction regarding the place of lodging of the report. (Paras 12 and 17). *Dharmendrasinh* v. *State of Gujarat*, (2002) 4 SCC 679: AIR 2002 SC 1937.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Brijesh Kumar**, JJ. [Date of decision: 17-4-2002]

[849] — S. 154 — FIR — Discrepancies — Effect — *If FIR found to be truthful, merely because case against some of the accused named in it could not be established by prosecution and merely because some enquiries were made to ascertain truth of the incident and to apprehend the accused, held, entire prosecution case cannot be discarded*

In the first information report all the accused persons were named and overt acts on their part were also stated at some length. Each and every detail of the incident was not necessary to be stated. A first information report is not meant to be encyclopaedic. While considering the effect of some omissions in the first information report on the part of the informant, a court cannot fail to take into consideration the probable physical and mental condition of the first informant. One of the important factors which may weigh with the court is as to whether there was a possibility of false implication of the appellants. Only with a view to test the veracity of the correctness of the contents of the report, the court applies certain well-known principles of caution. Once, however, a first information report is found to be truthful, only because names of some accused persons have been mentioned, against whom the prosecution was not able to establish its case, the entire prosecution case would not be thrown away only on the basis thereof. If furthermore the purported entry in the general diary, which had not been produced, is not treated to be a first information report, only because some enquiries have been made, the same by itself would not vitiate the entire trial. Enquiries are required to be made for several reasons; one of them is to ascertain the truth or otherwise of the incident and the second to apprehend the accused persons. Arrest of accused persons, as expeditiously as possible, leads to a better investigation. (Paras 13 and 14). *Animireddy Venkata Ramana* v. *Public Prosecutor, High Court of A.P.*, (2008) 5 SCC 368: (2008) 2 SCC (Cri) 600: AIR 2008 SC 1603: (2008) 65 AIC 136 (SC): 2008 Cri LJ 2038.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

[850] — S. 154 — FIR — Discrepancies — Dacoity — Acquittal by High Court for offences under S. 396 IPC — Doubts regarding conviction — *Deceased's party on inimical terms with named accused persons — First oral information by PW 3 (village chowkidar) only against unknown persons — Later addition of accused persons (inimical to deceased party) in written report of PW 2 (member of deceased party) — No witnesses speaking about A (respondent-Accused 4) — Known inimical accused persons did not try to cover their face during dacoity though unknown persons covered their face — Interference with acquittal of A (respondent-Accused 4) for offences under S. 396 IPC, held, is not warranted* (Paras 5 to 12). *State of U.P.* v. *Awdhesh*, (2008) 16 SCC 238.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 9-9-2008]

[851] — S. 154 — Minor in nature — Effect — *Held, much importance cannot be given to such minor discrepancies*

It was argued by the appellant that there were certain discrepancies in the FIR, like from the FIR, it was suggested as if the incident had taken place near the canal. The use of the word "canal" may be because of the impression of the constable, who wrote the report in vernacular. That, however, will not take the spot of occurrence to near the canal on the northern side. It must be realised that vocabulary and the terms used by the villagers could always be confused by the police when they recorded their statements. Much importance cannot be given to such minor discrepancies. The broad features of the evidence, which are clearly established and enough to sustain conviction of the accused were that the complainant party wanted to irrigate their field and for that they wanted to open the aqueduct for supplying water to their field and it was at that spot that the incident took place. (Paras 27, 18 and 23). *Bhagwati Prasad* v. *State of M.P.*, (2010) 1 SCC 697.

Bench Strength 3. Coram: *R.V. Raveendran*, **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 3-12-2009]

[852] — S. 154 — FIR — Discrepancies or omissions in FIR — Effect — *Description of robbed jewels not given in FIR by PW 1 (son of deceased) — Held, will not in any way affect the identification of the jewellery seized from the accused as those belonging to his mother* (Para 12). *Krishnamoorthy* v. *State*, (2007) 12 SCC 110: (2008) 2 SCC (Cri) 248: 2007 Cri LJ 1803: (2007) 52 AIC 83 (SC).

Bench Strength 2. Coram: *Tarun Chatterjee* and **R.V. Raveendran**, JJ. [Date of decision: 1-3-2007]

[853] — Ss. 154 and 482 — FIR alleging that offences were committed by purchase of insurance stamps from outside State for use within the State — FIR also bringing within its ambit purchase of stamps made within the State — Propriety — *Held, FIR displays complete*

(3)(ii)4. Reliability and Validity of FIR - Contents of FIR - Discrepancies/Inconsistencies/Contradictions in or vis-à-vis FIR *(contd.)*

non-application of mind — Criminal proceedings liable to be quashed (Para 30). *V.V.S. Rama Sharma* v. *State of U.P.*, (2009) 7 SCC 234: (2009) 3 SCC (Cri) 356: (2009) 77 AIC 24 (SC): (2009) 4 All LJ 309.

Bench Strength 2. Coram: *S.B. Sinha* and **Dr. M.K. Sharma**, JJ. [Date of decision: 15-4-2009]

[854] — S. 154 — FIR — Discrepancies or omissions in FIR — Effect — *Held, merely because of some contradiction it cannot be said that the FIR was lodged later and that the police had prior information and the same was not recorded — When a witness is examined after a long period it is possible that some mistakes may occur when they give evidence before the court* (Para 10). *Gonchi Rajashekhar Reddy* v. *State of A.P.*, (2006) 9 SCC 535: (2006) 3 SCC (Cri) 332: 2006 Cri LJ 2378.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *Arun Kumar*, JJ. [Date of decision: 3-4-2006]

[855] — S. 154 — FIR — Discrepancies/Omissions in FIR — Effect of — Non-mentioning of name of PW 2, son of deceased in FIR as witness — *Complainant had apparently not seen him as PW 2 witnessed incident from some distance away — Contradiction regarding site of injury also held immaterial as it was impossible for any witness to make out as to where a bullet had hit after it had been fired* (Para 4). *Hari Singh* v. *State of M.P.*, (2010) 12 SCC 108: AIR 2010 SC 3630.

Bench Strength 2. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 3-8-2010]

[856] — S. 154 — FIR lodged with great promptitude — Minor omissions or variations in the FIR, which do not distort the substratum of the prosecution story — Effect — *Held, the same would not make the prosecution case unreliable. Radhey Shyam Narendra* v. *State of Orissa*, (1980) 1 SCC 585: 1980 SCC (Cri) 293.

Bench Strength 2. Coram: **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 27-11-1979]

[857] — S. 154 — FIR — Discrepancies in making later additions, explained — Effect on acquittal of offence under S. 396 IPC, based on other factors — *Later addition of accused persons (inimical to deceased party) in written report of PW 2 (member of deceased party) sought to be explained by pointing out that the witnesses on hearing about the dacoity had rushed to police station and had no occasion to know names of accused persons — Explanation of said discrepancies, held, cannot alter the ultimate/prima facie conclusion of doubts regarding conviction* (Paras 10 and 11). *State of U.P.* v. *Awdhesh*, (2008) 16 SCC 238.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 9-9-2008]

[858] — S. 154 — FIR — Discrepancies — Not by themselves fatal to prosecution case — *Court should weigh all situations including discrepancies as well as other evidence and after carefully appreciating the same come to a correct conclusion — Conviction confirmed under S. 302 r/w Ss. 149/34 IPC — Penal Code, 1860 — S. 302 r/w Ss. 149/34*

The importance of FIR cannot be underestimated as it is first version on the basis of which the investigation proceeds. But FIR is not a be-all and end-all of the matter, even though it is a very important document. In most of the cases, FIR provides corroboration to the evidence of the maker thereof. It provides a direction to the investigating officer and the necessary clues about the crime and the perpetrator thereof. (Paras 20 and 39)

Merely because doubts are raised about the FIR and the nature of prosecution case, that by itself, would not be fatal to the prosecution case. True it is that a concocted FIR, wherein some innocent persons are deliberately introduced as the accused persons, raises a reasonable doubt about the prosecution story, however, a vigilant, competent and searching investigation can despoil all the doubts of the court. It is not a universal rule that once FIR is found to be with discrepancies, the whole prosecution case, as a rule, has to be thrown. Such can never be the law. If the investigating agency is able to collect reasonable evidence against the accused persons and such evidence stands the scrutiny of the Court, then such a discrepancy need not be fatal. (Paras 38, 39 and 41)

If the argument that a suspicious and doubtful FIR would have the effect of throwing out the whole prosecution case is accepted, then there would be no necessity of leading any evidence. The correct view would be to weigh all the situations including the discrepancies found in the FIR, as also the other evidences made available before the Court and after carefully appreciating the same, to come to the correct conclusion. That is precisely what has been done in this case. (Para 42). *Alagarsamy* v. *State*, (2010) 12 SCC 427: AIR 2010 SC 849: 2010 Cri LJ 29: (2010) 2 ECrN 88: (2009) 84 AIC 192 .

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 22-10-2009]

Nirmal Singh v. State of Bihar, (2005) 9 SCC 725: 2005 SCC (Cri) 1461; Sanganagouda A. Veeranagouda v. State of Karnataka, (2005) 12 SCC 468: (2006) 1 SCC (Cri) 610; State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715: 2000 SCC (Cri) 61, relied on

Sevi v. State of T.N., 1981 Supp SCC 43: 1981 SCC (Cri) 679, explained and distinguished

[859] — S. 154 — Slight discrepancy in FIR held, to support its authenticity. *Ajmer Singh* v. *State of Punjab*, (1977) 1 SCC 659: 1977 SCC (Cri) 140: AIR 1977 SC 1078: 1977 Cri LJ 659.

Bench Strength **3**. Coram: *P.N. Bhagwati, A.C. Gupta* and **P.N. Shinghal**, JJ. [Date of decision: 16-12-1976]

[860] — S. 154 — FIR — Suspicious circumstances — Caste rivalry — *Names of accused persons mentioned in FIR, did not find place in reports of Tahsildar sent to Collector and that of Collector sent to Secretary, Public (Law and Order) — Held, inconsequential since these officers were not concerned with investigation of offence in question and they had only reported about prevailing law and order situation in the area*

The reports of the Tahsildar and the Collector would be of no consequence, as the two officers concerned had nothing to do with the investigation of the offence. The mere fact that in the Tahsildar's report and also the second report, the names of the accused persons did not figure, does not, amount to a very clinching circumstance. Law and order in the village was the prime concern of this Revenue Officer, who sent these two reports. It was not his task to investigate the offence. He was merely reporting the prevailing situation in his village to his superiors as per his duty. Therefore, merely because the names of the accused persons did not figure in his report, would not, matter. It is nobody's case that he was actively assisting or was directly connected or cooperating with the investigating officer. By these reports, he merely did his duty of informing his Collector, the prevalent situation, which was undoubtedly tense. Therefore, the non-mention of those names in the aforementioned reports, would be of no consequence. Similarly, for the report by the Collector to the Secretary, the same comment is applicable. The Collector was not a man on the spot. He was merely acting on the basis of the report sent to him by the local officer. Therefore, his report is also of no consequence. (Paras 35 and 36). *Alagarsamy* v. *State*, (2010) 12 SCC 427: AIR 2010 SC 849: 2010 Cri LJ 29: (2010) 2 ECrN 88: (2009) 84 AIC 192 .

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 22-10-2009]

Nirmal Singh v. State of Bihar, (2005) 9 SCC 725: 2005 SCC (Cri) 1461; Sanganagouda A. Veeranagouda v. State of Karnataka, (2005) 12 SCC 468: (2006) 1 SCC (Cri) 610; State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715: 2000 SCC (Cri) 61, relied on

Sevi v. State of T.N., 1981 Supp SCC 43: 1981 SCC (Cri) 679, explained and distinguished

[861] — Ss. 154 and 172 — Inconsistency between FIR and police station daily diary maintained under Punjab Police Rules — Effect — *Veracity of contents of FIR cannot in all cases be tested with reference to police station daily diary — Original DDR not filed in court; instead photocopy filed and that too at the instance of accused after 4 years of closure of evidence — Evidence showing that FIR was recorded first and DDR recorded thereafter on the basis of the facts recorded in FIR — In the circumstances, held, a totally different version contained in the photocopy of DDR belatedly filed before court rendered its contents doubtful and no reliance can be placed thereon — Punjab Police Rules, 1934, R. 2* (Paras 16 and 19). *Paramjit Singh* v. *State of Punjab*, (2007) 13 SCC 530: AIR 2008 SC 441: (2008) 61 AIC 142 (SC).

Bench Strength **2**. Coram: *P.P. Naolekar* and **B. Sudershan Reddy**, JJ. [Date of decision: 31-10-2007]

5. Corrections/Overwriting/ Interpolation in FIR

See also Section 154, '(3)(ii)4. Discrepancies/Inconsistencies/Contradictions in or vis-à-vis FIR', above

See also CRIMINAL TRIAL — 'Appreciation of Evidence' — Contradictions, inconsistencies, exaggerations or embellishments in Vol. 3

[862] — S. 154 — Correction of date in FIR, by Magistrate — *On facts, did not amount to manipulation — Offence under Ss. 302/34 — In the endorsement on the copy of the FIR, the Magistrate mentioning the time and date of receipt as 6 p.m., 5-10-1984 and then correcting and initialling the date as 4-10-1984 — In view of consistency with the entries in the daily diary made by the Constable who took the FIR to the Magistrate, and in absence of any evidence of bias on the part of the Magistrate, held, the High Court erred in holding that the FIR had been recorded later than the time indicated — Penal Code, 1860 — Ss. 302/34*

The deceased was killed on 4-10-1984 by the accused-respondents. The FIR was lodged the same day within 21/2 hours. The copy of the FIR was taken to the Magistrate by a Constable. In the endorsement made by the Magistrate, the time of receipt was mentioned as 6 p.m. and the date, as 5-10-1984 which was then corrected and initialled by the Magistrate as 4-10-1984. On account of this correction, the High Court came to the conclusion that the FIR was recorded at a point of time later than what was indicated.

(3)(ii)5. Reliability and Validity of FIR - Contents of FIR - Corrections/Overwriting/Interpolation in FIR *(contd.)*

Reversing this finding

Held :

There is no doubt that the figure "5" has been altered to figure "4". The High Court, however, overlooked the fact that the police constable who took the FIR to the Magistrate had made an entry number 14 at 4.25 p.m. in the daily diary on 4-10-1984 to the effect that he was taking the copy of the FIR to be delivered to the Magistrate. In the daily diary there is also the recording of the fact that the police constable, after having delivered the FIR, had come back to the police station the following morning. There is no correction as far as time of 6 p.m. which is recorded. This being so, it is obvious that the report could not have reached the Magistrate at 6 p.m. on 5-10-1984 when the constable had come back, after giving a copy of the report to the Magistrate, on the morning of 5-10-1984. Furthermore, the change in the date has been initialled by the Magistrate. There is no circumstance which will go to show that the Magistrate manipulated the official record and initialled a wrong date solely with a view to help the prosecution. The conclusion arrived at by the High Court with regard to the time when the FIR was lodged is clearly without any basis. *S. Kaur* v. *Baldev Singh*, (1997) 11 SCC 292: 1998 SCC (Cri) 161: AIR 1999 SC 1581.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *B.N. Kirpal*, JJ. [Date of decision: 28-1-1997]

[863] — S. 154 — FIR — Corrections made in names of some of the accused in written complaint — False implication alleged — *Written complaint prepared within very short time and handed over to officer-in-charge of the police station — Complainant explaining that when the complaint read over to him, he realising that exact names of some of the accused had not been stated, effected the corrections — FIR prepared accordingly — Held, neither the time interval, nor the nature of corrections indicated that corrections were improvements suggestive of deliberation and false involvement of the accused. Golla Pullanna* v. *State of A.P.*, (1996) 10 SCC 223: 1996 SCC (Cri) 1235: AIR 1996 SC 2727.

Bench Strength **2**. Coram: *G.N. Ray* and **G.T. Nanavati**, JJ. [Date of decision: 13-8-1996]

[864] — S. 154 — Omissions, inconsistencies and overwriting in FIR — When not material — *Female (PW 5) lodging FIR at 2.40 a.m. in the night being carried to police station by an outsider on bicycle and there being overwriting in FIR by police officers (properly explained) — Credibility — Informant wife severely injured stating that she lodged FIR in the above manner as all male members of her family were murdered — Police officers explaining that overwriting of time in FIR and non-mentioning of case number in injury report and enquiry report was on account of their misunderstanding that the FIR was a cross-case of another murder which took place in the adjacent house by the same assailants — Also, distance of PW 5's house (place of crime) being five km from the police station, crime taking place at 1.45 a.m., PW 5 informant lodging FIR at 2.40 a.m. and there being clinching and reliable evidence against the accused persons — On facts, held, FIR cannot be doubted* (Paras 22 to 29). *Moti Lal* v. *State of U.P.*, (2010) 1 SCC 581.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *J.M. Panchal*, JJ. [Date of decision: 2-12-2009]

[865] — S. 154 — FIR — Manipulation in FIR about the time of recording it — Allegation of — *Merely because there was some change in time of the lodging of the FIR, held, that does not per se render the prosecution version vulnerable — At the most, the requirement in such case was of a careful analysis of the evidence, which had been done by the trial court* (Para 15). *State of M.P.* v. *Mansingh*, (2003) 10 SCC 414.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 13-8-2003]

[866] — S. 154 — FIR — Overwriting on — *On facts, held, not on any material part so as to justify acquittal — Penal Code, 1860, S. 304 Part II*

The overwriting appearing in the part of FIR pertaining to what was being taken by the deceased to his house is not material so as to sustain the order of acquittal. The document which became the first information report was prepared by PW 1 in the village itself before he went and gave it at the police station. Thus there was no police involvement either in that writing or overwriting. And the overwriting pertained merely to a detail as to what was being carried by the deceased to his house and what was being carried by PW 1. Those were not material particulars insofar as the actual occurrence was concerned. *State of U.P.* v. *Hari Om*, (1998) 9 SCC 63: 1998 SCC (Cri) 979.

Bench Strength **2**. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 2-12-1997]

[867] — S. 154 — Effect of interpolation — *Investigating Officer not examined and therefore circumstances warranting interpolation remaining unexplained — Additional allegation made by way* *of interpolation disbelieved by High Court to which Supreme Court concurred* (Paras 9 and 10). *Arvind Singh* v. *State of Bihar*, (2001) 6 SCC 407: 2001 SCC (Cri) 1148: AIR 2001 SC 2124: 2001 Cri LJ 2556.

Bench Strength 2. Coram: **U.C. Banerjee** and *K.G. Balakrishnan*, JJ. [Date of decision: 26-4-2001]

6. Embellishments/Improvements in FIR

See also Section 154, '(3)(ii)4. Discrepancies/Inconsistencies/Contradictions in or vis-à-vis FIR', above

See also CRIMINAL TRIAL — 'Appreciation of Evidence' — Contradictions, inconsistencies, exaggerations or embellishments in Vol. 3

[868] — S. 154 — Embellishments in FIR — If inferable — *Statement of the victim recorded by the police officer in the hospital treated as FIR — Contention that FIR was fabricated since the said police officer had admitted that it was prepared after consulting the superior officers and the contents thereof were not made known to the witnesses who had signed it — Held, unsustainable — FIR only incorporated the statement of the victim at the hospital — Fact that superior officials were consulted before formally recording it did not mean that any changes or interpolations were introduced* (Paras 16, 9 and 2). *Sree Vijayakumar* v. *State*, (2005) 10 SCC 737: 2005 SCC (Cri) 1896: 2005 Cri LJ 3085.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 13-5-2005]

[869] — S. 154 — FIR — Possibility of embellishment in FIR — *Fact that the first informant was in the company of one C, a political rival of the accused-appellant, soon after the incident and before and at the time of lodging of FIR — Held, a possibility of some embellishment having crept into the FIR in view of the political influence wielded by such opponent of the accused-appellant could not be completely ruled out* (Para 16). *Jayantibhai Bhenkarbhai* v. *State of Gujarat*, (2002) 8 SCC 165: 2002 SCC (Cri) 1873: AIR 2002 SC 3569.

Bench Strength 2. Coram: *R.C. Lahoti* and *Brijesh Kumar*, JJ. [Date of decision: 11-9-2002]

[870] — S. 154 — FIR written by eyewitness — Some embellishments in, on facts, held, not sufficient to reject the entire prosecution case. *Dukhmochan Pandey* v. *State of Bihar*, (1997) 8 SCC 405: AIR 1998 SC 40.

Bench Strength 2. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 25-9-1997]

[871] — S. 154 — Very detailed FIR of murder and dacoity lodged soon after by son of one of the deceased — *Held, makes it doubtful. Ram Lakhan Singh* v. *State of U.P.*, (1977) 3 SCC 268: 1977 SCC (Cri) 474: AIR 1977 SC 1936: 1977 Cri LJ 1566.

Bench Strength 3. Coram: **P.K. Goswami**, *A.C. Gupta* and *P.N. Shinghal*, JJ. [Date of decision: 6-5-1977]

[872] — S. 154 — FIR — Rough notes — *Police report prepared on the basis of rough notes made by Police Constable — Rough notes being the first recorded entry were an important document — In absence of production of the same before court, the fair report cannot be given unreserved acceptance — Further the report should have been prepared by the Head Constable who was also present — Evidence Act, 1872, Ss. 63 and 65. Balbir Singh* v. *State of Haryana*, (1987) 1 SCC 533: 1987 SCC (Cri) 193: AIR 1987 SC 1053: 1987 Cri LJ 853.

Bench Strength 2. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 20-1-1987]

[873] — S. 154 — FIR — Embellishment — Rioting and murder — *In statement of the injured witness initially recorded as dying declaration the accused and some others stated to have inflicted the injuries on him — But in court the witness improving his version stating that the accused alone had inflicted the injuries — In such case one of the tests is whether name of the accused mentioned in the earliest report — Since accused's name was not mentioned in FIR nor during the inquest and there was prevarication in the version of the witness who was a partisan and interested witness, held, possibility of implicating the accused at a subsequent stage annot be ruled out — Hence this particular accused entitled to acquittal — Penal Code, 1860 — Ss. 302/149. Nallamsetty Yanadaiah* v. *State of A.P.*, 1993 Supp (3) SCC 177: 1993 SCC (Cri) 892: AIR 1993 SC 1175: 1993 Cri LJ 408.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 16-9-1992]

7. Inculpative statement in FIR

[874] — S. 154 — FIR given by the accused at police station — Admissibility in evidence — Inculpative statements in, held, would stand excluded from evidence — *Evidence Act, 1872, S. 25* (Para 18). *State of Karnataka* v. *K. Yarappa Reddy*, (1999) 8 SCC 715: AIR 2000 SC 185.

Bench Strength 2. Coram: **K.T. Thomas** and *A.P. Misra*, JJ. [Date of decision: 5-10-1999]

(3)(iii) Reliability and Validity of FIR *(contd.)*

(iii) FIR and other evidence

See also Section 154, '(3)(ii)4. Discrepancies/Inconsistencies/Contradictions in or vis-à-vis FIR', above

See also CRIMINAL TRIAL — 'Appreciation of Evidence' — Contradictions, inconsistencies, exaggerations or embellishments in Vol. 3

[875] — S. 154 — Contradiction with testimony of complainant regarding time of recording of — Injured eyewitness who filed the FIR stating that it was recorded by the police in the evening while the police version was that it was recorded in the morning — *Held, this discrepancy, on the facts of the case, was not enough to castigate an important eyewitness whose presence at the spot could not be doubted — The maximum consequence was that the first information statement could not be used to corroborate the evidence of the maker of it. State of Rajasthan* v. *Ani*, (1997) 6 SCC 162: 1997 SCC (Cri) 851: AIR 1997 SC 1023: 1997 Cri LJ 1529.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 13-1-1997]

[876] — Ss. 154 and 174 — Discrepancies between FIR and statements of witnesses during inquest — Doctor conducting post-mortem opining that injuries caused only with blunt weapon — *While according to FIR injuries inflicted by sticks alone, according to the statement made during inquest injuries inflicted by iron rods and sticks — Held, High Court justified in ignoring the discrepancy relying upon the testimony of eyewitnesses. Desaji Wadia Samkaiah* v. *State of A.P.*, 1988 Supp SCC 531: 1988 SCC (Cri) 879: 1988 BLJR 382.

Bench Strength **2**. Coram: *M.M. Dutt* and *K. Jagannatha Shetty*, JJ. [Date of decision: 4-2-1988]

[877] — S. 154 — FIR — Eyewitness who named the accused in FIR not sure of his presence but had heard about it — Effect — Reliability of eyewitness — *There were twenty assailants — A-6 was named in statements of other witnesses — PW 1 explained how the confusion had arisen and courts below accepted the same — Held, doubt entertained by PW 1 could not be a ground to suspect the veracity of evidence of other eyewitnesses (PWs 2 to 4)* (Para 6). *Goura Venkata Reddy* v. *State of A.P.*, (2003) 12 SCC 469.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 19-11-2003]

[878] — S. 154 — FIR — Inconsistency with — *Overt act of stabbing the deceased attributed to one of the accused by the prosecution, having not been mentioned in the earliest report lodged with the police, held, an afterthought and therefore unacceptable — Penal Code, 1860 — Ss. 302 and 34. Bejoy Singh* v. *State of W.B.*, (1990) 2 SCC 159: 1990 SCC (Cri) 289: AIR 1990 SC 814: 1990 Cri LJ 901.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 7-2-1990]

[879] — S. 154 — FIR — Merely because names of some of the PWs had not been mentioned in FIR, testimony of those PWs does not become unreliable

There is no substance in the submission that because the names of PWs 1 and 5 were not mentioned in the FIR, no reliance could be placed on their testimony. The purpose of the FIR is to set the criminal law in motion which does not require the details or the names of all the witnesses who have seen the occurrence. It is not necessary that elaboration of every fact that had happened should be given by the person who lodges the first information report. PW 6 whose husband had been killed must have been extremely perturbed at the time of lodging of the FIR and in that state of mental agony she might not have been able to give details relating to the names of the witnesses who had seen the occurrence. The presence of all the eyewitnesses has been accepted by the courts below and there is no reason to take a different view, particularly this being a question of fact which was fully noticed by the two courts of fact and in spite of that the courts had believed the testimony of PWs 1 and 5. It is not the case of the appellant that the names of the accused persons were not mentioned in the FIR. It is also not the case of the appellant that the statements made under Section 161 CrPC of the aforesaid witnesses were not immediately recorded by the investigating agency. The plea raised is far-fetched and without any substance. (Para 25). *Anil Rai* v. *State of Bihar*, (2001) 7 SCC 318: 2001 SCC (Cri) 1009: AIR 2001 SC 3173.

Bench Strength **2**. Coram: **K.T. Thomas**[2] **and R.P. Sethi**[1], JJ. [Date of decision: 6-8-2001]

[880] — Ss. 154, 161 and 174 — Name of assailant — Mention of, in inquest report although stated in FIR to be unknown — Whether indicative of infirmity of prosecution case — *I.O.*

explaining that the name was found out from the statements of the persons he examined — Eyewitnesses identifying the accused in T.I. Parade and no infirmity or suspicious feature appearing in their identification — In such circumstances, there was no infirmity in the prosecution case. Babu Poojari v. *State of Karnataka*, 1993 Supp (3) SCC 304: 1993 SCC (Cri) 997.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 11-8-1992]

[881] — S. 154 — Version given in FIR fully supported by testimony of eyewitnesses — FIR lodged within one hour of occurrence by brother of deceased as narrated to him by eyewitness — In the FIR only the appellant was named as having assaulted the deceased along with three others who could not be identified — *Held, if the eyewitness was not there at the scene of occurrence, the FIR could not have been lodged within one hour — If the witnesses had any motive to falsely implicate their enemies or persons against whom they had any grudge they would have named the three other persons as well — The version given in the FIR was fully supported by the eyewitnesses in court — Hence the conviction under S. 302/34 of IPC and the sentence of life imprisonment imposed by High Court was not improper — Penal Code, 1860, Ss. 302/34. Rajju* v. *State of M.P.*, 1993 Supp (4) SCC 667: AIR 1994 SC 1459.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **N.P. Singh**, JJ. [Date of decision: 27-4-1993]

[882] — S. 154 — Some witnesses deposing before trial court that it was the appellants who beat the deceased which is inconsistent with the FIR — *Held, evidence on this point cannot be totally relied upon* (Para 10). *Parme Hansda* v. *State of Bihar (Now Jharkhand)*, (2006) 12 SCC 114: (2007) 2 SCC (Cri) 551: (2007) 49 AIC 728 (SC): 2007 Cri LJ 314.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 22-11-2006]

[883] — Ss. 154 and 161 — Inconsistency — Two of the accused implicated in the course of deposition in court though no specific injury was attributed to them in FIR or in statement under S. 161 CrPC — Effect — *High Court observing that credibility of witness should not be doubted as he clarified the factual aspect in court — Held, version disclosed in FIR was so different from the version disclosed in the course of deposition that it could not be said to be merely clarificatory — Hence, proved fatal* (Para 22). *Ram Swaroop* v. *State of Rajasthan*, (2004) 13 SCC 134: 2005 SCC (Cri) 61: AIR 2004 SC 2943: 2004 Cri LJ 5043.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 15-3-2004]

[884] — S. 154 — FIR — Mere failure to mention in FIR about injuries received by accused, held, not a ground to discard the explanation of injuries given at the trial — *Penal Code, 1860 — Ss. 302, 307 and Ss. 148, 323 and 324 r/w S. 149*

The High Court took note of the fact that the prosecution witnesses did explain that the injuries came to be inflicted on the accused with bamboos picked up by PW 2 and his brother in order to repel the further attack by the accused. The High Court observed that the mere fact that the FIR was silent regarding the injuries received by the accused is not a ground to discard the explanation given at the trial. There may be initial reluctance on the part of the informant to disclose that the prosecution party made a counter-attack causing injuries to some of the accused. The High Court was of the view that in the face of the clear and consistent evidence of independent and natural witnesses supported by the dying declaration, all of which revealed that the accused party was the aggressor and initiated the attack on the deceased in front of his house, the non-explanation of injuries at the earliest point of time cannot be put against the prosecution. Broadly speaking, the approach of the High Court seems to be correct and in conformity with the legal position clarified and explained by the Supreme Court in a series of decisions. (Para 16). *Dashrath Singh* v. *State of U.P.*, (2004) 7 SCC 408: 2004 SCC (Cri) 1932: 2004 All LJ 3256.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 13-8-2004]

Bhaba Nanda Sarma v. State of Assam, (1977) 4 SCC 396: 1977 SCC (Cri) 602; Takhaji Hiraji v. Thakore Kubersing Chamansingh, (2001) 6 SCC 145: 2001 SCC (Cri) 1070, relied on

[885] — S. 154 — Acquittal justified on ground of discrepancies or omissions in FIR — Variance between the FIR and the testimony of eyewitnesses — *Trial court, held on facts, was justified in acquitting the accused persons. Kalyan* v. *State of U.P.*, (2001) 9 SCC 632: AIR 2001 SC 3976.

Bench Strength **2**. Coram: *M.B. Shah* and **R.P. Sethi**, JJ. [Date of decision: 28-9-2001]

(3)(iii) Reliability and Validity of FIR - FIR and other evidence *(contd.)*

[886] — S. 154 — Discrepancy between FIR and evidence of prosecution — Effect — *Prosecution witness (PW) stating in FIR about the death of two persons whereas in evidence stating that while he was at police station he learnt from the SI that only one of the persons died whereas the other was in hospital — There being discrepancy between the statements made in FIR and evidence, the testimony of PW not reliable. Jang Singh* v. *State of Rajasthan*, (2001) 9 SCC 704.

Bench Strength 2. Coram: *G.B. Pattanaik* and *Doraiswamy Raju*, JJ. [Date of decision: 4-5-2000]

[887] — S. 154 — FIR — Alleged discrepancies and shortcomings immaterial if otherwise inconsequential to the prosecution case and not contradictory to the rest of the testimony. *State of Gujarat* v. *Bai Fatima*, (1975) 2 SCC 7: 1975 SCC (Cri) 384: AIR 1975 SC 1478: (1975) 12 ACC 243: 1975 Cri LJ 1079.

Bench Strength 2. Coram: *A. Alagiriswami* and **N.L. Untwalia**, JJ. [Date of decision: 19-3-1975]

[888] — S. 154 — FIR — Discrepancy — Difference between the statement of the eyewitnesses and FIR regarding the location of the injury inflicted upon the person of the deceased — *No effect of, on prosecution case when all the witnesses deposed the position of the said injury consistently in the court*

The High Court was justified in setting aside the judgment of the trial court because the judgment of acquittal is based upon surmises, conjectures and assumed contradictions. The High Court rightly found that in fact there was no contradiction in the depositions of the eyewitnesses and omissions or improvements noticed by the trial court did not amount to contradictions for the purposes of discarding the testimony of otherwise trustworthy natural witnesses. The trial court totally ignored the testimony of the eyewitnesses while holding that they had not seen the injury because, according to the FIR, the injury allegedly had been inflicted on the nose of the deceased. All the witnesses had deposed in the court that the injury was caused on the body of the deceased from behind near the right shoulder and the force with which it was caused resulted in the cutting of the vital inner parts of her body. (Para 4). *Keshavlal* v. *State of M.P.*, (2002) 3 SCC 254: 2002 SCC (Cri) 641: AIR 2002 SC 1221: 2002 Cri LJ 1776.

Bench Strength 2. Coram: **R.P. Sethi** and *K.G. Balakrishnan*, JJ. [Date of decision: 4-3-2002]

[889] — S. 154 — Exaggerated version in FIR — FIR not tallying with dying declaration recorded by Naib Tehsildar — Reliability of dying declaration — Effect on — *Facts improbabilising that PW 2 could have received any information from deceased before he went to lodge FIR — Dying declaration recorded by Naib Tahsildar — Found credible — Hence held, could not be rejected merely because the FIR lodged by PW 2 and deposition of PW 2 did not tally with it — Evidence Act, 1872, S. 32* (Para 22). *Sohan Lal* v. *State of Punjab*, (2003) 11 SCC 534: 2004 SCC (Cri) 226: AIR 2003 SC 4466.

Bench Strength 2. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 14-10-2003]

[890] — S. 154 — FIR — Held on facts, no inconsistency between recitals in FIR and version of eyewitnesses. *Suraj Pal* v. *State of U.P.*, 1994 Supp (1) SCC 528: 1994 SCC (Cri) 701: AIR 1994 SC 748: 1994 Cri LJ 928: (1994) 1 Crimes 502.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 17-11-1993]

[891] — S. 154 — Prosecution version as narrated in FIR at the instance of an eyewitness discrepant from evidence of other eyewitnesses at trial — *Held, only testimony of that witness on whose dictation FIR had been written could be tested with reference to the version contained in the FIR and adverse inference drawn vis-à-vis that witness on the basis of the alleged discrepancies — Wholesale rejection of testimony of all prosecution witnesses collectively not justified. State of U.P.* v. *Brahma Das*, (1986) 4 SCC 93: 1986 SCC (Cri) 368: AIR 1986 SC 1769: 1986 Cri LJ 1732.

Bench Strength 2. Coram: **M.P. Thakkar** and *S. Natarajan*, JJ. [Date of decision: 19-8-1986]

(iv) Doubt regarding lodging of FIR

See also Section 154, '(3)(ii)4. Discrepancies/Inconsistencies/Contradictions in or vis-à-vis FIR', above

See also '(3)(v) Falsity of/Fabricated FIR', below

[892] — S. 154 — FIR — Lodging of — Unnatural conduct — Plea that FIR not lodged at nearest police station — *Inspector not available at nearest police station — Constable present there not competent to accept the intimation — He suggested the witness to lodge the report at another police station having jurisdiction — Hence held, contention based on the above plea had no substance* (Para 6). *Gubbala Venugopalaswamy* v. *State of A.P.*, (2004) 10 SCC 120: 2004 SCC (Cri) 1764: AIR 2004 SC 2477.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 6-4-2004]

[893] — S. 154 — FIR — Suspicious circumstances — *FIR not recorded by the police constable present in the police station and the informant eyewitness told that the same would be recorded by the SI of Police, who was absent then — Police station diary, however, disclosing the presence of SI at the police station during the relevant time — Informant not naming assailants though narrating the incident to the constable — Not clear whether the station diary entry was recorded on the basis of rumours heard by SI or on the basis of statement made by the constable — Evidence of SI, as regards this aspect, contradictory — However, FIR fully corroborating the testimony of the informant eyewitness as well as that of other eyewitnesses — Medical evidence also supporting the prosecution case — In the circumstances, held, FIR cannot be discarded merely on the basis of certain suspicious circumstances* (Paras 8, 9, 10 and 12 to 15). *Nirmal Singh* v. *State of Bihar*, (2005) 9 SCC 725: 2005 SCC (Cri) 1461: AIR 2005 SC 1265: 2005 Cri LJ 672.

Bench Strength **2**. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 17-11-2004]

[894] — S. 154 — FIR — Lodging of complaint — Suspicious circumstances — *Lodging of complaint by PW 3, who was not an eyewitness, despite the presence of PW 4 (an eyewitness) and PW 5 (who came immediately after the assault) at the police station — PW 3 stating that complaint lodged on the basis of information given to him by PWs 4 and 5, but PWs 4 and 5 denying the said fact — Thus, lodging of complaint by PW 3, on facts, doubtful* (Para 7). *Khima Vikamshi* v. *State of Gujarat*, (2003) 9 SCC 420: AIR 2003 SC 1326: 2003 Cri LJ 2025.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 27-3-2003]

[895] — S. 154 — FIR — Reliability of FIR — FIR reaching JM on May 26 — Seal of court on FIR affixed on May 29 — *Genuineness of signature of Magistrate on May 26 not questioned by accused at any time — IO also not questioned regarding authenticity of signature of JM — May 28 was a holiday, being Muharram — Hence held, seal affixed on May 29 would not be extraordinary* (Para 33). *Myladimmal Surendran* v. *State of Kerala*, (2010) 11 SCC 129: AIR 2010 SC 3281.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 1-9-2010]

State of Rajasthan v. Kalki, (1981) 2 SCC 752: 1981 SCC (Cri) 593, relied on

(v) Falsity of/Fabricated FIR

See also Section 154, '(3)(ii)2. Form and language of FIR', and

'(3)(iv) Doubt regarding lodging of FIR', above

[896] — S. 154 — Complaint (Ext. P-1) recorded at behest of PW 1 in hospital after MLA and legal advisors of the party had visited injured — *Held, once it is proved that FIR itself was given with consultation of legal advisors and under guidance of MLA who was inimical towards appellant on account of political rivalry, the prosecution version becomes suspicious* (Para 34). *Boddella Babul Reddy* v. *Public Prosecutor*, (2010) 3 SCC 648.

Bench Strength **2**. Coram : **V.S. Sirpurkar** and *Dr. M.K. Sharma*, JJ. [Date of decision : 6-1-2010]

[897] — Ss. 154, 156, 173(2) & (8) and 211 — FIR — Till police completes investigation pursuant to an FIR and finally lays the charge-sheet against the accused persons, if during the course of the investigation it finds the FIR to be false, it can continue with the investigation and reach its final conclusion as regards the real culprits

The respondent filed an FIR alleging that few persons from outside had entered the bedroom of her daughter-in-law and committed her murder. During the course of investigation the police found that murder was actually committed pursuant to a conspiracy hatched by the respondent and her other daughters-in-law. Accordingly the police sent a report to the court and continued the investigation on that basis after informing the court that it had registered another FIR. The respondent filed a protest complaint before CJM alleging that the police report was wholly unsustainable and reiterating that the person arrayed in her FIR were the real culprits. The CJM having rejected the protest complaint, the respondent challenged that order in revision before the High Court. The revision was allowed and the CJM was directed by the High Court to conduct an inquiry under Section 202 CrPC. The police proceeded with the investigation accordingly and on final conclusion thereof filed a charge-sheet against the respondent and her daughters-in-law, her son and few others for offence under Sections 302/34 IPC. In the meanwhile the respondent moved the High Court once again for quashing the criminal proceedings lodged against her and others. The High Court upheld the contention and quashed the criminal proceedings, taking the following view:

"When once recommendation of lodging of false case and cognizance thereof have been set

(3)(v) Reliability and Validity of FIR - Falsity of/ Fabricated FIR *(contd.)*

aside by a court then there is no scope to proceed with the same allegation that too by the police officer making himself a party which is nothing but a double jeopardy."

Allowing the appeal,

Held :

The result of the factual development is that the respondent is allowed to persist with her complaint despite the conclusion reached by the police that the said complaint was false. But the course adopted by the court cannot disable the police to continue to investigate into the offence of murder of the deceased and to reach the final conclusion regarding the real culprits of the murder. The police completed their investigation only when the charge-sheet was finally laid against the respondent and others. The said case has to be legally adjudicated for which a trial by the Sessions Court is indispensable. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the court by way of the subsequent FIR need be considered as an information submitted to the court regarding the new discovery made by the police during investigation that persons not named in the first FIR are the real culprits. To quash the said proceedings merely on the ground that final report had been laid in the first FIR is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it. Even otherwise, the investigating agency is not precluded from further investigation in respect of an offence in spite of forwarding a report under sub-section (2) of Section 173 on a previous occasion. This is clear from Section 173(8) of the Code. (Paras 10 to 12). *Kari Choudhary* v. *Sita Devi*, (2002) 1 SCC 714: 2002 SCC (Cri) 269: AIR 2002 SC 441: 2002 Cri LJ 923: (2002) 1 CHN (Supp) 108.

Bench Strength 2. Coram: **K.T. Thomas** and *S.N. Phukan*, JJ. [Date of decision: 11-12-2001]

[898] — Ss. 154, 156 and 173 — False complaint — Judicial review — Directions and investigation — *On the basis of a false complaint by a non-existent person criminal case under Ss. 504/506 IPC, registered against petitioner — Non-bailable arrest warrant to arrest petitioner also obtained — Held, having regard to the facts and circumstances of the case the matter required investigation by an independent agency — Hence the Director of CBI directed to nominate a senior officer to investigate the circumstances under which the criminal case was registered and the person or persons responsible for having the said case registered against the petitioner in order to arrest him in connection with the said case — Such report directed to be filed within two months — Constitution of India — Art. 32. Uma Shankar Sitani* v. *Commr. of Police, Delhi*, (1996) 11 SCC 714.

Bench Strength 2. Coram: *S.C. Agrawal* and *Sujata V. Manohar*, JJ. [Date of decision: 7-3-1995]

[899] — Ss. 154 and 173 — FIR of doubtful authenticity — *Names of four of the nine accused included by the informant in the FIR, not included in his brief statement to the investigating officer and not finding mention in the body of the inquest report — No explanation forthcoming for such omission — Such accused, held, rightly acquitted — Held, also casts serious doubt on veracity and authenticity of the FIR itself and the complicity of the other accused. Balaka Singh* v. *State of Punjab*, (1975) 4 SCC 511: 1975 SCC (Cri) 601: AIR 1975 SC 1962: 1975 Supp SCR 129: 1975 Cri LJ 1734.

Bench Strength 2. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 16-4-1975]

[900] — S. 154 — False implication — *On the basis of language used in the FIR it cannot be claimed that it was prepared by none else but the police in order to falsely implicate the accused — There is no necessity for employment of a particular language in the FIR — Mere fact that the maker of the FIR had come to know the name of the accused two years ago is also no ground to discard the FIR when he had actually witnessed the entire occurrence. Hari Om* v. *State of U.P.*, 1993 Supp (2) SCC 1: 1993 SCC (Cri) 396: 1993 Cri LJ 1383: (1993) 1 Crimes 294.

Bench Strength 2. Coram: *P.B. Sawant* and **S. Mohan**, JJ. [Date of decision: 8-1-1993]

[901] — S. 154 — FIR — Credibility of — *Held, absence of the name of the eyewitness therefrom is inconsequential when the same had been lodged by a person who was not an eyewitness — Further held, on facts, where there was practically no cross-examination of the eyewitness so far as the assault on the deceased was concerned, allegations of fabrication of FIR could not be proved* (Paras 6 and 7). *Shamsuddin* v. *State of M.P.*, (2003) 12 SCC 693.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-12-2003]

[902] — S. 154 — FIR — Where FIR is recorded by Investigating Officer as narrated by eyewitness, court should not start with a presumption that it was false or fabricated — *Testimony of the eyewitness found to be trustworthy — On facts held, FIR not fabricated — Evidence Act, 1872, S. 114, Ill (e). Pattipati Venkaiah* v. *State of A.P.*, (1985) 4 SCC 80: 1985 SCC (Cri) 464: AIR 1985 SC 1715.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 16-8-1985]

[903] — S. 154 — FIR — FIR being in a neat and clean handwriting — Inference regarding — *Held, fact that FIR is in a neat and clean handwriting cannot always lead to conclusion that said report was prepared by police officer or at his dictation — If handwriting of writer of information is neat and clean and he could express himself clearly, no fault could be found against such writing* (Paras 25 and 26). *Patai* v. *State of U.P.*, (2010) 4 SCC 429.

Bench Strength 2. Coram : **Dr. M.K. Sharma** and *A.K. Patnaik*, JJ. [Date of decision : 30-3-2010]

[904] — S. 154 — Neatly written and detailed FIR alleged to have been written within an hour of the murder, held, makes doubtful such fact of early reporting — *Absence of entry in FIR, as to when it was sent to Magistrate concerned, held, assumes great significance and supports the defence plea that the FIR was drawn up much later than alleged. Datar Singh* v. *State of Punjab*, (1975) 4 SCC 272: 1975 SCC (Cri) 530: AIR 1974 SC 1193: 1974 Cri LJ 908: (1974) 11 ACC 262.

Bench Strength 2. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 19-12-1973]

[905] — S. 154 — Failure of informant, father of the two deceased victims of murder, to withstand narration of the murder in Court does not justify the inference that he was a person of weak intellect who could not have dictated the detailed FIR. *Sone Lal* v. *State of U.P.*, (1978) 4 SCC 302: 1978 SCC (Cri) 587: AIR 1978 SC 1142: 1978 Cri LJ 1122: 1978 ALJ 530.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 6-4-1978]

[906] — S. 154 — FIR — Reliability — FIR lodged on the basis of a report prepared by another person at the spot — *Held, that by itself would not affect the prosecution version unless it is shown that the writer had some oblique motive — FIR naming the eyewitnesses lodged within 2 hours of the incident, the police station being 4 miles from place of occurrence — Investigating Officer reaching the spot within 2 hours of lodging of FIR — Version of occurrence in FIR same as stated in court — Held, there was no scope for concoction of a false case leaving out the real culprits. Ram Asrey* v. *State of U. P.*, 1993 Supp (4) SCC 218: 1993 SCC (Cri) 1164: (1993) 2 Crimes 339.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 5-5-1993]

[907] — S. 154 — Merely because two members of victim's family talked about giving the complaint and drafted the same it could not be said that there was consultation before filing the FIR. *State of U.P.* v. *Nahar Singh*, (1998) 3 SCC 561: 1998 SCC (Cri) 850: AIR 1998 SC 1328.

Bench Strength 2. Coram: *G.T. Nanavati* and **S.S.M. Quadri**, JJ. [Date of decision: 18-2-1998]

(vi) FIR and Time

Synopsis

1. Generally **295**
2. Ante-timed FIR **296**
3. Delay in forwarding FIR to Magistrate (i.e. the report as required to be sent to Magistrate under S. 157 r/w S. 158) **303**
4. Delay in lodging/filing FIR **317**
5. Non-mention of time of dispatch in FIR **364**
6. Promptness/Haste in filing FIR **365**

1. Generally

[908] — Ss. 154, 156 & 157 and 162 — FIR — Timing of — When may be filed — *Held, FIR need not precede the information regarding commission of cognizable offence received by the officer in charge of a police station which requires him to reach the place of occurrence as early as possible*

When an information is received by an officer in charge of a police station, he in terms of the provisions of CrPC is expected to reach the place of occurrence as early as possible. It is not necessary for him to take that step only on the basis of a first information report. An information received in regard to commission of a cognizable offence is not required to be preceded by a first information report. Duty of the State to protect the life of an injured as also an endeavour on the part of the responsible police officer to reach the place of occurrence in a situation of this nature is his implicit duty and responsibility. If some incident had taken place in a bus, the officers of Road Transport Corporation also could not ignore the same. (Para 11). *Animireddy Venkata Ramana* v. *Public Prosecutor, High Court of A.P.*, (2008) 5 SCC 368: (2008) 2 SCC (Cri) 600: AIR 2008 SC 1603: 2008 Cri LJ 2038.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

(3)(vi)1. Reliability and Validity of FIR - FIR and Time - Generally *(contd.)*

[909] — S. 154 — Allegation that FIR was not recorded at the time it was alleged to be recorded — *Victim stating that his brother (PW 9) accompanied him to hospital after the incident whereas PW 9 stating that he had gone to police station to lodge FIR — Held, this discrepancy does not demolish the entire prosecution case — Having regard to the fact that the FIR was recorded at 12.15 p.m., there was a possibility of PW 9 lodging the report after leaving his brother in hospital at 11.45 a.m. — Thus, there was a sufficient time gap of half an hour* (Para 4). *Jagdish* v. *State of Haryana*, (2005) 11 SCC 146: AIR 2005 SC 2576: 2005 Cri LJ 3073.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2005]

2. Ante-timed FIR

See also Section 154, '(3)(vi)4. Delay in lodging/filing FIR', below

[910] — S. 154 — Version given in FIR fully supported by testimony of eyewitnesses — Ante-timed fardbeyan — Allegation of — *Held on facts, not made out*

The informant's fardbeyan was recorded at 10.00 a.m. on 22-1-1999 i.e. the date of occurrence. The inquest report was prepared on the same day at 1925 hours and the case number was also mentioned. Post-mortem was thereafter conducted at 2200 hours.

Held :

The plea that the fardbeyan was ante-timed has not been substantiated. The fardbeyan was recorded on the date of occurrence and filed at the indicated time and the case had been instituted on the basis of the said fardbeyan. Finding recorded by the High Court that the fardbeyan was not ante-timed is amply supported by evidence on record and no adverse view as claimed by the accused-appellants can be taken. (Para 14). *Anil Sharma* v. *State of Jharkhand*, (2004) 5 SCC 679: 2004 SCC (Cri) 1706: AIR 2004 SC 2294: 2004 Cri LJ 2527.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 30-4-2004]

[911] — S. 154 — Ante-timed FIR — *Surnames of the appellants not disclosed by the informant nor did he name any other miscreant — But their surnames and name of another miscreant given in the formal FIR prepared on the basis of such statement of the informant — Held, in the peculiar facts and circumstances, which remained unexplained, FIR was not prepared at the time alleged by the prosecution but was outcome of the investigation. Ravindra* v. *State of Maharashtra*, (1998) 6 SCC 609: 1998 SCC (Cri) 1527: AIR 1998 SC 3031.

Bench Strength 2. Coram: **M.K. Mukherjee** and *D.P. Wadhwa*, JJ. [Date of decision: 4-8-1998]

[912] — S. 154 — Ante-timed FIR — *Witness who claimed to have lodged the FIR not shown in the station diary to have visited the police station and lodged the report — Accused not known to him before the incident — Accused arrested two days after the occurrence and no explanation given therefor — In the circumstances, the statement of the witness that he lodged the FIR promptly and disclosed the name of the accused becomes absolutely doubtful and must be rejected. Mohanlal Gangaram Gehani* v. *State of Maharashtra*, (1982) 1 SCC 700: 1982 SCC (Cri) 334: AIR 1982 SC 839: 1982 Cri LJ 630(2): 1982 MLJ (Cri) 431.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**, *D.A. Desai* and *A. Varadarajan*, JJ. [Date of decision: 17-2-1982]

[913] — S. 154 — Ante-timed FIR — Inference regarding, from non-mention of FIR number and name of complainant (PW 1) in inquest panchnama, when cannot be drawn — *After police arrived at the scene of occurrence, complainant was sent to police station and during his absence from the scene of occurrence, the inquest panchnama was prepared — Complaint of PW 1 was registered at the police station on the basis of his statement — Held on facts, as at the time of preparing panchnama, neither the FIR number nor name of the complainant was known to police, the same could not be mentioned therein and even assuming it was known, such circumstance would not probabilise the defence version that the FIR was ante-timed in view of unequivocal, reliable and confidence-inspiring testimony of the complainant — Having regard to the events of circumstances, held on facts, the occurrence had actually taken place at about 1.15 p.m., as deposed by PWs, in consequence of which deceased died and FIR was registered on the basis of statement of the complainant at 2.40 p.m. at the police station — Therefore, defence case that the FIR was ante-timed to facilitate introduction of the alleged eyewitnesses cannot be sustained* (Paras 9 to 13). *Rajesh* v. *State of Gujarat*, (2002) 4 SCC 426: AIR 2002 SC 1412: 2002 Cri LJ 1821.

Bench Strength 2. Coram: **R.P. Sethi** and *K.G. Balakrishnan*, JJ. [Date of decision: 7-3-2002]

Meharaj Singh (L/Nk.) v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391, distinguished

See also Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450

[914] — S. 154 — Ante-timed FIR — Plea as to — Sustainability — *Occurrence took place on 27-6-1995 in the morning — All material witnesses examined by IO on that very day — Post-mortem examination held at 3 p.m. on that day — The Magistrate who received FIR merely made a mistake in putting the relevant date as 26-6-1995 instead of 27-6-1995 — Thus, the contention as to ante-timed FIR was not sustainable — Hence, rejected* (Paras 13 and 14). *Mahendra Singh* v. *State of M.P.*, (2007) 9 SCC 796: (2007) 3 SCC (Cri) 583.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 5-4-2007]

[915] — S. 154 — FIR — Ante-timed FIR — Contention — Sustainability — *Incident occurring at about 6.15 p.m., while FIR registered at 7.35 p.m. — Hence held, there was no question of ante-timing of FIR* (Para 13). *Ramvir* v. *State of U.P.*, (2009) 15 SCC 254: 2009 Cri LJ 4155: (2009) 80 AIC 172 (SC).

Bench Strength 2. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 6-7-2009]

[916] — S. 154 — FIR — Ante-timed FIR — Contention of, if made out — *Contention raised on premise that PW 8 got his father admitted at 1.35 p.m., whereas FIR was lodged at 1.50 p.m., and half an hour was at least needed to commute from hospital to police station, and besides, the Head Constable reached hospital at about 5 p.m. — Held, said contention cannot be sustained because by 1.30 p.m./1.40 p.m. the accused were arrested; they were produced before the doctor and medically examined; PW 12 and other witnesses were examined; and FIR was received by Magistrate concerned on same day — Moreover, the IO was not examined on the said point — Further held, even assuming it to be so, fact that incident had occurred was not disputed — Two accused had accepted their presence — If occurrence stands admitted, even if there is some delay in filing FIR, the same would not render prosecution case suspicious*

It was contended that the FIR was ante-dated and ante-timed. Such a contention was raised inter alia on the premise that the first informant got his father admitted in General Hospital, Nanaul at about 1.35 p.m. whereas the FIR was lodged at about 1.50 p.m. at Ateli having regard to the fact that one has to take at least half an hour to reach Ateli from General Hospital, in his own conveyance and also having regard to the fact that Head Constable *K* (PW 13) reached the hospital at about 5.00 p.m. The said contention cannot be sustained having regard to the fact that by 1.30 p.m. or 1.40 p.m. even the accused persons were arrested; they had been produced before Dr. *G* and they had been examined; even PW 12 and other witnesses were also examined. The FIR might have been recorded at a later stage. But the information about the occurrence must have been given by PW 8 to the officer in charge of Ateli Police Station prior thereto. Even a copy of the FIR was received by the Magistrate concerned at about 10.30 p.m. on the same day. Furthermore, the investigating officers were not cross-examined on that point. Even assuming that the same was ante-timed or ante-dated, the fact that an incident had occurred was not disputed. At least two of the accused persons accepted their presence. The defence story is that two accused persons had sustained injuries at the hands of the prosecution witness *L* (PW 12). If occurrence of the incident stands admitted, even if some delay has been caused in writing of the FIR, the same would not render the entire prosecution case suspicious. (Paras 43 to 45). *Ram Pat* v. *State of Haryana*, (2009) 7 SCC 614: (2009) 3 SCC (Cri) 488: (2009) 79 AIC 98 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-5-2009]

[917] — S. 154 — FIR — FIR, if ante-timed — Delay in sending of FIR to the Magistrate — If fatal — *PW 1 had made certain statements which went beyond the record viz. holding of inquest before the FIR was recorded and was examined ten years after the occurrence — FIR sent to Magistrate after twenty-four hours — Post-mortem examination held on the date of occurrence — Inference that may be drawn — Held, it is possible that PW 1 because of lapse of time had made certain statements which went beyond the record — Number of accused persons in FIR might have also been put by investigating officer at a later point of time — Fact that post-mortem examination had been held promptly itself went a long way to establish genesis of the occurrence — In a case of this nature delay in sending of FIR to the Magistrate may not, by itself, be held to be fatal — Therefore, submission that the FIR was ante-timed cannot be accepted* (Para 44). *Akbar Sheikh* v. *State of W.B.*, (2009) 7 SCC 415: (2009) 3 SCC (Cri) 431.

Bench Strength 2. Coram: **S.B. Sinha** and *R.M. Lodha*, JJ. [Date of decision: 5-5-2009]

[918] — S. 154 — Ante-timed FIR — Whether the FIR was ante-timed — Determination of — External checks — *List of external checks given in* Meharaj Singh case *not exhaustive — Site map prepared at the spot in the presence of the first informant giving crime case number and sanha entry maintained at the police station giving all the*

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relevant contents of the FIR are also external checks — Non-mention of name of the accused who hurled bomb on the deceased after the first informant left for the police station lending credence to the prosecution case that the FIR was promptly lodged — Non-mention of names of the accused in requisition application for post mortem would not by itself be a circumstance to rule out the prompt filing of the FIR. Girish Yadav v. *State of M.P.*, (1996) 8 SCC 186: 1996 SCC (Cri) 552: AIR 1996 SC 3098.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 29-3-1996]

But see Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450

[919] — S. 154 — Ante-timed FIR — Whether the FIR was ante-timed and ante-dated — *Positive checks by way of contemporaneous record — Occurrence taking place at 6.30 p.m. — Inquest report prepared after sometime in the morgue of the hospital and seizure list prepared at 12.30 o'clock — Both the documents giving nature of offence, criminal case No., etc. indicating that the FIR was registered prior to preparation of these documents — Consequently it cannot be said that the FIR was ante-timed or that it was not recorded as suggested by the prosecution. Ram Sanjiwan Singh* v. *State of Bihar*, (1996) 8 SCC 552: 1996 SCC (Cri) 701: AIR 1996 SC 3265.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 26-4-1996]

[920] — S. 154 — Anti-timed FIR — *Statement in FIR that both the victims died in the occurrence having received bullet injuries — On fact held, finding of the trial court that FIR was anti-timed as the first informant had no knowledge of the death of the victims at the time of lodging of FIR is, on facts, not sustainable* (Para 17). *Ram Kumar* v. *State of Haryana*, 1995 Supp (1) SCC 248: 1995 SCC (Cri) 355: AIR 1995 SC 280: (1995) 32 ACC 47.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 7-10-1994]

[921] — S. 154 — FIR — Alleged to be ante-timed — Allegation based on evidence of an illiterate rustic lady — *Held on facts, cannot be accepted as minor variance in her statement should not be given primacy when evidence itself was recorded long time after and it should not be made basis for coming to a conclusion that FIR was ante-timed* (Para 12). *Anil Kumar* v. *State of U.P.*, 2005 SCC (Cri) 178: 2004 All LJ 3779.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-9-2004]

[922] — S. 154 — FIR — Alleged to be ante-timed — Allegation based on evidence of an illiterate rustic lady — *Held on facts, cannot be accepted as minor variance in her statement should not be given primacy when evidence itself was recorded long time after and it should not be made basis for coming to a conclusion that FIR was ante-timed* (Para 12). *Anil Kumar* v. *State of U.P.*, (2004) 13 SCC 257: 2005 SCC (Cri) 178: AIR 2004 SC 4662: 2004 Cri LJ 4881.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-9-2004]

[923] — S. 154 — FIR — Ante-timed — Held on facts, not ante-timed

In this case the contention that the FIR was made 15 days after the incident cannot be accepted. The incident occurred on 30-10-1988. Evidence of the doctor of the hospital indicated that on 11-11-1988 he had medically examined the victim who was brought to the hospital by a Constable. The requisition slip carried by the Constable indicated that the FIR preceded 1-11-1988 when the victim and his wife (who had also sustained some injuries while attempting to save her husband from assault) were brought to the hospital. In the circumstances the FIR cannot be said to be ante-timed. (Para 18). *Asharam* v. *State of M.P.*, (2007) 11 SCC 164: AIR 2007 SC 2594: (2007) 56 AIC 180 (SC).

Bench Strength **2**. Coram: **S.H. Kapadia** and *B. Sudershan Reddy*, JJ. [Date of decision: 25-4-2007]

[924] — S. 154 — FIR — Ante-timed FIR — Determination of — *Held, whether the first information report is an ante-timed one or not must be considered having regard to the facts and circumstances of the case — In the instant case FIR was transcribed by PW 8 from the oral statement made by PW 1 and it contained all the material particulars — Very fact that it was recorded almost immediately after taking place of the occurrence, the question of its being an ante-timed one would not arise* (Para 23). *Budh Singh* v. *State of M.P.*, (2007) 10 SCC 496: (2008) 1 SCC (Cri) 64: (2007) 57 AIC 134 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 18-5-2007]

[925] — S. 154 — FIR — FIR whether ante-timed — Determination of — *FIR lodged within 1 hour and 45 minutes of occurrence, wherein two people were murdered, one received serious injuries and one minor injuries — Police station at a distance of 8 km from the place of occurrence — Special report forwarded to the Magistrate next day — Hence, contention that FIR was ante-timed which was supported by the fact that no* *crime number had been mentioned in the letter requesting the doctor to conduct post-mortem — Held, after such a ghastly crime was committed, it was but natural for PW 1 to report the matter as early as possible to the police — It was also necessary to get necessary medical assistance for the injured persons, particularly having regard to the nature of injuries suffered by them — PW 1 had travelled in a bullock-cart to the outskirts of the village and thereafter took a tractor to travel up to the police station — He returned to his village on a cycle — Further held, crime number was mentioned in the inquest report and the time of lodging FIR was also mentioned therein — Crime number was not necessary to be mentioned on the challan of the dead bodies or letters to the doctors for the medical examination of the injured persons and for obtaining post-mortem report of the deceased — Contention rejected* (Paras 11, 12 and 13). *Hori Lal* v. *State of U.P.*, (2006) 13 SCC 79: (2007) 2 SCC (Cri) 581: (2007) 50 AIC 979 (SC): 2007 Cri LJ 1181.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 5-12-2006]

[926] — S. 154 — FIR — If on facts antedated — *Receipt of the FIR by the Magistrate after about two days, held, not ipso facto a proof of the FIR being belated — More so when the eyewitness (the widow) had asserted to have seen the entire incident and to have gone to the police station by the named vehicle (Matador) with the dead body and lodged the FIR on the date and at the time as specified, and despite searching cross-examination the defence had failed to elicit any omission or contradiction in her statement. Madru Singh* v. *State of M.P.*, (1997) 11 SCC 506: 1997 SCC (Cri) 1232: AIR 1997 SC 3527.

Bench Strength **3**. Coram: *M.M. Punchhi*, **S.P. Kurdukar** and *M. Jagannadha Rao*, JJ. [Date of decision: 9-9-1997]

[927] — S. 154 — FIR — Whether ante-timed — *FIR containing such details of weapons used and wounds caused as could not have been known without proper medical examination — Such FIR, held on facts, was ante-timed and was a fabricated document*

The doctor did not notice any contusion but on external examination he only noticed an incised injury on the left leg of the deceased. However, he detected that there was a fracture. Neither the doctor who examined him in the first instance nor the doctor who conducted the post-mortem indicated as to how the fracture would have been caused except saying that the injuries Nos. 1 to 4 were caused by sharp-edged weapon. The evidence of the doctor who conducted the post-mortem also would indicate that the incised injury on the leg could have resulted in fracture but strangely in the FIR it is mentioned that the leg was twisted in such a way that it resulted in fracture. None of the doctors spoke about this possibility. Obviously from the mere external examination of the injury, no definite cause could be given at that time. Therefore it could only be explained that not knowing the cause of the fracture, it was vaguely mentioned that the leg was twisted. Further it is rather intriguing as to how the informant could mention in the FIR that there was a fracture of the left leg. A layman cannot detect a fracture by himself unless he is told or comes to know after medical examination that there was such a fracture. This also shows that the version in the FIR in which such details, as mentioned above, were given, must have been a result of consultations among the interested persons after coming to know the nature of injuries. *Dharam Singh* v. *State of Punjab*, 1993 Supp (3) SCC 532: 1993 SCC (Cri) 1059: AIR 1993 SC 319: 1993 Cri LJ 150.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 22-10-1992]

[928] — S. 154 — FIR — Whether ante-timed — *Murder — In the enclosed report prepared in respect of dead body there was an inscription that in the column meant for the person who gave information of the dead body the name of a member of Home Guard (who was on duty at the place of occurrence) was mentioned — Inquest report prepared at 8.30 a.m. — In the entry in general diary of the police station, made at 1 a.m., report of the said member of Home Guard was mentioned — That entry in the general diary not produced — There was nothing to show that that entry in general diary was the FIR — That member of Home Guard was neither examined by prosecution, nor was he cited by the defence as a defence witness or a witness to be examined under S. 311 CrPC — FIR, relied upon by prosecution, based on a statement furnished by PW 1 and lodged at 2 a.m. — FIR reaching the Magistrate next day — In the circumstances held, FIR relied upon by prosecution cannot be said to be ante-timed and not the real one merely because of non-examination of the said member of Home Guard* (Paras 6 to 10). *Gopal* v. *State of U.P.*, (2002) 9 SCC 744.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 8-2-2001]

[929] — S. 154 — FIR — Whether ante-timed — Bodies of deceased reaching hospital in town 28-29 km from place of incident about 15-16 hours after incident — *Incident taking place at*

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dusk — Explanation being that police jeeps carrying bodies had broken down about 13-14 km from hospital town, hence the delay — Held, explanation acceptable and it could not be said on the basis of said delay that FIR was ante-timed (Para 23). *Jaishree Yadav* v. *State of U.P.*, (2005) 9 SCC 788: AIR 2004 SC 4443: 2004 Cri LJ 4826.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 12-8-2004]

[930] — S. 154 — FIR — Whether ante-timed — Radio transmission made to senior officers by investigating officer informing them of incident involving murder of prominent person of area concerned — Particulars that may be contained *— Held, in such communication it is not necessary that names of all persons or other particulars contained in complaint ought to have been mentioned or that non-mentioning of such particulars in such communication gives rise to inference that at time of transmission investigating agency was not in know of names of all the accused — Evidence Act, 1872, S. 114* (Paras 17 and 18). *Jaishree Yadav* v. *State of U.P.*, (2005) 9 SCC 788: AIR 2004 SC 4443: 2004 Cri LJ 4826.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 12-8-2004]

[931] — S. 154 — FIR — Whether ante-timed — *Requisition sent to doctor to conduct post-mortem not containing all the particulars found in inquest report and complaint, like particulars of case, weapon used and names of accused persons, etc. — Held, the same would not lead to the conclusion that FIR was ante-timed* (Para 15). *Jaishree Yadav* v. *State of U.P.*, (2005) 9 SCC 788: AIR 2004 SC 4443: 2004 Cri LJ 4826.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 12-8-2004]

[932] — S. 154 — FIR — Whether ante-timed — Time of receipt of special report sent to Jurisdictional Magistrate not noted — Other facts as to delivery of special report, however, consistent and credible *— Held, mere non-noting of said time would not lead to conclusion that FIR was ante-timed* (Para 15). *Jaishree Yadav* v. *State of U.P.*, (2005) 9 SCC 788: AIR 2004 SC 4443: 2004 Cri LJ 4826.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 12-8-2004]

[933] — S. 154 — Scooter robbery *— Scooter not belonging to the first informant but given to him some time before the incident — Letters of English alphabet preceding the scooter number mentioned in the FIR but the first informant admitting that he did not give those letters in the FIR — Scar on forehead of one of the accused mentioned in the FIR but not visible to the first informant in the court — First informant making material improvements to make his claim of having seen the scar acceptable — Held, in the circumstances of the case, the FIR was prepared after the scooter was recovered by the police. Bhupinder Singh* v. *State of Punjab*, 1996 SCC (Cri) 103.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **G.T. Nanavati**, JJ. [Date of decision: 16-8-1995]

[934] — S. 154 — Time of lodging — If ante-time *— Occurrence taking place around 11 a.m. and FIR claimed to have been given at 1.12 p.m. — FIR not containing Magistrate's endorsement regarding time of its receipt — But head constable deposing that special report despatched to the Magistrate at 1.20 p.m. itself through a constable and that General Diary contained an entry to that effect — In the circumstances held, the FIR cannot be said to have been given later than 1.12 p.m. and ante-dated to cover up the delay in making the report. Subash* v. *State of U.P.*, (1987) 3 SCC 331: 1987 SCC (Cri) 573: AIR 1987 SC 1222: 1987 Cri LJ 991.

Bench Strength **2**. Coram: *M.M. Dutt* and **S. Natarajan**, JJ. [Date of decision: 14-4-1987]

[935] — S. 154 — Time of lodging — If ante-time *— Prosecution case that report made at 9.10 p.m. on the date of occurrence — No correction made on the date mentioned in the FIR — Police-officer's signature existing in more than one place under that very date — Prior report made at 4 p.m. on the same date, about which entry made in General Diary, also mentioning names of accused — In the circumstances held, High Court erred in doubting the FIR on the basis of surmise that there had been confabulation in the night and that the FIR had actually been lodged next morning. State of U.P.* v. *Ranjha Ram*, (1986) 4 SCC 99: 1986 SCC (Cri) 374: AIR 1986 SC 1959: 1986 Cri LJ 1906.

Bench Strength **2**. Coram: *M.P. Thakkar* and **S. Natarajan**, JJ. [Date of decision: 19-8-1986]

[936] — Ss. 154, 157 and 174 — FIR — Value of — Delay in lodging — Effect — Whether the FIR was ante-timed *— Determination of — External checks — Delay in sending special report to the Magistrate or failure to send copy of the FIR to the Medical Officer along with the dead body for post-mortem and absence of its reference in inquest report can give rise to an inference that the FIR had been ante-timed — On facts, held, the FIR had been ante-timed and had not been recorded till the inquest proceedings were over at the spot by the Investigating Officer*

FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under S. 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. *Meharaj Singh (L/Nk.)* v. *State of U.P.*, (1994) 5 SCC 188: 1994 SCC (Cri) 1391.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 21-4-1994]

But see Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450

[937] — Ss. 154 and 157 — FIR if ante-timed — FIR allegedly recorded at 2.40 p.m. on the day of occurrence but received by the Magistrate on the next day at 10 a.m. — *Held, in the circumstances of the case, the FIR was recorded on the next day after the case was converted to one under S. 302 IPC consequent upon the death of the injured and not on the day of occurrence as alleged by the prosecution. Devinder* v. *State of Haryana*, 1997 SCC (Cri) 570: AIR 1997 SC 454: 1996 Cri LJ 4461.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 13-9-1996]

[938] — Ss. 154 and 157 — Ante-timed FIR — Delay in dispatch — Effect — *Submission that FIR was ante-timed and ante-dated and brought into existence after due deliberations and consultations with the police; delay in sending copy of FIR to Ilaqa Magistrate; one accused* **M** *was arrested and detained in police station at 3.40 p.m. while the alleged occurrence took place at 4.45 p.m.; and the seizure memos prepared by the IO did not bear any crime number — Held, there is no dispute with the proposition that it is the duty of the Station House Officer to dispatch special report to the Ilaqa Magistrate as required under S. 157(2) — But, it is not possible to lay down any universal rule as to within what time the special report is required to be dispatched by the Station House Officer after recording FIR — Each case turns on its own facts — Delay contemplated under S. 157 of the Code for doubting the authenticity of FIR is not every delay but only extraordinary and unexplained delay — Delay in dispatch of FIR by itself is not a circumstance which can throw out the prosecution case in its entirety, particularly in cases where the prosecution provides cogent and reasonable explanation for the delay in dispatch of FIR — Existence of FIR and its time may become doubtful in cases where there is no satisfactory and proper explanation from the investigating agencies — In the instant case, PW 1 (son of deceased) stating that he rushed to the police station by a bicycle and lodged written FIR, Ext. Ka-1 within 11/2 hours of the incident — Distance between the place of occurrence and the police station about 9 km — He further stating that he took about 15-20 minutes to prepare his report and nobody advised him in preparation of the report and that he had gone to the police station alone — No reason discernible to disbelieve PW 1's version — Nothing unnatural and unusual in PW 1 stating the details of the incident in his written FIR, Ext. Ka-1 — Behavioural pattern and response of individuals in a given situation may differ from person to person — Bare reading of FIR does not disclose any manipulation and cannot be said to be a contrived one brought into existence after due deliberations — PW 7 (officer in charge of the police station) had rushed to the place of occurrence at about 6 p.m. where he found the dead body; inquest report was prepared on spot which duly mentioned lodging of FIR by PW 1 at 4.45 p.m. followed by dispatch of the dead body to the hospital which reached the hospital by 9.30 p.m. and the post-mortem examination at 9.30 a.m. on the next day in clear and unequivocal terms reveal that FIR was lodged at the time it is stated to have been recorded — It cannot be treated as an ante-timed and ante-dated one — In such circumstances, mere fact that crime number is not mentioned in the inquest report is of no significance — Further, next*

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day being Sunday, the Ilaqa Magistrate received special report on Monday by dak — Moreover, M was arrested in connection with another case (Paras 7, 8, 10 to 15, 17 to 19 and 22). *Mahmood* v. *State of U.P.*, (2007) 14 SCC 16: AIR 2008 SC 515: 2008 Cri LJ 696: (2008) 1 All LJ 248: (2008) 61 AIC 203 (SC).

Bench Strength **2**. Coram: *Altamas Kabir* and **B. Sudershan Reddy**, JJ. [Date of decision: 15-11-2007]

Meharaj Singh v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391; Anil Rai v. State of Bihar, (2001) 7 SCC 318: 2001 SCC (Cri) 1009; Alla China Apparao v. State of A.P., (2002) 8 SCC 440: 2003 SCC (Cri) 87, relied on

[939] — Ss. 154 and 157 — FIR — Ante-timed — Delay in sending FIR to Magistrate — *Prosecution failing to clear doubt regarding date and time of recording the FIR — Held on facts, adverse inference can be drawn —* Meharaj Singh case *explained*

The incident of murder had taken place on the intervening night of 18-5-1982, 19-5-1982. Complaint was lodged on the morning following the night of the occurrence. The defence produced a certified copy of the FIR received by the Court of the First Class Magistrate in which a note was written by the clerk of the court showing that it was received on 21-5-1982. The evidence of the date of sending the copy of FIR to the Magistrate's court was not adduced by the prosecution in spite of being given more than one opportunity. On 28-11-1984, it was noted that adverse inference will be drawn if the record was not produced. Yet, the prosecution failed to adduce proof. The Sessions Judge particularly adverted to the fact that the prosecution did not produce the original record of the police station relating to the receipt and dispatch of FIR in spite of an order passed to that effect. A specific suggestion was put to the SHO concerned that FIR was prepared 2 or 3 days after the occurrence which, however, was denied. The SHO admitted that no attempt was made to apprehend the accused on May 19 or 20. The crime number/FIR number was not found in the inquest report, site plan or the requisition sent to the hospital for post-mortem. No reference was made in the inquest report about the information, if any, furnished by PWs. Though the trial Judge was not careful enough in recording a specific finding that the prosecution failed to clear the doubt regarding the date and time of recording the FIR, in sum and substance, that was what the trial Judge purported to say.

Held :

The facts cast a serious doubt on the correctness of the FIR, especially the time and date of its recording. All this would support the defence version that FIR in which the names of the accused were mentioned would have probably come into existence much later. There is nothing in the decision of the Supreme Court in *Shiv Ram* v. *State of U.P.* which goes against the legal position laid down in *Meharaj Singh case*. No broad proposition can be said to have been enunciated in that later case that inordinate and unexplained delay in sending the FIR to the Magistrate would be an immaterial factor liable to be ignored altogether. (Paras 6 and 5.2). *Thanedar Singh* v. *State of M.P.*, (2002) 1 SCC 487: 2002 SCC (Cri) 153: AIR 2002 SC 175: 2002 Cri LJ 254.

Bench Strength **3**. Coram: *Dr. A.S. Anand*, C.J. and *R.C. Lahoti* and **P. Venkatarama Reddi**, JJ. [Date of decision: 30-10-2001]

Meharaj Singh v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391, relied on

Shiv Ram v. State of U.P., (1998) 1 SCC 149: 1998 SCC (Cri) 278, clarified and harmonised

See also Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450

[940] — Ss. 154 and 157 — FIR — Ante-timed — Necessity of production of general policy diary — *Original general diary not produced despite the fact that a specific defence was raised that the FIR was ante-timed — Copy of FIR sent to Circle Officer after 4 days and to Court of Magistrate after 8 days of the incident — Held, production of general diary, wherein FIR was required to be taken down, was necessary when it was alleged to be ante-dated — Further, in a case of grave nature such delay in sending copy of FIR to the Magistrate was not proper — Police Act, 1861, S. 147. Jagdish Murav* v. *State of U.P.*, (2006) 12 SCC 626: (2007) 2 SCC (Cri) 234: (2006) 46 AIC 641 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

Meharaj Singh v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391; Budh Singh v. State of U.P., (2006) 9 SCC 731, relied on

[941] — Ss. 154 and 174 — Ante-timed FIR — *FIR lodged at 9.05 p.m. and the inquest report prepared on the following day — Non-mention of title of crime in the inquest report — Police reaching the place of occurrence at 11 p.m. — Held, in the circumstances FIR cannot be said to be ante-timed — Such minor omission is nothing but a bona fide error or casual approach on the part of the investigating agency which does not affect the substratum of the prosecution story. Shiv Ram* v. *State of U.P.*, (1998) 1 SCC 149: 1998 SCC (Cri) 278: AIR 1998 SC 49: 1998 Cri LJ 76.

Bench Strength **2**. Coram: *M.M. Punchhi* and **S.P. Kurdukar**, JJ. [Date of decision: 21-10-1997]

[942] — Ss. 154 and 157 — Ante-timed FIR — *FIR allegedly lodged at 7.30 a.m. — Evidence of panch witness and inquest report showing that work of preparing inquest report started at 8 a.m. — Number of FIR given in inquest report and other panchnamas indicating that the FIR had come into existence before 8 a.m. — Merely because the FIR reached the Magistrate after three days its genuineness cannot be doubted. Sk. Ayub* v. *State of Maharashtra*, (1998) 9 SCC 521: 1998 SCC (Cri) 1055: AIR 1998 SC 1285.

Bench Strength 2. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 26-2-1998]

3. Delay in forwarding FIR to Magistrate
(i.e. the report as required to be sent to
Magistrate under S. 157 r/w S. 158)

See also Section 154, '(3)(vi)2. Ante-timed FIR', above

[943] — S. 154 — Delay in forwarding FIR to Magistrate — Effect — *Held on facts, that alone not fatal to prosecution case* (Para 9). *State of Punjab* v. *Hakam Singh*, (2005) 7 SCC 408: 2005 SCC (Cri) 1679: 2005 Cri LJ 4111.

Bench Strength 2. Coram: *B.N. Agrawal* and **A.K. Mathur**, JJ. [Date of decision: 31-8-2005]

[944] — S. 154 — FIR — Delay in sending, to Ilaka Magistrate — *Held on facts, merely because of some delay prosecution case would not become unreliable — Moreover, since no effort was made to elicit the reason for such delay, adverse inference cannot be drawn — Evidence Act, 1872, S. 114 Ill. (g)*

FIR was recorded on 29-10-1999 at about 11.00 a.m. and it reached the Magistrate on 30-10-1999 at about 12 noon.

Held :

It cannot be laid down as a rule of universal application that whenever there is some delay in sending the FIR to the Magistrate concerned, the prosecution version becomes unreliable. It would depend upon the facts of each case. In the instant case as appears from the records the investigation was taken up immediately and certain steps in investigation were taken. Therefore, the plea that there was no FIR in existence at the relevant time has no substance. Additionally, no question was asked of the investigating officer as to the reason for the alleged delayed dispatch of the FIR. Had this been done, the investigating officer could have explained the circumstances. That having not been done, no adverse inference can be drawn. (Para 13). *Sunil Kumar* v. *State of Rajasthan*, (2005) 9 SCC 283: AIR 2005 SC 1096: 2005 SCC (Cri) 1230: 2005 Cri LJ 1402.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-1-2005]

[945] — S. 154 — FIR — Delay in sending to Magistrate — *Report recorded at 3.25 p.m. on the basis of dying declaration for offence under Ss. 307 read with 148 and 149 Indian Penal Code but after his death offence converted into S. 302 read with Ss. 148 and 149 — Next morning report despatched to Magistrate — Held, there was no delay in sending the report. Dalbir Singh* v. *State of Punjab*, (1987) 3 SCC 360: 1987 SCC (Cri) 519: AIR 1987 SC 1328: 1987 Cri LJ 1065.

Bench Strength 2. Coram: *V. Khalid* and **G.L. Oza**, JJ. [Date of decision: 10-4-1987]

[946] — S. 154 — FIR — Once FIR is held to be fabricated or brought into existence long after the occurrence, the entire prosecution case would collapse — *Omission to mention names of eyewitnesses in FIR giving minute details, and unexplained delay in despatch of the FIR to Magistrate besides other infirmities, held, would throw serious doubt on prosecution case. Marudanal Augusti* v. *State of Kerala*, (1980) 4 SCC 425: 1980 SCC (Cri) 985: AIR 1980 SC 638: 1980 Cri LJ 446.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 29-3-1979]

[947] — S. 154 — FIR — Report to Village Munsif — Delay of one or two hours in making the report — *Held, did not undermine the corroborative evidentiary value of FIR where the informant was terror-stricken and was overwhelmed with grief and the murderers, fully armed, were active and roaming about the village. Public Prosecutor, Govt. of A.P.* v. *Boya Jaggapuram Venkateswarlu*, 1980 Supp SCC 480: 1981 SCC (Cri) 444: AIR 1980 SC 1876: 1980 Cri LJ 1301.

Bench Strength 2. Coram: **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 6-10-1980]

[948] — S. 154 — Time of lodging FIR — Effect of delay in despatch of — *On facts, delay reasonably explained — Hence no adverse inference can be drawn*

Mere delay in despatch of the FIR, is not a circumstance which can throw out the prosecution case in its entirety. *Sarwan Singh* v. *State of Punjab*, (1976) 4 SCC 369: 1976 SCC (Cri) 646: AIR 1976 SC 2304: 1976 Cri LJ 1787.

Bench Strength 3. Coram: *P.N. Bhagwati, A.C. Gupta* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 11-8-1976]

(3)(vi)3. Reliability and Validity of FIR - FIR and Time - Delay in forwarding FIR to Magistrate (i.e. the report as required to be sent to Magistrate under S. 157 r/w S. 158) *(contd.)*

[949] — Ss. 154 and 157 — Delay in sending copy of FIR to area Magistrate — *Not material where FIR is shown to have been recorded promptly and investigation had started on that basis — Also delay not material when prosecution gives cogent and reasonable explanation for it — Doubt on authenticity of FIR can be based not on every delay but only on extraordinary and unexplained delay*

The further contention based on the alleged delay in sending copy of the FIR to the Area Magistrate also has no substance. In the present case the FIR is shown to have been lodged within 15 minutes after the occurrence and most of the accused had been apprehended immediately. There does not appear to be any possibility of falsely implicating the accused persons. On facts also the courts below did not find any delay in despatch of the copy of the FIR to the Area Magistrate. (Para 21)

Section 157 CrPC is designed to keep the Magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under Section 159. But where the FIR is shown to have actually been recorded without delay and investigation started on the basis of the FIR, the delay in sending the copy of the report to the Magistrate cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. Extraordinary delay in sending the copy of the FIR to the Magistrate can be a circumstance to provide a legitimate basis for suspecting that the FIR was recorded on a much later day than the stated day, affording sufficient time to the prosecution to introduce improvements and embellishment by setting up a distorted version of the occurrence. The delay contemplated under Section 157 CrPC for doubting the authenticity of the FIR is not every delay but only extraordinary and unexplained delay. However, in the absence of prejudice to the accused the omission by the police to submit the report does not vitiate the trial. Delay in despatch of FIR by itself is not a circumstance which can throw out the prosecution's case in its entirety, particularly when it is found on facts that the prosecution had given a very cogent and reasonable explanation for the delay in despatch of the FIR. (Para 20). *Anil Rai* v. *State of Bihar*, (2001) 7 SCC 318: 2001 SCC (Cri) 1009: AIR 2001 SC 3173.

Pala Singh v. State of Punjab, (1972) 2 SCC 640: 1973 SCC (Cri) 55: AIR 1979 SC 2679; Sarwan Singh v. State of Punjab, (1976) 4 SCC 369: 1976 SCC (Cri) 646: AIR 1976 SC 2304, relied on

Bench Strength 2. Coram: **K.T. Thomas**[2] and **R.P. Sethi**[1], JJ. [Date of decision: 6-8-2001]

[950] — Ss. 154 and 157 — Delay in sending FIR to Magistrate — Explanation given that due to holidays court being closed, FIR could reach the Magistrate only on reopening of the court after the holidays — *Held, court holidays cannot be a ground for the delay in the FIR reaching the Magistrate, because requirement of law is that the FIR should reach the Magistrate concerned without any undue delay — Explanation neither convincing nor acceptable* (Para 4). *State of Rajasthan* v. *Teja Singh*, (2001) 3 SCC 147: 2001 SCC (Cri) 439: AIR 2001 SC 990: 2001 Cri LJ 1176.

Bench Strength 2. Coram: **N. Santosh Hegde** and *Shivaraj V. Patil*, JJ. [Date of decision: 7-2-2001]

[951] — S. 154 — Delay in sending FIR report to Magistrate — Defective investigation — Effect of — *FIR lodged at about 10.50 a.m. however, the inquest report showed that the inquest was started at 10.30 a.m. on the same day — No explanation offered for the discrepancies — Moreover, Magistrate received FIR after four days — Delay not explained — Held, it is true that a faulty investigation cannot be a determinative factor and would not be sufficient to throw out a credible prosecution version — But in the instant case, it was required to be explained by the investigating officer by plausible evidence on record, as to how the inquest was undertaken at a point of time when the FIR was not in existence — Further held, the statutory requirement under S. 157 CrPC is that the report has to be sent forthwith: that itself shows the urgency attached to the sending of the report — If the FIR is timely lodged and investigation is undertaken immediately, in a given case, the delayed receipt of the report by the Magistrate would not be fatal to the prosecution — It would depend upon the facts of each case — In a given case it is open to the prosecution to establish by evidence the reasons for the delayed dispatch or delayed receipt — Therefore, the cumulative effect of the factors highlighted above would show that the prosecution miserably failed to establish the accusations — Hence appellants acquitted* (Paras 9 to 12). *Motilal* v. *State of Rajasthan*, (2009) 7 SCC 454: (2009) 3 SCC (Cri) 444.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 5-5-2009]

[952] — S. 154 — Delay in transmitting FIR to Magistrate — Allegations of — Absence of any evidence as to when FIR reached the Magistrate — Non-cross-examination of IO pertaining thereto — Effect — *Held, in absence of any cogent evidence led by defence to substantiate its claim, it cannot be held that there was any such delay — Besides, said issue was not raised before courts below — Furthermore, no suggestion was put to IO regarding thereto, which if given would have given him an opportunity to explain as to when it was sent and received by the Magistrate — New plea* (Para 28). *Satish Narayan Sawant* v. *State of Goa*, (2009) 17 SCC 724: 2009 Cri LJ 4655: (2010) 1 ECrN 464: (2009) 82 AIC 89 .

Bench Strength 2. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 14-9-2009]

Dinesh Kumar v. State of Rajasthan, (2008) 8 SCC 270: (2008) 3 SCC (Cri) 472; State of U.P. v. Krishna Gopal, (1988) 4 SCC 302: 1988 SCC (Cri) 928; Anwar v. State of Haryana, (1997) 9 SCC 766: 1997 SCC (Cri) 762; Ravi Kumar v. State of Punjab, (2005) 9 SCC 315: (2006) 1 SCC (Cri) 738; Munivel v. State of T.N., (2006) 9 SCC 394: (2006) 2 SCC (Cri) 581, relied on

[953] — Ss. 154 and 157 — Delay of 7 days in sending copy of the FIR to the Magistrate — Delay not explained by the IO — *Defence plea that the witnesses could not identify the assailants and only after recovery of the alleged pistol they were named as assailants in the FIR — Considering the defence of the accused in the light of evidence on record and previous enmity between the parties, held, prosecution failed to establish guilt of the accused beyond reasonable doubt — Penal Code, 1860, Ss. 307/34. Chhotu* v. *State of Haryana*, 1996 SCC (Cri) 1161.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 20-8-1996]

[954] — S. 154 — FIR — Delay in transmitting the FIR and its reaching the Magistrate, held, not fatal in all cases — However, if the genesis of the complaint is in doubt then promptness in receipt of FIR by Magistrate assumes importance (Para 34). *Chikkarangaiah* v. *State of Karnataka*, (2009) 17 SCC 497: 2009 Cri LJ 4667: (2010) 1 ECrN 427: (2009) 82 AIC 233 .

Bench Strength 2. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 2-9-2010]

[955] — Ss. 154 and 157 — FIR — Delay in despatching FIR to Magistrate — If otherwise reasonable and otherwise trustworthy, that would not be fatal to the prosecution case

While it is true that Section 157 of the Code makes it obligatory on the officer in charge of the police station to send a report of the information received to a Magistrate forthwith, but that does not mean and imply to denounce and discard an otherwise positive and trustworthy evidence on record. Technicality ought not to outweigh the course of justice — if the court is otherwise convinced and has come to a conclusion as regards the truthfulness of the prosecution case, mere delay, which can otherwise be ascribed to be reasonable, would not by itself demolish the prosecution case. The statutory obligation warrants utmost promptitude and in the event of the delay not being an unreasonable one and in the event of availability of some explanation therefor, which is otherwise acceptable as well, question of prosecution being tainted would not arise. FIR sets the investigation rolling and in the event of there being some delay somewhere and with the acceptable explanation, the delay cannot be said to vitiate the trial by reason therefor. (Paras 13 and 16). *Munshi Prasad* v. *State of Bihar*, (2002) 1 SCC 351: 2002 SCC (Cri) 175: AIR 2001 SC 3031.

Bench Strength 2. Coram: **U.C. Banerjee** and *K.G. Balakrishnan*, JJ. [Date of decision: 10-10-2001]

Shiv Ram v. State of U.P., (1998) 1 SCC 149: 1998 SCC (Cri) 278; State of Karnataka v. Moin Patel, (1996) 8 SCC 167: 1996 SCC (Cri) 632: AIR 1996 SC 3041, relied on

[956] — Ss. 154 and 157 — Delay in despatching FIR to Magistrate — If established — *Occurrence taking place on 3-4-1988, while FIR alleged to have been received by court on 12-4-1988 i.e. after about nine days — Held, FIR register (Ext. 84) indicates that copy of FIR was sent to Magistrate concerned on 3-4-1988 itself — Further held, if evidence of eyewitnesses is found cogent, convincing and credible, delay in receipt of copy of FIR by court concerned, insignificant* (Paras 42 and 24). *Pandurang Chandrakant Mhatre* v. *State of Maharashtra*, (2009) 10 SCC 773: (2009) 83 AIC 38 (SC).

Bench Strength 2. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 8-10-2009]

[957] — Ss. 154 and 157 — Delay in lodging and/or despatching FIR to Ilaqa Magistrate, and/or discrepancy between ocular and medical evidence — Effect — *Held, not fatal to prosecution case in all circumstances — However, in the instant case combined effect thereof leads to conclusion that prosecution had failed to substantiate accusations — View taken by High Court directing acquittal being a possible view, no interference therewith called for — Penal Code, 1860 — S. 302 r/w S. 34* (Paras 3 and 5). *State of Punjab* v. *Avtar Singh*, (2009) 10 SCC 800: (2009) 1 ECrN 658 (SC).

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 21-10-2008]

(3)(vi)3. Reliability and Validity of FIR - FIR and Time - Delay in forwarding FIR to Magistrate (i.e. the report as required to be sent to Magistrate under S. 157 r/w S. 158) *(contd.)*

[958] — Ss. 154 and 157 — Delay in receipt of occurren ce report by Magistrate — Effect — *Held, delay itself does not make the investigation tainted — Further held, where an explanation is offered by the prosecution for the delay, that has to be tested — Unexplained delay by itself may not be fatal, but is certainly a relevant aspect which can be taken note of while considering the role of the accused — Delay in sending the FIR to the Magistrate sometimes affords opportunity to introduce improvement and embellishment thereby resulting in a distorted version of the occurrence — Hence, S. 157 mandates that the report should be sent to the Magistrate forthwith, which itself indicates urgency* (Para 13). *State of Kerala* v. *Anilachandran*, (2009) 13 SCC 565: AIR 2009 SC 1866: (2009) 77 AIC 46 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 15-4-2009]

Pala Singh v. State of Punjab, (1972) 2 SCC 640: 1973 SCC (Cri) 55; Sarwan Singh v. State of Punjab, (1976) 4 SCC 369: 1976 SCC (Cri) 646, relied on

[959] — Ss. 154 and 157 — Delay in sending special report — By itself can be of no consequence (Paras 15 and 17). *Munnawar* v. *State of U.P.*, (2010) 5 SCC 451.

Bench Strength **2**. Coram : **H.S. Bedi** and *J.M. Panchal*, JJ. [Date of decision : 5-5-2010]

[960] — Ss. 154 and 157 — Delay in sending copy of FIR to Magistrate — Effect of — *Held, not always fatal to prosecution — However, said delay is of significance when genesis of prosecution case is doubtful* (Para 34). *Chikkarangaiah* v. *State of Karnataka*, (2009) 17 SCC 497: 2009 Cri LJ 4667: (2010) 1 ECrN 427: (2009) 82 AIC 233 .

Bench Strength **2**. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 2-9-2010]

[961] — Ss. 154 and 157 — FIR — Delay in forwarding FIR to Magistrate — Effect of — *Held, such delay does not by itself render prosecution case doubtful — Explanation offered for delay and possibility of such explanation has to be looked into — Whether delay led to false implication has to be assessed from facts and circumstances* (Para 22). *Narinder Kumar* v. *State of J&K*, (2010) 9 SCC 259: AIR 2010 SC 3015: 2010 Cri LJ 3905.

Bench Strength **2**. Coram: *Aftab Alam* and **T.S. Thakur**, JJ. [Date of decision: 21-7-2010]

[962] — Ss. 154 and 157 — Forwarding of special report to Magistrate — Purpose/Necessity of — *Held, forwarding of the report is indispensable and absolute and it has to be forwarded with earliest dispatch which intention is implicit in use of word "forthwith" in S. 157 which means promptly and without any undue delay — Real purpose is to avoid possibility of improvement in prosecution case and introduction of distorted version by deliberations and consultation and to enable Magistrate concerned to keep a watch on progress of investigation — However, it cannot be laid down as a rule of universal application that whenever there is some delay in sending FIR to Magistrate, prosecution version becomes unreliable — It would depend upon facts of each case — In the instant case, occurrence had taken place on 16-12-2001, while report received on 20-12-2001 — However, High Court rightly observed that if there was any lapse on the part of investigating officer, that would not affect credibility of prosecution version — Words and Phrases — "Forthwith"* (Paras 8 to 10). *Aqeel Ahmad* v. *State of U.P.*, (2008) 16 SCC 372: AIR 2009 SC 1271: (2009) 2 All LJ 178: (2009) 75 AIC 248 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 19-12-2008]

Pala Singh v. State of Punjab, (1972) 2 SCC 640: 1973 SCC (Cri) 55; State of Karnataka v. Moin Patel, (1996) 8 SCC 167: 1996 SCC (Cri) 632; considered and relied on

Rabindra Mahto v. State of Jharkhand, (2006) 10 SCC 432: (2006) 3 SCC (Cri) 592, relied on

[963] — Ss. 154 and 157 — FIR — Delay in its dispatch to and/or receipt by the court — *Held, alone cannot be taken to be a ground for throwing out the prosecution case if otherwise the same is proved by unimpeachable evidence — However, this may be a ground to discard the prosecution case, if the court otherwise doubts the veracity of the same*

It cannot be said that there was any delay at all in lodging the FIR, much less an inordinate one, as the incident took place on 11-9-1996 at 2130 hours and the fardbeyan was recorded in the hospital at 0045 hours on the same night and dispatched to the police station through special messenger where formal FIR was drawn at 0120 hours on the fateful night itself. The FIR was received by the Magistrate in the morning at 0730 hours on 12-9-1996. Hence, there was no delay at all either in its dispatch to or receipt by the court. Further, even in cases where there is some delay in dispatch of the FIR to the court and its receipt by it, that alone can in no case be taken to be a ground for throwing out the prosecution case if otherwise the same is proved by unimpeachable evidence. However, in cases where the court otherwise doubts the veracity of the prosecution case, this may be taken to be one of the grounds to discard the same. (Paras 8 and 9). *Ashok Kumar Pandey* v. *State of Delhi*, (2002) 4 SCC 76: 2002 SCC (Cri) 728: AIR 2002 SC 1468.

Bench Strength 2. Coram: *M.B. Shah* and **B.N. Agrawal**, JJ. [Date of decision: 15-3-2002]

[964] — Ss. 154 and 157 — FIR — Delay in sending FIR to Magistrate — *Incident occurred on 3-8-1994 — FIR reached the Magistrate on 5-8-1994 — In view of the proper explanation offered for the delay, held, the plea of delayed dispatch of FIR did not have any substance*

The delay in sending the FIR to the Magistrate cannot be said to be unusual when proper explanation has been offered for the delay. The plea of delayed dispatch has been rightly held to be without any substance. (Para 32). *Bodhraj* v. *State of J&K*, (2002) 8 SCC 45: AIR 2002 SC 3164.

Bench Strength 2. Coram: *Ruma Pal* and **Arijit Pasayat**, JJ. [Date of decision: 3-9-2002]

[965] — Ss. 154 and 157 — Requirement to forward forthwith copy of FIR to Magistrate — Delay in sending the copy — Effect — *Does not render the entire prosecution case doubtful but would put the court on guard — Delay must be reasonably explained — In case of non-explanation, court should be cautious and should minutely examine the prosecution version to ensure that there was no false implication of innocent persons — On facts held, delay not properly explained by prosecution which raised doubt as regards complicity of some of the accused in the crime*

Sending the copy of the special report to the Magistrate as required under Section 157 CrPC is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether the version as stated in the court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157 CrPC is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if tendered, no adverse inference can be drawn against it. (Para 7)

In the instant case, the FIR was registered on 25-8-1991 at about 2.30 a.m. and copy thereof referred to in Section 157 was received by the Magistrate on 27-8-1991. Even though there was a mention in the FIR that its copy was sent through special messenger, yet no date or time of sending the said report was mentioned. The Magistrate, receiving the copy of the report, had also not noted the time of its receipt. The Magistrates receiving reports under Section 157 CrPC, particularly when it relates to the commission of heinous crime are required to note not only the date but also the time of the receipt of the copy thereof. (Para 8)

The prosecution has apparently failed to explain the delay in sending the copy of the said report in terms of Section 157 CrPC to the Magistrate of the area. This aspect has been highlighted by the counsel for the appellant to contend that many of the accused were innocent and wrongly roped in the case allegedly on account of enmity existing between the complainant and the accused party. There is some substance in such a submission. (Para 8). *Bijoy Singh* v. *State of Bihar*, (2002) 9 SCC 147: AIR 2002 SC 1949: 2002 Cri LJ 2623.

Bench Strength 2. Coram: **R.P. Sethi** and *D.M. Dharmadhikari*, JJ. [Date of decision: 17-4-2002]

[966] — Ss. 154 and 157 — Delay in forwarding FIR to Magistrate — Delay of 3 days in sending FIR to Magistrate — No explanation given in respect of — *Said delay, held, was fatal. Jang Singh* v. *State of Rajasthan*, (2001) 9 SCC 704.

Bench Strength 2. Coram: *G.B. Pattanaik* and *Doraiswamy Raju*, JJ. [Date of decision: 4-5-2000]

[967] — Ss. 154 and 157(1) — Delay in sending FIR to Magistrate, explained — Requirement under S. 157(1), restated — Meaning of expression "forthwith" used therein, explained — *Further held, prosecution is not required to explain every hour's delay in sending FIR to Magistrate, but the same has to be sent within a reasonably possible time in the circumstances prevailing — Where the FIR lodged at 12 noon reached the Magistrate at 6.00 p.m., having regard to the facts and circumstances*

(3)(vi)3. Reliability and Validity of FIR - FIR and Time - Delay in forwarding FIR to Magistrate (i.e. the report as required to be sent to Magistrate under S. 157 r/w S. 158) *(contd.)*

of the case as well as lack of adequate strength of police personnel at the police station, held, there was no delay at all in forwarding the FIR to Magistrate

If any delay is caused in sending the FIR to the Magistrate, which the prosecution fails to explain by furnishing reasonable explanation, *ipso facto* the same cannot be taken to be a ground for throwing out the prosecution case if the same is otherwise trustworthy upon appreciation of evidence which is found to be credible. However, if it is otherwise, an adverse inference may be drawn against the prosecution and the same may affect the veracity of the prosecution case, more so when there are circumstances from which an inference can be drawn that there were chances of manipulation in the FIR by falsely roping in the accused persons after due deliberations. (Para 9)

What is required under Section 157(1) CrPC is that if from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall, *forthwith* send a report of the same to a Magistrate empowered to take cognizance of such an offence upon a police report. (Para 9)

The expression "forthwith" used in Section 157(1) would undoubtedly mean within a reasonable time and without any unreasonable delay. In the case on hand, distance from the police station to the Magistrate's Court was about 20 to 25 km. PW 11 constable was entrusted with the FIR by the then Sub-Inspector of Police for being made over to the Magistrate. This witness stated that after handing over the FIR, the Sub-Inspector of Police sent him to the place of occurrence where as per his instructions he stayed till 5 p.m. Later, the Inspector of Police made over the dead body of the deceased to this witness with instructions to take the same to the Government Hospital, Guntur, and to hand it over to the hospital authorities and after handing over the dead body to the hospital authorities, he went to the Magistrate and delivered the FIR to him at 6 p.m. This witness further stated that there were only six constables attached to the police station on the relevant date which goes to show that at the police station concerned there was no full strength of constables. This apart, it is a matter of common experience that there has been tremendous rise in crime resulting in enormous volume of work, but increase in the police force has not been made in the same proportion. In view of the aforesaid factors, the expression "forthwith" within the meaning of Section 157(1) obviously cannot mean that the prosecution is required to explain every hour's delay in sending the FIR to the Magistrate, of course, the same has to be sent with reasonable dispatch, which would obviously mean within a reasonably possible time in the circumstances prevailing. (Para 9)

Thus, in the instant case, the FIR was sent to the Magistrate with reasonable promptitude and no delay at all was caused in forwarding the same to the Magistrate. In any view of the matter, even if the Magistrate's Court was close by and the FIR reached him within six hours from the time of its lodgement, in view of the increase in workload, even in such a case it cannot be said that there was any delay at all in forwarding the FIR to the Magistrate. (Para 9). *Alla China Apparao* v. *State of A.P.*, (2002) 8 SCC 440: 2003 SCC (Cri) 87: AIR 2002 SC 3648.

Bench Strength **2**. Coram: *U.C. Banerjee* and **B.N. Agrawal**, JJ. [Date of decision: 10-10-2002]

Pala Singh v. State of Punjab, (1972) 2 SCC 640: 1973 SCC (Cri) 55; Sarwan Singh v. State of Punjab, (1976) 4 SCC 369: 1976 SCC (Cri) 646; State of Karnataka v. Moin Patel, (1996) 8 SCC 167: 1996 SCC (Cri) 632; Harpal Singh v. Devinder Singh, (1997) 6 SCC 660: 1997 SCC (Cri) 981; Shiv Ram v. State of U.P., (1998) 1 SCC 149: 1998 SCC (Cri) 278; Anil Rai v. State of Bihar, (2001) 7 SCC 318: 2001 SCC (Cri) 1009; Munshi Prasad v. State of Bihar, (2002) 1 SCC 351: 2002 SCC (Cri) 175, relied on

[968] — Ss. 154 and 157(1) — FIR — Delay in sending FIR to Magistrate — *FIR registered at 6.30 a.m. on 19-12-1984 reached the Magistrate at 3.30 p.m. on that day — Contention that delay in dispatching the FIR to the court was not properly explained — In view of the fact that the FIR after its registration was transferred to another police station and from there it was dispatched to the Magistrate, held, the above contention had no substance* (Para 5). *Kunhimodeenkutty* v. *State of Kerala*, (2002) 10 SCC 352: 2003 SCC (Cri) 1452: AIR 2003 SC 836.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **K.G. Balakrishnan**, JJ. [Date of decision: 18-12-2002]

[969] — S. 154 — FIR lodged round about midnight — *It reached the Magistrate next morning at about 6 a.m. — Held, no delay. Satish Kumar* v. *State of Punjab*, 1994 SCC (Cri) 180.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *Dr. A.S. Anand*, JJ. [Date of decision: 12-10-1993]

[970] — Ss. 154 and 157 — FIR — Delay in lodging FIR and delay in sending the special report to and in receiving of the same by Magistrate — Allegations regarding, on facts, not made out

The occurrence had taken place at about 6.30 a.m. in a village as a result of political rivalry. It was not a hit-and-run affair but one in which five persons had died, several others received injuries and a large number of accused persons had participated. Some of the injured and the deceased persons tried to escape but they were given a chase and beaten. The incident, therefore, must have taken some time. It is also obvious that the witnesses and others, whosoever may have been around had also run for safety and shelter. It must have taken some time to come out and assemble again making sure that the danger of assault again was over. They must have been shocked to see headless bodies lying on the spot, besides others. It is very natural in these circumstances that they went to the place of the Sarpanch to narrate the whole incident. The Sarpanch wrote down the report. In the meantime a Sub-Inspector reached the place of incident at about 10.30 a.m., who was handed over the report. He sent it to the police station, where the case was registered at 11.30 a.m. The sequence of the events and the circumstances as well as the horrifying nature of the incident which took place leaving five persons dead, does not make it unnatural at all. The manner in which the FIR was scribed and lodged can hardly be said to be inordinately delayed so as to create any kind of suspicion on the prosecution case. (Para 10)

As regards the further submission that the special report should have been sent and received by the Magistrate immediately, whose office was also in the same complex or in the nearby building, the High Court observed that there was an endorsement of the Magistrate, having received the special report on the same day. Even if for the sake of argument it is assumed that there may have been some delay in furnishing the special report to the Magistrate, it is difficult to conclude that it will be fatal to the prosecution case. It was received by the Magistrate on the same day. A little delay here and there in furnishing copy of the FIR to the Magistrate, cannot be a ground to throw out the prosecution case, in the facts and circumstances of the case. (Para 10). *Gajula Venkateswara Rao* v. *State of A.P.*, (2002) 6 SCC 487: 2002 SCC (Cri) 1432: AIR 2002 SC 2775.

Bench Strength **2**. Coram: *R.C. Lahoti* and **Brijesh Kumar**, JJ. [Date of decision: 29-7-2002]

[971] — Ss. 154 and 157(1) — FIR — Delay in registration of FIR and its dispatch to the Magistrate — *Held on facts, explained — Hence, not fatal to the prosecution case*

In the instant case, the time of occurrence was around 11.00 p.m. The FIR was lodged on the next day at around 9.35 a.m. First the information was given at the police chowk at about 8.00 a.m. The FIR reached the Magistrate around 3.00 p.m.

Held :

Considering the distance between the place of occurrence, police chowk, police station and the Court of the Magistrate, it cannot be said that there was any unexplained delay so far as registration of the FIR and dispatch to the Magistrate are concerned. From the evidence it is clear that the area was a terrorist-infected area and terrorism was at its peak during the period concerned. Merely because the information was not lodged at the police chowk or the police station in the night, that cannot be a suspicious circumstance in view of the facts of the case. (Para 7). *State of Punjab* v. *Karnail Singh*, (2003) 11 SCC 271: 2004 SCC (Cri) 135: AIR 2003 SC 3609.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 14-8-2003]

[972] — Ss. 154 and 158 — Delay in forwarding FIR to Magistrate — Effect — *Incident occurring at 7.30 p.m. on 18-7-1996 — FIR registered at 11 p.m. — Distance between police station and Magistrate's court about 20 km — No bus service available during the two places during nighttime — FIR received by Magistrate at 4 p.m. on 19-7-1996 i.e. delay of about 16 hours — Held, it has been repeatedly and consistently emphasised that the requirement of sending FIR to Magistrate forthwith is to enable him to watch progress of investigation — Further held, forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word "forthwith" occurring in S. 157, which means promptly and without any undue delay — It has the dual purpose, firstly, to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and, secondly, to enable the Magistrate concerned to have a watch on the progress of the investigation — In the instant case there was a delay of about sixteen hours in sending the FIR (Ext. P-5) to the Magistrate, but the same was due to fact that the majority of the police personnel were deputed for maintaining the law and order situation which was*

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too tense in view of the murder of three men of the village on the same evening — Hence, there is no cogent and convincing reason for doubting the correctness and truthfulness of the FIR (Paras 22 to 35). *Bathula Nagamalleswara Rao* v. *State*, (2008) 11 SCC 722: (2008) 3 SCC (Cri) 898.

Bench Strength **2**. Coram: *P.P. Naolekar* and **L.S. Panta**, JJ. [Date of decision: 22-4-2008]

Thulia Kali v. State of T.N., (1972) 3 SCC 393: 1972 SCC (Cri) 543; Arjun Marik v. State of Bihar, 1994 Supp (2) SCC 372: 1994 SCC (Cri) 1551; Meharaj Singh v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391; Thanedar Singh v. State of M.P., (2002) 1 SCC 487: 2002 SCC (Cri) 153; Kunju Muhammed v. State of Kerala, (2004) 9 SCC 193: 2004 SCC (Cri) 1425, considered and relied on

[973] — Ss. 154, 158 and 157 — Copy of FIR sent to Magistrate after four days — Delay not explained — Held, requirements of S. 157 not satisfied

The Code of Criminal Procedure provides for certain internal and external checks; one of them being the receipt of a copy of the first information report by the Magistrate concerned. It is not in dispute that in a grave case of this nature, the copy of the first information report was received by the Magistrate four days later. No explanation has been offered therefor. Section 157 CrPC mandates that the first information report should be sent to the nearest Magistrate within a period of 24 hours. It has not been disputed that the occurrence took place near the district headquarters. There cannot be any reason whatsoever as to why the first information report was sent after four days. (Para 20). *Ramesh Baburao Devaskar* v. *State of Maharashtra*, (2007) 13 SCC 501: 2008 Cri LJ 372.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

Jagdish Murav v. State of U.P., (2006) 12 SCC 626: (2007) 2 SCC (Cri) 234; State of Rajasthan v. Teja Singh, (2001) 3 SCC 147: 2001 SCC (Cri) 439, relied on

[974] — Ss. 154, 157 and 158 — Delay in despatch of the FIR — *FIR recorded without delay and the investigation started on the basis thereof — Mere delay in despatch of the FIR would not make the prosecution case suspect — FIR lodged at 1 a.m. — Received by the constable for handing over the same to the local Magistrate at 1.30 a.m. — Constable covering a distance of 17 kms handing over the FIR to the Magistrate at 10 a.m. — Held, even assuming that the plea that no conveyance was available at the dead of night was unsatisfactory one, there was no undue delay in despatch of the FIR. State of Karnataka* v. *Moin Patel*, (1996) 8 SCC 167: 1996 SCC (Cri) 632: AIR 1996 SC 3041.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *B.N. Kirpal*, JJ. [Date of decision: 22-2-1996]

[975] — Ss. 154, 157 and 158 — Delay in despatch of the FIR — *Occurrence taking place on 24-5-1972 at 6.30 p.m. — Fact that copy of the FIR was placed before the Magistrate on 26-5-1972 would only indicate that the clerk concerned brought it to the notice of the Magistrate on that day and not that the copy of the FIR had not reached the Magistrate's office on next day. Ram Sanjiwan Singh* v. *State of Bihar*, (1996) 8 SCC 552: 1996 SCC (Cri) 701: AIR 1996 SC 3265.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 26-4-1996]

[976] — Ss. 154, 157 and 158 — Delay in despatching the FIR — *Held, does not affect the testimony of the person who lodged the FIR — Delay of 4 hours in lodging the FIR with the Magistrate, in the circumstances, not unreasonable*

Even if the residence of the Chief Judicial Magistrate was close-by, the fact that the FIR was lodged with him within four hours is not ignorable. No doubt the ideal situation is that FIR is lodged with utmost speed and despatch but if the ideal is not adhered to in any case, the corollary is not castigation of the evidence of the maker of the FIR. In the present set-up no police station can be expected to have only one case to look into. A little delay in lodging the FIR with the Magistrate should not be viewed from an unrealistic angle. *Harpal Singh* v. *Devinder Singh*, (1997) 6 SCC 660: 1997 SCC (Cri) 981: AIR 1997 SC 2914: 1997 Cri LJ 3561.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 9-7-1997]

[977] — Ss. 154, 157 and 158 — Delay in sending copy of FIR to Magistrate — If made out — Need for sending copy to residence of Magistrate — *Occurrence took place at 6 a.m., FIR lodged at 7.20 p.m. and copy thereof received by the Magistrate in court next day at 12.45 p.m. — Definite stand taken by prosecution that there was no practice prevalent in the area for sending the report to the residence of the Magistrate — Held, no adverse inference should be drawn for not sending the report at the residence of the Magistrate on the same night of the occurrence — Copy of FIR was sent at the earliest on the next day in court and there was no delay much less inordinate delay in sending the same to Magistrate*

Mere delay in sending the first information report to a Magistrate cannot be a ground to throw out the prosecution case if the evidence adduced is otherwise found to be credible and trustworthy. (Para 11). *State of J&K* v. *S. Mohan Singh*, (2006) 9 SCC 272: (2006) 2 SCC (Cri) 484: AIR 2006 SC 1410: 2006 Cri LJ 1691.

Bench Strength 2. Coram: **B.N. Agrawal** and *A.K. Mathur*, JJ. [Date of decision: 9-3-2006]

[978] — Ss. 154, 157 and 158 — Delay in sending FIR to Magistrate — FIR lodged on 10-11-1981 at about 4 a.m. reaching the Magistrate on 12-11-1981 — *Held, delay rendered the FIR suspicious in the absence of any explanation. Radhakrishnan Nair* v. *State of Kerala*, 1995 Supp (1) SCC 217: 1995 SCC (Cri) 345.

Bench Strength 2. Coram: *M.M. Punchhi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 7-12-1994]

[979] — Ss. 154, 157 and 158 — Delay in sending FIR to the Magistrate — *Not fatal to the prosecution case unless prejudice is shown to have been caused to the accused by such delay — Held, in the circumstances of the case, sending of report not delayed in order to introduce some improvement, embellishment or distorted version of the occurrence* (Para 7). *Sushil* v. *State of U.P.*, 1995 Supp (1) SCC 363: 1995 SCC (Cri) 388.

Bench Strength 2. Coram: *G.N. Ray* and **Faizan Uddin**, JJ. [Date of decision: 8-11-1994]

[980] — Ss. 154, 157 and 158 — Delay in sending information to Magistrate — If on facts, fatal to second complaint of graver offence lodged same day and acted upon promptly — *Where no action was taken by police on the first complaint informing about a missing boy but on the basis of the second complaint lodged on the same day informing kidnapping of the boy and demand of ransom, investigation was started and the complaint was sent promptly to Magistrate, held mere delay in sending the first complaint to the Magistrate cannot be a ground to discard the prosecution case if found reliable — It could not be inferred thereby that the first complaint contained something inconsistent with the prosecution case*

A complaint about a missing boy was first lodged with the police on 20-5-1996 at 1.00 p.m. The complaint was registered by the police on the same day. But the complaint was sent to the Magistrate on 17-8-1996. However, another complaint was made on 20-5-1996 after receipt of a telephone call about kidnapping of the boy and demand of ransom and the same was sent to the Magistrate's Court the very next day i.e. on 21-5-1996. It was this compliant on the basis of which the investigation was started. It was urged that delay in sending the first complaint to the Magistrate gave a reasonable apprehension that the actual complaint made on 20-5-1996 at 1.00 p.m. contained something different than what it contained in a complaint sent to the Magistrate on 17-8-1996 and that therefore, the whole genesis of the prosecution case was belied and could not be relied upon. Rejecting the contention.

Held :

While it is true that Section 157 CrPC makes it obligatory on the officer in charge of the police station to send the information to the Magistrate's Court forthwith but that does not mean and imply to denounce and discard an otherwise positive and trustworthy evidence on record. The first complaint of missing person although was sent late, in fact, had not moved the investigating agency to real investigation except informing various other police stations regarding disappearance of the boy. The second complaint which was taken note of was sent in due time to the Magistrate. Unless, it is that the evidence led by the prosecution is not reliable, the delay in sending the first complaint would not lead to the inference that the complaint lodged of missing person contained some other facts that may have revealed some other story which is not consistent with the prosecution case. (Para 4). *A.N. Venkatesh* v. *State of Karnataka*, (2005) 7 SCC 714: 2005 SCC (Cri) 1938: 2005 Cri LJ 3732.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and **P.P. Naolekar**, JJ. [Date of decision: 8-8-2005]

[981] — Ss. 154, 157 and 158 — Delay in sending report to magistrate by police — *Delay of 6 hours, held on facts, not inordinate and unexplained*

There was no inordinate and unexplained delay in sending the report to the magistrate. There is no ground to doubt the presence of the eye witnesses at the scene of occurrence. They have consistently deposed that the two appellants inflicted injuries on the neck with kirpans. The medical evidence amply supports the same. There are no material contradictions or omissions which in any manner throw a doubt on their veracity. The High Court by way of an abundant caution gave the benefit of doubt to the other three accused since the allegation against them is an omnibus one. The evidence against the

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appellants being cogent and convincing and the specific overt acts having been attributed to them, there are no grounds for the Supreme Court to interfere. (Para 4). *Tara Singh* v. *State of Punjab*, 1991 Supp (1) SCC 536: 1991 SCC (Cri) 710: AIR 1991 SC 63: (1991) 28 ACC 93.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 25-10-1990]

[982] — Ss. 154, 157 and 158 — Delay in sending special report of occurrence to Magistrate — *When adverse inference cannot be drawn on ground of such delay*

It is not as if every delay in sending a special report to the District Magistrate under S. 157 CrPC would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or that the investigation is not fair and forthright. If in a case it is found that the FIR was recorded without delay and the investigation started on that FIR then however improper or objectionable the delayed receipt of the report by the Magistrate concerned, that cannot by itself justify the conclusion that the investigation was tainted and the prosecution unsupportable.

In the present case the incident took place on the night between March 27 and 28, 1972 and steps in investigation by way of drawing inquest report and other Panchanamas had been taken in the early morning of March 28, and these could only follow the handing over of FIR to the station officer at about 2.15 a.m. In view of these facts the delayed receipt of the special report by the District Magistrate on March 29 would not enable the Court to dub the investigation as tainted one nor could the FIR be regarded as ante-timed or ante-dated. For the same reasons the delay in sending the necessary papers to the medical officer which were received by him on March 29, will be of no significance. *State of U.P.* v. *Gokaran*, 1984 Supp SCC 482: 1985 SCC (Cri) 41: AIR 1985 SC 131.

Bench Strength 3. Coram: **V.D. Tulzapurkar**, *M.P. Thakkar* and *V. Khalid*, JJ. [Date of decision: 28-9-1984]

Pala Singh v. State of Punjab, (1972) 2 SCC 640: 1973 SCC (Cri) 55, followed

[983] — Ss. 154, 157 and 158 — Delay in sending special report to the Magistrate — *Delay properly explained by the constable who delivered the special report to the Magistrate — Even assuming that there was some delay it was on account of the constable — On facts, no prejudice caused to the accused* (Para 18). *Ram Kumar* v. *State of Haryana*, 1995 Supp (1) SCC 248: 1995 SCC (Cri) 355: AIR 1995 SC 280: (1995) 32 ACC 47.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 7-10-1994]

[984] — Ss. 154, 157 and 158 — Delay in sending the FIR to the Magistrate — *Occurrence taking place on 4-1-1980 — Post-mortem examination conducted on 5-1-1980 and before that the inquest completed and despatched to the Magistrate — Copy of the FIR despatched to the Magistrate on which the Magistrate set his eyes on 10-1-1980 — Such facts not concealed by the prosecution but what happened in between gone unchallenged — High Court rightly held that there was no delay in despatch of the special report especially when the foundation of the case stood laid well before the post-mortem examination completed. Surjan Mahto* v. *State of Bihar*, 1998 SCC (Cri) 886, 889.

Bench Strength 2. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 11-12-1997]

[985] — Ss. 154, 157 and 158 — FIR — Delay in sending copy of the FIR to Magistrate — *Held, would not demolish other positive and credible evidence on record — This only shows carelessness on part of the investigating agency. Shiv Ram* v. *State of U.P.*, (1998) 1 SCC 149: 1998 SCC (Cri) 278: AIR 1998 SC 49: 1998 Cri LJ 76.

Bench Strength 2. Coram: *M.M. Punchhi* and **S.P. Kurdukar**, JJ. [Date of decision: 21-10-1997]

[986] — Ss. 154, 157 and 158 — FIR lodged at 1.00 a.m. and a constable sent at 1.30 a.m. to deliver the special report to the Magistrate — Special report received by the Magistrate at about 3.15 a.m. — *Held, in the facts and circumstances, delay of about 2 hours in delivering the special report is of no consequence in the absence of any prejudice to the accused. State of Haryana* v. *Jinder Singh*, (1997) 4 SCC 180: 1997 SCC (Cri) 532.

Bench Strength 2. Coram: *M.M. Punchhi* and **Faizan Uddin**, JJ. [Date of decision: 24-1-1997]

[987] — Ss. 154, 157 and 158 — Forthwith sending FIR to Magistrate — *Must be sent even on Sundays and holidays — Practice in Bihar of not sending the FIR to the residence of Magistrate on Sundays and holidays deprecated. Arjun Marik* v. *State of Bihar*, 1994 Supp (2) SCC 372: 1994 SCC (Cri) 1551.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 2-3-1994]

[988] — Ss. 154, 157 and 158 — Mere delay in lodging FIR and further delay in sending the same to Magistrate concerned would not always be fatal to the prosecution case — *But such delay is a material circumstance to be taken into consideration while appreciating evidence on record — Having regard to reliable evidence led by prosecution, held, delay in forwarding FIR to Magistrate would not dislodge the prosecution case*

It was urged that the delay in lodging the FIR and thereafter further delay in forwarding the same to the Magistrate concerned would lead to the conclusion that the FIR had been recorded much later than the one as shown in the document and as such the very genesis of the prosecution case belies and cannot be relied upon to convict the accused-appellants.

Held :

Section 157 CrPC requires sending of an FIR to the Magistrate forthwith which reaches promptly and without undue delay. The reason is obvious to avoid any possibility of improvement in the prosecution story and also to enable the Magistrate to have a watch on the progress of the investigation. At the same time, this lacuna on the part of the prosecution would not be the sole basis for throwing out the entire prosecution case being fabricated if the prosecution had produced the reliable evidence to prove the guilt of the accused persons. The provisions of Section 157 CrPC are for the purpose of having a fair trial without there being any chance of fabrication or introduction of the fact at the subsequent stage of investigation. The cases cited by the learned counsel for the appellants do not lay down any law that simply because there is a delay in lodging the FIR or sending it to the Magistrate forthwith, the entire case of the prosecution has to be discarded. The decisions rendered by this Court and relied upon by the learned counsel for the appellant would only show that this will be a material circumstance which will be taken into consideration while appreciating the evidence on record. Having regard to the material on record, it must be held that the prosecution has led reliable evidence, the veracity of which is not dislodged by delay in recording of the FIR and delay in sending the same to the Magistrate in the facts and circumstances of this case. At best it can be taken to be an infirmity in investigation. (Paras 19 and 20). *Rabindra Mahto* v. *State of Jharkhand*, (2006) 10 SCC 432: (2006) 3 SCC (Cri) 592: AIR 2006 SC 887: 2006 Cri LJ 957: (2006) 1 KLJ 431. Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 6-1-2006]

[989] — Ss. 154, 157 and 158 — Requirement of sending FIR to the Magistrate forthwith — Object of — *Meaning of the expression "forthwith" in S. 157 — Effect of delay in despatch of FIR — On facts and in the circumstances delay in sending FIR leads to the conclusion that the Fard-beyan and FIR had been recorded much later than one as shown in the said documents*

The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word "forthwith" occurring in S. 157, which means promptly and without any undue delay. The purpose and object is very obvious which is spelt out from the combined reading of Ss. 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.

It is true that quite often there are valid reasons for the delay in the despatch of the first information report and it is not always a circumstance on the basis of which the entire prosecution case may be said to be fabricated, but it all depends on the facts and circumstances of each case where the circumstance of delay may lead to serious consequences. But in the present case there are other circumstances which cast a serious cloud on the prosecution case and this circumstance of delay in sending the FIR still hardens the suspicion and leads to the definite conclusion that the Fard-beyan and FIR both were recorded much later in point of time than the one as shown in the said documents and in any case after the appellant's house was raided and seizure of articles was effected. *Arjun Marik* v. *State of Bihar*, 1994 Supp (2) SCC 372: 1994 SCC (Cri) 1551. Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 2-3-1994]

[990] — Ss. 154, 157 and 158 — Sending copy of FIR to Illaqa Magistrate — Object — Delay in sending must be reasonably explained — *Failure to explain the delay would put the court on guard requiring it to minutely examine the prosecution version but that by itself would not render the entire prosecution case doubtful — On facts held, delay reasonably explained*

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In this case, the incident occurred at 7 a.m. in which the deceased received head injuries. The brothers of the deceased, in order to provide the injured immediate medical aid, took him first to the Primary Health Centre, then to Civil Hospital and lastly to PGI where he ultimately died at 1.15 p.m. FIR was then lodged at police station situated a few kilometres away from the hospital, after making funeral arrangements. The special report was received by the Illaqa Magistrate shortly after midnight.

Held :

The first priority of the family members was to save the life of the deceased. There is no unexplained delay in sending the special report to the Special Magistrate, as the distance between the police station and the place where the Illaqa Magistrate was stationed was not small. (Para 11)

Sending the copy of the special report to the Magistrate as required under Section 157 CrPC is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether the version as stated in the court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157 CrPC is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. (Paras 13 and 16). *Ravi Kumar* v. *State of Punjab*, (2005) 9 SCC 315: AIR 2005 SC 1929: 2005 Cri LJ 1742.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 4-3-2005]

Pala Singh v. State of Punjab, (1972) 2 SCC 640: 1973 SCC (Cri) 55, relied on

[**Ed.**: See also *Bijoy Singh* v. *State of Bihar*, (2002) 9 SCC 147: 2003 SCC (Cri) 1093]

[991] — Ss. 154 and 157 — FIR — Communal riot — Delay in sending FIR to Magistrate — *Court has to see whether there were indications in the report to show that it was a result of subsequent deliberations — Having regard to the nature of occurrence, held, the report was a true one and even if there had been some delay, that by itself cannot be a ground to hold that the same was brought into existence at a later stage. Paresh Kalyandas Bhavsar* v. *Sadiq Yakubbhai Jamadar*, (1993) 3 SCC 95: 1993 SCC (Cri) 612: AIR 1993 SC 1544: 1993 Cri LJ 1857.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 24-3-1993]

[992] — Ss. 154 and 157 — FIR lodged within 30 minutes of the occurrence clearly describing the basic prosecution case — *Mere delay in sending the same to the Magistrate is of no consequence. Betal Singh* v. *State of M.P.*, (1996) 8 SCC 205: 1996 SCC (Cri) 571: AIR 1996 SC 2770.

Bench Strength 2. Coram: *M.K. Mukherjee* and **G.B. Pattanaik**, JJ. [Date of decision: 19-3-1996]

[993] — Ss. 154, 157 and 156 — Delay in sending report to Magistrate — Effect of — *Held, that alone cannot affect the prosecution case if the same is otherwise found to be trustworthy — On facts, there was no delay at all in sending the said report rather the same was very promptly sent and delivered* (Para 12). *Gurpreet Singh* v. *State of Punjab*, (2005) 12 SCC 615.

Bench Strength 2. Coram: **B.N. Agrawal** and *A.K. Mathur*, JJ. [Date of decision: 9-11-2005]

[994] — Ss. 154, 157 and 158 — Non-explanation by prosecution for delayed dispatch and receipt of FIR and connected documents in Court of Magistrate — *Non-explanation by prosecution of serious injuries received by some of the accused persons — Lack of credibility and cogency in evidence of PW 1 — Held, though delayed receipt of FIR and connected documents in all cases may not be a factor corroding credibility of prosecution version, but considering combined effect of all these factors High Court rightly concluded that prosecution established the accusations and accordingly convicted the accused persons — Criminal Trial — Benefit of doubt. State* v. *N. Rajamanickam*, (2008) 13 SCC 303: (2008) 70 AIC 105 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat**, and *M.K. Sharma*, JJ. [Date of decision: 16-9-2008]

[995] — Ss. 154, 157 and 158 — FIR — Whether ante-timed — Delay in sending special report to Magistrate — Explanation — Murder — *Incident occurred on April 4 at 3 p.m., FIR lodged at*

3.45 p.m. — Inquest on dead bodies started at 5.45 p.m. and dead bodies removed to police headquarters at 6.30 p.m. and received therein at 7.45 p.m. — Police constable deposed that dead bodies were sealed and handed over to him between 6.30 p.m. to 7 p.m. on April 4 and that he came in possession of FIR and other related documents which were handed over to him — Constable was not cross-examined on this aspect and his statement was fortified by other evidence — Post-mortem conducted during night hours as per DM's order — Copy of FIR reached Circle Police Officer on April 5 — Special Report received by Magistrate on April 8 — Held on facts, delay in delivering the special report to Magistrate would not raise a suspicion that FIR had been written later and was ante-timed — Suspicion that a line or two might have squeezed in here and there in some of the documents prepared during the initial investigation would not dislodge the huge volume of documentary and oral evidence on the spontaneity of the FIR (Paras 14 and 15). *Sarvesh Narain Shukla* v. *Daroga Singh*, (2007) 13 SCC 360: AIR 2008 SC 320: (2008) 1 All LJ 56.

Bench Strength **2**. Coram: *S.B. Sinha* and **H.S. Bedi**, JJ. [Date of decision: 12-10-2007]

[996] — Ss. 154, 158, 157 and 174 — Sending of FIR to the Magistrate — *Dak Book or outward Register not produced by the prosecution as it was destroyed after lapse of 3 years — Kaimisanha, a contemporaneous record of what was mentioned in the FIR, mentioning that the copy of the FIR was being sent to the Magistrate concerned — Absence of positive proof regarding receipt of a copy of FIR by the Magistrate inconsequential. Girish Yadav* v. *State of M.P.*, (1996) 8 SCC 186: 1996 SCC (Cri) 552: AIR 1996 SC 3098.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 29-3-1996]

[997] — Ss. 154, 158 and 157 — Delay in forwarding FIR to Magistrate — *No satisfactory explanation therefor — Delay adversely affected the prosecution case*

The Supreme Court in *Marudanal Augusti case*, (1980) 4 SCC 425 observed that the delay in forwarding the FIR to the Magistrate would throw serious doubt on the prosecution case, whereas in *Arjun Marik* v. *State of Bihar*, 1994 Supp (2) SCC 372 it was reminded that the forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest dispatch. But, in the instant case, the prosecution did not satisfactorily explain the delayed lodging of the FIR with the Magistrate. (Paras 15 and 14). *Rajeevan* v. *State of Kerala*, (2003) 3 SCC 355: 2003 SCC (Cri) 751: AIR 2003 SC 1813.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 17-2-2003]

Marudanal Augusti v. State of Kerala, (1980) 4 SCC 425: 1980 SCC (Cri) 985; Arjun Marik v. State of Bihar, 1994 Supp (2) SCC 372: 1994 SCC (Cri) 1551, relied on

[998] — Ss. 154, 158 and 157 — Delay in sending FIR to Court — Inference of High Court in respect of, whether proper — *Held, where occurrence had taken place between 7.00 a.m. and 7.30 a.m., the distance of the police station was 10 km from the place of occurrence, FIR was lodged at 10.30 a.m. and after registering the case IO simultaneously proceeded to the place of occurrence and sent the FIR to court where the same was received at 4.15 p.m. on that day itself, held, High Court not justified in holding that delay was caused in receipt of the FIR in court* (Para 11). *Kamma Otukunta Ram Naidu* v. *Chereddy Pedda Subba Reddy*, (2003) 11 SCC 293: 2004 SCC (Cri) 155: AIR 2003 SC 3342.

Bench Strength **2**. Coram: **B.N. Agrawal** and *B.N. Srikrishna*, JJ. [Date of decision: 19-9-2003]

[999] — Ss. 154, 158 and 157 — Delay in sending FIR to Ilaqa Magistrate — Held, it is not the time, but unexplained delay in a case, which is of relevance — *Distance between police post and Ilaqa Magistrate was about 20 km — No question was put to IO as to why it took three hours for the report to reach the Magistrate — In such case, held, it was not open to say that there was delay in sending the report* (Para 13). *State of Punjab* v. *Phola Singh*, (2003) 11 SCC 58: 2004 SCC (Cri) 276: AIR 2003 SC 4407.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 22-9-2003]

[1000] — Ss. 154, 158 and 157 — Delay in sending FIR to Magistrate — Murder — Seventeen victims — Delay, held on facts, not fatal to the prosecution case

Here is a case where a serious crime had been committed and the dead bodies of as many as seventeen victims had to be taken care of and inquest and post-mortem had to be conducted at the instance of the police. This must have caused a few hours' delay in sending the FIR to the Magistrate. (Para 9). *Gurdev Singh* v. *State of Punjab*, (2003) 7 SCC 258: 2003 SCC (Cri) 1616: AIR 2003 SC 4187: 2003 Cri LJ 3764.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 1-8-2003]

(3)(vi)3. Reliability and Validity of FIR - FIR and Time - Delay in forwarding FIR to Magistrate (i.e. the report as required to be sent to Magistrate under S. 157 r/w S. 158) *(contd.)*

[1001] — Ss. 154, 157 and 174 — Delay in receipt of report, by Magistrate — Not by itself fatal to prosecution case — FIR lodged immediately after murder — *Investigation started, statements of witnesses recorded, inquest report prepared, dead bodies sent for post-mortem examination without delay — Special report sent by post — In such circumstances, the mere fact that special report was received by Magistrate after about one week from the date of occurrence, held, not sufficient to doubt prosecution case — More so when none of the witnesses including IO were examined on that point*

There was no delay in lodging of FIR. Thereafter, the investigation proceeded, the statements of the witnesses recorded, the inquest report prepared and the dead bodies were sent for post-mortem examination without delay. It is also on record that the special report was sent by post. In the background of the said facts, mere delay in receipt of the special report, in no way casts doubt on the case of the prosecution. Furthermore, none of the witnesses including the investigating officer of the case were cross-examined on that point. Therefore, it would not be proper to reject the case of the prosecution merely on the ground that there was delay in dispatch of the FIR. (Paras 16 and 17). *Dharamveer* v. *State of U.P.*, (2010) 4 SCC 469.

Bench Strength 2. Coram : *H.S. Bedi* and **C.K. Prasad**, JJ. [Date of decision : 9-3-2010]

L/Nk. Meharaj Singh v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391; Pala Singh v. State of Punjab, (1972) 2 SCC 640: 1973 SCC (Cri) 55, cited

[1002] — Ss. 154, 158 and 157 — Delay in sending FIR to Magistrate — When not fatal — *Delay in lodging the FIR explained — Few hours delay in sending the same to Magistrate, held, not of serious consequence* (Para 7). *State of Punjab* v. *Joginder Singh*, (2003) 12 SCC 179.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *B.N. Agrawal*, JJ. [Date of decision: 29-10-2003]

[1003] — Ss. 154, 158 and 157 — Delay in sending the FIR/complaint to the Jurisdictional Magistrate — When not fatal — *If the ocular evidence adduced by the prosecution is worthy of acceptance, held, the said delay by itself not fatal to the prosecution case — There was no delay in preparing the FIR but there was some delay in transmitting the said information to the Jurisdictional Magistrate — Delay satisfactorily explained by the prosecution — Testimony of PWs found reliable — Thus, on facts, the said delay did not affect the prosecution case adversely*

If the ocular evidence adduced by the prosecution is worthy of acceptance, the element of delay in registering a complaint or sending the same to the Jurisdictional Magistrate by itself would not in any manner weaken the prosecution case. In the instant case, the evidence of PWs 1 and 2 does not suffer from any such contradiction or omission which makes the said evidence unbelievable. (Paras 10 and 13)

The incident in question took place at about 8.30 p.m. on 5-5-1990. The FIR reached the Jurisdictional Magistrate at about 3.05 a.m. on 6-5-1990. There was no delay in preparing the FIR but there was some delay in transmitting the said information to the Jurisdictional Magistrate. The prosecution has given satisfactory explanation for this delay. Having been satisfied with the fact that the FIR in question was registered in the morning of 6-5-1990, it could not be said that the delay thereafter in communicating it to the Jurisdictional Magistrate on the facts of this case, has really given any room to doubt that the FIR was created after much deliberation. (Para 10). *Balram Singh* v. *State of Punjab*, (2003) 11 SCC 286: 2004 SCC (Cri) 149: AIR 2003 SC 2213.

Bench Strength 3. Coram: **N. Santosh Hegde**, *Ashok Bhan* and *B.P. Singh*, JJ. [Date of decision: 7-5-2003]

[1004] — Ss. 154, 158 and 157 — Delay of one day in sending the FIR to the Magistrate — *Held on facts, not fatal*

Though the incident happened on 25-6-1984, injured *S* passed away during the night of 25-6-1984/26-6-1984. There was only one day's delay in sending the first information report to the Magistrate. The "fardbeyan" was received in Hilsa Police Station on 25-6-1984 and from there it was sent to Hilsa Court. This must have caused some delay in sending the FIR to the Magistrate. (Para 7). *Krishna Gope* v. *State of Bihar*, (2003) 10 SCC 45: AIR 2003 SC 3114: 2003 Cri LJ 3890.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 25-8-2003]

[1005] — S. 154 — FIR — Delay in recording and sending of report to Magistrate — Appellant-accused husband alleged to have strangled the deceased while her in-laws held her, for non-fulfilment of dowry demand — *Demand for dowry not proved — Testimonies of PWs neither inspiring confidence, nor corroborating each other — Incident alleged to have occurred at about 6 a.m. but fardbeyan recorded only after 9.30 p.m. when IO visited place of occurrence, despite fact that*

PWs (father and brother of deceased, and one acquaintance) were with dead body for entire day — Moreover, FIR reached Magistrate only after five days which was extremely suspicious since court and police station were in same city — Though medical evidence suggesting that there were multiple bruises which could be due to forcible pressure of fingers, and even if it were assumed that deceased died due to throttling, there was no convincing evidence that it was the accused alone who had throttled deceased to death — Further, there were many lacunae in investigation — Furthermore, DWs had stated that deceased was alive after 6 a.m.; and one of them even stated that she had offered breakfast to her husband at about 11 a.m. — Held, in such circumstances, benefit of doubt must go to appellant — Hence, impugned judgment confirming conviction of appellant under S. 302 set aside — Penal Code, 1860 — Ss. 302, 304-B and 498-A (Paras 13 to 32). *Arun Kumar Sharma* v. *State of Bihar*, (2010) 1 SCC 108.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 5-10-2009]

Arun Kumar Sharma v. State of Bihar, (2002) 3 PLJR 174, reversed

[1006] — Ss. 154, 158 and 157 — Delay of six days in sending FIR to Magistrate — Effect — *Contention that said delay enabled the prosecution to cook up a false case against the accused — Sustainability of — IO not given opportunity to explain the said delay — Further, FIR containing only a brief statement of events — Absence of any further details in FIR showing its genuineness — Hence, the said delay, held, not fatal* (Para 8). *Sahdeo* v. *State of U.P.*, (2004) 10 SCC 682: 2004 SCC (Cri) 1873: AIR 2004 SC 3508: 2004 Cri LJ 2876.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 30-4-2004]

[1007] — Ss. 154, 158 and 157 — FIR reaching the Jurisdictional Magistrate more than 36 hrs. after the incident — *No explanation given in respect of — Distance between Magistrate's court and police station was very close — Said delay, held on facts, created a serious doubt about the prosecution case* (Para 9). *Kunju Mohd.* v. *State of Kerala*, (2004) 9 SCC 193: 2004 SCC (Cri) 1425.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-8-2003]

[1008] — Ss. 154, 158 and 157 — FIR recorded at 9.00 p.m. — Reached the court on next day at 1.30 p.m. — *On facts, held, no delay in sending the FIR to the court — Penal Code, 1860 — Ss. 302/34 and 302/114 — Arms Act, 1959 — Ss. 25 and 27* (Para 9). *Hem Raj* v. *Raja Ram*, (2004) 9 SCC 18: 2004 SCC (Cri) 1412: AIR 2004 SC 1489: 2004 Cri LJ 901.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 22-1-2004]

[1009] — Ss. 154, 158 and 157 — Inordinate delay of 1 1/2 days in sending the report to the Magistrate after the registration of complaint — *In absence of any explanation therefor, held, the said delay contributed to the doubtful circumstances surrounding the prosecution case*

The express message which PW 13 sent to the Jurisdictional Magistrate reached the said Magistrate at his place only on 12-10-1992 nearly 1 1/2 days after the said complaint was registered. There is no explanation from PW 13 as to this inordinate delay which only adds to the doubtful circumstances surrounding the prosecution case. (Para 9). *Suresh Chaudhary* v. *State of Bihar*, (2003) 4 SCC 128: 2003 SCC (Cri) 801: AIR 2003 SC 1981: 2003 Cri LJ 1717.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 5-3-2003]

[1010] — Ss. 154, 158 and 157 — Special report received by Magistrate ten days after its alleged dispatch — *Delay not explained by prosecution — Hence proved fatal* (Paras 23 and 24). *Badam Singh* v. *State of M.P.*, (2003) 12 SCC 792: AIR 2004 SC 26: 2004 Cri LJ 22.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 4-11-2003]

4. Delay in lodging/filing FIR

See also Section 154, '(3)(vi)2. Ante-timed FIR', above

[1011] — S. 154 — Delay, held, by itself is not fatal to the prosecution case but requires satisfactory explanation — *Delay in filing FIR in rape cases is normal especially when the perpetrator is a relative — A village girl of the age of 5 years 6 months, complaining commission of rape on her at about 6.30 p.m. on 29-10-1991 while her widow mother was away — The accused (appellant) was a relative — FIR lodged by mother on 31-10-1991 in the morning — In the intervening period, the mother discussed the incident with her in-laws who in turn called upon respondent's father — The matter was reported to police when it was not settled within the family — Held, the sequence of events as projected by the prosecution sounded quite natural and provided satisfactory explanation for the delay — Prosecution story could not therefore be disbelieved on the ground of delay — Penal Code, 1860, Ss. 375 and 376*

(3)(vi)4. Reliability and Validity of FIR - FIR and Time - Delay in lodging/filing FIR *(contd.)*

Delay in lodging FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding it. Delay has the effect of putting the court on its guard to search if any explanation has been offered, and if offered, whether or not it is satisfactory. If prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution case. However, if the delay is explained to the satisfaction of the court, it cannot by itself be a ground for disbelieving and discarding the entire prosecution case. The accused, in the present case, is a close relation of prosecutrix's late father. The mother obviously needed her in-laws to accompany her or at least to help her in lodging an FIR. The incident having occurred in a village, the approach of in-laws displayed rusticity in first calling upon father of the accused. It remained an unpleasant family affair on the next day of the incident which was tried to be settled, if it could be, within the walls of the family. That failed. It is thereafter only that the complainant who is a widow, left all by herself and having no male family member willing to accompany her, proceeded alone to the police station. She was lent moral support by the village *Panch*, whereupon report of the incident was lodged. The sequence of events soon after the crime provide a satisfactory explanation for the delay. The High Court has not looked into the explanation offered and very superficially recorded a finding of the delay having remained unexplained. It is common knowledge and also judicially noted fact that incidents like rape, more so when the perpetrator of the crime happens to be a member of the family or related therewith, involve the honour of the family and therefore there is a reluctance on the part of victim's family to report the matter to police and carry it to the court. A cool thought may precede lodging of FIR. The delay has been satisfactorily explained in this case and therefore it does not cause any dent in the prosecution case. (Para 12). *State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71: 2001 SCC (Cri) 980: AIR 2001 SC 2075.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Doraiswamy Raju*, JJ. [Date of decision: 1-5-2001]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Harpal Singh v. State of H.P., (1981) 1 SCC 560: 1981 SCC (Cri) 208, relied on

Gian Chand v. State of H.P., (1996) 2 Crimes 213 (HP), reversed

[1012] — Ss. 154 and 482 — Delay in FIR — Principles reiterated

One *K* executed an agreement dated 4-1-1988 to sell the land specified, in favour of the respondents. The land was already mortgaged with the respondents. The sale deed was to be executed and registered by 10-6-1989. According to the appellants herein, on 22-10-1988, *K* entered into an agreement with their father to sell the same land, and received a certain amount as earnest money. The sale was to be executed and registered by 15-6-1989.

The respondents filed a suit for specific performance of the sale deed against *K* in 1989 which was decreed in 1996 and in pursuance thereof, the sale was executed by *K* in favour of the respondents. The father of the appellants filed a suit seeking cancellation/setting aside of the said decree but the same stood dismissed. An appeal filed thereagainst continued to be pending.

In 2002, the father of the appellants filed an FIR under Sections 420/423/467/468/120-B IPC alleging that *K*'s signatures on the agreement to sell dated 4-1-1988 were forged. At the instance of the respondents, the High Court quashed the FIR on the ground that the civil court had recorded a finding that the document in question was not forged or fabricated. The first informants then filed the present appeal by special leave.

Finding the order of the High Court to be not sustainable legally but in the facts and circumstances of the case refusing interference,

Held :

No explanation has been furnished as to why after expiry of the date of execution of the sale deed in favour of the appellants' father i.e. 15-6-1989, the appellants' father did not file the suit for specific performance which was subsequently filed on 6-2-1996. Even if it is presumed that he was not aware of the suit filed by the respondents, no explanation could be furnished that in case the appellants' father filed another suit for setting aside the decree passed in the respondents' suit, why did he wait till the decision of that suit for lodging FIR, as the civil and criminal proceedings could have proceeded simultaneously. The FIR was filed only after filing of appeal thereagainst before High Court on 15-7-2002. (Para 20)

Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (Paras 21 and 24)

In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Para 22). *Kishan Singh* v. *Gurpal Singh*, (2010) 8 SCC 775.

Bench Strength **2**. Coram : *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision : 12-8-2010]

Sahib Singh v. State of Haryana, (1997) 7 SCC 231: 1997 SCC (Cri) 1049; Chandrapal Singh v. Maharaj Singh, (1982) 1 SCC 466: 1982 SCC (Cri) 249; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Gorige Pentaiah v. State of A.P., (2008) 12 SCC 531: (2009) 1 SCC (Cri) 446, relied on

[1013] — S. 154 — Allegation of fabrication and delay in lodging FIR in the face of regular entries in public documents — *Presumption of due performance of official acts — Evidence Act, 1872, S. 114*

Once the prosecution had shown that regular entries were made in public document namely, the general diary regarding the registration of the case and the forwarding of the special report to the higher authorities and of the return of the person who had taken the special report to the Police Station the legal presumption would be that official acts must have been duly performed.

Of course, it would have been better if the prosecution would have completed the link in the chain by examining the constable who took the report and showing the exact time when the FIR was received by the Magistrate or the S.P., but even if it did not do so that was not sufficient to put the prosecution out of court.

In the present case the fact of filing of FIR at 9.10 a.m. had to be believed since three of the injured were medically examined at 10.30, 11.00 and 11.45 a.m. The fact that the constable who took the FIR to the Magistrate or the S.P. returned at 8 p.m., is therefore of no significance. *Sone Lal* v. *State of U.P.*, (1978) 4 SCC 302: 1978 SCC (Cri) 587: AIR 1978 SC 1142: 1978 Cri LJ 1122: 1978 ALJ 530.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 6-4-1978]

[1014] — S. 154 — Effect — Held, time and again, the object and importance of prompt lodging of the FIR has been highlighted — *More often than not, results in embellishment and exaggeration, which is a creature of an afterthought — Delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity — Therefore, it is essential that the delay in lodging the report should be satisfactorily explained — In the instant case Accused 1 to 4 alleged to have forced complainant to consume poison as a result whereof she was admitted in nursing home in an unconscious state on 19-4-1996 — FIR in regard thereto lodged on 22-5-1996 — Admittedly, after her discharge from the hospital on 22-4-1996, the complainant went to her parents' house and resided there — Complainant stating that since no one from the family of the accused came to enquire about her welfare, she decided to lodge the FIR — No explanation worth the name for delay in filing the complaint with the police was brought on record — Held, such circumstances raise considerable doubt regarding the genuineness of the complaint and the veracity of the evidence of the complainant (PW 1) and her father (PW 3), rendering it unsafe to base the conviction of the respondent upon it — Resultantly, when the substratum of the evidence given by the complainant (PW 1) is found to be unreliable, the prosecution case has to be rejected in its entirety* (Paras 30 and 31). *State of A.P.* v. *M. Madhusudhan Rao*, (2008) 15 SCC 582: (2009) 3 SCC (Cri) 1123: (2009) 1 ECrN 489 (SC): (2008) 71 AIC 8 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 24-10-2008]

(3)(vi)4. Reliability and Validity of FIR - FIR and Time - Delay in lodging/filing FIR *(contd.)*

[1015] — S. 154 — Delay in lodging FIR — Falsity of FIR — High Court not finding any delay — *On facts, conviction of appellants under Ss. 147, 148, 323, 324, 307 and 302 IPC r/w S. 149 IPC by courts below upheld* (Paras 12 to 14). *Kilari Malakondiaah* v. *State of A.P.*, (2008) 15 SCC 311: (2009) 3 SCC (Cri) 974: (2008) 72 AIC 13 (SC): (2009) 1 ECrN 910 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 21-11-2008]

[1016] — S. 154 — FIR — Delay in filing — Effect — *Held, delay in lodging FIR impels the court to scrutinise evidence of witnesses regarding actual occurrence with greater care and caution* (Para 20). *Darshan Singh* v. *State of Punjab*, (2010) 2 SCC 333.

Bench Strength 2. Coram: **Dalveer Bhandari** and *A.K. Ganguly*, JJ. [Date of decision: 15-1-2010]

[1017] — S. 154 — FIR — Delay in lodging/filing FIR — When not a factor for discrediting prosecution case — *Immediately after occurrence of incident, deceased taken to hospital by complainant and other relations where he was declared dead — One general diary entry entered on same night which was just after a gap of about two hours — Therefore, considering normal human conduct, held, delay of about two hours between occurrence and lodging of complaint, was not a factor for discrediting prosecution case — Hence, finding of acquittal on ground of this delay, not a reasonable exercise of jurisdiction by appellate court* (Paras 23 and 26). *Champaben Govindbhai* v. *Popatbhai Manilal*, (2009) 13 SCC 662: (2009) 82 AIC 48 (SC).

Bench Strength 2. Coram: *D.K. Jain* and **A.K. Ganguly**, JJ. [Date of decision: 31-7-2009]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033, relied on

[1018] — S. 154 — Delay in filing FIR — By itself not fatal to the prosecution case, if the delay is explained to the satisfaction of the court — *Incident of rape taking place on Oct. 1 but reported to the police on Oct. 5 — Initial hesitation on the part of victim's father to give publicity as also other factors such as likelihood of communal tension etc. stated as reasons for the delay — Held, on facts explanation acceptable — Hence prosecution case cannot be wholly disbelieved merely on ground of such delay — Penal Code, 1860, S. 376*

A mere delay in lodging the FIR cannot be a ground by itself for throwing the entire prosecution case overboard. The court has to seek an explanation for delay and test the truthfulness and plausibility of the reason assigned. If the delay is explained to the satisfaction of the court it cannot be counted against the prosecution. (Para 15)

In the present case it is true that the incident dated 1-10-1993 was reported to the police on 5-10-1993. The prosecutrix was a married woman. Her *muklana* ceremony had not taken place. Muklana ceremony is a rural custom prevalent in Rajasthan, whereunder the bride is left with the parents after marriage having been performed and is taken away by the husband and/or the in-laws to live with them only after a lapse of time. The origin of the custom owes its existence to performance of child-marriages which are widely prevalent there. The *muklana* was yet to take place. The prosecutrix was a virgin prior to the commission of the crime and this fact finds support from the medical evidence. The parents of such a prosecutrix would obviously be chary to such an incident gaining publicity because it would have serious implications for the reputation of the family and also on the married life of the victim. The husband and the in-laws having become aware of the incident may even refuse to carry the girl to reside with them. The incident if publicised may have been an end to the marriage of the prosecutrix. Added to this is the communal tinge which was sought to be given by the community of the accused. (The accused and the prosecutrix belonged to different communities.) The father of the prosecutrix and other witnesses have stated that while they were about to move to the police station they were prevented from doing so by the community fellows of the accused who persuaded them not to lodge a report with the police and instead to have the matter settled by convening a *panchayat* of the village people. After all the family of the victim had to live in the village in spite of the incident having taken place. The explanation is not an afterthought. An indication thereof is to be found in the FIR itself where the complainant stated — "the delay in lodging the report is due to village panchayat, insult and social disrepute". Nothing has been brought out in the cross-examination of the witnesses to doubt the truth and reasonableness of the explanation so offered. (Para 14). *State of Rajasthan* v. *N.K.*, (2000) 5 SCC 30: 2000 SCC (Cri) 898: AIR 2000 SC 1812: 2000 Cri LJ 2205.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *S.N. Variava*, JJ. [Date of decision: 30-3-2000]

State of Rajasthan v. Narayan, (1992) 3 SCC 615: 1992 SCC (Cri) 781; State of Punjab v. Gurmeet Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977, relied on

[1019] — S. 154 — FIR — Delay — Considerations in sexual offences — Effect of — *FIR lodged after about four months of commission of offence — Panchayat had intervened and it pressurised complainant to compromise — Panchayat met several times — Fine of Rs 1100 imposed on appellant — Complainant had demanded that appellant be fined to the tune of Rs 5000 and be taken in procession after blackening his face and be paraded in village — Demand not accepted by Panchayat — Ultimately complainant raised grievance before SP — Report lodged on instruction of SP — Held, delay in lodging FIR has been satisfactorily explained — Delay in lodging FIR in sexual offences has to be considered with a different yardstick — Penal Code, 1860 — Ss. 375 and 376* (Paras 10 to 18). *Satpal Singh* v. *State of Haryana*, (2010) 8 SCC 714.

Bench Strength **2**. Coram : *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision : 28-7-2010]

Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of A.P. v. M. Madhusudhan Rao, (2008) 15 SCC 582: (2009) 3 SCC (Cri) 1123; Satyapal v. State of Haryana, (2009) 6 SCC 635: (2009) 3 SCC (Cri) 108; State of H.P. v. Prem Singh, (2009) 1 SCC 420: (2009) 1 SCC (Cri) 351, relied on

[1020] — S. 154 — Delay in filing FIR — Effect on credibility of prosecution case — *Held, by itself cannot be a ground to doubt the prosecution case and discard it — It would put the court on its guard to search if any plausible explanation has been offered and if offered whether it is satisfactory — Father of the deceased finding the dead body of his daughter at 1 p.m. on 8-9-1990, yet lodging the FIR on 9-9-1990 at 7.30 p.m. — Explanation offered being that he was shocked and mentally unfit to lodge the complaint, found sufficient and satisfactory by the courts below — Held, after finding his newly wedded daughter's dead body in her matrimonial home, where he had left her just a day before, it was very natural for the father to lose his tranquillity of mind — Hence if such grief-stricken father had told the police that he would give the complaint afterwards, it was not unnatural or unusual — Besides, there was no reason to falsely implicate the accused-appellants, nor any allegation that his daughter was murdered were made in the complaint which contained only narration of facts of the harassment meted out to the deceased — Hence, simply because of the delay it cannot be said that the allegations in the FIR are unworthy of credence or that the accused-appellants had been falsely implicated. Sahebrao* v. *State of Maharashtra*, (2006) 9 SCC 794: (2006) 3 SCC (Cri) 408: AIR 2006 SC 2002: 2006 Cri LJ 2881.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 3-5-2006]

State of H.P. v. Gian Chand, (2001) 6 SCC 71: 2001 SCC (Cri) 980; Ravinder Kumar v. State of Punjab, (2001) 7 SCC 690: 2001 SCC (Cri) 1384; Zahoor v. State of U.P., 1991 Supp (1) SCC 372: 1991 SCC (Cri) 678; Tara Singh v. State of Punjab, 1991 Supp (1) SCC 536: 1991 SCC (Cri) 710; Jamna v. State of U.P., 1994 Supp (1) SCC 185: 1994 SCC (Cri) 348; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, relied on

[1021] — S. 154 — Delay in lodging FIR — Reliability of such FIR — *Appraising evidence of PW 1 (eyewitness and father of the deceased), the informant, his explanation for delay, inter alia, was that due to fear of accused and non-availability of conveyance, he could not promptly go to police station to lodge FIR — Said explanation, held, quite satisfactory and convincing and there was no deliberate delay in reporting crime to police — Contention, therefore, unsustainable* (Paras 13 to 15). *Indra Pal Singh* v. *State of U.P.*, (2008) 16 SCC 648: AIR 2009 SC 958: (2009) 74 AIC 244 (SC): (2009) 1 All LJ 666: 2009 Cri LJ 942.

Bench Strength **2**. Coram: **L.S. Panta** and *Aftab Alam*, JJ. [Date of decision: 2-12-2008]

State of U.P. v. Ayodhya Singh, (2006) 55 All Cri C 216, affirmed

[1022] — S. 154 — FIR — Delay — Effect — *Incident taking place in the early morning hours while FIR lodged at 1.30 p.m. — PW 1 immediately lodging complaint after occurrence, and was accompanied by PW 2 (grievously injured witness) to police station — PW 2 taken to a hospital first and FIR recorded at 1.30 p.m. on basis of the complaint — Held, in such circumstances delay of few hours would not vitiate the prosecution version — It was consistent with normal human conduct that effort would be first made to save life of a seriously injured person before spending time on anything else* (Paras 10 and 18). *Hari* v. *State of Maharashtra*, (2009) 11 SCC 96: (2009) 3 SCC (Cri) 1254.

Bench Strength **2**. Coram: *S.B. Sinha* and **A.K. Ganguly**, JJ. [Date of decision: 23-3-2009]

State of Rajasthan v. Rajendra Singh, (2009) 11 SCC 106: 1998 SCC (Cri) 1605, distinguished on facts

[1023] — S. 154 — FIR — Delay — Informant going to wrong police station — Delay explained (Para 15). *State of Maharashtra* v. *Prakash Sakha Vasave*, (2009) 11 SCC 193: (2009) 3 SCC (Cri) 1289: AIR 2009 SC 1636.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 21-1-2009]

[1024] — S. 154 — Presumption of adverse inference as to guilt — Incorrect basis — The fact of delay in informing police (lodging FIR) was misconstrued — *PW 1 (neighbour of appellant) getting information from appellant had*

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informed the police — On facts, held, no presumption of adverse inference can be raised against the appellant. Dinesh Borthakur v. *State of Assam*, (2008) 5 SCC 697: (2008) 3 SCC (Cri) 39: AIR 2008 SC 2205.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 13-3-2008]

[1025] — S. 154 — Delay in filing FIR — Indirect information to police prior to FIR — Effect — *FIR was lodged by appellant-accused only when police arrived at the scene of occurrence — PW 1 (neighbour of appellant) getting information from appellant had informed the police — Held, there is no delay on the part of appellant in informing the police*

There was no delay on the part of the appellant in informing the police, particularly, when he had informed PW 1 who, in turn, informed the police. The first information report might have been lodged by the appellant only when the police arrived at the scene of occurrence. The investigating officer came to the place of occurrence at about 4.45 p.m. PW 1 categorically stated that he had asked somebody (whose name has not been disclosed) to inform the police. As the said request was not complied with, he himself informed the officer in charge of the police station about the incident. (Paras 58 and 5)

Though the appellant had not informed the officer in charge of the police station, no presumption of adverse inference could be raised against him. The learned trial Judge, apart from the statements made by the prosecution witnesses in regard to the conduct of the appellant opined that the appellant had failed to establish his own innocence. An adverse inference was drawn against the accused in regard to his failure to inform about the death of his wife and adopted daughter till the arrival of the police party to his house. (Paras 58 and 27). *Dinesh Borthakur* v. *State of Assam*, (2008) 5 SCC 697: (2008) 3 SCC (Cri) 39: AIR 2008 SC 2205.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 13-3-2008]

[1026] — S. 154 — Delay in filing FIR — Inference — Study of factual situation — Prompt filing whether guarantees veracity of the report *— CrPC, 1898, S. 154*

It is true that witnesses cannot be called upon to explain every hour's delay and a commonsense view has to be taken in ascertaining whether the First Information Report was lodged after an undue delay so as to afford enough scope for manipulating evidence. Whether the delay is so long as to throw a cloud of suspicion on the prosecution case must depend upon a variety of factors which would vary from case to case. Even a long delay in filing report of an occurrence can be condoned if the witnesses on whose evidence the prosecution relies have no motive for implicating the accused. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness version of the prosecution. *Ram Jag* v. *State of U.P.*, (1974) 4 SCC 201: AIR 1974 SC 606.

Bench Strength 2. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 21-12-1973]

[1027] — S. 154 — Delay in filing FIR — Police outpost in village where occurrence taking place *— But informant proceeding to jurisdictional police station which was 6-7 km away and that too on foot though having a tractor and a scooter in his house — Meeting PW 19 (police) on the way 2 km before the police station — Complaint lodged with PW 19 at 7 p.m. but the same reaching the police station at about 11.15 p.m. — No explanation regarding this delay — As per PW 9, police arriving at the place of occurrence at about 7.30 p.m. — PW 19 in his evidence not mentioning the time of recording of the complaint — Held, actual complaint drafted at village after due deliberations and sent to police station well past 10 p.m. — Thus, PW 4 had no knowledge about the assailants when he met PW 19 — Prosecution case doubtful* (Paras 10 and 17). *Mohinder Singh* v. *State of Punjab*, (2004) 12 SCC 311: AIR 2003 SC 4399: 2003 Cri LJ 5002.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-9-2003]

[1028] — S. 154 — Delay in filing FIR — Police station at a short distance — Delay explained — *Members of Peoples' War Group armed with pistol and tamanchas suddenly appearing and firing at one of the three ex-members of the Group — One (PW 1 herein) of the remaining two ex-members rushing to police station at a distance of 200 ft and the other one running away — PW 1 returning with the police, taking the injured one to hospital where the injured dying 55 minutes after the incident — Five minutes later, PW 1 returning to police station and lodging formal FIR — In such circumstances, held, there was no delay in filing of FIR — Penal Code, 1860, Ss. 302 and 34 — TADA Act, 1987, Ss. 3(2)(i) & (ii) and 5 — Arms Act, 1959, S. 27* (Para 11). *Sheelam Ramesh* v. *State of A.P.*, (1999) 8 SCC 369: 1999 SCC (Cri) 1437: AIR 2000 SC 118.

Bench Strength 2. Coram: *G.T. Nanavati* and **S.N. Phukan**, JJ. [Date of decision: 12-10-1999]

[1029] — S. 154 — Delay in registration and forwarding of FIR to Magistrate — On facts, held, there was no such delay — *On facts, held, there was no such delay — Penal Code, 1860 — S. 302*

The contention about delay in registering the FIR in sending the same to the Magistrate is without any substance. PW 13, in his deposition before the trial court, clearly stated that immediately on receipt of information about the incident, PW 13 intimated his senior officer, PW 14 at the police station about the same. He further stated that after registering the FIR at 11.10 a.m. (the incident having taken place at 9.25 am), he forwarded the FIR to the Magistrate forthwith. The crystal clear statements furnished by PW 13 (police SI) do not leave any doubt that there was any delay either in registering the FIR or in forwarding the same to the Magistrate. (Para 25). *Jayabalan* v. *UT, Pondicherry*, (2010) 1 SCC 199.

Bench Strength **2**. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 6-11-2009]

[1030] — S. 154 — Delay in filing FIR in sexual offences — Reluctance of the prosecutrix or her family members must be taken into consideration — *On facts, delay not only properly explained but also found natural — Penal Code, 1860, S. 376*

The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. *State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

[1031] — S. 154 — FIR — Delay in filing — Effect — Held, not fatal in each and every case — *Factum of delay requires the court to scrutinise the evidence adduced with greater degree of care and caution — Further held, delay by itself would not be sufficient to discard the prosecution version unless it is unexplained and such delay is coupled with the likelihood of concoction of evidence — In the instant case, occurrence taking place around midnight of 24/25-8-1995, statement recorded by ASI at 9.40 a.m. on basis of which formal FIR recorded at 11 a.m. on 25th, while the copy thereof reached the Magistrate at 7 p.m. — Late delivery was due to floods, which was specifically noted by the Magistrate and undisputed — Held, the delay was satisfactorily explained* (Para 12). *Silak Ram* v. *State of Haryana*, (2007) 10 SCC 464: (2008) 1 SCC (Cri) 58: AIR 2007 SC 2739: (2007) 57 AIC 29 (SC): 2007 Cri LJ 3760.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 6-8-2007]

[1032] — S. 154 — FIR — Delay in filing FIR — Effect — *Held, though mere delay in lodging of the report may not by itself be fatal to the case of the prosecution, but the delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the court of fact — Circumstances under which delay may be condoned, stated — On facts, further held, FIR was lodged eight days after the alleged occurrence, for which no satisfactory explanation was rendered — Hence, appellants given benefit of doubt — Penal Code, 1860 — Ss. 375 and 376*

In the light of the totality of the evidence, the court of fact has to consider whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation there may be circumstances appearing on record which provide a reasonable explanation for the delay. There are cases where much time is consumed in taking the injured to the hospital for medical aid and, therefore, the witnesses find no time to lodge the report promptly. There may also be cases where on account of fear and threats, witnesses may avoid going to the police station immediately. The time of occurrence, the distance to the police station, mode of conveyance available, are all factors which have a bearing on the question of delay in lodging of the report. (Para 24)

It is also possible to conceive of cases where the victim and the members of his or her family belong to such a strata of society that they may not even be aware of their right to report the matter to the police and seek legal action, nor was any such advice available to them. (Para 24)

In the case of sexual offences there is another consideration which may weigh in the mind of the court i.e. the initial hesitation of the victim to report the matter to the police which may affect her family life and family's reputation. Very often in such cases only after considerable persuasion the prosecutrix may be persuaded to disclose the true facts. There are also cases where the victim may choose to suffer the ignominy rather than to

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disclose the true facts which may cast a stigma on her for the rest of her life. These are cases where the initial hesitation of the prosecutrix to disclose the true facts may provide a good explanation for the delay in lodging the report. In the ultimate analysis, what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence, and the court must consider the delay in the background of the facts and circumstances of each case. Different cases have different facts and it is the totality of evidence and the impact that it has on the mind of the court that is important. No straitjacket formula can be evolved in such matters, and each case must rest on its own facts. (Para 24). *Ramdas* v. *State of Maharashtra*, (2007) 2 SCC 170: (2007) 1 SCC (Cri) 546: AIR 2007 SC 155: (2007) 49 AIC 418 (SC).

Bench Strength **2**. Coram: **B.P. Singh** and *Tarun Chatterjee*, JJ. [Date of decision: 7-11-2006]

[1033] — S. 154 — FIR — Delay in lodging of — By itself not fatal to the prosecution case — A matter of appreciation of the evidence — *Normal human nature in the context of Indian rural conditions have to be kept in mind — In absence of indications of fabrication and false implication of accused, version given in FIR and later substantiated by evidence cannot be rejected merely on ground of such delay*

According to the prosecution the two appellants, who were armed with kirpans and three other accused who were armed with gandasas and takwa, emerged from the field at about 5 p.m. and at the instigation of the first appellant, all the accused chased and overtook the deceased. The first appellant (A-1) inflicted a kirpan blow on his neck while the second appellant inflicted another blow on the neck and they inflicted further blows on the deceased on receipt of which he fell down. The other accused thereafter gave him some blows. The accused thereupon ran away. An eye witness (PW 2) then went to the village at a distance of half a mile, informed the Lambardar and proceeded along with the Lambardar to the police station at a distance of 6 1/2 miles and lodged the FIR at about 8.45 p.m. on the same evening particularly mentioning that the two appellants inflicted injuries with kirpans on the neck of the deceased. On the basis of the report the Investigating Officer prepared copies of the FIR and despatched the same to all the concerned officers including the local Magistrate who received the same at about 2.45 a.m. Post mortem disclosed 12 incised wounds and one contusion. Some of them were on the head and injuries Nos. 7, 8 and 11 were either on the neck or near about. The doctor opined that the death was due to shock and haemorrhage and that injuries Nos. 1 to 5 which were on the head were also individually sufficient to cause death. The accused were absconding. Then later they were arrested and at their instance the weapons were recovered. The trial court relying on the evidence of the three eyewitnesses, which was corroborated by the medical evidence and the circumstantial evidence, convicted all the five accused and sentenced them to suffer imprisonment for life and also to pay a fine of Rs 1500 each. The Division Bench of the High Court, however, felt it unsafe to convict all the five accused since no specific acts attributed to accused 3 to 5 and accordingly convicted under S. 302/34 IPC the two appellants only to whom specific overt acts were attributed and acquitted the other three accused. Before the Supreme Court it was contended on behalf of the appellants that there was unexplained delay in the special report reaching the Magistrate and therefore a reasonable doubt arose that this time should have been utilised for consultation with a view to implicate some of the appellants falsely out of enmity.

Dismissing the appeal,

Held :

The delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are these villagers cannot be expected to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-striken because of the calamity it may not immediately occur to them that they should give a report. It is but natural in these circumstances for them to take some time to go to the police station for giving the report. As in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely, courts in order to avert the danger of convicting such innocent persons, are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case. (Para 4)

There was no inordinate and unexplained delay in sending the report to the magistrate. There is no ground to doubt the presence of the eye witnesses at the scene of occurrence. They have consistently deposed that the two appellants inflicted injuries on the neck with kirpans. The medical evidence amply supports the same. There are no material contradictions or omissions which in any manner throw a doubt on their veracity. The High Court by way of an abundant caution gave the benefit of doubt to the other three accused since the allegation against them is an omnibus one. The evidence against the appellants being cogent and convincing and the specific overt acts having been attributed to them, there are no grounds for the Supreme Court to interfere. (Para 4). *Tara Singh* v. *State of Punjab*, 1991 Supp (1) SCC 536: 1991 SCC (Cri) 710: AIR 1991 SC 63: (1991) 28 ACC 93.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 25-10-1990]

Balaka Singh v. State of Punjab, (1975) 4 SCC 511: 1975 SCC (Cri) 601, distinguished

[1034] — S. 154 — Genuine causes for, illustrated — Delayed FIR is neither illegal nor necessarily fatal — *Court has to ascertain the causes for the delay in a particular case and if the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the prosecution case — Where death of the deceased was confirmed only when his dead body was identified two days after his disappearance and thereafter it took some time for deceased's grief-stricken widow to come to the level of placidity so as to communicate to others, held, delay of two days in lodging the FIR was not a vitiating factor*

The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It is to be noted that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. Even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein. (Para 13)

When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgement to get delayed. Rural people might be ignorant of the need to inform the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquillity of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident. This is not an exhaustive catalogue of instances which could cause delay in lodging the FIR. (Para 14)

The stale demand made in the criminal courts to treat the FIR vitiated, merely on the ground of delay in its lodgement cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR. (Para 15)

In the present case, no doubt, there is apparently a long delay of two days to give information to the police but the bereaved widow was not absolutely certain that she lost her husband once and for all until her brother-in-law confirmed to her, after identifying the dead body, that the same was that of her husband. The initial tension and suspense undergone by her would have billowed up into a massive wave of grief. It is only understandable how much time a woman, placed in such a situation, would take to reach some level of placidity for communicating to the strangers of what she knew about the last journey of her husband. Therefore, there is no merit in the contention that the inordinate delay in filing the FIR was itself a vitiating factor. (Para 16). *Ravinder Kumar* v. *State of Punjab*, (2001) 7 SCC 690: 2001 SCC (Cri) 1384: AIR 2001 SC 3570.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 31-8-2001]

Zahoor v. State of U.P., 1991 Supp (1) SCC 372: 1991 SCC (Cri) 678; Tara Singh v. State of Punjab, 1991 Supp (1) SCC 536: 1991 SCC (Cri) 710; Jamna v. State of U.P., 1994 Supp (1) SCC 185: 1994 SCC (Cri) 348, relied on

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[1035] — S. 154 — Lodging of FIR regarding a gruesome murder after 3 hours at a police station 4 1/2 miles away from the place of occurrence, cannot amount to unreasonable delay — *Delay properly explained. Abdul Razaq* v. *Nanhey*, 1984 Supp SCC 15: 1984 SCC (Cri) 384: AIR 1984 SC 452: 1984 Cri LJ 185.

Bench Strength **3**. Coram: **S. Murtaza Fazal Ali**, *O. Chinnappa Reddy* and *E.S. Venkataramiah*, JJ. [Date of decision: 22-11-1983]

[1036] — S. 154 — Delay in filing FIR — Whether there was due diligence — Normal conduct of person of common prudence to be considered

The argument raised on behalf of the appellant that there was inordinate and unexplained delay in registering the FIR is without any substance. The incident occurred at 4.00 p.m. on 16-5-1988 whereafter the family of the deceased was informed. It is a normal conduct of a normal person that the entire concentration would be upon looking after and saving the deceased rather than to run up to the police or other persons instantaneously. She died at 9.00 p.m. on the same day. A complaint was lodged resulting in registration of the FIR at 7.30 p.m. on 17-5-1988 which obviously means that the complainant had reached the police station even prior thereto. The conduct of the complainant and the witnesses is in line with the behaviour of a person of common prudence and the facts and circumstances of the case clearly demonstrate proper exercise of due diligence on the part of these witnesses. Firstly, the complainant family got the information of the death of the deceased from a relative and, thereafter, they must have tried to get the body subjected to the post-mortem and have the same released for performing the last rites. The incident occurred on 16-5-1988 and the FIR was registered on 17-5-1988. Therefore, there was no abnormal or inordinate delay in lodging the FIR in the facts of this case. Even if delay is presumed it is not of such a nature that would entail any benefit to the accused. There is no *inordinate or unexplained delay* in lodging the FIR. (Paras 45 and 46). *Ashok Kumar* v. *State of Haryana*, (2010) 12 SCC 350: AIR 2010 SC 2839: 2010 Cri LJ 4402: (2010) 93 AIC 129 .

Bench Strength **2**. Coram: *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision: 8-7-2010]

[1037] — S. 154 — Mere delay by itself not sufficient to reject the evidence of eyewitnesses unless there were indications of false implication or circumstances which would manifest that they could not have witnessed the occurrence. *Brijpal Singh* v. *State of U.P.*, 1994 Supp (1) SCC 566: 1994 SCC (Cri) 419: AIR 1994 SC 1624: 1994 Cri LJ 2082.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 30-3-1993]

[1038] — S. 154 — Occurrence taking place at 7 p.m. — Deceased rushed to hospital but expiring on the way and so his dead body brought back — *FIR lodged next morning, held, cannot be said to be case of delay — In any case, such delay not material on facts. State of Karnataka* v. *Rama Reddy*, 1994 SCC (Cri) 42: 1993 Cri LJ 3553.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 27-7-1993]

[1039] — S. 154 — Time taken in lodging FIR — *Must be considered against the facts and circumstances of the case without ignoring the human factor involved such as the time required by the persons concerned to compose themselves before deciding on their course of action. State of U.P.* v. *Manoharlal*, 1981 Supp SCC 35: 1981 SCC (Cri) 672: AIR 1981 SC 2073.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 8-1-1981]

[1040] — Ss. 154 and 157 — Delay in filing FIR — Occurrence taking place at 6.30 p.m. — *FIR lodged at 9.45 p.m. at Police Station 13 km. from the place of occurrence — Special report reaching the Magistrate at midnight at a distance of 25 km. — Held, FIR not delayed. State of Haryana* v. *Mewa Singh*, (1997) 10 SCC 587: 1997 SCC (Cri) 890: AIR 1997 SC 1407: 1997 Cri LJ 1906.

Bench Strength **2**. Coram: **M.M. Punchhi** and *Faizan Uddin*, JJ. [Date of decision: 3-2-1997]

[1041] — S. 154 — Delay in lodging FIR — Conviction confirmed — Dispute over fixing of a banner — *Six accused, of whom SK and AA armed with double-barrelled guns alleged to have gone to informant's house and on exhortation from other co-accused alleged to have fired at D-1 and D-2 (informant's sons) resulting in their death and causing injuries to one other — AA convicted under S. 302 and sentenced to death (commuted to life imprisonment by High Court) while other accused convicted under S. 302 r/w S. 149 and sentenced to life imprisonment — Submission by accused that: (i) unexplained delay in lodging FIR; manipulations/fabrication in FIR; no evidence that special report was sent to Magistrate; (ii) as injured wit-*

*ness not examined, evidence of other PWs also should not be believed; (iii) investigation was tainted; (iv) no evidence to show that death was on account of **AA**'s firing and even if prosecution version accepted in totality appropriate conviction would be under S. 304 Pt. I; and (v) co-accused included the driver and if they were carrying weapons, there was no question of any exhortation or it might have been done by the absconding accused since it was unlikely that a driver would give orders to his master — Held, purported delay in registering/manipulation of FIR, or dispatch of special report to Magistrate has been satisfactorily explained by prosecution — Moreover, as observed by High Court that if there was any lapse on the part of the investigating officer, that would not affect the credibility of the prosecution version — Besides, investigation had commenced immediately and there was no previous enmity between parties — Hence, question of fabrication/manipulation of FIR does not arise — Held, no interference with impugned judgment called for* (Paras 2, 6 and 13 to 19). *Aqeel Ahmad* v. *State of U.P.*, (2008) 16 SCC 372: AIR 2009 SC 1271: (2009) 2 All LJ 178: (2009) 75 AIC 248 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 19-12-2008]

Sunil Kumar v. State of Rajasthan, (2005) 9 SCC 283: 2005 SCC (Cri) 1230; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, considered and relied on

Ram Bali v. State of U.P., (2004) 10 SCC 598: 2004 SCC (Cri) 2045, relied on

[1042] — S. 154 — FIR — Delayed FIR — Effect of — *Delayed FIR based on dying declaration written on 17-9-1993 — Complaint was filed on 26-9-1993 — FIR held to be doubtful* (Para 19). *Mukeshbhai Gopalbhai Barot* v. *State of Gujarat*, (2010) 12 SCC 224: AIR 2010 SC 3692.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 4-8-2010]

[1043] — S. 154 — FIR — Delay in filing — Offence of bigamy — Delay of four years in filing the complaint — Effect — *Held, delay by itself may not be fatal but it was so in the facts and circumstances of the case*

Ordinarily the Supreme Court would decline to reappreciate the evidence but in a given case if the court comes to the conclusion that the appreciation of evidence by lower courts has resulted in grave miscarriage of justice, the court may appreciate the evidence. Having examined the record, it is held that the present case falls in the excepted category as all the courts have lost sight of the material aspect of the case, namely, filing of the complaint after four years and absence of any explanation as to what was happening during the said period. (Para 6). *Purandar Sahoo* v. *Golapi Sahoo*, (2007) 15 SCC 696.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *H.K. Sema*, JJ. [Date of decision: 23-1-2003]

[1044] — S. 154 — Delay in lodging FIR — Satisfactory explanation — *Attack by unlawful assembly — Appreciation of evidence — Conviction justified — Ongoing land dispute between **B** and **J** caste — Appellant-accused of **B** caste not permitting father and brother of first informant of **J** caste to cultivate land allotted to them by Government — On a day, appellants on being informed about tilling of disputed land by people of **J** caste, proceeded towards said land, armed with axes and lathis, and on reaching the place, attacked first informant and his relatives, by means of weapons carried and fist-blows, thereby injuring them and causing death of his brother — Held, homicidal death of deceased, proved beyond reasonable doubt — Medical evidence establishing cause of death and various injuries sustained by injured witnesses and also corroborating prosecution version regarding time and date of occurrence — Submission that appellants should be acquitted on ground that several conflicting complaints given, without substance — In a small village, incident relating to death of villager and injuries to several others would cause sensation and anxiety in minds of villagers residing there — Therefore, some villagers had also given vague information relating to incident — Further, merely because FIR handed over to police on next day of incident, would not show that no incident took place at all — Undoubtedly, appellants were members of unlawful assembly, common intention of which was to mount attack and cause injuries and death to first informant and his relatives — Hence, held, conviction justified* (Paras 22 to 49). *Vishnu* v. *State of Rajasthan*, (2009) 10 SCC 477: (2009) 83 AIC 177 (SC).

Bench Strength **2**. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 15-9-2009]

[1045] — S. 154 — FIR — Delay in lodging — Unnatural conduct of complainant — Adverse inference drawn — *Police station hardly one furlong away from place of occurrence — Complainant not going to police station immediately — Instead going elsewhere, getting a written report prepared and lodging report after 45 minutes — Held, such behaviour creates doubt and false implication not ruled out since complainant had a grudge against accused*

(3)(vi)4. **Reliability and Validity of FIR - FIR and Time - Delay in lodging/filing FIR** *(contd.)*

One of the main reasons given by the High Court in upsetting the judgment of acquittal is that the FIR was lodged barely 45 minutes after the incident; the distance of police station being hardly one furlong from the place of occurrence. The High Court, however, failed to consider a very material aspect that despite the fact that police station was situated close and visible from the place of incident, yet PW 1 did not go immediately to the police station to report but he first went to *C* to have a written report prepared and then went to the police station with written report. The first version of the incident could have been reported at the police station within five minutes of its occurrence. The fact that PW 1 took 45 minutes in reporting the incident at the police station rather creates doubt about the truthfulness of the prosecution case and does not rule out false implication of the accused against whom PW 1 had grudge due to some civil dispute between them. (Para 15). *Mahtab Singh* v. *State of U.P.*, (2009) 13 SCC 670: AIR 2009 SC 2298: (2009) 5 All LJ 268: (2009) 78 AIC 254 (SC).

Bench Strength **3**. Coram: *S.B. Sinha, Dr. M.K. Sharma* and **R.M. Lodha**, JJ. [Date of decision: 13-4-2009]

[1046] — S. 154 — FIR — Delay in lodging/filing FIR — *High Court holding that although there was no cross-examination on the aspect of delay but possibility of some deliberation before registration of FIR could not be ruled out as a result of delay in sending the FIR — Held, such conclusion of the High Court without any factual basis was perverse* (Para 6). *State of Karnataka* v. *Papanna Uruf Babavaraj Shivappa*, (2008) 17 SCC 739.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *H.K. Sema*, JJ. [Date of decision: 2-4-2003]

[1047] — S. 154 — FIR — Delay in lodging/filing FIR — Reasonably explained — Held, in such a case, High Court was in grave error in concluding that there was no reasonable and plausible explanation for belated FIR and that it was lodged after consultation and due deliberation which created doubt about instant case — Unfortunately, High Court did not advert to evidence of PW 1 (complainant, brother of rape victim) and reasoning of trial court in this regard — *Penal Code, 1860, Ss. 376, 363, 366 and 368* (Para 33). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

Prakash Singh v. Union of India, (2006) 8 SCC 1: (2006) 3 SCC (Cri) 417, relied on

[1048] — S. 154 — FIR — Delay satisfactorily explained — *The alleged delay in lodging FIR satisfactorily explained that informant first got his two injured sons admitted to hospital and soon thereafter lodged FIR — High Court not considering relevance of concession made by advocate of accused as regards death of wife of informant — High Court also discarding evidence of three injured eyewitnesses which trial court found flawless and credible — Held, High Court should not have on mere surmises and conjectures interfered with judgment of trial court — Hence, conviction restored. State of Punjab* v. *Atma Singh*, (2009) 15 SCC 45.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 8-5-2009]

[1049] — S. 154 — FIR — Delay in lodging/filing FIR — Adequate reasons therefor — Effect on prosecution story, if any — *Murder trial — On facts, delay in lodging FIR, if any, was explained with adequate reasons therefor — Hence, held, no delay at all was caused in lodging the same — Therefore prosecution story not affected — Penal Code, 1860 — Ss. 302, 307, 143, 148, 504 and 149*

The FIR, having regard to the distance between the place of occurrence and the police station cannot be said to have been lodged after a long delay. The incident took place at about 2 o'clock in the afternoon. It must have continued for sometime. The mental condition of the prosecution witnesses can be well imagined. They had to arrange a transport to take three persons, who were severely injured, to the hospital, particularly when one of them had suffered grievous injuries. (Para 14)

Before coming to the police station, PW 1 (nephew of two of the deceased) got the FIR scribed by PW 2 (nephew of two of the deceased) who is a graduate in Science. He wrote the same in English. That must have also consumed some time. It was in the aforementioned circumstances that the FIR was lodged at the police station within a period of 2½ hours from the time when the incident had taken place; the police station being at a distance of 16 km from the village. Therefore, no delay at all was caused in lodging the same. (Para 17). *Gurunath Donkappa Keri* v. *State of Karnataka*, (2009) 13 SCC 34: 2009 Cri LJ 2995.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 6-5-2009]

[1050] — Ss. 154 and 157 — FIR — Delay — Whether there was unexplained and unreasonable delay in lodging — Whether FIR antetimed — Checks to determine — Murder — *Copy of FIR received by Ilaqa Magistrate in time —*

While sending the dead body for inquest copy of FIR also sent along with it — Inquest report referred to the FIR and time of its lodging as also dispatch of the special report to authorities concerned — Incident took place in village at 7 p.m. — Victim in a critically injured condition first taken to his farmhouse, then to Primary Health Centre in a bullock cart at about 9 p.m. and then to Civil Hospital, where he died — FIR lodged next day at 11.45 a.m. in police station at a distance of 9-10 km — Special report sent to Ilaqa Magistrate at 5 p.m. same day — Held on facts, sequence of events reveals that there was no unexplained and unreasonable delay in lodging FIR — In the circumstances, FIR cannot be said to be ante-timed and brought into existence after some deliberations — Penal Code, 1860 — S. 302 (Paras 13 to 15). *Paramjit Singh* v. *State of Punjab*, (2007) 13 SCC 530: AIR 2008 SC 441: (2008) 61 AIC 142 (SC).

Bench Strength **2**. Coram: *P.P. Naolekar* and **B. Sudershan Reddy**, JJ. [Date of decision: 31-10-2007]

[1051] — Ss. 154 and 157 — FIR — Delay in forwarding FIR to Magistrate — Explanation if satisfactory — *FIR lodged at 0025 hours on 13-4-1992 received by the Judicial Magistrate only on 18-4-1992 — Only explanation offered was that the same was sent through a Circle Officer and not directly — No explanation as to why the Circle Officer of the rank of DSP did not act responsibly — Statement of V who had accompanied PW 1 (complainant) to lodge FIR not recorded by the IO and provisions contained in U.P. Police Regulations not complied with — Held, finding of the trial court that there was possibility of FIR being ante-timed sustainable since although the number of FIR was mentioned other details were lacking — U.P. Police Regulations — Regns. 97, 108 and 109* (Paras 14, 15, 16 and 18 to 24). *Budh Singh* v. *State of U.P.*, (2006) 9 SCC 731: (2006) 3 SCC (Cri) 377: AIR 2006 SC 2500: 2006 Cri LJ 2886: (2006) 4 All LJ 284.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

Thanedar Singh v. State of M.P., (2002) 1 SCC 487: 2002 SCC (Cri) 153; Rajeevan v. State of Kerala, (2003) 3 SCC 355: 2003 SCC (Cri) 751; Bijoy Singh v. State of Bihar, (2002) 9 SCC 147: 2003 SCC (Cri) 1093; Rajesh v. State of Gujarat, (2002) 4 SCC 426: 2002 SCC (Cri) 814, relied on

Meharaj Singh v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391, held distinguished

***Followed in** Mahmood v. State of U.P., (2007) 14 SCC 16*

[1052] — S. 154 — Delay explained — *Delay in lodging FIR adequately explained by the fact of fear created by the accused and by the compelling circumstance to first trace out the dead bodies taken away by the accused and another person abducted by them. Sone Lal* v. *State of U.P.*, (1978) 4 SCC 302: 1978 SCC (Cri) 587: AIR 1978 SC 1142: 1978 Cri LJ 1122: 1978 ALJ 530.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 6-4-1978]

[1053] — S. 154 — Delay explained — *Murder taking place at 12 noon — Police station at a distance of three miles — Complainant son made to wait at police station for arrival of PSI — FIR recorded at 5-30 p.m. — Held, delay in filing report, if any, remains explained and did not affect prosecution case*

When the accused themselves do not want to rely on the injuries found on them and do not in any manner connect the receipt of the injuries found on them to the occurrence, the question of explaining the same by the prosecution does not arise. The High Court has rightly held that the trial court has erred on doubting the prosecution case and the evidence of the eyewitnesses on the ground that the injuries on the accused were not explained. *Thakore Dolji Vanvirji* v. *State of Gujarat*, 1993 Supp (2) SCC 534: 1993 SCC (Cri) 704: AIR 1993 SC 209: (1993) 1 GLH 1040.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 15-9-1992]

[1054] — S. 154 — 14 hours' delay in lodging FIR — *On facts, held, was inevitable — Hence, not vitiative of the testimony of the prosecution witnesses*

The evidence of PWs 1 and 3 clearly indicates that they spent the night in the fields, then walked the entire distance to the police station situate at a distance of 10 miles, got the report written there and lodged it at the police station at 8.30 a.m. Having seen the ghastly murder of their leader being committed by the rivals at about 6.30 p.m. in the preceding evening, it was too much to expect of PWs 1 and 3 to rush to the police station, for reasonable apprehension to their lives in the event of their taking such a step could not be excluded. Obviously, for that purpose PWs 1 and 3 took shelter in the fields in the darkness and proceeded to the police station in the small hours of the following day. Therefore, there was no avoidable delay in lodging the FIR. On the contrary, it was lodged at the earliest possible opportunity. *B. Subba Rao* v. *Public Prosecutor, High Court of A.P.*, (1997) 11 SCC 478: AIR 1997 SC 3427: 1997 Cri LJ 4072.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S. Saghir Ahmad*, JJ. [Date of decision: 7-8-1997]

(3)(vi)4. Reliability and Validity of FIR - FIR and Time - Delay in lodging/filing FIR *(contd.)*

[1055] — S. 154 — Attack on deceased taking place at midnight — *Deceased remaining alive and taken to police station at a distance of 5 miles for lodging FIR next morning due to difficulty in arranging bullock-cart at night and fear of further attack by the accused in darkness — Lantern seized and produced before court, not having wick and chimney — In the circumstances held, High Court erred in construing the delay in taking the deceased to the police station as meaning that the attack on the deceased had gone unnoticed till the morning hours. State of U.P.* v. *Chet Ram*, (1989) 2 SCC 425: 1989 SCC (Cri) 388: AIR 1989 SC 1543: 1989 Cri LJ 1785.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 28-3-1989]

[1056] — S. 154 — Concoction of prosecution case alleged — *Murder in a village at 11.00 p.m. — FIR lodged on the following day at about 7.30 a.m., held, not delayed — Hence, the plea that the prosecution had concocted a false story against the accused, rejected. Nikka Singh* v. *State of Punjab*, (1996) 11 SCC 283: 1997 SCC (Cri) 67: AIR 1997 SC 3676.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 8-10-1996]

[1057] — S. 154 — Delay in filing, even though concerned police officers and DM reached the spot soon after the occurrence, police station situated at a short distance and eyewitnesses also claim to be present at the spot — *No satisfactory explanation given by prosecution — Held, circumstances make the presence of the eyewitnesses at the place and time of occurrence doubtful. Awadesh* v. *State of M.P.*, (1988) 2 SCC 557: 1988 SCC (Cri) 361: AIR 1988 SC 1158.

Bench Strength **2**. Coram: **K.N. Singh** and *M.H. Kania*, JJ. [Date of decision: 12-4-1988]

[1058] — S. 154 — Delay in filing FIR — *Attempt to murder daughter by her father and uncle — Victim and her mother being shocked could not take any intelligent decision and FIR lodged about 30 hours after the incident — Delay not fatal. Sher Singh* v. *State of Punjab*, (1979) 3 SCC 606: 1979 SCC (Cri) 740: AIR 1979 SC 699: 1979 Cri LJ 642.

Bench Strength **2**. Coram: *P.S. Kailasam* and **A.D. Koshal**, JJ. [Date of decision: 17-11-1978]

[1059] — S. 154 — FIR — Delay in lodging/filing FIR — If stands explained — Effect on prosecution case, if any — Death by burning — *Allegation on appellant-accused for burning deceased to death — Information received at police outpost in the hospital on 9-4-1995 when requisition for recording dying declaration made — Dying declaration recorded on 9-4-1995 — On 10-4-1995 statement taken by police officer himself — Formal FIR recorded on 12-4-1995 — Held, delay in recording formal FIR stood explained — Hence, prosecution case not affected*

A submission was made that there was a delay in filing the FIR inasmuch as although the alleged incident of burning had taken place on 9-4-1995 the same came to be recorded in the form of a formal FIR only on 12-4-1995. On going through the records and its proper examination, the said contention cannot be accepted for the simple reason that information was received about the incident of burning at the police outpost located in the hospital (where the deceased was admitted) itself on 9-4-1995, when requisition was sent for recording the dying declaration, pursuant to which the dying declaration was recorded on 9-4-1995. On 10-4-1995, a statement was taken from the deceased by the police officer himself. Consequently, it is established that the formal FIR came to be recorded on 12-4-1995, although the incident was reported on 9-4-1995 on the basis of which the police started the investigation by sending a requisition to the Taluka Executive Magistrate which was followed up by recording of the statement of the deceased by the police. Delay, therefore, in recording the formal FIR stands explained. (Para 19). *Kamalavva* v. *State of Karnataka*, (2009) 13 SCC 614: 2009 Cri LJ 4408.

Bench Strength **2**. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 29-7-2009]

[1060] — S. 154 — Delay in filing FIR — *Delay of 10 hours in lodging FIR — Incident taking place at 10.30 p.m. — FIR lodged in the following morning immediately after arrival of the father of the deceased — Held, on facts, no unreasonable delay occurred. Sat Pal* v. *State of Punjab*, 1995 SCC (Cri) 1039: AIR 1996 SC 201.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *G.T. Nanavati*, JJ. [Date of decision: 8-9-1995]

[1061] — S. 154 — Delay in filing FIR — *Delay of 12 hours in filing the FIR at police station which was at a distance of two furlongs from the spot — Deceased taken to the hospital in a very critical condition — Eyewitnesses, one of whom was father of the deceased, remaining busy in attending the deceased and arranging for blood and medicines — Accused closely related with the complainant and there was no previous enmity between the two families — In the facts and circumstances of the case* *conclusion of the High Court that the delay was properly explained is unexceptionable. Sanjeev Kumar* v. *State of Punjab*, (1997) 10 SCC 40: 1997 SCC (Cri) 773: AIR 1997 SC 3717: 1997 Cri LJ 3178.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *K. Venkataswami*, JJ. [Date of decision: 6-5-1997]

[1062] — S. 154 — Delay in filing FIR — *FIR mentioning names of some of the accused lodged next day early in the morning at police station at a distance of 5 km from the place of occurrence — Held, in the circumstances, FIR was not delayed and non-mention of name of all the accused (24) and details of injuries would not render it unreliable* (Para 6). *P. Venkataswarlu* v. *State of A.P.*, (2002) 10 SCC 46: 2003 SCC (Cri) 1414: AIR 2003 SC 574: 2003 Cri LJ 837.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **Arun Kumar**, JJ. [Date of decision: 10-12-2002]

[1063] — S. 154 — Delay in filing FIR — *Gruesome murder of three persons in a village — Assailants keeping a watch on the road throughout the night and leaving the place at about 5.00 a.m. — FIR lodged at 7 a.m. — Two hours' time taken in covering distance of police station — Absence of cross-examination of the first information on explanation of delay — Held, in the circumstances, delay satisfactorily explained. State of U.P.* v. *Nahar Singh*, (1998) 3 SCC 561: 1998 SCC (Cri) 850: AIR 1998 SC 1328.

Bench Strength **2**. Coram: *G.T. Nanavati* and **S.S.M. Quadri**, JJ. [Date of decision: 18-2-1998]

[1064] — S. 154 — Delay in filing FIR — *Held, mere delay in lodging FIR may not prove fatal in all cases — But on facts of the present case, certainly it is one of the factors which corrodes the credibility of the prosecution case* (Para 6). *State of Rajasthan* v. *Bhanwar Singh*, 2005 SCC (Cri) 73.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 14-9-2004]

[1065] — S. 154 — FIR — Sufficiently explained — *Action on part of PWs in giving priority to treatment of injured deceased was wholly justifiable — Again, they were busy also in intimating his son and bringing him to hospital at the earliest possible opportunity — Therefore, delay in lodging FIR, sufficiently explained* (Paras 23 and 24). *Padmanaban* v. *State*, (2009) 15 SCC 108.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 31-7-2009]

Virsa Singh v. State of Punjab, AIR 1958 SC 465; Kesar Singh v. State of Haryana, (2008) 15 SCC 753; Mohd. Asif v. State of Uttaranchal, (2009) 11 SCC 497; Bala Baine Linga Raju v. State of A.P., (2009) 6 SCC 706, relied on

[1066] — S. 154 — Sufficiently explained — Effect, if any — *Held, on facts, delay of two hours in filing FIR, stood sufficiently explained — Therefore, defence submission that time of two hours was used to falsely implicate accused due to previous enmity, rejected* (Para 17). *Himanshu* v. *State (NCT of Delhi)*, (2011) 2 SCC 36.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 4-1-2011]

Ram Babu v. State of U.P., (2010) 5 SCC 63: (2010) 2 SCC (Cri) 1233, relied on

[1067] — S. 154 — Delay in filing FIR — *Held, mere delay in lodging FIR may not prove fatal in all cases — But on facts of the present case, certainly it is one of the factors which corrodes the credibility of the prosecution case* (Para 6). *State of Rajasthan* v. *Bhanwar Singh*, (2004) 13 SCC 147: 2005 SCC (Cri) 73: AIR 2004 SC 4660: 2004 Cri LJ 4886.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 14-9-2004]

[1068] — S. 154 — Delay in filing FIR — *Held, on facts to be sufficiently explained. Ravulappalli Kondaiah* v. *State of A.P.*, (1975) 3 SCC 752: 1975 SCC (Cri) 213: AIR 1975 SC 216: 1975 Cri LJ 262.

Bench Strength **2**. Coram: *Y.V. Chandrachud* and **R.S. Sarkaria**, JJ. [Date of decision: 20-11-1974]

[1069] — S. 154 — Delay in filing FIR — *In sexual offences, held, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same — Delay has the effect of putting the court on guard to search if any explanation has been offered for the delay and, if offered, whether it is satisfactory* (Para 6). *Dildar Singh* v. *State of Punjab*, (2006) 10 SCC 531: (2007) 1 SCC (Cri) 129: AIR 2006 SC 3084: 2006 Cri LJ 3914.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 20-7-2006]

[1070] — S. 154 — Delay in filing FIR — *Incident taking place at about 2.15 p.m. and FIR lodged at 5.10 p.m. — Time taken in providing medical aid to the victim — Held, in the circumstances, delay not fatal to the prosecution case. State of Karnataka* v. *Diwakara Bhat*, (1996) 11 SCC 148: 1997 SCC (Cri) 146.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **Faizan Uddin**, JJ. [Date of decision: 23-9-1996]

[1071] — S. 154 — FIR — Delay in lodging/filing FIR — Not established — *Incident taking place at 12 midnight — Police station at a distance of 4 or 5 km — Three persons in family killed by group of persons armed with deadly weapons and PWs 2 to 4 (eyewitnesses) also seriously injured — Entire village terror-stricken — Under such circumstances,*

(3)(vi)4. Reliability and Validity of FIR - FIR and Time - Delay in lodging/filing FIR *(contd.)*

held, it is not expected that someone would rush to police station and lodge FIR — FIR lodged within 5 to 5 1/2 hours immediately after incident, can not be characterised as delayed one in such circumstances — Penal Code, 1860 — Ss. 302, 307 and 147 to 149 (Paras 16 and 16.3). *Surendra Pal* v. *State of U.P.*, (2010) 9 SCC 399.

Bench Strength 2. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 16-9-2010]

Suresh Rai v. State of Bihar, (2000) 4 SCC 84: 2000 SCC (Cri) 764; Eqbal Baig v. State of A.P., (1986) 2 SCC 476: 1986 SCC (Cri) 232, relied on

[1072] — S. 154 — Delay in filing FIR — *Information of the incident given to the local village officer who went to the spot and after verifying the correctness of the information furnished by the informant recorded his statement — Possibility of deliberations and confabulations cannot be ruled out — But that is not enough to vitiate the entire testimony of the first informant — Assurance can be obtained from other evidence regarding the truth of his version. Periasami* v. *State of T.N.*, (1996) 6 SCC 457: 1997 SCC (Cri) 121.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 25-9-1996]

[1073] — S. 154 — Delay in filing FIR — *Message about the incident given to the police at 9.54 a.m. — Police reaching the spot at about 10.30 a.m. and taking the victims to the hospital at 11.15 a.m. — FIR recorded on the basis of the statement of the sister of the deceased at about 1.15 p.m. when she was fit to make a statement — Held, in the circumstances of the case, the High Court was justified in taking the view that there was no undue delay in recording the FIR and it was a true and correct recording of the earliest version about the incident. Hari Chand* v. *State of Delhi*, (1996) 9 SCC 112: 1996 SCC (Cri) 950: AIR 1996 SC 1477.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 12-2-1996]

[1074] — S. 154 — Delay in filing FIR — *Occurrence taking place at 2.30 p.m. — Fardbayan giving complete and full account of the occurrence and the role of the accused recorded by the IO at 4.30 p.m. — IO preparing the inquest report and site plan and continuing to record the statements of witnesses till 10.30 p.m. — Thereafter, fardbayan sent to the police station through special messenger on the basis of which the FIR recorded next day — Held, in the circumstances of the case, plea that there was delay in lodging the FIR making the prosecution story unbelievable cannot be accepted. Baleshwar Mandal* v. *State of Bihar*, (1997) 7 SCC 219: 1997 SCC (Cri) 1042: AIR 1997 SC 3471: 1997 Cri LJ 4084.

Bench Strength 2. Coram: *M.M. Punchhi* and **V.N. Khare**, JJ. [Date of decision: 8-8-1997]

[1075] — S. 154 — Delay in filing FIR — *Occurrence taking place in the evening at 7.30 p.m. in the winter season — FIR lodged next day at 10.30 a.m. — Police station at a distance of 18 kms. — Injured first informant, a widow, having 4 minor children one of whom also injured in the occurrence — Absence of male member in family — Held, in the circumstances, delay properly explained* (Para 16). *Ram Kumar* v. *State of Haryana*, 1995 Supp (1) SCC 248: 1995 SCC (Cri) 355: AIR 1995 SC 280: (1995) 32 ACC 47.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 7-10-1994]

[1076] — S. 154 — Delay in filing FIR not explained properly — *Such FIR would be viewed with suspicion*

In the present case in view of the inordinate delay involved in giving FIR to the police and other inherent inconsistencies in the evidence of the sole eyewitness, such evidence cannot be considered as sufficient to find the accused guilty. *Ramji Surjya Padvi* v. *State of Maharashtra*, (1983) 3 SCC 629: 1983 SCC (Cri) 748: AIR 1983 SC 810: 1983 Cri LJ 1105: 1983 MLJ (Cri) 520.

Bench Strength 2. Coram: **E.S. Venkataramiah** and *V. Balakrishna Eradi*, JJ. [Date of decision: 13-5-1983]

[1077] — S. 154 — Delay in filing of FIR — Seriously affects the credibility of the story stated therein. *Anne Nageswara Rao* v. *Public Prosecutor*, (1975) 4 SCC 106: 1975 SCC (Cri) 357: AIR 1975 SC 1387: 1975 Cri LJ 1119.

Bench Strength 2. Coram: **A. Alagiriswami** and *N.L. Untwalia*, JJ. [Date of decision: 14-3-1975]

[1078] — S. 154 — Delay in lodging FIR — *Considerable delay for which the explanation was not convincing — Benefit given to defence* (Paras 7 to 9). *Ronald Kiprono Ramkat* v. *State of Haryana*, (2001) 6 SCC 423: 2001 SCC (Cri) 1034: AIR 2001 SC 2488.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and **Shivaraj V. Patil**, JJ. [Date of decision: 31-7-2001]

[1079] — S. 154 — Delay in lodging FIR — *Father of deceased daughter staying in hospital all along till evening of next day when body handed over after post-mortem — Delay explained — Not* *to affect veracity of statement of the father and sister of deceased. Gurbachan Singh* v. *Satpal Singh*, (1990) 1 SCC 445: 1990 SCC (Cri) 151: AIR 1990 SC 209: 1990 Cri LJ 562.

Bench Strength 2. Coram: **Sabyasachi Mukharji**[1] and **B.C. Ray**[2], **JJ.** [Date of decision: 26-9-1989]

[1080] — S. 154 — Delay in lodging FIR — *Incident taking place at 9 a.m. — Distance of police station from the village in question 15 km. and bus not available to reach the police station in the night — FIR lodged at 9 a.m. on the following day, held, not delayed. Bhaskaran* v. *State of Kerala*, (1998) 9 SCC 12: 1998 SCC (Cri) 843: AIR 1998 SC 476: 1998 Cri LJ 684.

Bench Strength 2. Coram: **M.K. Mukherjee** and *K.T. Thomas*, JJ. [Date of decision: 5-12-1997]

[1081] — S. 154 — Delay in lodging FIR — *Occurrence taking place at 1.30 p.m. and the first information statement recorded at 4.50 p.m. — Time taken in shifting the injured to other hospital and making effort to save his life — Delay not unreasonable. Harpal Singh* v. *Devinder Singh*, (1997) 6 SCC 660: 1997 SCC (Cri) 981: AIR 1997 SC 2914: 1997 Cri LJ 3561.

Bench Strength 2. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 9-7-1997]

[1082] — S. 154 — Delay in lodging FIR — *Occurrence taking place at about 6 p.m. — FIR lodged next day at 2 p.m. — Delay in medical treatment of the deceased and in preparation of medico-legal report due to non-availability of doctor in the hospital — Held, in the circumstances, delay in registering the case was not due to some ulterior motive. Balbir Singh* v. *State of Punjab*, 1995 Supp (3) SCC 472: 1995 SCC (Cri) 951.

Bench Strength 2. Coram: *M.K. Mukherjee* and **G.T. Nanavati**, JJ. [Date of decision: 16-8-1995]

[1083] — S. 154 — Occurrence taking place on 26-8-1998 at 4 p.m. — *Father of victim, the informant, reached home at 8 p.m. whereafter he was informed about the occurrence — IO stating that it was rainy season, the area was flooded, and he reached the place of occurrence on night of 26-8-1998/27-8-1998 at about 1.30 a.m. and recorded fardbeyan — Hence held, there was no such delay which was fatal to the prosecution case* (Para 6). *Murari Thakur* v. *State of Bihar*, (2009) 16 SCC 256.

Bench Strength 2. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 14-12-2006]

[1084] — S. 154 — Delay in lodging FIR — Adverse effect — Murder — Political rivalry — Presence of eyewitnesses (PWs 1 and 2) at the place of incident — Doubt in respect of — *PWs 1 and 2 along with deceased **M** returning from a hospital where **S** (brother of **M**) was lying injured because of an earlier attack by the members of the accused — On the way, they found accused and their followers waiting in a jeep and tractor abusing **S** — A-2 exhorting A-1 to kill **M** — **M** started running towards hospital — A-1 shot him on his back — Body of **M** found lying not in direction of hospital but in opposite direction — **M** bleeding profusely, but no stains of blood on clothes of PWs 1 and 2 who were stated to have carried him to hospital — Case diary showing that **M** was carried to hospital by IO — FIR filed belatedly after due deliberation — Ballistic report not supporting prosecution case — Contradiction between evidence of IO and PWs 1 and 2 regarding the time at which they went to see **S** in the hospital — Defence version that (i) **M** and others came to attack accused persons present in shop of one **O**, and (ii) **M** died due to gunshot fired by one supporter of **S**, on facts, more probable — Acquittal upheld — Penal Code, 1860 — Ss. 302 and 302/34*

The IO stated that he went to the hospital at about 9 p.m. and recorded the statement of injured *S*; whereas PWs 1 and 2 state that when they went to the hospital at 9 p.m. they did not see the IO there. Therefore, either the IO who stated that he recorded the statement at 9 p.m. or the statement of PWs 1 and 2 that they went to the hospital at 9 p.m. is false. Either way, the prosecution has to suffer the consequence of such contradiction. (Para 11)

The defence stated that after the incident in which *S* was injured, the members of the group belonging to the said *S* which included *M*, came to the Chowk Bazar and wanted to attack the supporters of the group of the accused persons who were in the shop of one *O*. *O* and others who were in the shop, noticing the likely attack from this group, downed the shutters of the shop but the same did not close completely, hence, one of the members of the group supporting *S* fired with a 12-bore gun which inadvertently hit *M* who was then peeping between the gaps in the shutter into the shop, and because of that injury *M* fell down dead on the *thara* of the said shop of *O*. There was a parallel investigation in regard to the said attack in the shop of *O* and in the said investigation, the investigating agency had recorded certain statements which clearly showed the possibility of *M* having died in such an attack. (Para 9)

Further, the entry in the case diary shows that it is the IO who took the dead body of *M* to the hospital from the place of incident, and not PWs 1 and 2. That apart, a *gandasa* was found opposite to the shop of the said *O*. It is not the case of the

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prosecution in this case that these accused carried any *gandasa*, while the defence had suggested that the assailants went to the shop of *O* carrying a *gandasa* apart from a gun. The facts in the case strengthen the argument of the defence that the complaint in question had come into existence much later as stated by the prosecution. (Para 10)

From the evidence of the ballistic expert it is clear that it is not possible to establish whether the firearm used in the attack as alleged by the prosecution was the same as was sent to him for his examination. (Para 12)

In view of the above, the judgment of the High Court is unexceptional, therefore, it does not call for any interference. (Para 13). *State of Rajasthan* v. *Taran Singh*, (2003) 12 SCC 341: AIR 2004 SC 1080: 2004 Cri LJ 654.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 8-10-2003]

[1085] — S. 154 — Delay in lodging FIR — Explanation — Incident taking place at 10.00 p.m. — Terrorist activities at its peak in Punjab at that time — *PW stating that accused had threatened the lives of the witnesses, in case they went to police station — Next morning PW going to Sarpanch at 5.00 a.m. and as it was raining they starting from his house at 7.45 a.m. for lodging report at the police station — On the way they meeting the Officer-in-charge of the police station, who was on patrolling duty — He recording the statement of PW at 9.00 a.m. on the basis of which formal FIR was drawn up at 9.40 a.m. — Held, there was no inordinate delay in lodging the FIR as the delay had been duly explained* (Para 11). *State of Punjab* v. *Mela Singh*, (2003) 12 SCC 464: AIR 2004 SC 257: 2004 Cri LJ 368.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **B.N. Agrawal**, JJ. [Date of decision: 6-11-2003]

[1086] — S. 154 — Delay in lodging FIR — Explanation that critical law and order situation was existing in the area concerned — Acceptability of — Incident occurring at about 8 p.m. — *FIR lodged at about 6 a.m. on the next day — PW 7 (a male) soon after the incident going to a village 5 km away from the place of incident to inform his grandmother about the occurrence — No explanation as to why he could not go to police station which was situated 5 km in the opposite direction — That apart, explanation regarding delay in sending FIR to Magistrate, difficult to believe — No efforts made to take assistance of the Village Lambardar and the members of the Panchayat and others present at the place of the incident to lodge the complaint — Nor the said independent witnesses examined to establish that the alleged eyewitnesses disclosed the names of assailants at the first available opportunity — Held, prosecution failed to explain the delay in filing the complaint — Prosecution case doubtful — Acquittal by High Court, upheld — Penal Code, 1860 — S. 302 r/w S. 34* (Para 8). *State of Punjab* v. *Daljit Singh*, (2004) 10 SCC 141: 2004 SCC (Cri) 1776.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 25-9-2003]

[1087] — S. 154 — Delay in lodging FIR — Gang rape — Delay of about 10 days in lodging the FIR — *Delay fully explained and strongly supported by the circumstantial evidence — On facts, held, the said delay was not fatal to the prosecution case*

The courts below have carefully considered the evidence on record and have come to the conclusion that the delay, if any, in lodging the first information report was fully explained by the prosecutrix and was strongly supported by the circumstantial evidence on record. The prosecutrix was living all alone and was an unmarried person, about 28 years of age. She did not have any family member to whom she could have narrated her story immediately after the occurrence on 4-3-1992. Moreover, the sense of shame coupled with the fear on account of threats given out by the appellants must have deterred her from immediately reporting about the occurrence to others. The prosecutrix narrated the incident to the Deputy Director of Education on 6-3-1992. Later she narrated the incident to one of her colleagues whom she found to be sympathetic towards her and thereafter when her cause was taken up by the Teachers' Association, she could muster courage to lodge a report with the Superintendent of Police. Thus in the facts and circumstances of the case, the mere delay in lodging of the first information report does not discredit the prosecution case. (Para 5). *Malkhansingh* v. *State of M.P.*, (2003) 5 SCC 746: 2003 SCC (Cri) 1247: AIR 2003 SC 2669: 2003 Cri LJ 3535.

Bench Strength **3**. Coram: *N. Santosh Hegde*, *Ashok Bhan* and **B.P. Singh**, JJ. [Date of decision: 8-7-2003]

[1088] — S. 154 — Delay in lodging FIR — If explained, held, not fatal — *Penal Code, 1860 — S. 376 r/w S. 34*

Mere delay in lodging the FIR is really of no consequence, if the reason is explained. In the instant rape case, the evidence of PW 3, the victim and that of her husband, PW 4, clearly shows that there was initial reluctance to report the matter to the police by PW 4. He, in fact, had taken his wife to task for the incident and had slapped her. (Para 5). *Sri Narayan Saha* v. *State of Tripura*, (2004) 7 SCC 775.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 8-9-2004]

[1089] — S. 154 — Delay in lodging FIR — In the absence of any plausible explanation therefor, held, fatal — *Occurrence took place at about 4.00 p.m. on 10-4-1991 — FIR lodged at about 11.30 p.m. and reached the court at about 10.00 a.m. on 11-4-1991 — The delay, considering the fact that there was police outpost just in front of PW 4's house and court was at a very short distance, held, not explained — Hence, proved fatal* (Para 13). *Gorle S. Naidu* v. *State of A.P.*, (2003) 12 SCC 449: AIR 2004 SC 1169: 2004 Cri LJ 924.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 15-12-2003]

[1090] — S. 154 — FIR — Delay in lodging/filing of FIR — When relevant, necessitating acquittal — *PW 2 (sole eyewitness) though witnessing murder not revealing it to anyone on account of fear — FIR lodged after 36 hours after discovery of dead body — Time of murder alleged by PW 2 being 40 to 70 hours after the time of death of victim (as deduced from medical evidence) — Effect — Evidence of PW 2 (the only eyewitness) being diluted by medical evidence and his unnatural conduct, conviction by Sessions Court and High Court set aside and accused acquitted — Penal Code, 1860 — S. 302*

Allowing the appeal of the accused and acquitting him,

Held :

Although a mere delay in lodging the FIR would not be fatal to the prosecution story, but there is a proviso to this broad principle, that the evidence read as a whole must inspire confidence. PW 2 was the only eyewitness and his statement under Section 161 CrPC was recorded after a delay of about 36 hours. (Para 9)

Eyewitness, PW 2's conduct was wholly unnatural. PW 2 deposed that he heard the cry for help and saw the appellant standing in the field giving axe-blows on the deceased's head. Getting frightened, PW 2 returned home and did not inform anybody about the incident. Though PW 2 as alleged had witnessed the murder, at about 6.00 a.m. on 13-5-1999, he did not tell anyone about the incident. The incident was reported by PW 1 (Police Patil of village) from information received from PW 5. The FIR was accordingly lodged after an inordinate delay at 4.00 p.m. on 14-5-1999. (Paras 9 and 8)

The eyewitness, PW 2's account is diluted by the medical evidence. An appreciation of medical evidence to find out whether it corroborated the prosecution story was necessary because the evidence was looked at with suspicion and the entire prosecution story was alleged to have been concocted after the dead body was recovered. (Paras 13 and 9)

Clearly, the murder was a blind one and had not been witnessed by PW 2. In this background, the other circumstantial evidence becomes irrelevant. It is clear from the inquest and the post-mortem reports that the brain had disappeared. Taking the medical evidence to be correct, the incident could not have happened on 13-5-1999 at 6.00 a.m. (as deposed by PW 2) and must have happened much earlier in any case between 40 to 70 hours before the alleged time of death. (Paras 14 and 12)

By taking the average time between the minimum and maximum time for putrefaction mentioned in Modi's Jurisprudence, the death must have occurred at least 40 hours before the body was first examined at the time of the inquest report on 14-5-1999. A perusal of *Modi's Medical Jurisprudence and Toxicology*, 23rd Edn., pp. 438-40, would reveal that the rectum and uterus protrude within 48 to 70 hours after death and that maggots come on to the body within a minimum of 24 hours 18 minutes and a maximum of 76 hours, making an average of 39 hours 43 minutes. (Para 11)

The post-mortem examination of PW 4 itself is tell-tale and indicates some very significant facts. The body was highly decomposed, insects and maggots were crawling all over the face, the brain was absent and maggots were crawling in the skull cavity. The doctor also deposed that in his opinion the death had occurred about 60 hours before the post-mortem examination but in the cross-examination he modified his statement to say that it could be less than 60 hours but not less than 48 hours under any circumstances. The inquest report which is equally revealing and refers to the fact that maggots were crawling all over the body and that the anus was swollen and that the skin thereat had peeled off. (Para 10)

Therefore, the conviction by the Sessions Court and the High Court is set aside and the appellant is acquitted. (Para 15). *Rupchand Chindu Kathewar* v. *State of Maharashtra*, (2009) 17 SCC 37.

Bench Strength 2. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 28-7-2009]

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[1091] — S. 154 — Delay in lodging FIR — Incident at 5.30 p.m. — FIR lodged at 9.00 p.m. — *Deceased taken to hospital by informant (close relative of deceased) and others — Informant left for police station after other relatives reached the hospital — On facts, held, no delay in lodging the FIR — Penal Code, 1860, Ss. 302/34 and 302/114* (Para 9). *Hem Raj* v. *Raja Ram*, (2004) 9 SCC 18: 2004 SCC (Cri) 1412: AIR 2004 SC 1489: 2004 Cri LJ 901.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 22-1-2004]

[1092] — S. 154 — FIR — Delay in lodging — PW 1 stated that he rushed to police station at 9.00 a.m. — FIR allegedly recorded at 2.00 p.m. — *High Court holding that recording FIR belatedly was mistake on part of officer — PW 9, who delivered report to Magistrate, stating that distance between police station and Magistrate residence is only half kilometre and he delivering FIR at 5.55 p.m. — Inference can be drawn that FIR was registered at 5.30 p.m. or 5.45 p.m., when body had been received in hospital — There is delay in lodging FIR* (Para 10). *Birappa* v. *State of Karnataka*, (2010) 12 SCC 182: AIR 2010 SC 3398.

Bench Strength 2. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 28-7-2010]

[1093] — S. 154 — Delay in lodging FIR — Incident taking place at 4.00 p.m. — FIR lodged at 6.30 p.m. — Police station only 4 miles away — *Informant not going directly to police station, but adopting a circuitous route — Reason that one of the accused was Sarpanch of the village where occurrence took place — Hence, quite natural that informant would not be approaching anybody in the said village/adjoining village risking his life — On such facts, held, no delay, much less unexplained delay, in lodging the FIR — Penal Code, 1860 — Ss. 302/34 and Ss. 302/109* (Para 4). *State of Punjab* v. *Hardan Singh*, (2003) 12 SCC 679: AIR 2003 SC 4343: 2003 Cri LJ 5048.

Bench Strength 2. Coram: *S.N. Variava* and **H.K. Sema**, JJ. [Date of decision: 19-9-2003]

[1094] — S. 154 — Delay in lodging FIR — Incident taking place at 9 p.m. — *FIR lodged on the following day at 4 a.m. — Distance between police station and village being 6 miles — Time taken in bringing the victims to their house, fomenting their injuries and thereafter making an effort to arrange some conveyance — Held, in the circumstances of the case, there was no delay in lodging the FIR. Ranjha* v. *State of Punjab*, 1996 SCC (Cri) 1163: AIR 1996 SC 2741.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 16-8-1996]

[1095] — S. 154 — Delay in lodging FIR — Witnesses not chasing/nabbing murderers committing murder in a busy market — PW 1's detailed explanation in his deposition unshaken by cross-examination, accepted

On 21-11-1981, at about 5 p.m. when the deceased had gone to the market with his son (PW 1) and was taking betel from the shop of *KI*, he was attacked by the accused persons *D*, *V* and *KN* at the instigation of *SH* and *T*. First *V* stabbed him with a knife and thereafter the other accused persons beat him with lathis as a result of which the deceased fell on the ground. An alarm was raised by PW 1 as a result of which PWs 3 and 6 and one *KR* reached there and saw the occurrence.

PW 1 lodged an FIR at about 6.35 p.m. on the same day. The deceased was taken to a Primary Health Care Centre, where PW 7 doctor medically examined him, prepared the injury report and sent him to the District Hospital for better treatment. The deceased died in the hospital on 3-11-1984 at about 8.30 p.m. The post-mortem examination was done on 4-11-1981 at about 4.10 p.m.

The defence took the plea of false implication due to past enmity The Sessions Judge convicted all the accused persons under Sections 147, 148 and 302 IPC r/w Section 149 IPC and sentenced them to imprisonment for life. *SH*, *T*, *V*, *SU* and *D* were sentenced to life imprisonment under Section 302 read with Section 149 IPC. They were further sentenced to two years' RI under Section 148 IPC and one year's RI under Section 147 IPC. Considering that accused *H* was aged about 16 years, benefit of the Children Act, 1960 was extended to him. He was not sentenced to jail and was directed to be kept in children's home. The High Court after considering the materials on record set aside the conviction and acquitted all of them. Although the trial court had relied on the dying declaration which was neither recorded either by the police or by any doctor, the High Court disbelieved it on the ground that the same could not have been given by the deceased immediately after the occurrence as the prosecution witnesses themselves had stated that he became unconscious after receiving the blows and, therefore, he was not in a state of giving any such statement although alleged by the prosecution.

Allowing the appeal,

Held :

The High Court was wrong in doubting the entire prosecution case on the ground that there was a delay of one and a half hours (5 p.m. to 6.30 p.m.) although the police station was only one furlong away. The High Court was also wrong in doubting the prosecution case on the ground that the eyewitnesses present did not interfere, intervene or chase the culprit. It is proved and established on record that the entire incident as it happened was mentioned in the first information report wherein the names of the eyewitnesses were also mentioned. It cannot be said that there was any undue delay either in reporting the incident to the police or taking the victim to the hospital. (Paras 24 to 26)

PW 1, the informant, who was the son of the deceased, in his statement has clearly stated in detail as to how the incident took place and as to why he did not intervene when his father was being assaulted by the accused persons. He has stated that he could not immediately get any mode of conveyance to take his father to the police station or to the hospital and he had to wait for some time for getting a conveyance to enable him to shift his father to the police station which they reached at about 6.30 p.m. when the report was recorded. The victim was examined in the Primary Health Centre at about 7.15 p.m. i.e. within 45 minutes of the incident being reported to the police. Therefore, the order of acquittal passed by the High Court is set aside and order of the trial court is restored. (Paras 19 and 31). *State of U.P.* v. *Shobhanath*, (2009) 6 SCC 600.

Bench Strength **2**. Coram: *Dr. Arijit Pasayat* and **Dr. M.K. Sharma**, JJ. [Date of decision: 8-5-2009]

[1096] — S. 154 — FIR — Whether delayed — Witnesses taking injured (deceased) first to hospital and then lodging FIR, though police station was located in between place of occurrence and hospital — Effect — *Held, it is a case of quick reporting rather than delay in lodging FIR — Penal Code, 1860 — S. 302 — Evidence Act, 1872, S. 114*

It was natural that the witnesses accompanying the deceased first tried to take him to the hospital so as to enable him to get immediate medical treatment although the police station was located in between the hospital and the place of occurrence. Such action was definitely in accordance with normal human conduct and psychology. When their efforts failed and the deceased died they immediately reported the incident to the police. In fact, it was a case of quick reporting to the police. (Paras 25 and 24)

When every minute is precious, it is the natural conduct of the person accompanying him to see that his life could be saved. Therefore, the first endeavour is always to take the person to the hospital immediately so as to provide him medical treatment and only thereafter report the incident to the police. (Para 25). *State of H.P.* v. *Rakesh Kumar*, (2009) 6 SCC 308.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dr. M.K. Sharma**, JJ. [Date of decision: 6-5-2009]

[1097] — S. 154 — FIR, on facts of the case if delayed — The incident happened in two parts, first at about 6.00 p.m. and again an hour later — *In the first incident brothers **B** and **J** were killed and in the second incident **N**, father of **B** and **J** was killed, while he was going to report earlier murders to police — **W** then went to send a message to the police by phone, but could not get the connection on which he called the police at another police station — The message was conveyed to police station concerned upon which the message was recorded in the daily diary (Ext. 31) — Police officer reached the village at 1.00 p.m. next day and on enquiry found that **B**, **J** and **N** were dead — He then recorded the statement of **D** on which FIR was registered — Held, no delay on facts of case* (Paras 47 and 48)

The incident happened in two parts. In the first incident *B* and *J*, sons of *N* were killed, an event which was witnessed by PW 1, *S*, the son and nephew of the two deceased, respectively. The second incident was witnessed by PW 4, PW 5 and PW 6. *S* testified that he, *B* and *J* were returning from the field when they had been surrounded by all the accused and injuries had been caused to *B* and *J*. He also specified the weapons that each of the accused was holding and the manner of their use. His statement had been duly corroborated by the dying declaration made by *J* to *D*. PW 4 deposed that while accompanying his grandfather (*N*) to lodge the report with the Police Inspector with respect to the earlier murders, they had met PW 5 on the way and she too had accompanied them. They had thereafter been accosted by all the accused who were armed with axes and sticks and they had caused injuries to *N* with their weapons. PW 4 also deposed that on seeing this, he had run home, informed his mother about the incident and on account of the panic prevailing in the village, he too was hidden away till the next morning. The statement of PW 4 also found corroboration from the evidence of PW 5 and PW 6. The medical evidence fully supports the prosecution's story. The prosecution story is further fortified by the recoveries of bloodstained

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articles from some of the accused. Blood found on the articles was of the blood groups of the deceased persons. (Paras 37 to 40, 45 and 46). *Himmat Sukhadeo Wahurwagh* v. *State of Maharashtra*, (2009) 6 SCC 712.

Bench Strength **3**. Coram: *S.B. Sinha*, **H.S. Bedi** and *Aftab Alam*, JJ. [Date of decision: 1-5-2009]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Swami Prasad v. State of M.P., (2007) 13 SCC 25, followed

State of Maharashtra v. Himmat Sukhadeo Wahurwagh, (2007) 4 AIR Bom R 596, affirmed

[1098] — S. 154 — Delay in lodging FIR — Is of great importance if there is enmity between the parties (Para 18). *Om Prakash* v. *State of U.P.*, (2008) 17 SCC 249: AIR 2009 SC 944: (2009) 1 All LJ 657: (2009) 2 ECrN 14 (SC): 2009 Cri LJ 782: (2009) 75 AIC 257 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 12-12-2008]

[1099] — S. 154 — Delay in lodging FIR — Murder of a housewife by inflicting axe blows — *Occurrence taking place at 9 a.m. — Deceased's husband PW 1, who had seen the occurrence, lodging FIR at 1.45 p.m. — Having regard to the state of mind of PW 1, held, prosecution case cannot be disbelieved merely because of short delay in lodging the FIR*

Court should have regard to the reality that for PW 1 it was his wife who was butchered right in front of his eyes. If he had taken a couple of hours to regain his composure to go to the police station for lodging the complaint it only sounds as normal conduct of a bereaved husband in the aforesaid circumstances. There was no justification for the High Court to use that short delay for denouncing the core of the prosecution story. (Para 16). *State of U.P.* v. *Shyam Sunder*, (2000) 10 SCC 49.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 24-2-1999]

[1100] — S. 154 — Delay in lodging FIR — One day delay in lodging FIR explained. *Kashiram* v. *State of M.P.*, (1998) 7 SCC 450: 1998 SCC (Cri) 1683.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **M. Srinivasan**, JJ. [Date of decision: 16-10-1998]

[1101] — S. 154 — FIR — Delay in lodging/filing FIR — Non-naming of all accused — Inference — Credibility *— Incident occurring at about 4.45 p.m. on May 25; injured brought to Government Hospital at 5.40 p.m.; FIS of father of deceased recorded at 7 p.m. which reached police station concerned at about 9 p.m., whereafter FIR was registered which reached JM at 11.30 a.m. on May 26 — If FIR was fabricated then all the accused could have been incorporated — Hence, no unexplained delay in lodging/transmission of FIR — Besides, no prejudice had been caused to accused* (Paras 32 and 34). *Myladimmal Surendran* v. *State of Kerala*, (2010) 11 SCC 129: AIR 2010 SC 3281.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 1-9-2010]

State of Rajasthan v. Kalki, (1981) 2 SCC 752: 1981 SCC (Cri) 593, relied on

[1102] — S. 154 — Delay in lodging FIR — Question of, not raised before High Court — Explanation given in respect of delay, plausible — Hence, said delay not fatal to prosecution case

It has been explained by the prosecution as to why there was some delay in lodging the FIR. It has been categorically stated that there was no bus available and, therefore, it could be only done when the bus was available. The question was not raised before the High Court and apart from that, explanation offered appears to be plausible, in the absence of any material to the contrary. (Para 15). *Ram Bali* v. *State of U.P.*, (2004) 10 SCC 598: 2004 SCC (Cri) 2045: AIR 2004 SC 2329: 2004 Cri LJ 2490.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-4-2004]

[1103] — S. 154 — FIR — Delay if inordinate *— Incident had happened at 6.30 p.m. on 25-8-1995, the injured had reached the hospital by 8 p.m. and the FIR had been lodged at the police station by an injured eyewitness eight hours later — Held, taking into account normal human conduct and the fact that many persons had sustained injuries, one of whom had subsequently died, a delay of eight hours can, by no stretch of imagination, be dubbed as inordinate* (Paras 16 and 17). *Shankaraya Naik* v. *State of Karnataka*, (2008) 14 SCC 685.

Bench Strength **2**. Coram: *S.B. Sinha* and **H.S. Bedi**, JJ. [Date of decision: 22-9-2008]

[1104] — Ss. 154 & 173 and 401(3) — FIR — Delay — 7 days' delay in registering FIR — 40 days' delay in sending it to court — Effect — *Trial court convicting appellant-accused under Ss. 306 and 294(b) — Co-accused convicted under Ss. 306 and 323 — Both accused acquitted in appeal — In revision petition High Court converting acquittal into conviction with reduced sentence — Sustainability — Held, unexplained delay was large — Judgment of High Court set aside and mat-*

ter remitted for considering the effect of delay keeping in view the scope and ambit of S. 401(3) — Penal Code, 1860, Ss. 306, 294(b) and 323 (Paras 16 to 18). *Kannika* v. *Mookaiah*, (2009) 3 SCC 735.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-2-2009]

[1105] — S. 154 — Delay in lodging FIR — Rape case — FIR lodged after 17-18 days of the incident — Effect — *Held, delay in lodging the FIR would not be fatal to the prosecution case if the same is explained to the satisfaction of the court — Penal Code, 1860 — Ss. 375 and 376*

Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the same cannot by itself be a ground for disbelieving and discarding the entire prosecution version, as was done by the High Court in the present case. (Para 9)

The evidence of PWs 4 and 5 read with that of the victim clearly explained as to why the first information report was lodged after 17-18 days. The evidence of the aforesaid three witnesses clearly shows that PW 5 (father of victim) was seriously ill and the family members did not want to create tension in his mind when he was not physically well and waited for his recovery. In spite of the lengthy cross-examination this aspect has not been shaken by the defence. The view of the High Court that PW 4 should have told some respectable person or the father earlier to say the least is a view which has no foundation and overlooks the very reason to shun or openly publicise it to avoid the ignominy involved in it. In a tradition-bound and conservative society, more particularly in a rural area, the shame of sexual assault on a girl of about 14 years cannot be lost sight of. This down-to-earth reality has been lost sight of by the High Court. The trial court had rightly emphasized this aspect, but unfortunately, the High Court took a contrary view irrationally. (Para 10). *State of Punjab* v. *Ramdev Singh*, (2004) 1 SCC 421: 2004 SCC (Cri) 307: AIR 2004 SC 1290.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-12-2003]

[1106] — S. 154 — FIR — Delay in lodging FIR — Rape cases — Rape of a minor — Delay in lodging FIR was also a natural phenomenon in rape cases — Conviction of appellant under S. 376 IPC, sustainable — *Penal Code, 1860, Ss. 375 and 376* (Paras 10, 14, 17 to 21). *Satyapal* v. *State of Haryana*, (2009) 6 SCC 635.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 8-4-2009]

Satyapal v. State of Haryana, 2007 Cri LJ 2095 (P&H), affirmed

Modi's Medical Jurisprudence, 23rd Edn., at pp. 897 and 928, relied on

[1107] — S. 154 — Delay in lodging of — Sexual offence(s) involved — Different considerations apply — Effect of delay in filing FIR in cases of sexual assault — *Respondent-accused alleged to have sexually ravished PW 1 and outraged the modesty of several other girl students of the school where he was a teacher — High Court setting aside his conviction considering delay in lodging FIR — Held, delay in a case of sexual assault, cannot be equated with the case involving other offences — There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint — In a tradition-bound society prevalent in India, more particularly rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there was some delay in lodging the FIR — Further, though prosecution had failed to establish allegations of rape but commission of offence punishable under Ss. 354 and 506 have clearly been established — Hence, respondent deserves to be convicted for the offences punishable under Ss. 354 and 506 — Penal Code, 1860 — Ss. 376, 354 and 506* (Paras 2 and 6 to 8). *State of H.P.* v. *Prem Singh*, (2009) 1 SCC 420.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-11-2008]

[1108] — S. 154 — Delay in lodging/filing FIR — Case of taking away victim fraudulently and subjecting her to rape by appellant-accused and forcing her to indulge in prostitution by coercion — *Delay was bound to occur as FIR was filed only after return of victim from her captivity after one-and-a-half years — Reasons for which she could not come back or inform her parents, held, stood well explained by victim that she was given threat by appellant that dead body of some other girl had been identified by her parents to be of the victim and thus if she went back, her parents would be in difficulty —*

(3)(vi)4. Reliability and Validity of FIR - FIR and Time - Delay in lodging/filing FIR *(contd.)*

She had been living under a constant threat and could not muster courage to inform any person — Penal Code, 1860 — Ss. 375, 376 and 366 (Paras 14 and 13). *Fateh Chand* v. *State of Haryana*, (2009) 15 SCC 543: AIR 2009 SC 2729: (2009) 81 AIC 216 (SC): 2009 Cri LJ 3942.

Bench Strength 2. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 29-5-2009]

[1109] — S. 154 — Delay in lodging/filing FIR — Held on facts, was not fatal — *In cases involving offence of rape, the victim or her family members hesitate to file a complaint as there are other factors to be considered — Besides, no cross-examination on this aspect was made — Penal Code, 1860 — Ss. 375 and 376*

The trial court found that there was inordinate and unexplained delay in lodging the FIR; there was enmity between the appellant and the victim's family; the medical evidence did not support the case of the prosecution; material witnesses and mother of the victim girl were not examined and there were material contradictions in evidence of PWs. Hence, the Sessions Judge giving benefit of doubt to the accused, acquitted him.

In appeal, the High Court dealt with every one of the reasons given by the trial court for acquitting the accused and dislodged them by recording its own reasons. The High Court pointed out that if there was enmity between the family of PW 2 and that of the accused, it was improbable and unnatural that the victim girl would be allowed to work in the house of the appellant. As far as delay in lodging the FIR was concerned, the High Court has rightly held that the same was not fatal. It has also pointed out that in cases involving offence of rape, the victim or members of the family of the victim would be hesitant and reluctant to file a complaint as there would be other factors working in their minds. Moreover, there was no cross-examination on the said point. It further held that the evidence of the prosecutrix PW 1 was trustworthy and was acceptable and her age at the time of incident was about 10 years and she specifically denied that she was tutored. Further, the prosecution version was supported by other PWs.

Held :

As far as medical evidence is concerned, the High Court had rightly stated that a too technical view cannot be taken having regard to the evidence of the doctor that abrasion on hymen may be caused due to rape, coupled with the evidence of the victim girl herself. (Para 9)

Though, the mother of the victim and some of the material witnesses were not examined, but in the facts and circumstances of the case, their non-examination was not material having regard to the evidence that was brought on record particularly the evidence of the victim girl herself. No doubt, non-examination of material witnesses may go against the prosecution in some cases but not in all cases. The High Court observed that if a false case was to be foisted against the appellant at the instance of the victim's mother the complaint could have been lodged on the very day of the incident without waiting for the arrival of PW 2. Hence, the High Court was perfectly justified in reversing the order of acquittal. (Para 9). *Ayub Hussain Mandal* v. *State of Assam*, (2007) 15 SCC 549.

Bench Strength 2. Coram: *Shivaraj V. Patil* and *Arun Kumar*, JJ. [Date of decision: 8-10-2002]

[1110] — S. 154 — FIR — Delay in lodging/filing FIR — Case of gang rape — *Alleged incident of gang rape occurring on the night intervening 25-6-1989/26-6-1989; PW 4 (mother of prosecutrix) going to the police station next day to lodge FIR, but police concerned failing to take any action; written complaint (Ext. DA) lodged on 5-7-1989 before SSP who forwarding same to DSP; DSP, DW 2 visiting the village on 8-7-1989 and recording statement of prosecutrix — However, a panchayatnama (Ext. DB) dated 17-7-1989 brought forth by DW 2 wherein prosecutrix alleged to have admitted that she consensually cohabited with one* ***R****, and in order to save him she falsely implicated appellant-accused — A further complaint lodged before SSP by PW 4 and prosecutrix on 22-7-1989 stating that signatures of prosecutrix and thumb impression of PW 4 were obtained on some blank papers; that DW 2 had threatened them with dire consequences if they did not give statement in favour of accused; and that prosecutrix was harassed by constables who also caused her injuries — Injuries caused proved by doctor — Prosecutrix categorically denying that any Panchayat was convened on 17-7-1989 and stating that her signature was obtained after beating her with "leather patta" — Held, panchayatnama was the brainchild of DW 2, contents whereof cannot be taken into consideration for whatever purposes — Truthfulness of statement made by prosecutrix on 5-7-1989 to SSP, and her statement of 8-7-1989 based on which FIR was lodged cannot be doubted — Hence, submission that FIR was ante-timed and brought into existence to falsely implicate appellants, rejected* (Paras 8 to 13). *Jaswant Singh* v. *State of Punjab*, (2009) 16 SCC 201.

Bench Strength 2. Coram: **B. Sudershan Reddy** and *J.M. Panchal*, JJ. [Date of decision: 5-11-2009]

[1111] — S. 154 — When does not affect prosecution case — In instant case of gang rape, delay in lodging FIR stood properly explained — *Penal Code, 1860 — Ss. 375 and 376*

When FIR by a Hindu lady is to be lodged with regard to commission of offence like rape, many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of the victim who has been criminally assaulted in such a manner. Obviously, the victim must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reason for little delayed FIR. The delay was found to be properly explained by both the courts below. (Para 13). *Sohan Singh* v. *State of Bihar*, (2010) 1 SCC 68.

Bench Strength 2. Coram: *V.S. Sirpurkar* and **Deepak Verma**, JJ. [Date of decision: 9-10-2009]

[1112] — S. 154 — Delay in lodging FIR — Rape of a married woman — Effect of delay — *Held, does not necessarily indicate that the version of victim is false — Penal Code, 1860 — Ss. 375 and 376*

In India if the prosecutrix happened to be a married person, she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly, does not raise the question that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women. It casts doubt and shame upon her rather than comfort and sympathy. Therefore, the delay in lodging complaint in such cases does not necessarily indicate that her version is false. (Para 8). *Sri Narayan Saha* v. *State of Tripura*, (2004) 7 SCC 775.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 8-9-2004]

[1113] — S. 154 — Delay in lodging FIR — Time taken in carrying victims from one hospital to another — *In circumstances, held, delay properly explained. Kanhiyalal* v. *State of Rajasthan*, 1989 Supp (2) SCC 263: 1990 SCC (Cri) 168: AIR 1989 SC 1515: 1989 Cri LJ 1482: 1989 BBCJ 117.

Bench Strength 2. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 21-4-1989]

[1114] — S. 154 — Delay in lodging FIR explained

When the incident in the village between 9.30 pm to 10 pm at night and when effort was to be made first to remove the injured to the hospital which was a couple of kilometres away and when evidence shows that they had to requisition a vehicle of another person, it would naturally take some time. After injured was removed to the hospital, the witness had proceeded towards the police station but at the bus stop of the village ASI accompanied with constables met him and then immediately on the bus stop itself the complaint was recorded. On facts, it could not, therefore, be said that the recording of FIR was unduly delayed. *Ram Kumar* v. *State of Haryana*, Criminal Appeal No. 312 of 1985.

[1115] — S. 154 — Delay in lodging FIR involving sexual offences — *Since it brings in questions of morality and chastity of the victim, the initial hesitation and delay is understandable. State of Rajasthan* v. *Narayan*, (1992) 3 SCC 615: 1992 SCC (Cri) 781: AIR 1992 SC 2004.

Bench Strength 3. Coram: **A.M. Ahmadi**, *Kuldip Singh* and *B.P. Jeevan Reddy*, JJ. [Date of decision: 30-7-1992]

[1116] — S. 154 — Delay in recording FIR, on facts, held fatal to the prosecution case. *Ganesh Bhavan Patel* v. *State of Maharashtra*, (1978) 4 SCC 371: 1979 SCC (Cri) 1: AIR 1979 SC 135: 1979 Cri LJ 51.

Bench Strength 3. Coram: *Y.V. Chandrachud, C.J.* and **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 18-10-1978]

[1117] — S. 154 — Delay in registration of FIR — If on facts material — *Incident at 7.45 a.m. — FIR lodged at 8 a.m. and formal FIR recorded at 9.30 a.m. — Since the IO had himself proceeded to the hospital and recorded the complaint of the injured there and sent the same to the police station where the same was registered at 9.30 a.m., held, there was, on facts, no possibility of any manipulation at the instance of others. State of Maharashtra* v. *Bandu*, 1998 SCC (Cri) 584, 586.

Bench Strength 2. Coram: **G.T. Nanavati** and *G.B. Pattanaik*, JJ. [Date of decision: 11-12-1997]

[1118] — S. 154 — Delay of 10 days in lodging the FIR — *Explanation that the injured refused to disclose anything to the IO on the plea that the respectable inhabitants of the village were trying to have the matter compromised — None of them examined at the trial — No other material on record to substantiate the explanation for delay in lodging the FIR — Injured not disclosing the names of his assailants to the doctor in the hospital which rendered the prosecution case doubtful — Held, in the circumstances of the case the accused is entitled to the benefit of doubt. Satguru Singh* v. *State of Punjab*, 1997 SCC (Cri) 632: AIR 1995 SC 2449: 1995 Cri LJ 4165.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision: 20-4-1995]

(3)(vi)4. Reliability and Validity of FIR - FIR and Time - Delay in lodging/filing FIR *(contd.)*

[1119] — S. 154 — Delay of 14 hours in filing FIR — *Occurrence taking place in the night time in a village about 9 kilometres away from the Police Station — Three persons killed in the incident and the killers having deadly weapons — In such circumstances villagers could not be expected to go out in the night time — Held, in the circumstances of the case, FIR not delayed. State of M.P.* v. *Udai Singh*, 1998 SCC (Cri) 593, 596: AIR 1998 SC 198.

Bench Strength 2. Coram: *M.M. Punchhi* and **M. Srinivasan**, JJ. [Date of decision: 1-12-1997]

[1120] — S. 154 — Delay of about 5-6 hours in lodging FIR — *Victim totally stranger for the informant found lying in semi-conscious state with injuries on her private part — Time taken in tracing out the identity of the victim girl, arranging for a khatola and staying in the village for joining some more persons for taking the victim to the police station — Held, explanation for delay in lodging the FIR not fabricated. State of U.P.* v. *Babul Nath*, (1994) 6 SCC 29: 1994 SCC (Cri) 1585.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 12-8-1994]

[1121] — S. 154 — Delay of one day in forwarding the FIR to Magistrate — *Held on facts, did not vitiate the prosecution case. Jinnat Mia* v. *State of Assam*, (1998) 9 SCC 319: 1998 SCC (Cri) 1017: AIR 1998 SC 533.

Bench Strength 2. Coram: *M.M. Punchhi* and **M. Srinivasan**, JJ. [Date of decision: 12-12-1997]

Arjun Marik v. State of Bihar, 1994 Supp (2) SCC 372: 1994 SCC (Cri) 1551, distinguished

[1122] — S. 154 — Delay of twelve hours in lodging FIR — *Deceased immediately rushed to hospital in a seriously injured condition — Relatives and friends of deceased being under shock for some time after the occurrence and then their main concern being to save the life of the deceased lodging of FIR delayed till police arrived at the hospital in morning — Hence, the delay in filing FIR would not detract its corroborative value. Krishna Pillai Sree Kumar* v. *State of Kerala*, 1981 Supp SCC 31: 1981 SCC (Cri) 669: AIR 1981 SC 1237: 1981 MLJ (Cri) 539: 1981 Cri LJ 743: 1981 KLT 317.

Bench Strength 2. Coram: **A.D. Koshal** and *Baharul Islam*, JJ. [Date of decision: 12-3-1981]

[1123] — S. 154 — Delay of two days in lodging the FIR not a factor casting doubt on prosecution story in view of the generally known fact that the rape victim or her husband would hesitate to approach the police. *State of Rajasthan* v. *Narayan*, (1992) 3 SCC 615: 1992 SCC (Cri) 781: AIR 1992 SC 2004.

Bench Strength 3. Coram: **A.M. Ahmadi**, *Kuldip Singh* and *B.P. Jeevan Reddy*, JJ. [Date of decision: 30-7-1992]

[1124] — S. 154 — Delay properly explained — *Prosecutrix, a widow aged 55 years and having two grown-up children, alleging that respondents grappled with her and made her lie down on the earth and then committed rape and that in that process she received injuries — Allegation corroborated by medical evidence — At the time of contacting her advocate she was scared and hesitant — Lodging FIR through her advocate on the next day — Salwar of prosecutrix was found to be torn and stained — Forensic Science Laboratory report showing presence of human blood and semen on the salwar — In such circumstances, held, the trial court rightly convicted the accused under Ss. 376(2)(g) and 323 IPC* (Para 11). *State of H.P.* v. *Lekh Raj*, (2000) 1 SCC 247: 2000 SCC (Cri) 147: AIR 1999 SC 3916: 2000 Cri LJ 44.

Bench Strength 2. Coram: *S. Saghir Ahmad* and **R.P. Sethi**, JJ. [Date of decision: 2-11-1999]

[1125] — S. 154 — Delay satisfactorily explained — Attending to the injured first — *Rushing of the victim to the hospital to save his life instead of first going to the police station was a satisfactory explanation for the delay in making the complaint. Raghbir Singh* v. *State of Haryana*, (2000) 9 SCC 88: 2000 SCC (Cri) 1169: AIR 2000 SC 3395: 2000 Cri LJ 2463.

Bench Strength 2. Coram: *D.P. Wadhwa* and **Ruma Pal**, JJ. [Date of decision: 18-4-2000]

[1126] — S. 154 — Explanation for delay — Murder at night — *FIR containing categorical statement that nobody came forward to accompany the complainant wife of deceased to police station in the dark night — Therefore, she had to wait till the morning for visiting the police station for lodging the report — In her long cross-examination no question regarding the reasons for the alleged delay in lodging the FIR asked — No suggestion made that she had wrongly stated about the reason why she was lodging the FIR on the next morning — In the circumstances held, there was neither unexplained delay nor was there requirement for offering any explanation — Penal Code, 1860 — Ss. 302 and 34* (Para 13). *State of Punjab* v. *Mohinder Singh*, (2007) 13 SCC 560: AIR 2008 SC 92.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 28-9-2007]

[1127] — S. 154 — Explanation for delay of twelve hours — Murder case — *Incident at about sunset in a village, at 9 kms. from police station — FIR lodged next day at 7 a.m. — FIR containing the informant's statement that due to fear he could not reach during the night — Held, delay stood explained — Penal Code, 1860, Ss. 300 and 302. State of U.P.* v. *Ram Swarup*, 1988 Supp SCC 262: 1988 SCC (Cri) 552: AIR 1988 SC 1028: 1988 ALJ 555: (1988) 1 Crimes 994.

Bench Strength **3**. Coram: *G.L. Oza, B.C. Ray* and **K. Jagannatha Shetty**, JJ. [Date of decision: 26-2-1988]

[1128] — S. 154 — FIR — Belated FIR — *Sufficient explanation given in respect thereof — Hence, the said delay, held on facts, was not fatal to the prosecution case*

So far as the grievance to the belated FIR is concerned, sufficient explanation was found to have been given. The place of incident is said to be situated in a remote area, namely, three kilometres away from the village itself and the village in turn itself is said to be situated in a remote area in Athani taluk. In such circumstances, the explanation given that no one who was present at the time of occurrence could dare to leave the place in the dead of night to inform others or go to the police station seems to be plausible and reasonable and that only after the arrival of PW 7, another son of the deceased, at the place of incident they could send information to the police, normally and sufficiently explains the delay. Thus, the same could not be said to cast any shadow of doubt on the truthfulness of the case of the prosecution, on this account. (Para 7). *Shivraj Bapuray Jadhav* v. *State of Karnataka*, (2003) 6 SCC 392: 2003 SCC (Cri) 1372: AIR 2003 SC 3578: 2003 Cri LJ 3542.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 15-7-2003]

[1129] — S. 154 — FIR — Deceased immediately rushed to hospital in a seriously injured condition — Relatives and friends of deceased being busy in saving the life of the deceased FIR lodged after death of the deceased — *Held, delay in lodging FIR not undue. Nagappa Fakirappa Goudar* v. *State of Karnataka*, 1994 Supp (1) SCC 716: 1994 SCC (Cri) 621: AIR 1994 SC 953: 1994 Cri LJ 1200: (1994) 1 Crimes 577: (1994) 31 ACC 161.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 18-1-1994]

[1130] — S. 154 — FIR — Delay — Effect — *Held, delay in lodging FIR will not be fatal in every case if the ocular version of the eyewitnesses is reliable and trustworthy — Incident taking place at 6.30 p.m. on 4-11-1986, while FIR lodged at 10 a.m. on 5-11-1986 at the police station which was at a distance of about 15 km from the place of occurrence — Deceased and injured witnesses brutally assaulted by the accused-appellants with choppers, club etc. in front of A-1's house — Injured witnesses managing to flee, leaving the deceased lying there in injured condition — Held, having regard to the injuries inflicted on the body of the deceased as also on the person of the injured witnesses, it was but natural for PW 1 and other witnesses not to venture to go straight to the police station and lodge the complaint with the police on the day of the occurrence and the fact that the witnesses left the deceased on the scene of occurrence itself would indicate the gravity of the situation — Delay in lodging FIR satisfactorily explained — Hence, delay not fatal* (Para 16). *Venkategowda* v. *State of Karnataka*, (2006) 13 SCC 203: (2007) 2 SCC (Cri) 610: (2006) 48 AIC 47 (SC).

Bench Strength **2**. Coram: *A.K. Mathur* and **Lokeshwar Singh Panta**, JJ. [Date of decision: 6-11-2006]

Peddireddi Subbareddi v. State of A.P., AIR 1991 SC 1356: 1991 Cri LJ 1391; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, considered

[1131] — S. 154 — FIR — Delay — Effect — *Incident occurring at about 10.30 p.m. on 22-1-1997 in village* **P** *where there was no police post — FIR lodged at 7.30 a.m. on 23-1-1997 by PW 2 — PW 2 informing officer in charge of* **A** *police station on phone, consequent whereto police officers visiting place of occurrence at about 1 a.m. — Thereafter, deceased and injured admitted to hospital under a requisition letter of investigating officer which was proved — PW 6 admitted as indoor patient from 23-1-1997 to 26-1-1997 — Held, in a situation of this nature, explanation of PW 2 and others that they gave priority to the treatment of the deceased and the injured which occasioned the delay in lodging FIR was satisfactorily explained* (Paras 15 to 22). *Vikram* v. *State of Maharashtra*, (2007) 12 SCC 332: (2008) 1 SCC (Cri) 362: AIR 2007 SC 1893: 2007 Cri LJ 3193: (2007) 56 AIC 207 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 9-5-2007]

State of M.P. v. Kriparam, (2003) 12 SCC 675: 2005 SCC (Cri) 830; Shankarlal v. State of Rajasthan, (2004) 10 SCC 632: 2005 SCC (Cri) 579, distinguished

[1132] — S. 154 — FIR — Delay — Effect — *Incident occurring on 8-8-1984, while complaint made on 31-8-1984 — Except for a bare statement to the effect that representations were made to various persons, no material in that regard was adduced — Complainant seeking to explain the*

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delay by stating that the matter was reported to the police but the police did not take any action but modalities envisaged under S. 154(3) not adopted — Held, such allegations have to be established by calling for the necessary records from the police — Absence of such satisfactory proof was fatal to prosecution case (Paras 5, 12, 15 and 16). *Dilawar Singh* v. *State of Delhi*, (2007) 12 SCC 641: (2008) 3 SCC (Cri) 330: AIR 2007 SC 3234: (2007) 58 AIC 72 (SC): 2007 Cri LJ 4709.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 5-9-2007]

Khedu Mohton v. State of Bihar, (1970) 2 SCC 450: 1970 SCC (Cri) 479, relied on

[1133] — S. 154 — FIR — Delay — Explained and hence not fatal — Murder trial — Conviction justified — *Appellant alleged to have stabbed the deceased on his chest with knife — Appellant contending that High Court erred in convicting him and sentencing him to rigorous imprisonment for life and a fine of Rs 2000, as; (i) the first information report was lodged after considerable delay; (ii) the investigating officer could not collect any bloodstains from the place of occurrence as there were heavy torrential rains; (iii) the weapon of attack, namely, knife was not recovered — Held, delay in lodging FIR was satisfactorily explained — Police station was at a distance of 21 kms from place of occurrence and there was torrential rain — Fact that the bloodstains were not sent for chemical examination, or that the knife was not recovered insignificant — Statement by doctor that the injury suffered by deceased could be caused by fall on iron railing immaterial, as it was not the case of the defence that there was any iron railing or the deceased had fallen on any iron railing — Testimony of PW 2 (eyewitness) not impeached in cross-examination — Moreover, his testimony was substantially corroborated by PW 3 (eyewitness) — Hence, conviction and sentence sustainable — Penal Code, 1860 — S. 302* (Paras 2, 7, 10 to 13). *Tama* v. *State of W.B.*, (2007) 10 SCC 493: (2008) 1 SCC (Cri) 61: 2007 Cri LJ 4724: (2007) 59 AIC 268 (SC).

Bench Strength 2. Coram: *S.B. Sinha* and *H.S. Bedi*, JJ. [Date of decision: 11-9-2007]

[1134] — S. 154 — FIR — Delay — Lodged after inquest — Credibility — Murder — *PW 13 informed IO about the incident naming only A-9 as the assailant and PW 11 as the eyewitness — Details of the incident not furnished by him — Information given by PW 13 based on the version of PW 11 — But why PW 11 himself did not lodge FIR not disclosed — Instead PW 11 asked IO to visit the place of occurrence — Accordingly, IO reached the place of occurrence along with PW 13 — Inquest report prepared — Details of the incident narrated by PW 11 on the basis whereof FIR lodged on the spot — Panchnama held immediately thereafter — In inquest panchnama it was stated that deceased was assaulted with sharp-edged weapons by some unknown assailants as a result of which he died — Held, FIR cannot be lodged in murder case after inquest was held — Names of all the assailants not disclosed — FIR not reliable — Penal Code, 1860 — S. 302*

An information received by the officer in charge of a police station for commission of a cognizable offence must be reduced to writing so as to enable him to start investigation. Lodging of a first information report is necessary for setting the criminal law in motion. It can be lodged by anybody. It, however, should not be too sketchy so as to make initiation of investigation on the basis thereof impossible. Only information in regard to commission of an offence may not for all intent and purport satisfy the requirement of the first information report. When, however, the first information report is lodged by a person who claims himself to be aware of not only the commission of the offence, the name of the deceased and at least one of the accused who had committed the same, could have been recorded on the basis thereof. It may, however, be another thing to say that any information in regard to the commission of an offence is given by way of a telephone or by a person who does not disclose his identity and such message is so cryptic that it may not satisfy the requirement of Section 154 CrPC. (Paras 12 and 15)

A first information report cannot be lodged in a murder case after the inquest has been held. The first information report had been lodged on the basis of the statements made by PW 11 to the informant himself at the spot. If the said prosecution witness who claimed himself to be the eyewitness was the person who could lodge a first information report, there was absolutely no reason as to why he himself did not become the first informant. The first information report was recorded on the basis of his information given to the first informant at the spot. All information given by him to PW 13 was made before the investigating officer himself. What prevented him from lodging the first information report is beyond comprehension. PW 11, categorically stated that he had disclosed the details of information to all concerned. Therefore, it is expected that the first informant was informed thereabout. The information given by PW 13 had at least been recorded by the police in the crime register and he categorically stated a few facts viz. the main accused Accused 9 committed the murder. Even the place where the murder took place was known to him. The investigating officer recorded the statement after holding inquest. The detailed report in regard to the nature of injuries as also the place where the injuries were inflicted was known to him as inquest report had already been prepared. Such an attempt on the part of the investigating officer has been deprecated by the Supreme Court in a large number of decisions. All other witnesses including the panch witnesses must have been present there. If despite the same, according to panch witnesses some unknown persons are said to be his assailants, it is evident that PW 11 did not disclose the names of the assailants; at least all of them before PW 9 as also the investigating officer. It may be true that the prosecution would not be bound thereby. But, the impression that can be gathered therefrom is that at least at that point of time there was a general belief that the deceased had been killed by unknown assailants. (Paras 18 and 25)

In a case of this nature, enmity between two groups is accepted. Whether the first information report was ante-timed or not also requires serious consideration. First information report, in a case of this nature, provides for a valuable piece of evidence although it may not be a substantial evidence. The reason for insisting on lodging of first information report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had been used as also the names of eyewitnesses. Where the parties are at loggerheads and there had been instances which resulted in death of one or the other, lodging of a first information report is always considered to be vital. (Para 19)

The Code of Criminal Procedure provides for certain internal and external checks; one of them being the receipt of a copy of the first information report by the Magistrate concerned. It is not in dispute that in a grave case of this nature, the copy of the first information report was received by the Magistrate four days later. No explanation has been offered therefor. Section 157 CrPC mandates that the first information report should be sent to the nearest Magistrate within a period of 24 hours. It has not been disputed that the occurrence took place near the district headquarters. There cannot be any reason whatsoever as to why the first information report was sent after four days. (Para 20)

Proof of motive by itself may not be a ground to hold the accused guilty. Enmity, as is well known, is a double-edged weapon. Whereas existence of a motive on the part of an accused may be held to be the reason for committing crime, the same may also lead to false implication. Suspicion against the accused on the basis of their motive to commit the crime cannot by itself lead to a judgment of conviction. (Para 26)

There is some substance in the submission that the other accused persons did not share the common object with Accused 9. Their names did not appear in the first information report. Even PWs 11 and 12 did not attribute any overt act on their part. (Para 27)

As it is difficult to rely upon the testimonies of PWs 11 and 12 and for other reasons enumerated hereinbefore, it would be hazardous to record a judgment of conviction in this case. (Para 28). *Ramesh Baburao Devaskar* v. *State of Maharashtra*, (2007) 13 SCC 501: 2008 Cri LJ 372: (2007) 59 AIC 54 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

Om Prakash v. State of Uttaranchal, (2003) 1 SCC 648: 2003 SCC (Cri) 412; Mundrika Mahto v. State of Bihar, (2002) 9 SCC 183: 2003 SCC (Cri) 1163; Jagdish Murav v. State of U.P., (2006) 12 SCC 626: (2007) 2 SCC (Cri) 234; State of Rajasthan v. Teja Singh, (2001) 3 SCC 147: 2001 SCC (Cri) 439, relied on

[1135] — Ss. 154, 161 and 156, 157, 160 — FIR lodged after investigation (herein of witnesses), held, is doubtful — *Suppression by prosecution as to how police got prior information, on facts, created a doubt*

According to PW 2 (mother of the deceased), police had already arrived when they reached at the place of occurrence on the next day morning. The police must have received some information. Why the other information was suppressed by the prosecution has not been explained. In a situation of this nature, particularly if an FIR was lodged after recording the statements of the witnesses, another FIR would not be admissible in evidence and ordinarily an investigation cannot be started without recording the FIR. (Paras 35 and 37). *Subramaniam* v. *State of T.N.*, (2009) 14 SCC 415: (2009) 78 AIC 19 (SC): 2009 Cri LJ 3002.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

[1136] — S. 154 — FIR — Delay — Non-explanation of — Effect — *Generally*

In criminal trial one of the cardinal principles for the court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished

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version of the case to be presented before the court at the earliest instance. That is why if there is delay in either coming before the police or before the court, the courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case. (Para 9). *Dilawar Singh* v. *State of Delhi*, (2007) 12 SCC 641: (2008) 3 SCC (Cri) 330: AIR 2007 SC 3234: 2007 Cri LJ 4709.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 5-9-2007]

Thulia Kali v. State of T.N., (1972) 3 SCC 393: 1972 SCC (Cri) 543; Ram Jag v. State of U.P., (1974) 4 SCC 201: 1974 SCC (Cri) 370, relied on

[1137] — S. 154 — FIR — Delay — Unexplained delay — When fatal — *Murder trial — Acquittal justified — Respondent-accused (uncle of the deceased) alleged to have shot the deceased when the latter refused to be dissuaded from ploughing the field — Accused thereafter said to have rushed to the village and made extra-judicial confession to PWs — Occurrence taking place on 19-8-1987 at about 4 p.m., while FIR lodged on 21-8-1987 at 1 p.m. — No explanation offered for such delay — Accused advised by PW 8 to go to Village Kotwar — Distance between place of occurrence and house of Village Kotwar about 10 km and time required for commutation was approximately 2 hrs — PW 3 (son of Village Kotwar) stating that accused reached his house at about 4 p.m. — Held, if the accused had confessed to PW 3 at about 4 p.m., the incident could not have occurred at 4 p.m. as alleged — Further, PWs 1, 3 and 8 specifically stating that they had taken the accused to police station and his gun was seized there — However, PW 10 (police official) stating that the statement of the accused was recorded when he was found after search and the accused was not before him when the FIR was lodged — In such circumstances, held, the so-called extra-judicial confession is a myth and the prosecution version lacks credibility and has been rightly discarded by High Court — High Court's order of acquittal calls for no interference — Evidence Act, 1872, S. 24 — Penal Code, 1860 — S. 302* (Paras 2, 10 and 11). *State of M.P.* v. *Basodi*, (2007) 14 SCC 548.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 1-8-2007]

[1138] — S. 154 — FIR — Delay, if any — *Incident, in which death of a person occurred, took place at 11 p.m. — Dead body lying in the house and informant and others were threatened — Informant started proceeding to the police station which was about 11 km from the place — On his way he met SI at about 2 a.m. and informed him about the incident — FIR recorded at 3.10 a.m. — In this situation, held, FIR lodged without any delay* (Paras 13 and 14). *Anil* v. *State of Haryana*, (2007) 10 SCC 274: (2007) 3 SCC (Cri) 641: 2007 Cri LJ 4294.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 10-5-2007]

[1139] — S. 154 — FIR — Delay in filing — *FIR held reliable having regard to the time taken in assembling concerned persons on the spot and thereafter the distance covered in adverse weather for lodging it. Babu Krishna Kamble* v. *State of Maharashtra*, 1980 Supp SCC 222: 1980 SCC (Cri) 913: AIR 1980 SC 1269: 1980 Cri LJ 928.

Bench Strength 2. Coram: *R.S. Sarkaria* and **R.S. Pathak**, JJ. [Date of decision: 15-4-1980]

[1140] — S. 154 — FIR — Delay in filing — *FIR regarding the gruesome murder lodged within 1 1/2 hours of the incident — Held, in the circumstances, not delayed. Kaki Ramesh* v. *State of A.P.*, (1994) 4 SCC 397: 1994 SCC (Cri) 1214.

Bench Strength 2. Coram: *R.M. Sahai* and **B.L. Hansaria**, JJ. [Date of decision: 29-4-1994]

[1141] — S. 154 — FIR — Delay in filing — *Occurrence taking place at about 11.30 a.m. — FIR lodged at 3.30 p.m. — Held, in circumstances of the case, FIR not delayed. Raja Ram* v. *State of M.P.*, (1994) 2 SCC 568: 1994 SCC (Cri) 573: (1994) 2 An LT (Cri) 7: (1994) 1 Crimes 734.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 22-2-1994]

[1142] — S. 154 — FIR — Delay in filing — Suicidal death of woman in her in-laws' house within ten months of marriage — *Elder brother of deceased making written complaint about unnatural death of his sister on very day of incident but the same not treated as FIR by police — Mother of deceased making statement to police on next day which was treated as an FIR — Cause of delay in making such statement being great mental shock due to her daughter's death — Held, delay not unjustified even though FIR could have been lodged by some other adult member of the family*

If on getting the news of suicide being committed by the daughter, mother becomes unwell and is not in a proper mental frame to make any statement to the police, no exception can be taken to such conduct. It should be borne in mind that the elder brother of the deceased gave a written complaint to the police on the very day of the incident by indicating that there had not been any natural death of his sister and he felt that his sister had been murdered by her in-laws. On the very next date, the mother made a statement to the police indicating the plight of her deceased daughter and the physical and mental torture to which she was subjected to by the accused. Such statement of the mother has been treated as an FIR in the case. In the aforesaid circumstances, it cannot be held that there has been unjustified inordinate delay in lodging the FIR and that even if the mother had become unwell after hearing the news of the daughter's death other adult members of the family could have lodged the complaint with the police. *State of W.B.* v. *Orilal Jaiswal*, (1994) 1 SCC 73: 1994 SCC (Cri) 107: AIR 1994 SC 1418: 1994 Cri LJ 2104: (1994) 1 BLJR 267: (1994) 1 Guj LH 537.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 23-9-1993]

[1143] — S. 154 — FIR — Delay in filing — Explanation for — *Incident taking place at about 8 p.m. — FIR lodged next day at 11 a.m. by father of the deceased who could get details of incident at about 9 a.m. from his other son who was under shock and not in his senses till then — Held, delay properly explained — Importance of time factor in lodging FIR*

The adverse inference drawn by the High Court as to why the brother of the deceased did not inform the police regarding the occurrence throughout the night is without justification. A young boy of 19 years, who escaped death even after several attempts on the road and ultimately found his brother becoming victim of the said attack, must have been completely broken. It was too much to expect from him that before his father arrived, he would have taken legal steps for prosecuting the respondent. The father of the victim got the information from Rohtak at about 2.00 or 2.15 in the night and he immediately proceeded for Rohtak and reached there at about 4.00 or 4.15 in the morning. He found his son in the house but he was not in his senses. At about 9.00 a.m., in the morning he tried to know the full details from his son and then he lodged the first information report on the basis of the facts narrated by his son. It is true that time factor has an important role in context with lodging of a first information report. But, if the prosecution explains the delay satisfactorily, the Court is not expected to reject the whole prosecution case merely on that ground. The present case is one such case where taking all facts and circumstances into consideration, the prosecution case cannot be rejected on the ground that the first information report was not lodged during the night. *State of Haryana* v. *Manoj Kumar*, (1994) 1 SCC 495: 1994 SCC (Cri) 93: AIR 1994 SC 147: (1994) 1 Crimes 102: (1994) 31 ACC 34.

Bench Strength **2**. Coram: *K. Ramaswamy* and **N.P. Singh**, JJ. [Date of decision: 2-11-1993]

[1144] — S. 154 — FIR — Delay in filing — FIR lodged within half an hour of reporting the incident to police — *Special report reaching the Elaqa Magistrate within eight hours of lodging the FIR, although distance between police station and Magistrate's residence was about 16 miles — Held, on facts, no case of delay in lodging the FIR made out. Amrik Singh* v. *State of Punjab*, 1980 Supp SCC 315: 1981 SCC (Cri) 252: AIR 1981 SC 1171: 1981 Cri LJ 634.

Bench Strength **2**. Coram: **A.C. Gupta** and *P.S. Kailasam*, JJ. [Date of decision: 25-7-1980]

[1145] — S. 154 — FIR — Delay in filing — Incident taking place around 2 p.m. and report lodged at a police station 13 miles away at about 4.15 p.m. — *Held on facts, there was no appreciable delay in lodging the FIR. Joginder Singh* v. *State of Punjab*, (1980) 1 SCC 493: 1980 SCC (Cri) 255: AIR 1979 SC 1876: 1979 Cri LJ 1406.

Bench Strength **3**. Coram: *R.S. Sarkaria, D.A. Desai* and **O. Chinnappa Reddy**, JJ. [Date of decision: 17-8-1979]

[1146] — S. 154 — FIR — Delay in filing — Mere delay by itself not enough to reject the prosecution case unless there are clear indications of fabrication — *On facts, there was no fabrication — Twenty people breaking into house at 5 p.m., beating inmates and killing one of them by pressing lathi on the throat — Report handed over by deceased's wife to chowkidar at about 2.30 a.m. and the same reaching the police station six miles away at about 7.55 a.m. — Mode of attack and cause of death by strangulation mentioned in material particulars in the FIR and the same found to be in conformity with medical evidence — Held, there was no inordinate delay in filing the FIR — Having regard to the nature of the occurrence and the commotion that would have been created during the night, one cannot expect the persons concerned to go to the police station on that very night — Penal Code, 1860, Ss. 302/149, 325/149, 323/149 and 452. Zahoor* v. *State of U.P.*, 1991 Supp (1) SCC 372: 1991 SCC (Cri) 678: AIR 1991 SC 40.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 25-10-1990]

[1147] — S. 154 — FIR — Delay in filing — Not by itself a circumstance to doubt the prosecution case. *Jamna* v. *State of U.P.*, 1994 Supp (1) SCC 185: 1994 SCC (Cri) 348: AIR 1994 SC 79.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 21-9-1993]

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[1148] — S. 154 — FIR — Delay in filing — Rape on minor girl — *Immediately thereafter, incident narrated by prosecutrix to her mother and other ladies — But decision on course of action, taken only on arrival of prosecutrix's father — Sarpanch then contacted, who advised to proceed to police station next morning, as it was already evening and dark — FIR lodged next morning, in the circumstances held, not delayed. Prithi Chand* v. *State of H.P.*, (1989) 1 SCC 432: 1989 SCC (Cri) 206: AIR 1989 SC 702: (1989) 1 SCR 123: 1989 Cri LJ 841.

Bench Strength **2**. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 17-1-1989]

[1149] — S. 154 — FIR — Delay in filing FIR — *Incident taking place at night but FIR lodged on the following morning — Eyewitnesses remaining with the dead body for the whole night in view of the possibility of the accused persons removing the dead body to cause disappearance of evidence — Held, conduct of the eyewitnesses not unnatural and it cannot be said that there was delay in lodging FIR* (Para 6). *Gurmit Singh* v. *State of Punjab*, 1995 Supp (4) SCC 146: 1996 SCC (Cri) 45.

Bench Strength **2**. Coram: *G.N. Ray* and **G.T. Nanavati**, JJ. [Date of decision: 29-9-1995]

[1150] — S. 154 — FIR — Delay in filing FIR — Death of deceased alleged to have occurred sometime between 4 p.m. and 7 p.m. on 7-11-1992 — *FIR lodged at 6.30 a.m. on 8-11-1992 — Prosecution alleging that father of the accused informed the Sarpanch about death of the deceased at 7 p.m. on 7-11-1992 and Sarpanch thereafter telephonically informed the police as well as "sent a written report" at 11 p.m. — However, no such entry made in the station diary and no written report produced, to substantiate the claim — IO also not making any report, though the information disclosing commission of a cognizable offence — Besides, IO reaching the place of occurrence, which was only at a distance of 4 km from the police station on the next day at 6.30 a.m. and only thereafter FIR drawn up — Held, these facts cast doubt on the prosecution case and consequently on the time of occurrence of death* (Para 9). *State of A.P.* v. *Patnam Anandam*, (2005) 9 SCC 237: 2005 SCC (Cri) 1225: AIR 2005 SC 764: 2005 Cri LJ 894.

Bench Strength **2**. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 14-12-2004]

[1151] — S. 154 — FIR — Delay in filing FIR — Held, delay can only be a ground to arouse suspicion when it is unexplained

It is seen that though there was some delay in lodging the FIR, it is but natural in a tradition-bound society to avoid embarrassment, which is inevitable where the reputation of a woman is concerned. (Para 8)

Delay in every case cannot be a ground to arouse suspicion. It can only be so when the delay is unexplained. *Vidyadharan* v. *State of Kerala*, (2004) 1 SCC 215: 2004 SCC (Cri) 260: AIR 2004 SC 536: (2004) 1 KLT 105: 2004 Cri LJ 605: (2004) 2 MPLJ 251.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 14-11-2003]

[1152] — S. 154 — FIR — Delay in filing FIR — When fatal — *Incident occurring at 1.30 p.m. but complaint lodged at 3.15 a.m. on next day — Police station 30 miles away from the place of incident — Facility of tractor available but used only on the next day for going to police station — Said unexplained long delay in filing the complaint, held, creates doubt as to the genuineness of the prosecution case — Penal Code, 1860, S. 302* (Para 5). *Shankarlal* v. *State of Rajasthan*, (2004) 10 SCC 632: AIR 2004 SC 3559: 2004 Cri LJ 2874.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *B.P. Singh* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 7-5-2004]

Distinguished in Vikram v. State of Maharashtra, (2007) 12 SCC 332

[1153] — S. 154 — FIR — Delay in filing of — Failure of court to appreciate police apathy and rustic village woman's endeavour in lodging FIR

Apathy on the part of the police officers to accept complaints promptly is well-known phenomenon. The courts cannot be oblivious of such conduct on the part of the police officers. PW 1 is a rustic villager. She is an illiterate lady. According to her, she had been turned away from the police station on the premise that no dead body was recovered or there being no other evidence relating to her death. No exception to such a statement can be taken. (Para 16). *Ponnusamy* v. *State of T.N.*, (2008) 5 SCC 587: (2008) 2 SCC (Cri) 656: AIR 2008 SC 2110: 2008 Cri LJ 2563.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 10-4-2008]

[1154] — S. 154 — FIR — Delay in filing the complaint — Accused outraging modesty of a married woman — *Victim filing complaint after two days of the incident — Effect — Victim working at place where her husband or near relatives not available — She must have taken some time to* *decide as to what course of action was to be taken — Hence contention that much time was taken for filing the complaint, held, not sustainable — Penal Code, 1860, S. 354* (Para 8). *Satyaendra Dayal Khare* v. *State of Maharashtra*, (2005) 12 SCC 485.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *D.M. Dharmadhikari*, JJ. [Date of decision: 2-8-2005]

[1155] — S. 154 — FIR — Delay in giving FI statement to police — *Deceased dragged out of his house and murdered by accused persons at about 7/7.30 p.m. and when his wife tried to rescue him she was also assaulted — Deceased's wife stating that she was afraid to go to the police station at night and so she went only on the next day and gave the FI statement — Held, her evidence cannot be rejected on ground of delay in giving the FI statement when her evidence was corroborated by another eyewitness who too had sustained several injuries in the incident* (Para 8). *State of Karnataka* v. *Bhaskar Kushali Kotharkar*, (2004) 7 SCC 487: 2004 SCC (Cri) 1963: AIR 2004 SC 4333.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 19-8-2004]

[1156] — S. 154 — FIR — Delay in lodging — *Complainant party proceeding with injured to hospital but not lodging complaint at either of two police stations on the way — Delay therefore fatal*

It is also unusual that though two police stations fell on the way from the village, in which the occurrence had taken place, to the hospital, but the complainant party did not stop at the two police stations and proceeded straight to General Hospital. In the ordinary circumstances, it is quite imperative that the complainant party could have stopped at the police station, sought necessary help from the police station and also given first-hand information to the police. The injuries suffered by the complainant party were simple in nature except that of the deceased. Therefore, there are no mitigating circumstances for not reporting to the police station at the first hour especially when the police stations are on the way to General Hospital. (Para 11). *Raghunath* v. *State of Haryana*, (2003) 1 SCC 398: AIR 2003 SC 165.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision: 13-11-2002]

[1157] — S. 154 — FIR — Delay in lodging — *If there is absence of motive for falsely implicating the accused and plausible explanation for the delay, even long delay can be condoned — Whether delay would render prosecution case suspect would depend upon facts of each case — On facts held, delay not fatal to the prosecution case*

There cannot be any generalisation that whenever there is a delay in lodging the FIR, the prosecution case becomes suspect. Whether delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case, would depend upon the facts of each case. Even a long delay can be condoned if the witnesses have no motive of implicating the accused and have given a plausible reason as to why the report was lodged belatedly. In the instant case, this has been done. The witnesses have clearly stated that after seeing the deceased in an injured condition, immediate effort was to get him hospitalised and get him treated. Though there was cross-examination at length, no infirmity was noticed in their evidence. Therefore, the trial court and the High Court were right in relying on the evidence of the prosecution witnesses. (Para 7). *Harbans Kaur* v. *State of Haryana*, (2005) 9 SCC 195: 2005 SCC (Cri) 1213: AIR 2005 SC 2989: 2005 Cri LJ 2199.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 1-3-2005]

[1158] — S. 154 — FIR — Delay in lodging — *Parents and brother of the deceased rushing to the hospital to save the deceased as also to get medical aid for themselves being injured — Message thereafter sent from the hospital to Police station by them — Concurrent finding of trial court and High Court that the delay satisfactorily explained in the circumstances upheld. Gurnek Singh* v. *State of Punjab*, 1988 Supp SCC 807: 1989 SCC (Cri) 10: AIR 1988 SC 2249.

Bench Strength **2**. Coram: **M.P. Thakkar** and *B.C. Ray*, JJ. [Date of decision: 27-9-1988]

[1159] — S. 154 — FIR — Delay in lodging — *That by itself not sufficient to draw adverse inference against the prosecution case — Facts and circumstances of each case to be considered — Relevant circumstances stated — On facts held, sequence of events and manner in which FIR was lodged not considered — Delay properly explained — Report promptly sent to CJM — Hence no adverse inference can be drawn*

The main reason given by the High Court for disbelieving the prosecution case is that though the incident took place at 7.00 p.m. on 23-5-1987 but the FIR was recorded at 9.20 p.m. on 24-5-1987 at the police station and the special report reached the Magistrate at 11.45 p.m. and as the distance of Police Station Sangrur from the place of occurrence is only 4 kilometres, there was an inordinate delay in lodging the FIR which rendered the prosecution case doubtful.

(3)(vi)4. Reliability and Validity of FIR - FIR and Time - Delay in lodging/filing FIR *(contd.)*

Held :

There is no hard-and-fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station etc. have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR. (Para 10)

In this case sequence of events and the manner in which the FIR was lodged have not at all been taken into consideration. The High Court did not at all take into consideration the fact that the first informant and his three sons besides two others had received injuries and they had first gone to Sangrur from their village on a tractor-trolley and from there to Christian Medical College, Ludhiana which is about 60 kilometres on taxis and further, that all the six injured had been admitted in the hospital where one of them died next morning and another had sustained serious injuries which were dangerous to life and he had to be operated upon and in such circumstances he could not have left the hospital for going to PS Sangrur for lodging the FIR. The High Court also failed to take into consideration the fact that the FIR was lodged after SI of Police Station Sangrur had come to the hospital and had recorded the statement of the first informant after seeking opinion of the doctor in writing and thereafter, the said statement was sent through constable to Police Station Sangrur. The special report of the occurrence was sent to CJM, Sangrur within two hours and twenty minutes of the lodging of the FIR. The special report was thus sent very promptly. Therefore, in the facts and circumstances of the case, there was no delay in either lodging of the FIR or in sending the special report to the CJM and the view to the contrary taken by the High Court is absolutely incorrect. (Paras 9 and 11). *Amar Singh* v. *Balwinder Singh*, (2003) 2 SCC 518: 2003 SCC (Cri) 641: AIR 2003 SC 1164: 2003 Cri LJ 1282.

Bench Strength 2. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 31-1-2003]

Tara Singh v. State of Punjab, 1991 Supp (1) SCC 536: 1991 SCC (Cri) 710; Zahoor v. State of U.P., 1991 Supp (1) SCC 372: 1991 SCC (Cri) 678; Jamna v. State of U.P., 1994 Supp (1) SCC 185: 1994 SCC (Cri) 348, relied on

[1160] — S. 154 — FIR — Delay in lodging — Becomes material when it causes prejudice to accused or where there is any doubt regarding the prosecution case — *Incident of fatal attack on deceased happened between 7 a.m. and 8 a.m. — Deceased in injured condition admitted to hospital — Report sent by doctor to police station pursuant to which SHO came to the hospital but could not record any statement of deceased as he was not in a fit condition — Thereafter police did not take any action that day — Police swung into action only when a written complaint was lodged in the police station next day at 10.30 a.m. — Held, delay in registering the case was due to ignorance and negligence on the part of the police — Police officer who had visited the hospital could have registered the case based on the information that may be volunteered by any of the bystander to the patient — However, in this case delay in lodging the report had not caused any serious prejudice to the accused nor did it cast any doubt on the prosecution case — There was no allegation that accused were roped in and a false case was foisted upon them. State of Rajasthan* v. *Maharaj Singh*, (2004) 13 SCC 165: 2005 SCC (Cri) 90: AIR 2004 SC 4205: 2004 Cri LJ 4195.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 3-9-2004]

[1161] — S. 154 — FIR — Delay in lodging — Explanation for — Murder — *Held on facts, delay properly explained*

The incident took place at about 6.30 p.m. at Taran Taran. Two eyewitnesses, who were ladies and related to the deceased, were obviously very much frightened. They raised hue and cry but nobody from the neighbouring locality came there. The accused ran away. They, in the circumstances, locked the house and went to Amritsar to inform the deceased's husband but he was not available. He came back late at night and it was not possible thereafter to go to police station. Therefore, on the next day morning they went to the police station and lodged FIR at about 11.25 a.m.

Held :

It could not be said that there was unexplained delay on the part of the prosecution in lodging FIR. It was immediately forwarded to the Magistrate. (Para 13). *Gurdev Raj* v. *State of Punjab*, (2007) 13 SCC 380: 2008 Cri LJ 382: (2007) 59 AIC 124 (SC).

Bench Strength 2. Coram: **C.K. Thakker** and *Dalveer Bhandari*, JJ. [Date of decision: 9-10-2007]

[1162] — S. 154 — FIR — Delay in lodging — Explanation for — Murder — *Occurrence took place at 7 a.m. in which deceased received head injuries — First priority for the relations of the injured being to provide him immediate medical aid, he was first taken to Primary Health Centre, then to Civil Hospital and ultimately to PGI where he succumbed to his injuries at 1.15 p.m. — Thereafter FIR lodged in police station which was a few kilometres away from the hospital — Held, there was no unreasonable delay in lodging the FIR* (Para 11). *Ravi Kumar* v. *State of Punjab*, (2005) 9 SCC 315: AIR 2005 SC 1929: 2005 Cri LJ 1742.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 4-3-2005]

Ram Jag v. State of U.P., (1974) 4 SCC 201: 1974 SCC (Cri) 370; Sarwan Singh v. State of Punjab, (1976) 4 SCC 369: 1976 SCC (Cri) 646, relied on

[1163] — S. 154 — On facts, held, no delay in recording of FIR — *Incident happened at 1 or 2 a.m. in a remote village — Wife of deceased, 75 years of age, witnessing murder of her husband in a most brutal and blood-curdling manner with a huge amount of bleeding, nevertheless giving statement to Village Administrative Officer at about 8 a.m. and delay occurring after that was beyond her control — FIR received at police station 7 km away at 10.00 a.m., held, not delayed* (Para 20). *State of A.P.* v. *M. Narasimha Rao*, (2010) 9 SCC 166: (2010) 3 SCC (Cri) 1165: AIR 2010 SC 3776.

Bench Strength 2. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 27-8-2010]

[1164] — S. 154 — FIR — Delay in lodging — Occurrence alleged to have taken place at midnight but the informant waited till 7 a.m. next morning and only thereafter started for police station for lodging the report — *Explanation that in those days terrorists were active in Punjab was not acceptable as the informant knew that the assailants were not terrorists — FIR containing great details about family affairs of the deceased — Held, FIR was lodged after much deliberation* (Paras 17 and 18). *State of Punjab* v. *Ajaib Singh*, (2005) 9 SCC 94: 2005 SCC (Cri) 43: AIR 2004 SC 2466: 2004 Cri LJ 2547.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 13-4-2004]

[1165] — S. 154 — FIR — Delay in lodging due to threats held out by the opposite faction who were roaming about the village and nobody in the village was prepared to come forward — *Held, on facts, delay satisfactorily explained. Nand Singh* v. *State of Punjab*, 1980 Supp SCC 347: 1981 SCC (Cri) 273: AIR 1980 SC 2128: 1980 Cri LJ 1478.

Bench Strength 2. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 11-9-1980]

[1166] — S. 154 — FIR — Delay in lodging FIR — *Held, would assume significance in cases where the accused persons are being unnecessarily implicated while some others may have been responsible for the crime or to lug in those who were not present at the time of occurrence of the incident — Delay of more than nine hours in lodging the FIR, on facts, not affecting the prosecution case*

There was no justification for the High Court to hold that there was delay in lodging the FIR because the incident took place at the end of the night intervening 19-7-1984 and 20-7-1984 and the eyewitnesses who lodged the FIR had to go to the police station by at least covering a distance of 25 km partly by foot and partly by travelling in a bus. Further, waiting for a bus and reaching the appropriate police station to lodge the complaint does take time. More so, delay in lodging the complaint would assume significance in cases where the accused persons are being unnecessarily implicated while some others may have been responsible for the crime or to lug in those who were not present at the time of occurrence of the incident. On 20-7-1984, fairly early in the morning at about 7.15 a.m., PW 3 left for the police station to lodge the complaint about the incident which is neither unnatural or improbable. (Para 11). *State of Haryana* v. *Ram Sarup*, (2002) 7 SCC 250: 2002 SCC (Cri) 1691: AIR 2002 SC 3114.

Bench Strength 2. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 4-9-2002]

[1167] — S. 154 — FIR — Delay in lodging FIR — Becomes material when it causes prejudice to accused or where there is any doubt regarding the prosecution case — *Incident of fatal attack on deceased happened between 7 a.m. and 8 a.m. — Deceased in injured condition admitted to hospital — Report sent by doctor to police station pursuant to which SHO came to the hospital but could not record any statement of deceased as he was not in a fit condition — Thereafter police did not take any action that day — Police swung into action only when a written complaint was lodged in the police station next day at 10.30 a.m. — Held, delay in registering the case was due to ignorance and negligence on the part of the police — Police officer who had visited the hospital could have registered the case based on the information that may be volunteered by any of the bystander to the patient — However, in this case delay in lodging the report had not caused any serious prejudice to the accused nor did it cast any doubt on the prosecution case — There was*

(3)(vi)4. Reliability and Validity of FIR - FIR and Time - Delay in lodging/filing FIR *(contd.)*

no allegation that accused were roped in and a false case was foisted upon them. State of Rajasthan v. *Maharaj Singh*, 2005 SCC (Cri) 90: AIR 2004 SC 4205: (2004) 98 Cut LT 686: 2004 Cri LJ 4195.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 3-9-2004]

[1168] — S. 154 — FIR — Delay in lodging FIR — Grounds/considerations for ascertaining bona fides — Offence under S. 376(2)(g) IPC — *Prosecution case, held, should not be thrown out only on the ground of delay in lodging FIR — Other factors like trauma suffered by the victim, sociological factors along with other evidence should be taken into consideration*

The prosecutrix, a coolie, was gang raped while on her way back from a movie at about 10.00 p.m. on 20-11-1994. Her brother, *P* who was slapped, ran for help and when he returned with other villagers, found her sister lying unconscious and naked. FIR was lodged at about 7.00 p.m. on 21-11-1994 after the victim regained her consciousness. The conviction of six accused persons under Section 376(2)(*g*) IPC was upheld by the High Court.

Allowing the appeal of Accused 4 to 6 and dismissing the appeal of Accused 1 to 3,

Held :

The prosecution case should not be thrown out only on the ground of delay in lodging the FIR. Some delay has occurred in the lodging of the FIR but keeping in view the trauma suffered by the victim, her statement that she had regained her composure only in the evening cannot be disbelieved particularly in view of the evidence of PW 8. The fact that she was found lying naked at the place of occurrence in an unconscious state, stands proved not only by PW 7 but also by PW 8. The evidence of PW 8 remains uncontroverted. Prosecution case and the factor of delay should also be considered with regard to the sociological backgrounds from which PW 6 and PW 7 and other witnesses hail. (Paras 20, 19 and 14). *Viswanathan* v. *State*, (2008) 5 SCC 354: (2008) 2 SCC (Cri) 593: AIR 2008 SC 2222.

Bench Strength 2. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 29-4-2008]

[1169] — S. 154 — FIR — Delay in lodging FIR — Incident allegedly occurring at 10.45 a.m. — *FIR lodged at 1.00 p.m. — Injured were taken to hospital — One of the injured persons died at 12.00 noon — Held, immediate reaction of the witnesses would be to save the lives of injured — On facts, held, no delay in lodging the FIR* (Para 4). *Goura Venkata Reddy* v. *State of A.P.*, (2003) 12 SCC 469.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 19-11-2003]

[1170] — S. 154 — FIR — Delay in lodging FIR — Incident at 10 p.m. — *FIR lodged on next day at 7.20 a.m. — Effect — Disturbed conditions prevailing in locality — Not possible to go to police station — Information given to Sarpanch of village in the night itself — Held, delay in lodging the FIR explained — Hence, not fatal* (Para 7). *State of Punjab* v. *Joginder Singh*, (2003) 12 SCC 179.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *B.N. Agrawal*, JJ. [Date of decision: 29-10-2003]

[1171] — S. 154 — FIR — Delay in lodging FIR — Occurrence at 10.30 a.m. inside a factory — FIR lodged at 1.15 p.m. — Effect — *Accused causing serious injuries to three senior officers of factory — PW 5 (eyewitness who was son of one of the injured and employee of the said factory) along with others taking these injured to the hospital first — Defence plea that it was strange that though several telephones were available in factory, no information was given to the police and only when PW 5 was allegedly returning from the hospital to the factory he met the police on the way and reported the matter — Rejection of — High Court was justified in holding that there was no delay in lodging the FIR — Penal Code, 1860 — Ss. 302 and 307* (Paras 6 and 9). *Kamaljit Singh* v. *State of Punjab*, (2003) 12 SCC 155: AIR 2004 SC 69: 2004 Cri LJ 28.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-10-2003]

[1172] — S. 154 — FIR — Delay in lodging FIR — Rape case — *In view of the social conditions prevalent in India, there may be delay in giving the first information of such an offence to the police — Though the delay as such is not serious, but while considering the broad probabilities of the case, the delay in giving information to police in the instant case, considered to be of some importance*

It is true that in view of the social conditions prevalent in India, there may be delay in giving the first information of such an offence to the police. A rape victim may think seriously before giving the information to the police about rape as the onslaught of a social stigma may haunt her for life. Though the delay as such is not serious, but while considering the broad probabilities of the case, the delay in giving the information to the police, in the instant case, also assumes some importance. (Para 19). *Sudhansu Sekhar Sahoo* v. *State of Orissa*, (2002) 10 SCC 743: 2003 SCC (Cri) 1484: AIR 2003 SC 2136.

Bench Strength 2. Coram: *Y.K. Sabharwal* and **K.G. Balakrishnan**, JJ. [Date of decision: 18-12-2002]

[1173] — S. 154 — FIR — Delay in lodging FIR — Rape case — *Undue delay in lodging the complaint without acceptable evidence, held on facts, contributed to the doubt in the prosecution case* (Para 4). *State of Karnataka* v. *Mapilla P.P. Soopi*, (2003) 8 SCC 202: 2003 SCC (Cri) 1977.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 23-9-2003]

[1174] — S. 154 — FIR — Delay in lodging FIR — Rape case — Version of prosecutrix that the FIR was lodged after three days of the incident — Reliability of — *Held on facts, not correct — Evidence indicating that the FIR was lodged six days after the occurrence — Penal Code, 1860, Ss. 376, 457 and 380*

The prosecutrix claimed that she lodged the report on the third day of the incident. This apparently is not correct because the report identified by her as the report lodged by her was lodged on 26-2-1994. She deposed that on the third day she had talked to some labourers and narrated to them the incident. None of those labourers has been examined as a witness. In fact evidence of the residents of the building in which she was residing, who appeared as witnesses, is not that the prosecutrix, either in the morning following the incident or on any other day, mentioned to them about the incident which took place on the night of 20-2-1994. The evidence on record, therefore, does establish that for six days after the occurrence, the prosecutrix did not narrate the incident to anyone. (Para 16). *Devinder Singh* v. *State of H.P.*, (2003) 11 SCC 488: 2004 SCC (Cri) 185: AIR 2003 SC 3365.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 17-9-2003]

[1175] — S. 154 — FIR — Delay in lodging FIR — Rape cases — Inordinate delay of 6 months — *When accusations of rape involved, held, said delay per se is not a mitigating circumstance — Such delay, if satisfactorily explained, held, not fatal — If not so explained and there is possibility of embellishment or exaggeration in prosecution version due to such delay, then it is a relevant factor — Victim, a girl of about 14 years, ravished by her teacher in the month of May — She not disclosing about the incident to anyone due to threats given by the accused — Few days after the incident, accused again committing sexual intercourse with her — Since victim complaining about stomach ache, her mother taking her to a hospital in the month of September — Doctor telling the mother about pregnancy of victim — On enquiry by mother, victim disclosing that her conception was due to sexual intercourse by accused — FIR lodged in the month of November — Victim totally unaware of the catastrophe which had befallen her — Held, High Court's conclusion that there was unexplained delay in lodging the FIR was not sustainable — Penal Code, 1860 — Ss. 375 and 376, Ss. 376 and 506* (Paras 18 and 19). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

Tulshidas Kanolkar v. State of Goa, (2003) 8 SCC 590: 2004 SCC (Cri) 44, relied on

[1176] — S. 154 — FIR — Delay in lodging FIR — When accusations of rape are involved, held, said delay per se is not a mitigating circumstance — *Such delay, if satisfactorily explained, held, not fatal — If not so explained and there is possibility of embellishment or exaggeration in prosecution version due to such delay, then it is a relevant factor — Where a mentally deficient girl totally unaware of the catastrophe which had befallen her was ravished by accused not once, but several times, held, the unusual circumstances satisfactorily explained the delay in lodging FIR — Thus, said delay did not affect the prosecution version adversely — Penal Code, 1860, Ss. 376 and 506(2)*

Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. (Para 5)

Delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle. (Para 5). *Tulshidas Kanolkar* v. *State of Goa*, (2003) 8 SCC 590.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-10-2003]

(3)(vi)4. **Reliability and Validity of FIR - FIR and Time - Delay in lodging/filing FIR** *(contd.)*

[1177] — S. 154 — FIR — Delay in lodging FIR — When not fatal — Brutal attack — *Victim taken to hospital — Paramount attempt was to save his life — Thus delay in lodging FIR, held, explained — Hence, not fatal* (Para 23). *Bhargavan v. State of Kerala*, (2004) 12 SCC 414: AIR 2004 SC 1058: (2004) 1 KLT 201: 2004 Cri LJ 646.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-11-2003]

[1178] — S. 154 — FIR — Delay in lodging FIR — Whether satisfactorily explained — *PW 8, who was also thrown in the canal along with the deceased, after coming out from canal had gone to Village* ***K*** *and narrated the incident to one* ***J*** *— Thereafter along with* ***J*** *he returned to the place of occurrence and searched for the deceased and the tractor but could not find them — Thereafter they going to Village* ***M*** *on a tractor and narrating the incident to deceased's father, who reported the matter to Sarpanch — Then they went to Police Post* ***I*** *who refused to lodge the report but informed the Police at* ***G*** *— Held, though the distance between* ***K*** *and* ***G*** *Police Station is only 5 km, but PW 8 had satisfactorily explained the sequence of events which resulted in delay — Conduct of PW 8 in not going to the police station immediately was quite natural as it is not expected that a person would straightaway first go to the nearest police station and lodge the first information report even without informing the near relatives of the deceased — Further, it is not the case of the appellant that after occurrence of the incident some deliberations took place in order to falsely implicate the appellant in the case — No suggestion of any enmity between the appellant and PW 8 made — Hence held, mere delay in lodging the first information report, in the facts and circumstances of the case cannot be held to be fatal to the prosecution case* (Para 14). *Subhash v. State of Haryana*, (2007) 12 SCC 63: (2008) 2 SCC (Cri) 213.

Bench Strength **2**. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 21-8-2007]

[1179] — S. 154 — FIR — Delay in lodging of FIR in case of child rape, on facts, was fully explained — Acquittal for child rape reversed — Delay of 26 hours in lodging FIR fully explained by prosecution — *When testimony of the prosecutrix and her relatives and the doctor, who had examined her, found to be trustworthy, convincing and reliable, non-examination of other witnesses cannot be a ground to reject the prosecution case — It cannot be expected from the mother of the victim to have shouted on seeing the accused committing the rape so as to collect others, nor can it be expected that after the occurrence in the village others would have visited her house who would stand as prosecution witnesses — Courts should adopt a sensitive approach in dealing with cases of child rape — On facts held, trial court by a well-considered and well-analysed judgment was justified in convicting the respondent under S. 376 and High Court erred in reversing the same and acquitting the respondent on benefit of doubt — Penal Code, 1860, S. 376*

According to the testimony of PW 2, her daughter, then aged 8 years, had gone to the house of one *S* to take therefrom buttermilk. When her daughter did not return for a long time, she went to that house and when she pressed open the door which was closed, she found the respondent, son of *S* then aged 18 years, committing rape on her daughter, who was totally unconscious. On seeing her the respondent, who was then alone in the house, ran away. She lifted her daughter and brought her back home. At that time her husband and brother-in-law had gone to another village. Next day a report was lodged with the police. Besides the mother (PW 2), the father of the prosecutrix (PW 1) and wife of the brother of PW 1 also deposed supporting the version of PW 2. Prosecutrix, PW 5, being a child witness, the Additional District and Sessions Judge before administering her oath asked general questions so as to satisfy that she was competent to answer the questions and take oath. Her statement in court was recorded about four years after the date of the incident. Her deposition also was that the respondent had committed rape on her under the same circumstances as narrated by PW 2. The testimony of the doctor, PW 11, who had examined the prosecutrix was that externally there was no injury on her body but on the inner parts of both thighs and at the outer part of the left foot there were signs of blood. For internal examination she was referred to Family Incharge Hospital. The injury report was in his handwriting wherein the reports of a lady doctor and another doctor had been incorporated. PW 11 stated that: "In my opinion, the intercourse was done with the girl i.e. the possibility of doing the intercourse cannot be ruled out." The tip of the finger in the whole of her uterus was passing easily. PW 11 deposed that: "According to the opinion of the lady doctor, the opinion of the pathologist and my opinion of the examination, something was penetrated in her vagina." The only cross-examination of the witness was that the main examination report by the lady and the other doctors was not before him, that the seminal stains were not present on the clothes and that after the sexual contact the vagina remained intact. The Additional District and Sessions Judge found the respondent guilty for offence under Section 376 of the Indian Penal Code and imposed rigorous imprisonment for seven years and fine of Rs 1000 and in default of payment of fine to further undergo six months' rigorous imprisonment. The High Court gave benefit of doubt to the respondent and acquitted him. The main reasons which prevailed with the High Court in reversing the conviction were two. First, the non-examination of other independent witnesses and second, the rejection of medical evidence i.e. testimony of the doctor, PW 11. As regards non-examination of other witnesses, the High Court noticed that the incident had taken place in the environment of the village where there were other residential houses; the house of the prosecutrix from where the incident took place was 2-3 houses away and in the house of the accused his other brothers and sisters-in-law were also living. The High Court held that it was unnatural that PW 2 and PW 5 would not have shouted and others might not have gathered at the place of incidence and that, except the family members no other witness had come forward to support the case of the prosecution. The High Court also described as unnatural the statement of the mother that except her husband's brother's wife, PW 4, not a single person of the village had come to her house. As regards the second reason the High Court held that in absence of the evidence of the lady doctor, there was no support from any medical evidence. The prosecution case was also questioned on the ground of delay of nearly 26 hours in lodging the FIR. The offence was alleged to have taken place at about 9 a.m. The FIR was registered at about 11.30 a.m. on the next day. It was contended that this delay had assumed importance and was fatal particularly when the brother of the prosecutrix, was admittedly at the house. The delay, according to the defence counsel, resulted in embellishments.

Allowing the State's appeal,

Held :

As regards the contention regarding the delay in lodging the FIR, the real question is about the explanation for the delay. It is not at all unnatural for the family members to await the arrival of the elders in the family when an offence of this nature is committed before taking a decision to lodge a report with the police. The reputation and prestige of the family and the career and life of a young child is involved in such cases. Therefore, the presence of the brother of the prosecutrix at home is not of much consequence. It has been established that the father of the girl along with his brother came back to their house at 7 o'clock in the evening. The girl was unconscious during the day. PW 2 told her husband as to what had happened to their daughter. The police station was at a distance of 15 km. According to the testimony of PW 1 no mode of conveyance was available. The police was reported to the next day morning and FIR was recorded at 11.30 a.m. The delay in reporting the matter to the police has thus been fully explained. (Para 9)

The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim. However, after carefully scanning and scrutinising the evidence of the parents of the prosecutrix, her brother, the prosecutrix herself and the doctor (PW 11), the same is found to be trustworthy, convincing and reliable. At the time of the incident the accused was alone at home. When such an act is done, the natural tendency is not to talk about it to others but, to an extent possible, hide it. There was nothing unnatural in other villagers not visiting the house of PWs 1 and 2. Being a child witness, the testimony of the prosecutrix and that of her mother had been examined by the trial court with utmost care and caution. The High Court has clearly committed a serious illegality in assuming that in the natural course of events if rape had been committed, the young girl child and her mother would have shouted so as to collect others and they would have visited her house. The prosecutrix was unconscious. There was no question of the prosecutrix shouting as assumed by the High Court. Too much was made by the High Court on account of non-examination of persons other than the family members. The aspect of non-examination was given undue importance without having regard to the contextual facts. Cases involving sexual molestation and assault require a different approach — a sensitive approach and not an approach which a court may adopt in dealing with a normal offence under penal laws. (Para 15). *State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210: AIR 2002 SC 2235: 2002 Cri LJ 2951.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *B.P. Singh*, JJ. [Date of decision: 3-5-2002]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of H.P. v. Gian Chand, (2001) 6 SCC 71: 2001 SCC (Cri) 980; State of U.P. v. Ashok Dixit, (2000) 3 SCC 70: 2000 SCC (Cri) 579, relied on

Joseph v. State of Kerala, (2000) 5 SCC 197: 2000 SCC (Cri) 926, distinguished

[1180] — S. 154 — FIR — Delay in lodging/filing FIR — Effect, if any, considered — *On facts, there was some delay in lodging the FIR — However, as three of accused had put up a counter-version, held, effect of delay in the FIR was somewhat reduced — Also, delay in lodging FIR was substantially explained — Hence, considering the background, delay of a couple of hours cannot be said to be unreasonable*

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In a dispute between the deceased and his brothers relating to possession of land, the brothers of the deceased along with some others, assaulted him with sickles and choppers, resulting in his death. PW 3, another brother of the deceased, went to his rescue, but he too was assaulted, thereby sustaining injuries. The accused were charged for offences punishable under Sections 143, 147, 148, 302 and 324 read with Section 149 IPC.

The trial court acquitted the accused persons. However, the High Court, in appeal, reversed the judgment of acquittal, convicting the accused persons for offences punishable under Sections 143, 147, 148, 302/149 and 324/149 and sentencing them to imprisonment for life under Sections 302/149 IPC with no separate sentence for the other offences. Hence, the present appeal.

The contention of the appellants before the Supreme Court were that the deceased and his companions were the aggressors and that the incident had happened when the accused were exercising their right of self-defence to protect their person and property. It was further pleaded that the witnesses were discrepant as to the actual manner of the assault and as such no credence could be attached to their testimony. It was finally pleaded that there was an inordinate delay in the registration of the FIR and that this delay was utilised to create four eyewitnesses and a false story inculpating the accused.

Dismissing the appeal,

Held :

It is true that prima facie there appears to be some delay in the lodging of the FIR at 10.45 p.m. in the light of the fact that incident had happened at 4.30 p.m. However, as three of the accused have put up a counter-version, the effect of the delay in the FIR is somewhat reduced. The delay in the lodging of the FIR has been substantially explained as the incident had happened in a remote village some distance from the police station and as PW 3 had also sustained a serious injury, the first anxiety of the family would have been to look after him, the more so as all the brothers of the deceased and PW 3, were themselves the assailants and there was nobody else in the family to have taken the injured PW 3 to the hospital. It is also significant that the FIR could not have been recorded earlier as the entire family was involved either on one side or the other and it had ultimately been left to a hapless widow, completely isolated from the rest of the family, to lodge the FIR. It is in this background that a delay of a couple of hours cannot be said to be unreasonable. (Para 16). *Chandrappa* v. *State of Karnataka*, (2008) 11 SCC 328: AIR 2008 SC 2323.

Bench Strength **2**. Coram: *S.B. Sinha* and **H.S. Bedi**, JJ. [Date of decision: 29-4-2008]

[1181] — S. 154 — FIR — Delay in lodging/filing FIR — If fatal — *Held, mere delay in lodging the FIR is not by itself fatal to the prosecution case — Nevertheless, it is a relevant factor of which the court is obliged to take notice and examine whether any satisfactory explanation has been offered — Else adverse inference may be drawn — However, if delay is properly and satisfactorily explained, prosecution case cannot be thrown out merely on ground of the delay — Explanation has to be considered in light of the totality of facts and circumstances of the case — In the instant case, informant, PW 5, promptly gave his fardbeyan to police on the very next day i.e. 18-7-1988, in the hospital — Fardbeyan was forwarded by police to the police station concerned the same day and on the basis thereof, formal FIR was registered on 22-7-1988 — Despite delay FIR was in consonance with fardbeyan and not embellished in any manner — In the light of surrounding circumstances and the fact that police station concerned was about 12 km away from place of occurrence, delay was satisfactorily explained* (Paras 16 and 19). *Ashok Kumar Chaudhary* v. *State of Bihar*, (2008) 12 SCC 173: AIR 2008 SC 2436: (2008) 66 AIC 13 (SC): 2008 Cri LJ 3030.

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 5-5-2008]

State of H.P. v. Gian Chand, (2001) 6 SCC 71: 2001 SCC (Cri) 980; Ramdas v. State of Maharashtra, (2007) 2 SCC 170: (2007) 1 SCC (Cri) 546, relied on

[1182] — S. 154 — FIR — Delay in lodging/filing FIR — Whether indicates existence of possibility of false implication of accused — In the instant case, delay sufficiently explained — *Held, on facts, delay in lodging FIR in a case of this nature was not such from which existence of possibility of false implication could be inferred — Undoubtedly, lodging of FIR within a short time after occurrence would ordinarily lead to a conclusion that statements made therein are correct, but when delay in lodging FIR is sufficiently explained, same would receive the evidentiary value it deserves*

Delay in lodging the FIR has sufficiently been explained. If the accused persons were to be falsely implicated, PW 9 and PW 10 (father and brother of the deceased, respectively) would have rushed to the police station on the same night. In any event, they would have themselves gone for lodging the FIR on the next date. They had fled away because of the threats given to them. They stayed out throughout the night. PW 9 came back only on the next day. One can very well visualise his mental condition. If the married sisters of the deceased, therefore, in the aforementioned situation started from their village round about 8 a.m. on the next day to reach the police station at about 10 a.m., no exception can be taken thereto. Delay in lodging the FIR in a case of this nature is not such which would impel to infer that there existed a possibility of false implication. There cannot be any doubt whatsoever that lodging of the FIR within a short time after the occurrence would ordinarily lead to a conclusion that the statements made therein are correct but when the delay in lodging FIR is sufficiently explained, the same would receive the evidentiary value it deserved. (Para 28)

The very fact that two married sisters gathered the courage at the earliest possible opportunity to go to the police station itself eliminates false implication. They are married. They came to spend some time with their family on the occasion of some festival. It is difficult to believe that they would have some independent motive to falsely implicate so many persons. If that be so, it might not have been possible for them to give a detailed description of the manner in which the occurrence took place. Furthermore, the police came to the place of occurrence soon after the lodging of the FIR. The dead body was immediately sent for post-mortem examination. From the evidence of the doctor, the post-mortem examination started at 12.30 p.m. The approach of the High Court, therefore, cannot be said to be incorrect. Furthermore, in the FIR itself, three motives have been attributed, one of them being the involvement of the deceased in the murder of the younger brother of Accused 1. (Para 29). *Shivappa* v. *State of Karnataka*, (2008) 11 SCC 337: AIR 2008 SC 1860: 2008 Cri LJ 2992.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 31-3-2008]

[1183] — S. 154 — FIR — Delay in recording — Objection regarding — *Rejected in view of corroborated testimony of eyewitnesses. Baboo* v. *State of M.P.*, 1993 Supp (3) SCC 411: 1993 SCC (Cri) 1047: AIR 1994 SC 1712.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 23-7-1993]

[1184] — S. 154 — FIR — Delay in registering a complaint/FIR — When not fatal — *If the ocular evidence adduced by the prosecution is worthy of acceptance, held, the said delay by itself not fatal to prosecution case*

If the ocular evidence adduced by the prosecution is worthy of acceptance, the element of delay in registering a complaint or sending the same to the Jurisdictional Magistrate by itself would not in any manner weaken the prosecution case. In the instant case, the evidence of PWs 1 and 2 does not suffer from any such contradiction or omission which makes the said evidence unbelievable. (Paras 10 and 13). *Balram Singh* v. *State of Punjab*, (2003) 11 SCC 286: 2004 SCC (Cri) 149: AIR 2003 SC 2213.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *Ashok Bhan* and *B.P. Singh*, JJ. [Date of decision: 7-5-2003]

[1185] — Ss. 154 and 176(1-A) — FIR — Delay in sending telegram to superior police officers complaining about beating given to deceased at police station — *Time lost in post-mortem and securing dead body of deceased and time taken in taking decision to make so serious a complaint against police officer — Held, delay not unreasonable. Gauri Shanker Sharma* v. *State of U.P.*, 1990 Supp SCC 656: AIR 1990 SC 709: (1990) 1 Crimes 196.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 12-1-1990]

[1186] — S. 154 — FIR — Delay of 4 hours in lodging FIR — Effect — *Complainant, a police official — Police station at about 50 yards from place of occurrence — Telephone services available — On these facts, delay in lodging FIR raised doubt as to prosecution case — Prevention of Corruption Act, 1988, S. 12*

The offence took place around 7 o' clock in the morning. The trial court noticed that the first information report was recorded around 11 o'clock and it reached the Court of the Chief Judicial Magistrate after three-and-a-half hours. The police station was about 50 yards away from the police lines where PW 2 used to reside. Further, the telephone services were available both at the civil lines as also the police station. No attempt was made by PW 2 to inform the SHO of the police station immediately. The first information report was admittedly lodged after a long delay. Having regard to the distance of the police station as well as the CIA Office, it could not be understood as to why the DSP could come to the place of occurrence only at about 11.30 a.m. and why he remained at the spot for about three hours. (Paras 17 and 14). *Om Parkash* v. *State of Haryana*, (2006) 2 SCC 250: (2006) 1 SCC (Cri) 493: AIR 2006 SC 894: 2006 Cri LJ 972.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 17-1-2006]

(2005) 4 RCR 895 (P&H), reversed

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[1187] — S. 154 — FIR — Delay of 6 hours in lodging — *Accused's premises raided, recovery of arms effected, accused arrested and FIR lodged thereafter — In the circumstances held, delay does not warrant any adverse inference* (Para 6). *Erram Santosh Reddy* v. *State of A.P.*, (1991) 3 SCC 206: 1991 SCC (Cri) 510: AIR 1991 SC 1672: (1991) 2 Crimes 671.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision: 8-1-1991]

[1188] — S. 154 — FIR — Delay of 12 hours in lodging FIR — *Delayed filing of FIR and its consequences, discussed — Held on facts, sufficient to doubt the genuineness of the FIR*

The delayed filing of FIR and its consequences were discussed in *Thulia Kali* v. *State of T.N.*, (1972) 3 SCC 393 wherein the Supreme Court observed that the delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. It was further stated that on account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. The delay of 12 hours in filing the FIR in the instant case irrespective of the fact that the police station is situated only at a distance of 100 metres from the spot of incident is another factor sufficient to doubt the genuineness of the FIR. (Paras 12 and 14). *Rajeevan* v. *State of Kerala*, (2003) 3 SCC 355: 2003 SCC (Cri) 751: AIR 2003 SC 1813.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 17-2-2003]

Thulia Kali v. State of T.N., (1972) 3 SCC 393: 1972 SCC (Cri) 543; Maharaj Singh v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391; Thanedar Singh v. State of M.P., (2002) 1 SCC 487: 2002 SCC (Cri) 153, followed

But see Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450

[1189] — S. 154 — FIR — Delay of about 5 hrs in lodging FIR — *Informant (close relative of victim) owning a tractor — Merely because he did not use the tractor to go to the police station (9 km away), held, is not a suspicious circumstance — Delay, held on facts, not fatal to the prosecution case*

Merely because the informant and the father of the deceased did not choose to use a tractor to go to the police station, that cannot be a suspicious circumstance. It has only been brought on record that the informant owned a tractor. There is no evidence to show that the tractor was in usable condition. Even if it was in usable condition, the frame of mind of one who had lost his son and the other a close relative, using a tractor to cover a distance of 9 km at that point of time, has been lost sight of by the High Court. It is not unusual for a person to avail public transport facility to go to a police station. Much has been made of not lodging the case at the police post. An explanation has been offered as to why it has not been done. The High Court very lightly brushed it aside. Unfortunately, the High Court came to conclude on surmises and conjectures that the FIR was lodged after deliberation. There was no material to support such a conclusion. (Para 13). *State of Punjab* v. *Phola Singh*, (2003) 11 SCC 58: 2004 SCC (Cri) 276: AIR 2003 SC 4407.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 22-9-2003]

[1190] — S. 154 — FIR — Doubt as regards time of filing and other details if substantiated — *Incident taking place at 4.15 p.m. and FIR allegedly filed at 5.35 p.m. — High Court doubting the correctness of entries made in the FIR regarding time and names of the accused — Finding of the High Court based on improper appreciation of entries in Daily Diary — Evidence establishing that all the details regarding the incident had reached the police station by about 5.00 p.m. — Held, in the circumstances of the case there was no delay in recording the FIR and that it was truly recorded — Even assuming that the special report was received by the Magistrate on next day at 10.00 a.m. that circumstance in the facts of the case cannot be regarded as sufficient to create as doubt regarding genuineness of the time and other details contained in the FIR. Babu Ram* v. *State (Delhi Admn.)*, 1998 SCC (Cri) 597, 599: AIR 1998 SC 663.

Bench Strength **2**. Coram: **G.T. Nanavati** and *G.B. Pattanaik*, JJ. [Date of decision: 8-1-1998]

[1191] — S. 154 — FIR — Fardbeyan — Delay in recording — Rape and murder — *According to prosecution, informant had gone to the police station, narrated the occurrence and after 10-20 minutes' stay there, returned to his village where the officer in charge of the police station recorded his fardbeyan naming appellant as having committed the offence — But while in police station, informant had not disclosed the name of appellant — Held, recording of fardbeyan at the house of informant instead of at police station when he had gone there shows that there was inordinate delay in recording the fardbeyan — This further shows that by the time the informant was at the police station he did not suspect complicity of the appellant with the crime and subsequently, after due deliberations, fardbeyan was given by the informant at his house* *alleging therein that the appellant had committed the crime — Thus the evidence of this witness makes the prosecution case showing complicity of the appellant with the crime doubtful — Penal Code, 1860, Ss. 376 & 302* (Para 7). *Kanhai Mishra* v. *State of Bihar*, (2001) 3 SCC 451: 2001 SCC (Cri) 537: AIR 2001 SC 1113: 2001 Cri LJ 1259.

Bench Strength 3. Coram: *K.T. Thomas*, *R.P. Sethi* and **B.N. Agrawal**, JJ. [Date of decision: 27-2-2001]

[1192] — S. 154 — FIR — Importance of — Vital in case of clash between two groups resulting in death — Also, FIR in such situations must be lodged without delay

In a case of this nature, enmity between two groups is accepted. Whether the first information report was ante-timed or not also requires serious consideration. First information report, in a case of this nature, provides for a valuable piece of evidence although it may not be a substantial evidence. The reason for insisting on lodging of first information report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had been used as also the names of eyewitnesses. Where the parties are at loggerheads and there had been instances which resulted in death of one or the other, lodging of a first information report is always considered to be vital. (Para 19). *Ramesh Baburao Devaskar* v. *State of Maharashtra*, (2007) 13 SCC 501: 2008 Cri LJ 372: (2007) 59 AIC 54 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

Om Prakash v. State of Uttaranchal, (2003) 1 SCC 648: 2003 SCC (Cri) 412; Mundrika Mahto v. State of Bihar, (2002) 9 SCC 183: 2003 SCC (Cri) 1163; Jagdish Murav v. State of U.P., (2006) 12 SCC 626: (2007) 2 SCC (Cri) 234; State of Rajasthan v. Teja Singh, (2001) 3 SCC 147: 2001 SCC (Cri) 439, relied on

[1193] — S. 154 — FIR — Incident occurring at about 7.45 p.m. — Lodging of FIR at 11.30 p.m., held on facts, inconsequential

PW 3, the informant has stated that he was busy in searching the body and he could not lodge the fardbeyan in time. He also stated that people told him that the officer-in-charge of Mau Outpost had gone to Agar village for *Holi* duty. He has also stated that Tekari Police Station is about 5 miles away from the place of occurrence and conveyance was not easily available. In the aforesaid circumstances lodging of fardbeyan at 11.30 p.m. is inconsequential. (Para 11). *Gaya Yadav* v. *State of Bihar*, (2003) 9 SCC 122: AIR 2003 SC 1759: 2003 Cri LJ 1564.

Bench Strength 2. Coram: *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision: 18-2-2003]

[1194] — S. 154 — FIR — Incident took place at about 8 p.m. on 6-7-1989 — FIR lodged at 6 a.m. on 7-7-1989 at a police station situated at a distance of about 10 to 12 km from the village where the incident took place — *Held, the said FIR could not be said to be belated* (Para 16). *Jayantibhai Bhenkarbhai* v. *State of Gujarat*, (2002) 8 SCC 165: 2002 SCC (Cri) 1873: AIR 2002 SC 3569.

Bench Strength 2. Coram: *R.C. Lahoti* and *Brijesh Kumar*, JJ. [Date of decision: 11-9-2002]

[1195] — S. 154 — FIR — Injured taken to hospital but no report lodged promptly at the police station 100 yards from that hospital — *Explanation and conduct showing that time was sought to rope in innocents*

In the instant case, the FIR was registered on 25-8-1991 at about 2.30 a.m. and copy thereof referred to in Section 157 was received by the Magistrate on 27-8-1991. Even though there was a mention in the FIR that its copy was sent through special messenger, yet no date or time of sending the said report was mentioned. The Magistrate, receiving the copy of the report, had also not noted the time of its receipt. (Para 8)

The prosecution has apparently failed to explain the delay in sending the copy of the said report in terms of Section 157 CrPC to the Magistrate of the area. This aspect has been highlighted by the counsel for the appellant to contend that many of the accused were innocent and wrongly roped in the case allegedly on account of enmity existing between the complainant and the accused party. There is some substance in such a submission. (Para 8). *Bijoy Singh* v. *State of Bihar*, (2002) 9 SCC 147: AIR 2002 SC 1949: 2002 Cri LJ 2623.

Bench Strength 2. Coram: **R.P. Sethi** and *D.M. Dharmadhikari*, JJ. [Date of decision: 17-4-2002]

[1196] — S. 154 — FIR — Inordinate delay in lodging complaint — Allegation of — *Deceased **D** assaulted and forcibly taken away from his house at 12.30 p.m. — Mother of **D** informing PW 1 (brother of **D**) about the said incident when he came home at 1.30 p.m. — PW 1 going in search of **D** and coming back at 4.30 p.m. — He informing his mother that **D** was found lying injured in an open ground and that he admitted him in a hospital — PW 1 thereafter going to police station to lodge the complaint — On such facts, held, there was no delay in lodging the complaint*

The evidence of PW 2 (mother of deceased *D*) is cogent and convincing. She stated that appellant A-1 along with six persons armed with knife and sticks entered into their house and went inside the

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room where *D* was lying and attacked him. A-1 assaulted *D* with knife and a person with black complexion beat *D* with a stick. Unable to bear the beatings *D* climbed down the staircase and started running and the seven persons chased him. When she came out she found that all the seven persons forcibly took *D* in an autorickshaw. She told this fact to PW 1 at 1.30 p.m. when he came to her house. PW 1 and her other son *K* went in search of *D* and at 4.30 p.m. PW 1 came to her and informed her that *D* had sustained injuries and was lying in an open land and that they had admitted him in the hospital. (Para 20)

All the injuries in the post-mortem report were ante-mortem in nature. Injuries 1 and 2 with the corresponding internal injuries are fatal in nature, sufficient to cause death in the ordinary course of nature. The prosecution has established its case that A-1 has caused the death of the deceased. (Paras 21 to 23). *Ravi* v. *State*, (2004) 11 SCC 266: AIR 2004 SC 4164.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 12-8-2004]

[1197] — S. 154 — FIR — Lodging of FIR after the injured were moved to hospital — Time gap between occurrence and lodging of FIR was 3 hrs. 50 min. — *Held, it is a natural conduct of a normal human being to rush the injured persons to the hospital, particularly when they are his near and dear ones, instead of leaving them at the place of occurrence to die and go to the police station to give information about the occurrence — Hence, no adverse inference could be drawn against the prosecution when the informant did not go to the police station to lodge FIR but rushed the injured persons to hospital to save their lives — On facts, there was no delay in lodging the FIR*

It cannot be said that there was any delay at all in lodging the FIR, much less an inordinate one, as the incident took place on 11-9-1996 at 2130 hours and the fardbeyan was recorded in the hospital at 0045 hours on the same night and dispatched to the police station through special messenger where formal FIR was drawn at 0120 hours on the fateful night itself. (Para 8)

It is natural conduct of a normal human being to rush with injured persons to the hospital, more so when they are near and dear ones like daughter and granddaughter, instead of leaving them at the place of occurrence to die and go to the police station to give information about the occurrence. Therefore, no adverse inference can be drawn against the prosecution on the ground that the informant did not go to the police station to lodge the FIR, rather rushed to the hospital with the deceased persons to save their lives. (Para 8). *Ashok Kumar Pandey* v. *State of Delhi*, (2002) 4 SCC 76: 2002 SCC (Cri) 728: AIR 2002 SC 1468.

Bench Strength **2**. Coram: *M.B. Shah* and **B.N. Agrawal**, JJ. [Date of decision: 15-3-2002]

[1198] — S. 154 — FIR — Mere delay in filing, not fatal to prosecution case

Mere delay in filing FIR cannot be said to be fatal to a criminal prosecution. First information report cannot but be termed to be the starting point and thus sets in motion a criminal investigation. Strictly speaking it is of no consequence in the event the FIR has been delayed with a plausible explanation though on the factual score it is not even so. (Paras 7 and 8). *Munshi Prasad* v. *State of Bihar*, (2002) 1 SCC 351: 2002 SCC (Cri) 175: AIR 2001 SC 3031.

Bench Strength **2**. Coram: **U.C. Banerjee** and *K.G. Balakrishnan*, JJ. [Date of decision: 10-10-2001]

Apren Joseph v. State of Kerala, (1973) 3 SCC 114: 1973 SCC (Cri) 195: AIR 1973 SC 1, relied on

[1199] — S. 154 — FIR — Occurrence taking place at about 5.15 p.m. — FIR lodged at 9.45 p.m. — Time taken in informing family members of deceased and covering distance of police station in a tractor — *Held, FIR not delayed. Rai Saheb* v. *State of Haryana*, 1994 Supp (1) SCC 74: 1994 SCC (Cri) 239.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 16-3-1993]

[1200] — S. 154 — FIR — Occurrence taking place at about 8 p.m. — FIR lodged next morning at about 7.45 a.m. — *Held, in the absence of indications in FIR that it had been lodged after consultations and the delay had been utilised for some purpose, delay by itself not fatal to the prosecution case — In the circumstances of the case it cannot be said that family members of the deceased had informed the police in the night itself through telephone calls and the FIR had been lodged next morning after consultations — Fact that no important role assigned to the principal offender and no overt acts attributed to two other accused persons shows that the informant had witnessed the occurrence and had not lodged the FIR after consultations. Sanganabasappa Bheemappa Kaligonnavar* v. *State of Karnataka*, 1994 Supp (1) SCC 583: 1994 SCC (Cri) 727: AIR 1994 SC 848: 1994 Cri LJ 606: (1994) 31 ACC 147: (1994) 1 Crimes 33.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 3-12-1993]

[1201] — S. 154 — FIR — On facts, apparent delay in lodging the FIR reasonably explained. *State of U.P.* v. *Sughar Singh*, (1978) 1 SCC 178: 1978 SCC (Cri) 83: AIR 1978 SC 191: 1978 Cri LJ 141: 1978 ALJ 466.

Bench Strength 2. Coram: *P.K. Goswami* and **V.D. Tulzapurkar**, JJ. [Date of decision: 8-12-1977]

[1202] — S. 154 — FIR — On facts, held, FIR lodged promptly — *Contrary finding of High Court not based on any sound reasoning — Hence liable to be rejected. State of Karnataka* v. *Bheemappa*, 1994 Supp (1) SCC 103: 1994 SCC (Cri) 198: 1993 Cri LJ 2609.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *N.P. Singh*, JJ. [Date of decision: 13-5-1993]

[1203] — S. 154 — FIR — Time taken in lodging FIR and sending it to Magistrate — *Murderous assault taking place at 9.30 a.m., death of the injured taking place in hospital at around 11 a.m. and FIR lodged at 1 p.m. which reaching Magistrate at 5.30 p.m. — Held on facts, no unreasonable delay occurred — Penal Code, 1860 — S. 302*

When a murderous assault takes place in broad daylight, the first anxiety of the nearest ones of the victim would be to take him to the nearest hospital to get him medical aid to save his life. In the present case there was no great delay in lodging the FIR and it reached the Magistrate only about 4-5 hours after it was lodged. The mere fact that there was some delay in despatching a copy of the FIR to the Magistrate or some delay before necessary entries were made, would not be fatal to the prosecution case. *Pattipati Venkaiah* v. *State of A.P.*, (1985) 4 SCC 80: 1985 SCC (Cri) 464: AIR 1985 SC 1715.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 16-8-1985]

[1204] — S. 154 — FIR — Twelve hours' delay in lodging — Explanation for — *Incident taking place around 11 a.m. in which family members receiving grievous injuries — Medical treatment continuing till 3 p.m. when one of the injured persons succumbing to injuries — Heavy rains at that time affecting movement — Police station located 14 km. away — Held, sufficient and cogent reasons given for the delay. Meheruddin Sheikh* v. *State of W.B.*, (1985) 2 SCC 448: 1985 SCC (Cri) 241.

Bench Strength 2. Coram: *A. Varadarajan* and **Ranganath Misra**, JJ. [Date of decision: 13-2-1985]

[1205] — S. 154 — FIR — Unexplained delay in lodging FIR — Adverse effect of — Abduction and murder — Testimony of friends of deceased — Acquittal — Propriety — *As per the prosecution, accused armed with weapons forcibly carried away the deceased G with them when he was gossiping with his friends at night — G found dead in the house of accused M — Evidence regarding abduction not reliable — Unexplained delay in lodging FIR — Non-disclosure to police about assailants or scenario of the crime when they arrived at the spot — Unusual conduct of eyewitnesses — Their presence at the spot of occurrence, held, doubtful — Acquittal upheld — Penal Code, 1860 — Ss. 302/149 and 364/149*

Merely because the witnesses were friendly with the deceased, that would not be sufficient to term them as interested witnesses. Whenever any plea is taken by the accused persons about the interestedness of witnesses, materials have to be placed in that regard. (Para 7)

In the instant case, the two Hon'ble Judges of the High Court who have held the accused persons not guilty have kept the aforesaid salutary principle in view. They have analysed the evidence of PWs 4, 5 and 9 (friends of the deceased) with care and caution. It has been found that they were not truthful witnesses and their presence at the alleged spot of occurrence was doubtful. The evidence regarding abduction as stated by PWs 4, 5 and 9 does not inspire confidence. It is unnatural that with the scanty light which was stated to be available at the spot of occurrence, the witnesses could even notice the weapons held by the accused persons individually. The source of light for identification was also differently described by the witnesses. (Para 7)

Thus, the unusual conduct of PWs 4, 5 and 9, the unexplained delay in lodging the FIR, non-disclosure to the police officials about the assailants, or the scenario of the crime when they arrived at the spot cumulatively present a possible view of the case which has weighed with the two Hon'ble Judges directing acquittal. (Para 9). *Bihari Nath Goswami* v. *Shiv Kumar Singh*, (2004) 9 SCC 186: 2004 SCC (Cri) 1435.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and **Arijit Pasayat**, JJ. [Date of decision: 24-2-2004]

[1206] — S. 154 — FIR lodged at police station 10 miles away within 8 hours at night — Held, not fatal

The High Court was justified in holding that in the facts of the case there had not been any inordinate delay in lodging the FIR. As a matter of fact, such FIR had been lodged at a distance of about 10 miles from the place of occurrence at night within 8 hours and a copy of the FIR was also received by the Taluka Magistrate, the very next morning. *Lakhwinder Singh* v. *State of Punjab*, 1993 Supp (2) SCC 551: 1993 SCC (Cri) 719: AIR 1993 SC 87: (1993) 1 An WR 20 (SC).

Bench Strength 2. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 15-9-1992]

(3)(vi)4. Reliability and Validity of FIR - FIR and Time - Delay in lodging/filing FIR *(contd.)*

[1207] — S. 154 — Rape case — Delay explained — Held, not fatal to prosecution case — Rape — Delay in filing complaint — *The mere factum of, held, by itself not fatal to prosecution case — Occurrence on 6-3-1990 — Filing of complaint on 10-3-1990 — Victim, a girl of eight years — Her father out of station on the date of occurrence — Possibility of hesitation on the part of mother in lodging complaint — Thus said delay, held, explained — Hence, did not prove fatal — Penal Code, 1860 — Ss. 376 and 376(2)(f)* (Para 7). *State of Chhattisgarh* v. *Derha*, (2004) 9 SCC 699: 2004 Cri LJ 2109.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-4-2004]

[1208] — S. 154 — Unexplained delay — On facts, proved fatal — Contradictions — Testimony of eyewitnesses — Their presence at the time of incident — Doubt in respect of — Murder at night — *Original case that when attack took place, eyewitnesses (PWs 1 and 3) and deceased* ***B*** *were sleeping together — During evidence, change in version that PWs 1 and 3 were sleeping on the roof of pump house while* ***B*** *was sleeping on a cot under a tree — On seeing the attack, PWs 1 and 3 ran away and hid themselves till about 8 o'clock in the morning — Contradiction regarding direction in which they ran — They did not try to seek help of others who were sleeping in nearby thrashing yards — Incident took place in month of April when sunrise would have been around 6 o'clock — No explanation as to why PWs 1 and 3 did not go to their house or contact anybody up to 8 o'clock — Unexplained delay in lodging the FIR at 8.15 a.m. — Contradiction also regarding lodging of complaint — Testimony of PWs 1 and 3, held, not acceptable — Acquittal upheld — Penal Code, 1860 — S. 302 r/w S. 34* (Para 8). *State of M.P.* v. *Kriparam*, (2003) 12 SCC 675.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 25-9-2003]

Distinguished *in Vikram v. State of Maharashtra, (2007) 12 SCC 332*

[1209] — S. 154 — Delay in filing FIR — Delay of 12 hours in filing FIR — *Held, not detrimental when there was understandable reason for the delay. Lalai* v. *State of U.P.*, (1975) 3 SCC 273: 1974 SCC (Cri) 881: AIR 1974 SC 2118: 1974 Cri LJ 1393.

Bench Strength 3. Coram: **Y.V. Chandrachud**, *R.S. Sarkaria* and *A.C. Gupta*, JJ. [Date of decision: 4-10-1974]

[1210] — S. 154 — Delay in filing FIR — Delay of about 6 hours in filing FIR — *Though one of the sons of the deceased remained in the village, he did not go to the police station to lodge the report — Held, in the circumstances of the case, the delay was deliberate and meaningful. Sahib Singh* v. *State of Haryana*, (1997) 7 SCC 231: 1997 SCC (Cri) 1049: AIR 1997 SC 3247: 1997 Cri LJ 3956.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S. Saghir Ahmad**, JJ. [Date of decision: 28-7-1997]

[1211] — S. 154 — FIR lodged immediately after the incident — Delay in despatching the FIR from the outpost to the police station, held, on facts, was of no consequence (Para 7). *Ayodhya Ram* v. *State of Bihar*, (1999) 9 SCC 139: 1999 SCC (Cri) 564.

Bench Strength 2. Coram: *G.B. Pattanaik* and *A.P. Misra*, JJ. [Date of decision: 7-1-1999]

[1212] — S. 154 — FIR — Delay explained — *Gang rape by entering into victims' house at night — Victims taking shelter in another's house after the rape and lodging FIR next morning — Delay in lodging FIR, held on facts, satisfactorily explained — Penal Code, 1860, S. 376(2)(g). Pramod Mahto* v. *State of Bihar*, 1989 Supp (2) SCC 672: 1990 SCC (Cri) 206: AIR 1989 SC 1475: 1989 Cri LJ 1479.

Bench Strength 2. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 21-4-1989]

[1213] — Ss. 154 and 161 — Murder near bus-stop witnessed by the brother and the wife of the deceased — *Trial court convicting all the seven accused but in appeal High Court acquitting five of them and convicting only two of them under Ss. 302/34 IPC — Held, though the defence suggested that the victim might have died in a motor cycle accident, the various injuries on the body of the victim were undoubtedly suggestive of a homicidal death — The fact that the name of the other eyewitness (wife of the deceased) was not mentioned in the FIR lodged by the brother of the deceased was not sufficient to discard her testimony — Nothing could also be said against the testimony of the brother of the deceased except that he waited till next morning for filing the FIR — The delay in filing the FIR was hardly sufficient to reject his testimony — Accordingly, order of High Court confirmed — Penal Code, 1860, Ss. 302/34. Sahab Singh* v. *State of Rajasthan*, 1997 SCC (Cri) 704: AIR 1997 SC 945: 1997 Cri LJ 1188.

Bench Strength 2. Coram: *M.M. Punchhi* and **K.T. Thomas**, JJ. [Date of decision: 3-3-1997]

[1214] — Ss. 154 and 161 — Murder — Occurrence taking place in the morning — FIR lodged by son of the deceased at 2.00 p.m. at the police station which was at a distance of 7 miles from the place of occurrence — *Testimony of the son of the deceased found consistent and cogent and corroborated from the FIR — Held, in the circumstances of the case, reversal of acquittal by the High Court justified — Penal Code, 1860 — S. 302. Jaswant Singh* v. *State of U.P.*, 1998 SCC (Cri) 1344.

Bench Strength 2. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 21-10-1997]

[1215] — S. 154 — FIR lodged within 3 hours of the incident after covering a distance of 5 miles — *First informant being aged only 19 years and had lost her father and brother just then — Her conduct in sending message to her relations and seeking their help at that hour of her distress not unnatural — In the circumstance of the case, there was no delay in lodging FIR — Merely because the other witness did not go to the police station for lodging FIR no adverse inference can be drawn — On facts held, the Investigating Officer proceeded for the spot after recording of the FIR — Finding of the High Court that the FIR was doctored at the behest of the Investigating Officer to fit in with the injuries found on the person of the deceased not sustainable* (Paras 11 and 12). *State of Punjab* v. *Surja Ram*, 1995 Supp (3) SCC 419: 1995 SCC (Cri) 937: AIR 1995 SC 2413.

Bench Strength 2. Coram: **M.K. Mukherjee** and *G.T. Nanavati*, JJ. [Date of decision: 9-8-1995]

[1216] — S. 154 — Delay explained — *Allegation of FIR being fabricated found misconceived — Arrest of persons on the basis of the FIR and intervening public holiday explained the delay* (Para 5). *Ramesh* v. *State of M.P.*, (2000) 1 SCC 243: 2000 SCC (Cri) 206: AIR 1999 SC 3759: 1999 Cri LJ 4603.

Bench Strength 2. Coram: **G.B. Pattanaik** and *N. Santosh Hegde*, JJ. [Date of decision: 16-9-1999]

[1217] — S. 154 — FIR — Delay in lodging — *Prosecution case of recovery of charas and a loaded pistol from possession of accused-appellant — Though the two offences alleged to have been committed at the same time, two prosecutions, one under S. 61 of Punjab Excise Act and the other under S. 27 of Arms Act separately launched — Two offences bifurcated and FIR relating to the offence under Arms Act lodged 36 days after the seizure — Trial court acquitting the accused finding that in fact agarbattis and not charas seized from his possession and that there was no explanation for bifurcation of the offences and delay in lodging FIR — Appeal preferred only against acquittal from offence under the Arms Act — High Court reversing the acquittal order convicting under S. 27 of Arms Act — Held, High Court erred in doing so by condoning lapses of the prosecution — Arms Act, 1959, S. 27. Rajinder Singh* v. *State (Delhi Admn.)*, 1988 Supp SCC 599: 1989 SCC (Cri) 43: 1988 BLJR 369: (1988) 25 ACC 107.

Bench Strength 2. Coram: *Ranganath Misra* and *M.M. Dutt*, JJ. [Date of decision: 15-12-1987]

[1218] — S. 154 — FIR — Delay in lodging/filing of — Effect — When material — *Delay by itself may not be a ground to disbelieve prosecution case — But where the prosecution case (or main prosecution witness relying on whom conviction is based) itself is doubtful, held, the court may take a serious notice of delay in lodging the FIR — Penal Code, 1860, S. 377*

Delay in lodging of a first information report although by itself may not be a ground to disbelieve the entire prosecution case, but each case must be judged on its own facts. If the story of the complainant victim, PW 1 is to be accepted at its face value, the court may not take serious notice of delay in lodging the first information report. If PW 1 had returned to school on 3-8-1986 and attempts were made by the appellant immediately thereafter to send for him for repeating the commission of the same offence (of sodomy), there was no reason why the first information report was not lodged immediately. (Paras 17 and 18)

According to PW 4 as also PW 8, PW 1 came back to the house only on the Rakshabandhan day and stayed there for 20 days. He had to be persuaded to return to school. PW 8 came with them. Whereas according to PWs 4 and 8, they came to know about the incident on or about 18-8-1986 and Respondent 2 and his brother having stayed in the house for 20 days, it remains a mystery how first information report could be lodged on 29-8-1986. PW 4, the victim's mother in her deposition completely denied to have made any statement before the police officer on 31-8-1986. The reason is not very far to seek. Her attention was drawn to her previous statements where she had alleged that her son had mentioned about the incidents on 18-8-1986 and left the house on 28-8-1986. (Paras 19, 27 and 25)

It is unlikely that no step would be taken by the guardians when they came to know about the incident. PW 8 (the victim's maternal uncle) was attached to the Mutt. It was he, who was instrumental for admission of the boy in the Mutt. He knew

(3)(vi)4. Reliability and Validity of FIR - FIR and Time - Delay in lodging/filing FIR *(contd.)*

the administrator. He did not meet the appellant to make enquiries. He did not meet the senior Swamiji to lodge a complaint. He did not even meet the administrator. PW 4 was not an illiterate lady. She had studied up to IXth standard. She had been working in a school as an aaya. Her sister is a teacher in a school. (Para 20). *Gowrishankara Swamigalu* v. *State of Karnataka*, (2008) 14 SCC 411.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

[1219] — S. 154 — Delay in filing FIR — Effect *— Offence under Ss. 384 and 506 IPL — Proof of — Complainant's evidence regarding — Corroborated by her subsequent conduct in narrating the incident to witnesses on the following day and recovery of incriminating documents at accused's instance from accused's house — Admissibility in evidence — Held on facts, sufficient to establish prosecution case — High Court erred in rejecting complainant's evidence merely on ground of delay in filing FIR — Evidence Act, 1872 — Ss. 6 and 157 — Penal Code, 1860 — Ss. 384 and 506*

The accused Headmaster of a school called the complainant, a lady teacher of the school, at his residence on the pretext of some official work on March 10. When the complainant reached the accused's house, he alone was there. He asked the complainant to sign on three blank papers, which in fact were meant for affidavits and threatened her that if she did not sign, he would spoil her modesty. Apprehending trouble she put her signatures on those papers whereupon the accused told her that he could malign and blackmail her by recording any kind of statement on those papers or she should act according to his wishes. The complainant refused and after reaching home she narrated the incident to her husband. On the following day she narrated the incident to three of her colleagues at the school. Thereafter, the accused used to threaten her that he would make use of those papers. On March 18, the accused sent for her to see him in his office and when she went there he was all alone and he actually caught hold of her by her arm and tried to outrage her modesty but the complainant after pushing him aside managed to escape. The complainant immediately returned home and reported the incident to her husband who along with complainant went to police station and filed an FIR on the very day. The investigating officer arrested the accused on the same day and during the course of interrogation that followed the accused made a disclosure statement regarding the three papers on which the complainant's signatures had been obtained as also some photographs of the members of the staff (including a cut-out of the complainant) and in pursuance of such statement he led the police and the Panchas to his house and he produced the three papers, and some photographs. These documents were seized under a Memo attested by Panch witnesses.

Held :

As regards the first incident relating to charges under Ss. 384 and 506 IPC, the two pieces of evidence viz. subsequent conduct on the part of the complainant in narrating the story to the three witnesses on the following day and actual recovery of the three papers bearing the signatures of the complainant thereon from the house of the accused lend the strongest support to the complainant's story and clinches the veracity of that incident as deposed to by her in her evidence. Assuming that the complainant's conduct of narrating the incident to her colleagues is not *res gestae* and hence inadmissible under S. 6 of the Evidence Act, the same when corroborated by the three witnesses is clearly admissible under S. 157 of that Act and therefore ignoring such crucial and relevant evidence has led the Court to give undue importance to the so-called delay in lodging the report with the police. In fact it could not be regarded as a case of any delayed report for, it was the second incident when the accused actually assaulted the complainant that the culminating point was reached and immediately the same evening she lodged the FIR. The so-called delay in lodging the report to the police cannot cast any doubt on the veracity of the story. The so-called doubt entertained by the Sessions Judge about the complainant's version was not a doubt of a reasonable mind. With the two strong pieces of corroborative evidence discussed above the acquittal of the accused in regard to charges under Ss. 384 and 506 must be regarded as perverse. *Chander Kala* v. *Ram Kishan*, (1985) 4 SCC 212: 1985 SCC (Cri) 491: AIR 1985 SC 1268: 1985 Cri LJ 1490.

Bench Strength **3**. Coram: **V.D. Tulzapurkar**, *D.A. Desai* and *A.P. Sen*, JJ. [Date of decision: 1-5-1985]

5. Non-mention of time of dispatch in FIR

[1220] — S. 154 — FIR — Non-mention of time of despatch of FIR to court *— Inference that report had been prepared after the inquest, drawn from the non-mentioning of time raising doubts as to possibility of preparing an exhaustive report and lodging the same before police soon after the occurrence — Held, the inference and doubt unsustainable in view of unimpeachable evidence to the contrary regarding positive time of filing the report as* *entered in panchnama which was signed by a defence witness as well. State of U.P.* v. *Anil Singh*, 1988 Supp SCC 686: 1989 SCC (Cri) 48: AIR 1988 SC 1998.

Bench Strength **2**. Coram: *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision: 26-8-1988]

[1221] — Ss. 154, 157 and 158 — Time of despatch of FIR not required to be mentioned — *Failure to note time in the FIR would not lead to the inference that the FIR was antetimed. Om Prakash* v. *State of U.P.*, (1983) 2 SCC 358: 1983 SCC (Cri) 475: AIR 1983 SC 431: 1983 Cri LJ 831: 1983 ALJ 830.

Bench Strength **2**. Coram: *V.D. Tulzapurkar* and **A. Varadarajan**, JJ. [Date of decision: 11-3-1983]

6. Promptness/Haste in filing FIR

[1222] — S. 154 — FIR — Held, reliable because it was promptly lodged — Plea that accused persons were falsely implicated, therefore, rejected. *Jangir Singh* v. *State of Haryana*, 1993 Supp (2) SCC 632: 1993 SCC (Cri) 737: AIR 1993 SC 76.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 25-9-1992]

[1223] — S. 154 — Prompt FIR and offence proved — Conviction upheld — *Homicidal death by gunshot injury corroborated by medical and ocular evidence — Aggrieved accused persons inquiring from informant and his father (deceased) about one P, who had objected to A-1's misbehaviour with female members of informant's family — Deceased advising accused persons not to fight — A-1 exhorted by A-4 shooting deceased on the right side of stomach over his waist — A-4 and A-5 intercepting PWs 7 and 6 running to help deceased — A-4 giving lathi-blow to PW 7 and A-5 giving gandasa-blow on the head of PW 6 — 15-16 accused persons heavily armed with deadly weapons coming to spot together and indiscriminately firing and fleeing together after commission of murder — Doctor opining that death was caused due to shock and haemorrhage by reason of the injuries caused by a firearm damaging vital organs — Conviction of A-1, A-4 and A-5 under Ss. 302/34 IPC upheld* (Paras 12 to 19). *Ramdeo Kahar* v. *State of Bihar*, (2008) 17 SCC 517: AIR 2009 SC 1803: 2009 Cri LJ 1715: (2009) 75 AIC 195 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 19-12-2008]

[1224] — S. 154 — FIR — Prompt filing of — Inference — *Held, when soon after occurrence, FIR is lodged, false story being cooked up and/or false implication of accused, stands ruled out* (Para 17). *Kirpal Singh* v. *State of U.P.*, (2010) 3 SCC 347.

Bench Strength **2**. Coram : *B. Sudershan Reddy* and **J.M. Panchal**, JJ. [Date of decision : 23-2-2010]

[1225] — S. 154 — FIR — Prompt lodging of — *Fact that FIR was given immediately after the incident rules out any possibility of deliberation to falsely implicate any person in the crime* (Para 17). *Krishnan* v. *State*, (2003) 7 SCC 56: 2003 SCC (Cri) 1577: AIR 2003 SC 2978: 2003 Cri LJ 3705.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 28-7-2003]

[1226] — S. 154 — Prompt FIR — Effect of — Incident happened at 9.30 p.m. — FIR recorded at 10.30 p.m. i.e. within an hour of incident — Eyewitnesses turned hostile — Three dying declarations in spite of minor discrepancies, believed — Held, prompt lodging of the FIR is another circumstance in favour of prosecution — Reversal of acquittal and conviction by High Court on basis of the three dying declarations, confirmed (Para 13). *Abrar* v. *State of U.P.*, (2011) 2 SCC 750.

Bench Strength **3**. Coram: **H.S. Bedi**, *P. Sathasivam* and *C.K. Prasad*, JJ. [Date of decision: 16-12-2010]

[1227] — S. 154 — Prompt lodging of FIR by independent informant rules out false implication (Para 14). *Onkar Lal* v. *State of M.P.*, (2009) 13 SCC 754.

Bench Strength **3**. Coram: **S.B. Sinha**, *Dr. M.K. Sharma* and *H.L. Dattu*, JJ. [Date of decision: 31-3-2009]

[1228] — S. 154 — FIR — Prompt lodging of — Incident taking place at 6 p.m. four miles away from police station — FIR lodged at 7.15 p.m. — No adverse inference justified. *Mohd. Aslam* v. *State of U.P.*, (1993) 3 SCC 10: 1993 SCC (Cri) 577.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 18-3-1993]

[1229] — S. 154 — FIR — Prompt lodging of, in case of murder — *A significant circumstance in support of the prosecution case*

In cases relating to murder the time taken in lodging the FIR assumes special significance. The FIR being the first version of the occurrence disclosed to the police acts as check on the part of the prosecution. In this case the fact that the FIR was lodged by deceased's wife within an hour of the occurrence, giving the details of the manner of occurrence lends corroboration to her testimony in court regarding the participation of the accused persons in the occurrence. *Jarnail Singh* v. *State of Haryana*, 1993 Supp (3) SCC 91: 1993 SCC (Cri) 869: 1993 Cri LJ 1656.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **N.P. Singh**, JJ. [Date of decision: 20-1-1993]

(3)(vi)6. Reliability and Validity of FIR - FIR and Time - Promptness/Haste in filing FIR *(contd.)*

[1230] — S. 154 — Prompt lodging of FIR — *Held, lends credence to the presence/evidence of the eyewitnesses named therein* (Para 16). *Ram Pal* v. *State of U.P.*, (2007) 15 SCC 79.

Bench Strength 2. Coram: *S.B. Sinha* and **H.S. Bedi**, JJ. [Date of decision: 14-12-2007]

[1231] — S. 154 — Prompt FIR — Necessity of, explained (Para 15). *Satpal Singh* v. *State of Haryana*, (2010) 8 SCC 714.

Bench Strength 2. Coram : *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision : 28-7-2010]

Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of A.P. v. M. Madhusudhan Rao, (2008) 15 SCC 582: (2009) 3 SCC (Cri) 1123; Satyapal v. State of Haryana, (2009) 6 SCC 635: (2009) 3 SCC (Cri) 108; State of H.P. v. Prem Singh, (2009) 1 SCC 420: (2009) 1 SCC (Cri) 351, relied on

[1232] — S. 154 — FIR — Time of lodging — FIR lodged by eyewitness within one hour of the incident in a police station at a distance of 12 1/2 kms. from the scene of occurrence — Whether this was possible — *Question regarding, should have been raised by the defence in cross-examination — Having failed to do so and in absence of any evidence showing that the time of the incident noted was the precise time and that the person who lodged the FIR had gone to the police station on foot, held, the FIR lodged immediately after the incident. Darshan Singh* v. *State of Punjab*, (1988) 1 SCC 618: 1988 SCC (Cri) 214: AIR 1988 SC 747.

Bench Strength 3. Coram: **G.L. Oza**, *B.C. Ray* and *K. Jagannatha Shetty*, JJ. [Date of decision: 29-1-1988]

[1233] — S. 154 — FIR lodged within 3 hours of the incident naming the accused with all details — Order of acquittal recorded by the High Court on ground that case against the accused was framed in the village with the connivance of the police, is based on mere surmise. *Hardev Singh* v. *Harbhej Singh*, (1997) 1 SCC 80: 1997 SCC (Cri) 5: AIR 1997 SC 1487: 1997 Cri LJ 727.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 20-11-1996]

[1234] — S. 154 — Prompt FIR lends support to the prosecution case regarding the time of occurrence. *Charan Singh* v. *State of Punjab*, (1975) 3 SCC 39: 1974 SCC (Cri) 735: AIR 1975 SC 246: (1975) 1 SCR 561: 1974 Cri LJ 1253.

Bench Strength 2. Coram: **H.R. Khanna** and *Y.V. Chandrachud*, JJ. [Date of decision: 26-7-1974]

[1235] — S. 154 — FIR — Prompt FIR — Place of incident 7 km away from police station — FIR lodged within 2½ hours after incident, by brother of deceased — *As a close relative of family had been murdered, an hour or so would have been taken at place of incident before he had left for police station — Held, promptitude of FIR supports prosecution story* (Para 10). *Hari Singh* v. *State of M.P.*, (2010) 12 SCC 108: AIR 2010 SC 3630.

Bench Strength 2. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 3-8-2010]

[1236] — S. 154 — Prompt lodging of FIR — FIR lodged within 2½ hours of the occurrence and copy thereof sent to Illaqua Magistrate 90 km away by a special report about 5 hours after lodging of FIR — *In the circumstances held, FIR lodged promptly* (Para 8). *State of Haryana* v. *Tek Singh*, (1999) 4 SCC 682: 1999 SCC (Cri) 622: AIR 1999 SC 1742.

Bench Strength 2. Coram: *G.B. Pattanaik* and **M.B. Shah**, JJ. [Date of decision: 3-5-1999]

[1237] — S. 154 — Promptness in filing FIR — *Held, promptly lodged FIR reflects the first hand account of what actually happened and who were responsible for the offence in question. Girish Yadav* v. *State of M.P.*, (1996) 8 SCC 186: 1996 SCC (Cri) 552: AIR 1996 SC 3098.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 29-3-1996]

[1238] — S. 154 — Spontaneity of FIR — FIR corroborated by medical evidence — Importance of — Prompt FIR giving all relevant details fortifies prosecution story — *Prosecution story is that accused had fired at deceased with a country-made pistol from a very close range — Doctor who had conducted post-mortem examination found one wound of entry about 3 cm + 2.5 cm with blackening and charring and also recovered 160 pellets and three wads from inside the dead body — Medical evidence clearly suggests use of such a weapon from almost point blank range — Appellant's plea of false implication rejected* (Para 12). *Hari Singh* v. *State of U.P.*, (2010) 13 SCC 756.

Bench Strength 2. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 16-12-2010]

[1239] — S. 154 — Promptness in filing FIR — *Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of his version. State of U.P.* v. *Harban Sahai*, (1998) 6 SCC 50: 1998 SCC (Cri) 1412.

Bench Strength 3. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas** and *S. Rajendra Babu*, JJ. [Date of decision: 20-4-1998]

[1240] — Ss. 154 and 157 — Promptness in filing and despatching FIR to Magistrate — Finding of lower courts that there was no delay in recording or despatching of FIR — *Admissibility of FIR or truth of its contents cannot be assailed. Pattad Amarappa* v. *State of Karnataka*, 1989 Supp (2) SCC 389: 1990 SCC (Cri) 179: AIR 1989 SC 2004: 1989 Cri LJ 2167: (1989) 3 Crimes 39.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 25-7-1989]

[1241] — Ss. 154 and 157 — Undue haste in registering the case by police officer — *Held, by itself not sufficient to quash the FIR — Prevention of Corruption Act, 1947, S. 5-A(1)*

In this case the SP had directed the SHO to register the case and investigate the same even on the very first day of the receipt of the complaint from the DGP, in whose office the complaint was lying for nearly 9 days. This unprecedented overenthusiasm shown by the SP, without disclosing the reasons for making an order entrusting the investigation to the SHO who is not a designated officer under S. 5-A(1), shocks one's sense of justice and fair play even though the untested allegations made in the complaint require a thorough investigation. Still, it is an inexplicable riddle as to why the SP had departed from the normal rule and hastily ordered the SHO to investigate the serious allegations, levelled against a former Chief Minister and a Minister in the Cabinet of the Central Government on the date of the registration of the case. However, this conduct of the SP can never serve as a ground for quashing this FIR. *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604: 1992 Cri LJ 527.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 21-11-1990]

[1242] — Ss. 154 and 159 — Prompt FIR — Discrepancy regarding sending special report to Magistrate — *Incident happened at 7 a.m. on 24-4-1980 — FIR lodged at about at 9.10 a.m. — Police station 4 km from place of occurrence — As per column in statutory form dealing with FIRs, copy of special report had been dispatched next day to Magistrate — Head Constable R categorically stated that copy of special report had been dispatched from police station same day through Constable M — Both departure and arrival reports had been recorded in daily diary of 24-4-1980 of police station — PW 7 was not even remotely cross-examined with regard to special report — Held, no advantage can be taken by defence on account of this discordance — It is proved that incident had indeed happened at 7 a.m., FIR had been recorded at 9.10 a.m. and special report had been delivered to Magistrate the same day — Penal Code, 1860, Ss. 302 and 307* (Paras 16 and 17). *Mohd. Mian* v. *State of U.P.*, (2011) 2 SCC 721.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 16-12-2010]

(vii) FIR not filed/lodged

[1243] — S. 154 — FIR — Absence of — Eyewitnesses busy in removing deceased to hospital and informing relatives — FIR lodged by accused also deterring — *Held, failure to lodge report in the presence of sufficient explanation not detrimental to prosecution case. Thakarda Lalaji Gamaji* v. *State of Gujarat*, (1974) 3 SCC 639: 1974 SCC (Cri) 169: AIR 1974 SC 1351: 1974 Cri LJ 612.

Bench Strength **2**. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 22-11-1973]

(viii) Mala fides

See also under S. 157, below

[1244] — Ss. 154, 190 and 200 — Prosecution against former Minister or Chief Minister at the instance of succeeding political opponent in power — *Mala fide political motivation whether can be inferred — Effect on maintainability of the prosecution if political vendetta found*

Per Bhagwati, C.J. and Oza, J.

Merely because the prosecution against the Chief Minister was initiated by the successor Government after his ministry went out of power, that by itself cannot support the inference that the initiation of the prosecution was actuated by political vendetta or mala fides because it is quite possible that there might be material justifying the initiation of prosecution against the erstwhile Chief Minister and the successor Government might have legitimately felt that there was a case for initiation of prosecution and that is why the prosecution might have been initiated. There would be nothing wrong on the part of the successor Government in doing so and the prosecution cannot be said to be vitiated on that account.

Per Khalid and Natarajan, JJ.

The appellant was admittedly a political rival of the accused. There was no love lost between them. It was at the instance of such a highly interested person that Supreme Court was called upon to direct retrial of the case, setting aside the consent given by the Special Judge. Viewed against this background,

(3)(viii) Reliability and Validity of FIR - Mala fides *(contd.)*

it would not advance either the interests of justice or public interest, on the unsatisfactory factual details of the case, to accept the appeal and direct retrial. *Sheonandan Paswan* v. *State of Bihar,* (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength **5**. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[1245] — Ss. 154 and 157 — Criminal proceedings — Mala fides — *Complaint laid, case registered but investigation stayed by High Court — Question of mala fides on the part of the complainant — Held, premature — Moreover, criminal proceeding, if otherwise justifiable, not liable to be quashed merely on ground of mala fides — Further, if dominant purpose of registration of the case and intended investigation is not tainted with mala fide, the proceeding not liable to be quashed*

In this case the entire matter is only at a premature stage and the investigation is not yet proceeded with except some preliminary effort taken on the date of the registration of the case. The evidence has to be gathered after a thorough investigation and placed before the court on the basis of which alone the court can come to a conclusion one way or the other on the plea of mala fides. If the allegations are bereft of truth and made maliciously, we are sure, the investigation will say so. At this stage, when there are only allegations and recriminations but no evidence, this court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available. Therefore, there is no force in the contention that the complaint should be thrown overboard on the mere unsubstantiated plea of mala fides.

Further, the question of mala fide exercise of power will assume significance only if an authority acts for unauthorised purpose. The proper test to be applied in such a case is as to what is the dominant purpose for which the power is exercised. Applying this test to the present case it must be held that the dominant purpose of registration of the case and the intended follow-up action are only to investigate the allegations and present a case before the court, if sufficient evidence in support of those allegations are collected but not to make a character assassination of the accused respondent and his relatives. *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604: 1992 Cri LJ 527.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 21-11-1990]

Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288: 1987 SCC (Cri) 82, followed

[1246] — Ss. 154 and 157 — FIR — Mala fide — Allegations of, cannot be gone into at investigation stage — *On facts held, allegations made in the FIR prima facie made out*

When the entire matter is only at a preliminary stage and when the investigation has yet to go a long way to gather the requisite evidence the Court cannot come to a conclusion one way or the other on the plea of mala fide at such a stage. Further, in case the investigation discloses that the entire proceeding has been initiated only with mala fides, probably the prosecution itself may throw the case overboard. There is no merit in the submission that the Government has neither filed any civil suit nor has initiated any arbitration proceeding to recover the amount of alleged commission in the Bofors gun deal serves as one of the factors compelling the Court not to accept the case of the prosecution.

The allegations made in the FIR under S. 154 of the Code of Criminal Procedure prima facie constitute the offence alleged therein. *Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260: 1993 SCC (Cri) 1171: AIR 1993 SC 1082: 1993 Cri LJ 859.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 17-12-1992]

[1247] — Ss. 154 to 173 and 482 — Criminal proceedings challenged on ground of mala fides and bias on the part of the first informant and investigating officer — Maintainability — *Non-impleadment of the informant and investigating officer as eo nomine party itself sufficient to dismiss the petition — Besides no personal animosity or bias on the part of the informant and the investigating officer established — Mere lodging of FIR by the informant and rejection of certain documents, claimed to be favourable to the accused, as irrelevant and participation in writ proceedings by the investigating officer would not indicate mala fides or malice in law — Mala fides on the part of the informant would be of secondary importance once FIR is registered by police — Further, permitting the investigation to complete without complaining about the mala fides or bias to higher authorities amounted to waiver of the objection by the petitioners-accused — Moreover, investigating officer would also be available to cross-examination at the trial. State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192: AIR 1991 SC 1260.

Bench Strength **2**. Coram: **Kuldip Singh**[1] and **K. Ramaswamy**[2], JJ. [Date of decision: 2-4-1991]

(ix) Multiple FIRs/Cases

See also Section 154, '(1)(ii)4. FIRs in Cross-cases', and

'(1)(ii)8. Information if first information or statement of witness under S. 161, etc.', above

[1248] — Ss. 154, 173 and 482 — Second FIR covering partly the same subject-matter and period — Legality of such FIR and investigation pursuant thereto — If to be quashed — *Offence under S. 13(1)(e) read with S. 13(2) of Prevention of Corruption Act — FIR against, in respect of the period 1-8-1978 to 24-8-1989 and investigation pursuant thereto culminating in submission of 'B' report which, after a public notice accepted by the trial court — Subsequently another FIR filed making the same allegation against the same officer for the period 1-8-1978 to 25-7-1995 — Such a second FIR, held, not by itself illegal — Hence, could not be quashed and investigation pursuant thereto could not be restrained under S. 482 — However, the investigating authority will have essentially to take into account the results of the earlier investigation — Prevention of Corruption Act, 1988, Ss. 13(1)(e) and 13(2)*

The appellant was a Class I officer in the Karnataka Administrative Service. At the instance of the police, an FIR lodged against him under Sections 13(1)(*e*) and 13(2) of the Prevention of Corruption Act in respect of check period of 1-8-1978 to 24-8-1989 alleging that he had assets disproportionate to his known sources of income. The Investigating Officer submitted a 'B' Report before the Special Judge, who after issuing a public notice inviting objections, accepted the report. On 25-7-1995 another FIR was filed at the instance of the police against the appellant in respect of the period 1-8-1978 to 25-7-1995 under the same provisions and making similar allegations. The appellant filed a petition under Section 482, CrPC before the Karnataka High Court seeking quashment of the second FIR on the ground that in view of the result of the earlier investigation the inclusion of the same check period in the second FIR was not proper. However, the High Court refused relief and observed that the second FIR contained a set of fresh allegations in respect of fresh alleged assets during a fresh check period. Disapproving of the said observations but otherwise approving of the High Court's decision,

Held :

There is no provision in the Criminal Procedure Code or the Prevention of Corruption Act to sustain the appellant's contention that the present FIR itself is bad in law. There is no provision in the CrPC which debars the filing of an FIR and investigating into the alleged offences merely because for an earlier period, namely, 1-8-1978 to 24-8-1989, there was an FIR which was duly investigated into and culminated in a 'B' Form Report which was accepted by a competent court. At the same time, it has to be held that the conclusion of the High Court that the present proceeding relates to fresh alleged assets and a fresh check period is not wholly correct. Though the earlier period also could be a subject-matter of investigation for a variety of reasons like some assets not being taken into account or some materials brought during investigation not being taken into account, yet at the same time, the results of the earlier investigation cannot be totally obliterated and ignored by the investigating agency. But that cannot be a ground for quashing of the FIR itself and for injuncting the investigating authority to investigate into the offence alleged.

The appellant is right in contending that the assets which were valued in the earlier investigation proceeding at a particular value cannot be valued higher in the present proceedings unless any positive ground is there for such revaluation. *M. Krishna* v. *State of Karnataka*, (1999) 3 SCC 247: 1999 SCC (Cri) 397: AIR 1999 SC 1765.

Bench Strength 2. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 19-2-1999]

[1249] — S. 154 — FIR — Incident in question relating to FIR dated 12-10-1990 — *Acquittal of accused in respect of the incident relating to FIR dated 13-10-1990, held on facts, was not sufficient to ignore the prosecution story because evidence is to be read independently in both the FIRs* (Para 10). *Sarwan Singh* v. *State of Punjab*, (2003) 1 SCC 240: 2003 SCC (Cri) 282: AIR 2002 SC 3652: 2003 Cri LJ 21.

Bench Strength 2. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 7-10-2002]

[1250] — Ss. 154 & 156(3) and Ss. 161 & 162 — Two FIRs — Second complaint in regard to same incident filed as a counter-complaint, held, not prohibited under CrPC — *Hence, on refusal by police to register counter-complaint, Magistrate can direct the police, at any stage to register the complaint and investigate the same — Ss. 161 and 162 CrPC do not apply to such a situation —* T.T. Antony *v.* State of Kerala, *(2001) 6 SCC 181, considered, explained and clarified*

(3)(ix) Reliability and Validity of FIR - Multiple FIRs/ Cases *(contd.)*

The first respondent herein filed a complaint against the appellant and some others. On that basis the police registered a crime under Sections 452 and 307 IPC against the said persons. The appellant also lodged a complaint in regard to the very same offence against the respondents herein for having committed offences punishable under Sections 506 and 307 IPC as against him and his family members but since the said complaint was not entertained by the police concerned he tried to approach the Superintendent of Police and the District Magistrate and having failed in his attempts to get his complaint registered he filed petition under Section 156(3) CrPC before the Judicial Magistrate concerned. The Magistrate having found a prima facie case directed the police to register a crime against the accused persons named in the said complaint of the appellant and to investigate the same and submit a report within 2 months. The said order was set aside by the Sessions Judge in the revision petition filed by the first respondent. The High Court following its earlier judgment in the case of *Ram Mohan Garg* v. *State of U.P.*, (1990) 27 ACC 438 upheld the order of the Sessions Judge. The High Court understood the ratio of the judgment of the Division Bench in *Ram Mohan Garg case* as laying down a principle in law that in regard to one single incident there could not be a case and a counter-case. It observed that two FIRs are not permissible in respect of one and the same incident because the subsequent FIR is hit by Section 162 CrPC.

The Supreme Court while granting leave in the instant appeal doubted the correctness of the judgment of the Supreme Court in the case of *T.T. Antony* v. *State of Kerala*, (2001) 6 SCC 181. Hence, the instant case was referred to the present three-Judge Bench for final disposal and to consider the correctness of law laid down in the case of *T.T. Antony* v. *State of Kerala*.

Allowing the appeal and setting aside the impugned orders of the High Court and the Sessions Court,

Held :

In *T.T. Antony case*, (2001) 6 SCC 181 the Supreme Court did not consider the legal right of an aggrieved person to file counterclaim. On the contrary, from the observations found in the said judgment, it clearly indicates that filing a counter-complaint is permissible. If the law laid down in *T.T. Antony case* is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Criminal Procedure Code then, such conclusion would lead to serious consequences. This will be clear from the hypothetical example that if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimate right to bring the real accused to book. This cannot be the purport of the Code. (Paras 24 and 23)

In the instant case, it is seen in regard to the incident which took place on 20-5-1995, the appellant and the first respondent herein have lodged separate complaints giving different versions but while the complaint of the respondent was registered by the police concerned, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back. Both the Sessions Judge and the High Court erred in coming to the conclusion that the same is hit by Section 161 or 162 of the Code which has absolutely no bearing on the question involved. Section 161 or 162 of the Code does not refer to registration of a case, it only speaks of a statement to be recorded by the police in the course of the investigation and its evidentiary value. (Para 25). *Upkar Singh* v. *Ved Prakash*, (2004) 13 SCC 292: 2005 SCC (Cri) 211: AIR 2004 SC 4320: 2004 Cri LJ 4219.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 10-9-2004]

T.T. Antony v. State of Kerala, (2001) 6 SCC 181: 2001 SCC (Cri) 1048, considered, explained and clarified

Kari Choudhary v. Sita Devi, (2002) 1 SCC 714: 2002 SCC (Cri) 269; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479, relied on

[1251] — Ss. 154 and 173(2) & (8) — Lodging of two FIRs by different persons in respect of the same offence and against the same person — Sustainability — Extent of overlap between FIRs — Relevance of — *ABKS filed writ petition in the Rajasthan High Court alleging that Bangur Group ("Bangurs", for short) was responsible for siphoning off funds of Bank of Rajasthan ("BOR", for short) — Pursuant to the order dated 31-5-2002 passed by the Division Bench, CBI registered sixteen cases and filed charge-sheets — In the meantime, the Chief Judicial Magistrate, Alipore, Calcutta at the instance of one NB vide its order dated 23-7-2001 directed the officer in charge of Alipore Police Station, Calcutta to register and investigate under S. 156(3) CrPC by treating the complaint of NB as FIR — Accordingly, on*

25-7-2001 Alipore Police Station registered FIR No. 138/01 against Bangurs — The said FIR No. 138/01 was closed by the Alipore police on account of the CBI's involvement in the case — Subsequently the Supreme Court directed the CBI to proceed with the investigation of FIR No. 138/01 — Held, the closure of FIR was not on merits and even otherwise the investigating agency is not precluded from further investigation of an offence in spite of forwarding a report under S. 173(2) CrPC — It would be for the trial court to decide whether the aspects covered in FIR No. 138/01 stand covered by the report of CBI in the said sixteen FIRs or whether FIR No. 138/01 deals with some aspect which is left out by CBI in the said sixteen cases — Similarly, the trial court also directed to decide whether the alleged siphoning off took place under same transaction or under separate transactions

The question which came up for Supreme Court's consideration was whether registration of FIR No. 138/01 by Calcutta Police constituted the first FIR and, if so, whether the process in the hands of CBI initiated at the instance of the Rajasthan High Court stood discontinued when Calcutta Police registered the first FIR No. 138/01. The other question which fell for Supreme Court's consideration was what would be the procedure to be followed where there are two FIRs in respect of the same incident against the same person.

Disposing of the appeal in the following terms,

Held :

The above question has now become academic for the following reasons. Firstly, in our order dated 8-3-2007 we directed CBI to proceed with investigation into FIR No. 138/01 filed in PS Alipore, Calcutta. Under the said order we also directed CBI to submit their report under a sealed cover within six weeks. That report has been placed before us. We have gone through that report. We do not wish to discuss the contents of the report at this stage. (Para 15)

By the impugned judgment, the Calcutta High Court has directed CBI to take up the investigation of Alipore PS Case No. 138/01 and has further directed that in the course of such investigation of the said Case No. 138/01 it would be open to CBI to take into consideration the aforestated sixteen FIRs, the period during which the alleged offence were committed and thereafter to decide the course of action to be taken in accordance with law. The learned Sub-Divisional Judicial Magistrate was also directed to transmit the record of Alipore PS Case No. 138/01 to the Third Special Judge, CBI, Calcutta. We agree with the said direction. The said direction of the Calcutta High Court contained in the impugned judgment read with our order dated 8-3-2007 indicates that investigation into FIR No. 138/01 as well as into sixteen FIRs have been entrusted to one single agency, namely, CBI. (Paras 16 and 17)

Secondly, on 12-7-2002 a closure report in final form was drawn up in connection with FIR No. 138/01 inasmuch as CBI had taken up the investigation. The hearing on the final report of closure was concluded before the Sub-Divisional Judicial Magistrate, Alipore. It was allowed by the Sub- Divisional Judicial Magistrate. However, it may be clarified that the said closure was not on merits of the case. The said closure was only on account of the fact that the investigation stood transferred to CBI. Consequently, now Alipore Police Station has no role to play. (Para 19)

Applying the test laid down in *Kari Choudhary case*, (2002) 1 SCC 714 to the present batch of cases suffice it to state that since investigation has been done by CBI (common agency) the report submitted by it to the Supreme Court, pursuant to our order dated 8-3-2007, would also be placed before the Third Special Judge, CBI, Calcutta and it would be for that court to decide whether the aspects covered in FIR No. 138/01 stand covered by the report of CBI in the said sixteen FIRs or whether FIR No. 138/01 deals with some aspect which is left out by CBI in the said sixteen cases. Accordingly, it would decide whether the sixteen cases cover all aspects including those falling under FIR No. 138/01 or whether FIR No. 138/01 has some aspects which do not fall in the sixteen cases and, accordingly, it would decide whether to accept the report submitted by CBI before us pursuant to our order dated 8-3-2007. Similarly, it would be for that court to decide whether the alleged siphoning off took place under same transaction or under separate transactions. Suffice it to state, all the above cases from Calcutta, Mumbai and Delhi shall be tried and disposed of in accordance with law by the Third Special Judge, CBI, Calcutta. (Para 21). *Bank of Rajasthan* v. *Keshav Bangur*, (2007) 13 SCC 145: AIR 2008 SC 202: 2008 Cri LJ 397.

Bench Strength 2. Coram: **S.H. Kapadia** and *B. Sudershan Reddy*, JJ. [Date of decision: 3-10-2007]

Kari Choudhary v. Sita Devi, (2002) 1 SCC 714: 2002 SCC (Cri) 269, relied on

[1252] — Ss. 154 and 161 — FIR — Delay in lodging FIR — Dowry death — Delay in lodging second report and recording of statements of PWs in respect thereof — *On facts, held, not fatal* (Para 9). *Alamgir Sani* v. *State of Assam*, (2002) 10 SCC 277: 2003 SCC (Cri) 1447: AIR 2003 SC 2108.

Bench Strength 2. Coram: **S.N. Variava** and *B.N. Agrawal*, JJ. [Date of decision: 20-12-2002]

Ravindra Pyarelal Bidlan v. State of Maharashtra, 1993 Cri LJ 3019 (Bom), mentioned as laying down bad law

(3)(ix) Reliability and Validity of FIR - Multiple FIRs/ Cases *(contd.)*

[1253] — S. 154 — FIR made soon after the occurrence — *Held, reliable even though a supplementary statement was made by the maker immediately thereafter. Kartar Singh* v. *State of Punjab*, (1976) 3 SCC 478: 1976 SCC (Cri) 436: AIR 1977 SC 349: 1977 Cri LJ 214.

Bench Strength 3. Coram: *Y.V. Chandrachud*, *R.S. Sarkaria* and **P.N. Shinghal**, JJ. [Date of decision: 7-5-1976]

[1254] — Ss. 154 and 162 — More than one FIR — Cryptic report followed by detailed report — *Submission that PW 2 having informed the officer in charge of Police Station A on telephone which having been recorded in writing, the first information report lodged at 7.30 a.m. on 23-1-1997 was barred — Information given by PW 2 on phone was a cryptic report and only for the purpose of visiting the scene of occurrence — Hence held, if in the aforementioned premise, another first information report which was a detailed one came to be recorded, no exception can be taken to the same being treated as the FIR* (Paras 5 and 24 to 27). *Vikram* v. *State of Maharashtra*, (2007) 12 SCC 332: (2008) 1 SCC (Cri) 362: AIR 2007 SC 1893: 2007 Cri LJ 3193: (2007) 56 AIC 207 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 9-5-2007]

Tapinder Singh v. State of Punjab, (1970) 2 SCC 113: 1970 SCC (Cri) 328; State of U.P. v. P.A. Madhu, (1984) 4 SCC 83: 1984 SCC (Cri) 598; Ramsinh Bavaji Jadeja v. State of Gujarat, (1994) 2 SCC 685: 1994 SCC (Cri) 609; Binay Kumar Singh v. State of Bihar, (1997) 1 SCC 283: 1997 SCC (Cri) 333; Soma Bhai v. State of Gujarat, (1975) 4 SCC 257: 1975 SCC (Cri) 515, relied on

[1255] — Ss. 154, 161 and 162 — More than one FIR — Permissibility — Test of sameness — Two FIRs in respect of same transaction — *Subsequent to registration of an FIR, any further complaint in connection with the same or connected offence relating to the same incident or incidents which are parts of the same transaction, reiterated, not permissible — But if two FIRs pertain to two different incidents/crimes, second FIR is permissible*

Bench Strength 2. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 26-8-2010]

Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479; T.T. Antony v. State of Kerala, (2001) 6 SCC 181: 2001 SCC (Cri) 1048; Upkar Singh v. Ved Prakash, (2004) 13 SCC 292: 2005 SCC (Cri) 211; Rameshchandra Nandlal Parikh v. State of Gujarat, (2006) 1 SCC 732: (2006) 1 SCC (Cri) 481; Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441: (2009) 1 SCC (Cri) 523, relied on

[1256] — Ss. 154, 155, 156, 157, 162, 169, 170 and 173 — FIR — There can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences — *Only information about commission of a cognizable offence which is first entered in station house diary by officer in charge of the police station can be regarded as FIR under S. 154 — All such subsequent informations will be covered by S. 162 — Officer in charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in S. 173 — Even if after conclusion of the investigation pursuant to filing of the FIR and submission of report under S. 173(2), the officer in charge of the police station comes across any further information pertaining to the same incident, he can make further investigation, normally with the leave of the court and forward the further evidence, if any collected, with further report or reports under S. 173(8) — Words and Phrases — "FIR"*

When a Minister came to Kannur District (State of Kerala) to inaugurate the evening branch of a Cooperative Bank, violent demonstrations were staged by the members of youth wing of the rival political party viz. CPI(M) and police had to open fire to protect the Minister and public and private properties at two places — (*i*) in the proximity of Town Hall on the orders of the Executive Magistrate and Deputy SP, and (*ii*) in the vicinity of a police station on the orders of SP. As a result of the firing five persons died and six persons were injured. In the melee which preceded the police firing, more than hundred persons suffered injuries in lathi-charge resorted to by the police, and a few police personnel also suffered injuries. In respect of the occurrence near the Town Hall, FIR was lodged and Crime No. 353 of 1994 under Sections 143, 147, 148, 332, 353, 324 and 307 read with Section 149 IPC, Section 3(2)(*e*) of the PDPP Act and Sections 3 and 5 of the Explosive Substances Act, was registered, against the eight named and many other unidentifiable persons belonging to CPI(M) and in respect of the occurrence near the police station FIR was filed and Crime No. 354 of 1994 of Kuthuparamba Police Station under Sections 143, 147, 148, 307 and 427 read with Section 149 IPC and Section 3(2)(*e*) of the PDPP Act was registered against unidentifiable persons of CPI(M). Both the crimes were registered on the date of the incident itself and the Executive Magistrate submitted a report to the District Collector who in turn informed the Commissioner and Secretary to the Govt. and the SP sent a report to the DGP about the incident. On public demand the Govt. appointed a Distt. and Sessions Judge as Commission of Inquiry under Section 3(1) of the Commissions of Inquiry Act, 1952. Meanwhile as a result of the assembly elections in the State of Kerala, the ruling party lost to LDF which came in power and headed by CPI(M) formed the Govt. While the investigations on the basis of the FIRs were pending, the Inquiry Commission submitted its report to the Govt. holding the former Minister, the Deputy SP and the Executive Magistrate responsible for the police firing and consequent death of five persons and injuries to many others. The report was accepted by the Govt. and as a follow-up action, the Additional Chief Secretary to the Government of Kerala, while enclosing a copy of the said report, wrote to the Director General of Police regarding acceptance of the report of the Commission by the Government and directed that legal action be taken against those responsible on the basis of findings of the Commission. The Director General of Police issued orders to the Inspector General of Police (North Zone), to register a case immediately and have the same investigated by a senior officer. The Inspector General of Police noted that firing without justification by which people were killed amounted to murder and issued direction to the Station House Officer to register a case under the appropriate sections and forward the investigation copy of the FIR to the Deputy Inspector General of Police, North Zone, for urgent personal investigation. On that information the Deputy Superintendent of Police, registered Crime No. 268 of 1997 under Section 302 IPC arraigning the said former Minister, the Deputy SP and the Executive Magistrate as Accused 1 to 3 respectively. The DIG of Police who investigated Crime No. 268 of 1997 filed an interim report in the Court of Judicial First Class Magistrate implicating 19 police officers and 14 constables (who are parties to these appeals). The cases registered as Crimes Nos. 353 and 354 of 1994 which were mainly against the workers of the youth wing of CPI(M) came to be closed as being false and undetected after the said Crime No. 268 of 1997 was registered. Writ petitions were filed in the High Court for quashing the FIR in Crime No. 268 of 1997 and alternatively for directing investigation into the said crime by CBI. A Single Judge of the High Court directed the case to be reinvestigated by CBI. In writ appeals, the Division Bench of the High Court ordered quashing of the FIR in Crime No. 268 of 1997 as against the ASP but it directed a fresh investigation by the State police headed by one of the three senior officers named in the judgment instead of a fresh investigation by CBI. Hence the present appeals. At the rehearing of the appeals, the counsel for the parties addressed arguments on the question of the legality of the second FIR registered as Crime No. 268 of 1997 and the investigation that followed it in respect of the cognizable offence mentioned therein after about three years of the occurrence when in that regard two FIRs pertaining to two different places were already filed and registered as Crimes Nos. 353 and 354 of 1994 on the date of the occurrence and the investigations in those cases were pending. The counsel for the accused argued that registration of fresh information in respect of the very same incident as an FIR under Section 154 CrPC is not valid and therefore, all the steps taken pursuant thereto, including investigation are illegal and liable to be quashed. The Solicitor-General countered them stating that no illegality can be attached to the second FIR or the investigation made thereunder as nothing prevented the investigating agency from making further investigation on the basis of the first FIR in view of the subsequent information received and forwarding a further report; at any rate, the objection is merely one of form and not of substance and it makes no difference so far as the final report is concerned. Before the Supreme Court four points arose for determination:

(*i*) Whether registration of a fresh case, Crime No. 268 of 1997 which in the nature of second FIR under Section 154 CrPC was valid and could form the basis of a fresh investigation?

(*ii*) Whether the appellants, the Executive Magistrate in Cri. A. No. 689 of 2001 and the Police Constables in CA No. 4066 of 2001 and the respondents in the State's appeal Cri. As. Nos. 690-91 of 2001 have otherwise made out a case for quashing of proceedings in Crime No. 268 of 1997?

(*iii*) What was the effect of the report of the Commission of Inquiry?

(*iv*) Whether the facts and circumstances of the case justify a fresh investigation by CBI?

Allowing Cri. A. No. 689 of 2001 and CA No. 4066 of 2001 and dismissing Cri. As. Nos. 690-91 of 2001,

Held :

Points (i) and (ii)

An information given under sub-section (1) of Section 154 CrPC is commonly known as the first information report (FIR) though this term is not used in the Code. It is a very important document.

(3)(ix) Reliability and Validity of FIR - Multiple FIRs/Cases *(contd.)*

And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. It is quite possible and it happens not infrequently that more than one piece of information is given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 CrPC. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report — FIR postulated by Section 154 CrPC. All other informations made orally or in writing *after* the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 CrPC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of CrPC. (Para 18)

The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC. (Para 19)

In the case on hand the second FIR was filed in respect of the same incident and on the same facts after about three years. (Para 22)

The right of the police to investigate into a cognizable offence is a statutory right over which the court does not possess any supervisory jurisdiction under CrPC. This plenary power of the police to investigate a cognizable offence is, however, not unlimited. It is subject to certain well-recognised limitations. (Paras 23 and 24)

A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. The sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. A case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution. Where the police transgresses its statutory power of investigation the High Court under Section 482 CrPC or Articles 226/227 of the Constitution and the Supreme Court in an appropriate case can interdict the investigation to prevent abuse of the process of the court or otherwise to secure the ends of justice. (Paras 27 and 25)

In the present case in truth and substance the essence of the offence in Crimes Nos. 353 and 354 of 1994 is the same as in Crime No. 268 of 1997. In sending information in regard to the same incident, duly enclosing a copy of the report of the Commission of Inquiry to the Inspector General of Police for appropriate action, the Additional Chief Secretary adopted the right course of action. Perhaps the endorsement of the Inspector General of Police for registration of a case misled the subordinate police officers and the said letter with regard to the incident was registered again under Section 154 CrPC which would be the second FIR and, on the facts of this case, was irregular and a fresh investigation by the investigating agency was unwarranted and illegal. On that date the investigations in the earlier cases (Crimes Nos. 353 and 354 of 1994) were pending. The correct course of action should have been to take note of the findings and the contents of the report, streamline the investigation to ascertain the true and correct facts, collect the evidence in support thereof, form an opinion under Sections 169 and 170 CrPC, as the case may be, and forward the report/reports under Section 173(2) or Section 173(8) CrPC to the Magistrate concerned. The course adopted in this case, namely, the registration of the information as the second FIR in regard to the same incident and making a fresh investigation is not permissible under the scheme of the provisions of CrPC. Therefore, the investigation undertaken and the report thereof cannot but be invalid. The same is, therefore, quashed leaving it open to the investigating agency to seek permission in Crime No. 353 or 354 of 1994 of the Magistrate to make further investigation, forward further report or reports and thus proceed in accordance with law. (Para 28)

For the aforementioned reasons, the registration of the second FIR under Section 154 CrPC on the basis of the letter of the Director General of Police as Crime No. 268 of 1997 is not valid and consequently the investigation made pursuant thereto is of no legal consequence; they are accordingly quashed. However, this does not preclude the investigating agency from seeking leave of the Court in Crimes Nos. 353 and 354 of 1994 for making further investigations and filing a further report or reports under Section 173(8) CrPC before the competent Magistrate in the said cases. In this view of the matter, it is not necessary to interfere with the judgment of the High Court under challenge insofar as it relates to quashing of Crime No. 268 of 1997. In all other aspects the impugned judgment of the High Court shall stand set aside. (Para 35)

Point No. (iv)

On this conclusion, it is unnecessary to deal with the other aspects of the case including the fourth point, namely, to direct investigation of the case by CBI. (Para 36). *T.T. Antony* v. *State of Kerala*, (2001) 6 SCC 181: 2001 SCC (Cri) 1048: AIR 2001 SC 2637.

Bench Strength **2**. Coram: **S.S.M. Quadri** and *S.N. Phukan*, JJ. [Date of decision: 12-7-2001]

Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479; M. Krishna v. State of Karnataka, (1999) 3 SCC 247: 1999 SCC (Cri) 397, distinguished

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18: 46 Cri LJ 413, relied on

***Impliedly distinguished in** Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441*

[1257] — Ss. 154, 159, 190 and 482 — Two cases pertaining to the same incident — *Magistrate to take action as he thinks fit in accordance with the provisions of the Code after considering the reports in respects of the two cases — High Court not justified in interfering with the investigation. Jagdish Yadav* v. *Ram Nandan Yadav*, 1990 Supp SCC 55(2): 1990 SCC (Cri) 648.

Bench Strength **2**. Coram: *Ranganath Misra* and *M.M. Dutt*, JJ. [Date of decision: 11-2-1988]

[1258] — S. 154 — Clubbing of two FIRs in single charge-sheet — When valid — Application and scope — *Charge-sheet clubbing together offences in respect of two incidents one being the fallout of the other, held, valid — Though charge under S. 188 IPC was not tenable for absence of S. 195 CrPC complaint, that would not falsify other charges clubbed with it — Legislative intent behind S. 195(1)(a)(i) CrPC is to prevent frivolous litigation — Penal Code, 1860, S. 188*

There was no wrong in clubbing together of the two crimes. Keeping in view the totality of the circumstances and evidence, the second occurrence was nothing but a fallout of the first occurrence. Merely because two separate complaints had been lodged, did not mean that they could not be clubbed together and one charge-sheet could not be filed. (Paras 37, 8 and 36)

Therefore although the charges under Section 188 are quashed as no complaint in this regard had ever been filed, it would by no means have any bearing on the case of the prosecution, so far as the charges for other offences are concerned. It cannot be accepted that absence of a complaint under Section 195 CrPC falsifies the genesis of the prosecution case and is fatal to the entire prosecution case. (Paras 36 and 35)

The legislative intent behind Section 195(1)(*a*)(*i*) CrPC read with Section 188 is that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 CrPC. (Para 28)

Thus, there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 CrPC are mandatory. Non-compliance with it would vitiate the prosecution and all other consequential orders. The court cannot assume the cognizance of the case without

(3)(ix) Reliability and Validity of FIR - Multiple FIRs/ Cases *(contd.)*

such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction. (Para 33)

The test of whether there is evasion or non-compliance with Section 195 CrPC or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. The provisions of this section cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 CrPC. Thus, cognizance of such an offence cannot be taken by misdescribing it or by putting a wrong label on it. (Para 29). *C. Muniappan* v. *State of T.N.*, (2010) 9 SCC 567: (2010) 5 CTC 794 (SC).

Bench Strength **2**. Coram: *G.S. Singhvi* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 30-8-2010]

T.T. Antony v. State of Kerala, (2001) 6 SCC 181: 2001 SCC (Cri) 1048; Govind Mehta v. State of Bihar, (1971) 3 SCC 329: 1971 SCC (Cri) 608; Patel Laljibhai Somabhai v. State of Gujarat, (1971) 2 SCC 376: 1971 SCC (Cri) 548; Surjit Singh v. Balbir Singh, (1996) 3 SCC 533: 1996 SCC (Cri) 521; State of Punjab v. Raj Singh, (1998) 2 SCC 391: 1998 SCC (Cri) 642; K. Vengadachalam v. K.C. Palanisamy, (2005) 7 SCC 352: 2005 SCC (Cri) 1673; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101; M.S. Ahlawat v. State of Haryana, (2000) 1 SCC 278: 2000 SCC (Cri) 193; Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493: 1998 SCC (Cri) 660; Daulat Ram v. State of Punjab, AIR 1962 SC 1206: (1962) 2 Cri LJ 286; Basir-ul-Haq v. State of W.B., AIR 1953 SC 293: 1953 Cri LJ 1232; Durgacharan Naik v. State of Orissa, AIR 1966 SC 1775: 1966 Cri LJ 1491, relied on

[1259] — S. 154 — FIR — Two FIRs in respect of the same case — When can investigation be against both

Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the court by way of the subsequent FIR need be considered as an information submitted to the court regarding the new discovery made by the police during investigation that persons not named in the first FIR are the real culprits. To quash the said proceedings merely on the ground that final report had been laid in the first FIR is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it. Even otherwise, the investigating agency is not precluded from further investigation in respect of an offence in spite of forwarding a report under sub-section (2) of Section 173 on a previous occasion. This is clear from Section 173(8) of the Code. (Paras 10 to 12). *Kari Choudhary* v. *Sita Devi*, (2002) 1 SCC 714: 2002 SCC (Cri) 269: AIR 2002 SC 441: 2002 Cri LJ 923: (2002) 1 CHN (Supp) 108.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Phukan*, JJ. [Date of decision: 11-12-2001]

(4) Powers, Role and Duty of police in respect of FIR

Synopsis

(i)	Generally	**376**
(ii)	Jurisdiction to lodge FIR	**379**
(iii)	Preliminary enquiry	**380**
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(i) Generally

See also Ss. 155 to 159, below

See also Ss. 169, 170 and 173, below

[1260] — S. 154 — FIR — Registration of — Duty of police to register FIR — Genuineness of case — Relevance of, at the time of registration of FIR — *Held, provision of S. 154 is mandatory — Hence, the police officer concerned is duty-bound to register the case on receiving information disclosing cognizable offence — Genuineness or credibility of the information is not a condition precedent for registration of a case — That can only be considered after registration of the case* (Paras 5 and 3). *Ramesh Kumari* v. *State (NCT of Delhi)*, (2006) 2 SCC 677: (2006) 1 SCC (Cri) 678: AIR 2006 SC 1322: 2006 Cri LJ 1622: (2006) 127 DLT 636: (2006) 2 KLT 404.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 21-2-2006]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

***Clarified and distinguished** in Aleque Padamsee v. Union of India, (2007) 6 SCC 171*

***Explained and distinguished** in Rajinder Singh Katoch v. Chandigarh Admn., (2007) 10 SCC 69*

[1261] — Ss. 154, 156 and 157 — Police is duty-bound to register a case and investigate into it — *Police Act, 1861, S. 12 — Punjab Police Rules, 1934. Madhu Bala* v. *Suresh Kumar*, (1997) 8 SCC 476: AIR 1997 SC 3104: 1997 Cri LJ 3757.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S. Saghir Ahmad*, JJ. [Date of decision: 23-7-1997]

[1262] — Ss. 154 to 173 — Scheme of, stated — No absolute discretion to prosecute vested in police

Per Bhagwati, C.J. and Oza, J.

The police has no absolute or unfettered discretion whether to prosecute an accused or not to prosecute him. In our constitutional scheme, conferment of such absolute and uncanalised discretion would be violative of the equality clause of the Constitution. The Magistrate is therefore given the power to structure and control the discretion of the police. If the Magistrate finds from the report made by the police either on initial investigation or on further investigation directed by the Magistrate, that prima facie an offence appears to have been committed, the Magistrate is empowered to take cognizance of the offence notwithstanding the contrary opinion of the police and equally, if the Magistrate forms an opinion that on the facts set out in the report no offence prima facie appears to have been committed though the police might have come to a contrary conclusion, the Magistrate can decline to take cognizance of the offence. The discretion of the police to prosecute is thus "cabined and confined" and, subject to appeal or revision, and the Magistrate is made the final arbiter on this question. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] *and* **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[1263] — S. 154 — Registration of case — Duty of police under — Consideration of genuineness or credibility of information at stage of registration case — Requirement, if any — *Held, S. 154 casts a statutory duty upon the police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation — Genuineness or credibility of the information is not a condition precedent for registration of a case — Further held, police officer concerned cannot embark upon an enquiry as regards reliability of the information at the stage of registration of the offence — In the instant case, the cognizable offences disclosed in the complaint were under Ss. 147, 148, 149, 448, 452, 323 and 395 IPC but the police officer concerned registered the case only under Ss. 452/380/323/34 IPC — S. 395 being deliberately excluded from purview of FIR, no investigation carried on pertaining to that offence — Held, hence a grave injustice thereby resulted which was rightly corrected by the High Court directing the Magistrate concerned to proceed in accordance with law* (Paras 2 and 8 to 12). *Lallan Chaudhary* v. *State of Bihar*, (2006) 12 SCC 229: (2007) 1 SCC (Cri) 684: AIR 2006 SC 3376: (2006) 47 AIC 1 (SC).

Bench Strength 2. Coram: **H.K. Sema** and *P.K. Balasubramanyan*, JJ. [Date of decision: 12-10-2006]

Ramesh Kumari v. State (NCT of Delhi), (2006) 2 SCC 677: (2006) 1 SCC (Cri) 678, followed

Clarified and distinguished in Aleque Padamsee v. Union of India, (2007) 6 SCC 171

[1264] — Ss. 154 and 41(a) & (g) — Recording FIR/Registration of case disclosing a cognizable offence — Duty of police officer in charge of a police station — Discretion, if any, available to such officer in registering a case — Position compared with that obtaining under Ss. 41(a) & (g) — Remedy against non-registration — *Held, police officer concerned cannot embark upon an enquiry as to whether the information laid by the informant is reliable and genuine and refuse to register a case on the ground that the information is not reliable or credible — The officer is statutorily obliged to register a case — "Reasonableness" or "credibility" of the information is not a condition precedent for registration of a case — The condition which is sine qua non for recording FIR is that there must be information and that information must disclose a cognizable offence — If the officer refuses to register a case, the remedy lies under S. 154(3)*

At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) CrPC, the police officer concerned cannot embark upon an enquiry as to whether the information laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 CrPC to investigate, subject to the proviso to Section 157 thereof. In case an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 CrPC. (Para 66)

(4)(i) Powers, Role and Duty of police in respect of FIR - Generally *(contd.)*

It has to be noted that in Section 154(1) CrPC, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Sections 41(1)(*a*) or (*g*) of the Code wherein the expressions "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Sections 41(1)(*a*) and (*g*) CrPC may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. "Reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. The condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence. (Para 67)

It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) CrPC, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. (Para 68). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193: AIR 2007 SC 1274: (2007) 51 AIC 623 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[1265] — Ss. 154 and 482 — Applicability — Registration of FIR — Duty of police (Paras 8, 11 and 12). *Rajinder Singh Katoch* v. *Chandigarh Admn.*, (2007) 10 SCC 69: (2007) 4 KLT 877: (2007) 60 AIC 194 (SC): (2007) 144 DLT 241.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

Ramesh Kumari v. State (NCT of Delhi), (2006) 2 SCC 677: (2006) 1 SCC (Cri) 678, explained and distinguished

Shashikant v. CBI, (2007) 1 SCC 630: (2007) 1 SCC (Cri) 406, relied on

[1266] — S. 154 — FIR — Police officer's discretionary power, duty and right to investigate cognizable offence, clarified

The Collector in his order dated 5-6-2006 to the District Superintendent of Police referred to the meeting and instructions of the Chief Minister on 1-6-2006 and accordingly directed that if any complaint is received against a specified MLA or his family members, the said matter/complaint be placed for decision before the District Anti-Moneylending Committee and the said Committee should obtain the legal opinion of the District Government Pleader and then only take decision on the same and take appropriate legal action accordingly.

A complaint was lodged by Respondent 1 against the said MLA/family members under Sections 341, 342, 363, 392, 504 read with Section 34 IPC and Section 32-B of the Bombay Moneylenders Act, 1946. Station diary entry of the police station concerned where complaint had been lodged revealed that PS to the Chief Minister telephoned twice to the police station and directed that no action should be taken as instructed by the Chief Minister and that no offence should be registered.

The High Court after examining the provisions of the Bombay Moneylenders Act and also the materials on record held that the letter dated 5-6-2006 and the telephonic message recorded in the station diary entry exhibited gross abuse of power by the authority concerned and struck down both the communications.

Dismissing the appeal with costs of Rs 10 lakhs, *Held* :

Per A.K. Ganguly, J. (for Singhvi, J. and himself)

If the information lodged with the police discloses cognizable offence, the police shall record the same in accordance with and under Section 154 CrPC. The police officer's power to investigate in case of a cognizable offence without order of the Magistrate is statutorily recognised under Section 156 CrPC. The police officer in charge of a police station, on the basis of information received or otherwise, can start investigation if he has reasons to suspect the commission of any cognizable offence. This is subject to Section 157 provisos (*a*) and (*b*) CrPC which leave discretion with the police officer in charge of police station to consider if the information is not of a serious nature, he may depute a subordinate officer to investigate and if it appears to the officer-in-charge that there does not exist sufficient ground, he shall not investigate. (Paras 29 and 30). *State of Maharashtra* v. *Sarangdharsingh Shivdassingh Chavan*, (2011) 1 SCC 577.

Bench Strength 2. Coram: **G.S. Singhvi**[2] and **A.K. Ganguly**[1], JJ. [Date of decision: 14-12-2010]

Lalita Kumari v. Govt. of U.P., (2008) 14 SCC 337: (2009) 2 SCC (Cri) 812, distinguished

[Ed.: *See also* Criminal Procedure Code, 1973, Ss. 155 to 159, '(5) Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court', pp. 404 et seq. in **Vol. 16**; and

S. 154, '(4)(i) — Powers, Role and Duty of police in respect of FIR — Generally', pp. 367 et seq. also in **Vol. 16**, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

[1267] — Ss. 154(1), 154(2), 154(3), 157(1), 190(1)(a) and 200 — Inaction of police to record FIRs, and in cases FIR recorded on court directions, apathy to investigate the case — Notice issued by Supreme Court on PIL in regard to — *Such an instance brought to the notice of the Court — In order to curb this malady, the Court proposing to issue stringent directions pinning responsibility on police authorities to act promptly, or else to face contempt/disciplinary proceedings including suspension — Notices therefore issued to all State Govts./UTs and DGs of Police/Commissioners of Police for ascertaining their views before issuing directions — Constitution of India — Arts. 21 and 14 — Penal Code, 1860, Ss. 359 to 363 — Contempt of Courts Act, 1971, S. 2(b)* (Paras 4 to 8). *Lalita Kumari* v. *Govt. of U.P.*, (2008) 7 SCC 164: (2008) 2 SCC (L&S) 401: (2008) 3 SCC (Cri) 17: (2008) 4 KLT 130.

Bench Strength **2**. Coram: *B.N. Agrawal* and *G.S. Singhvi*, JJ. [Date of decision: 14-7-2008]

[1268] — S. 154(3) — FIR — Refusal to register FIR — Police advising rape victim to settle the matter amicably with accused — *FIR lodged only on directions issued after prosecutrix filed petition under S. 154(3) — Delay of six months therefore caused in sending prosecutrix for medical examination — Held, very valuable evidence was lost — Attitude of the police deplored* (Paras 21 and 22). *Zindar Ali Sheikh* v. *State of W.B.*, (2009) 3 SCC 761.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 6-2-2009]

[1269] — S. 154 — FIR — Once an information is laid before a police officer in compliance with the requirements of S. 154, the police officer is obliged to enter it in prescribed form and register the case — *He cannot refuse to do so on ground that it is not reasonable or credible information*

If any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of S. 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. 'Reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. The police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In S. 154(1) the legislature in its collective wisdom has carefully and cautiously used the expression "*information*" without qualifying the same as in S. 41(1)(*a*) or (*g*) of the Code wherein the expressions, "*reasonable complaint*" and "*credible information*" are used. *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604: 1992 Cri LJ 527.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 21-11-1990]

(ii) Jurisdiction to lodge FIR

See also Ss. 177 and 178, below

[1270] — Ss. 154, 156 and 162, 177, 178 — If IO finds that the crime was not committed within his territorial jurisdiction, he can forward the FIR to the police station concerned — *But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it. Satvinder Kaur* v. *State (Govt. of NCT of Delhi)*, (1999) 8 SCC 728: 1999 SCC (Cri) 1503: AIR 1999 SC 3596.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 5-10-1999]

[1271] — S. 154 — FIR — Refusal by police to record information about cognizable offence on ground of lack of territorial jurisdiction over the place of crime amounts to dereliction of duty — *In such cases police should record the information and forward the same to police station having jurisdiction over the area. State of A.P.* v. *Punati Ramulu*, 1994 Supp (1) SCC 590: 1994 SCC (Cri) 734: AIR 1993 SC 2644: 1993 Cri LJ 3684.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 19-2-1993]

[1272] — S. 154 — FIR — Lodging of — Unnatural conduct — Plea that FIR not lodged at nearest police station — *Inspector not available at nearest police station — Constable present there not competent to accept the intimation — He suggested the witness to lodge the report at another police station having jurisdiction — Hence held, contention based on the above plea had no substance* (Para 6). *Gubbala Venugopalaswamy* v. *State of A.P.*, (2004) 10 SCC 120: 2004 SCC (Cri) 1764: AIR 2004 SC 2477.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 6-4-2004]

(4) Powers, Role and Duty of police in respect of FIR *(contd.)*

(iii) Preliminary enquiry

[1273] — S. 154 — FIR — Duty of police to register case in a cognizable offence — Power to conduct preliminary enquiry prior to registering the case — *Question whether upon receipt of information disclosing a cognizable offence, it is imperative for the police officer concerned to register a case or a discretion lies with him/her to make some sort of preliminary enquiry before registering the same — Considering the conflicting decisions of the Supreme Court on the said issue, matter referred to a larger Bench — Supreme Court Rules, 1966, Or. 7 R. 2* (Paras 5 and 6). *Lalita Kumari* v. *Govt. of U.P.*, (2008) 14 SCC 337.

Bench Strength **2**. Coram: *B.N. Agrawal* and *G.S. Singhvi*, JJ. [Date of decision: 16-9-2008]

[1274] — Ss. 154, 156 and 157 — FIR — Preliminary enquiry — Permissibility and need for — *Held, in an appropriate case, the police officers also have a duty to make a preliminary enquiry so as to find out as to whether allegations made have any substance or not* (Paras 8, 11 and 12). *Rajinder Singh Katoch* v. *Chandigarh Admn.*, (2007) 10 SCC 69: (2007) 4 KLT 877: (2007) 60 AIC 194 (SC): (2007) 144 DLT 241.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

Ramesh Kumari v. State (NCT of Delhi), (2006) 2 SCC 677: (2006) 1 SCC (Cri) 678, explained and distinguished

Shashikant v. CBI, (2007) 1 SCC 630: (2007) 1 SCC (Cri) 406, relied on

(iv) Refusal to register FIR

See also Section 154, '(5) Interference by court', and

S. 156(3) and S. 190, below

See also CONSTITUTION OF INDIA, Arts. 32, 136 and 226 in Vol. 7, Vol. 8 and Vol. 9 of *Complete Digest of Supreme Court Cases*, 2nd Edn., respectively

[1275] — Ss. 154, 190 and 200 — Information to police relating to commission of cognizable offence — No action taken by the police — *Complainant can file a complaint before the Magistrate having jurisdiction to take cognizance of the offence — Complainant is not entitled to approach the High Court by filing a writ petition and seeking a direction to conduct an investigation by the CBI. All India Institute of Medical Sciences Employees' Union (Regd.)* v. *Union of India*, (1996) 11 SCC 582.

Bench Strength **2**. Coram: *K. Ramaswamy* and *G.B. Pattanaik*, JJ. [Date of decision: 29-10-1996]

Applied in Aleque Padamsee v. Union of India, (2007) 6 SCC 171

[1276] — Ss. 154 and 174 — FIR — Refusal to register FIR — Liability of erring police officers — Police atrocities — Injuries received during police custody resulting in death — Evidence not sufficient to convict the policeman concerned under S. 302 IPC but certain important questions unfavourable to police remaining unexplained — Relief — *Under-custody person taken to hospital but reasons therefor not explained — Later, he released on bail but the Magistrate granting the bail not enquiring into the reasons for taking him to hospital — Subsequently he dying and post-mortem report showing 16 injuries albeit of simple nature — Police officers although informed of the matter, not registering any FIR — After unsuccessfully approaching higher authorities, the widow of the deceased making a private complaint — In such circumstances, although due to contradictions and infirmities in evidence produced by the complainant, acquittal of the accused policeman in the murder case, upheld, in exercise of the power under Art. 142 a compensation of Rs 1,00,000 awarded to the heirs of the deceased against the State — Detailed directions for the apportionment of the said sum and the manner of utilisation thereof issued — Further directed that the award of the said compensation was only as a palliative measure which would not be a bar to any other remedy for recovering damages from the State Government and its erring officials — Moreover, an enquiry directed to be conducted by the Head of the police force under the direct control of Chief Secretary of the State to find out the persons responsible for causing injuries on the deceased's body — If the accused was found so responsible, the authorities would be at liberty to initiate proceedings against him notwithstanding his acquittal in the present case — Action also directed to be taken against the officers who had failed to register the FIR and the authorities who though requested to conduct Crime Branch enquiry failed to do anything — Penal Code, 1860 — S. 302 — Constitution of India — Art. 21*

The appellant herein filed a private complaint alleging that her husband *A* was tortured while in policy custody which resulted in his death. According to the complaint the deceased was arrested on 14-10-1983. The next day about 8.30 a.m. she saw a police van parked near her house. She saw that the accused (respondent herein), who was a policeman, came out of the van along with some constables and they were dragging *A*. The complainant noticed that the condition of *A* was not very sound, and he was not even able to stand up which showed that he had been assaulted the previous night, apparently in police custody. The accused was carrying a hockey stick in his hands and continued to beat *A* in the presence of the complainant and other persons. The other constables were holding the hands of *A* and tried to make *A* stand. The complainant (PW 1), PW 2 and PW 5 saw that event. The assaults continued for more than an hour and when one of the hockey sticks which was being used by the accused broke, another hockey stick was brought out from the van and the assaults continued. In the evening the complainant (PW 1) and PW 2 met the ACP and the Senior Police Inspector and requested them for medical assistance but there was no cooperation and *A* was taken to the hospital only on 16-10-1983 around 11.00 a.m. He was produced before the Remand Magistrate and was released on bail. Thereafter he was hospitalised and ultimately, expired on 17-10-1983. PWs 1, 2 and 5 made complaint to police officials against the accused holding him responsible for the death. Their statements were recorded but no action was taken. The appellant's representation to various higher authorities went in vain. Ultimately, she made a private complaint to the Metropolitan Magistrate on 12-12-1984. The case was committed for sessions trial on 5-1-1987. Nine persons were examined as prosecution witnesses. The accused pleaded innocence and false implication. He produced three witnesses to substantiate his plea of innocence. Three witnesses were examined as court witnesses. They were the police officials attached to the police station concerned. The trial court found the accused guilty under Section 302 IPC but the judgment of conviction and sentence was set aside by the High Court, which found certain circumstances to be of great importance corroding the credibility of the complainant's version. The said circumstances were that the complaint was lodged after more than one year of the alleged date of occurrence without any plausible explanation for the delay, the allegation of merciless assault was incredible inasmuch as the doctor who conducted the post-mortem found sixteen injuries on his body and had opined the cause of death to be acute renal failure. The evidence of PWs 1, 2 and 5 when read together improbabilised the stand that they had seen the beatings alleged to have been given by the accused to the deceased as in the first report there was no mention about the assaults on 14-10-1983 and the name of the accused was not mentioned in the medical history of the deceased. Besides, there was no mention of any dying declaration and it was highly improbable that after having given a thorough beating to the deceased, the police officials would bring the deceased in a pathetic condition to a spot near his house and would continue the assaults in the presence of the people of the locality. Before adverting to the question of innocence or otherwise of the accused, the Supreme Court expressed its concern over the omission of the police officers to record an FIR. The prosecution submitted that the statements given by PWs 1, 2 and 5 were treated to be in terms of Section 174 CrPC and, therefore, no FIR was registered. CW 1 stated that he had requested the higher authorities to conduct a Crime Branch enquiry. He added that he had personally questioned the accused and two other PSI, and he perused the papers, medical certificate and station diary etc. and submitted his report through ACP.

Dismissing the appeal but granting relief to the legal heirs of the deceased and issuing necessary directions to the authorities,

Held :

The explanation for omission to register an FIR given by the prosecution is fallacious. If it was brought to the notice of the police that somebody had beaten the deceased, the FIR was to be registered. (Para 21)

CW 1 has acted as if he were deciding the guilt or otherwise of an accused. The permissible area of application of mind is limited to finding out existence of a cognizable offence, and nothing beyond that. It is well settled that even at the time of taking cognizance the court is not required to find out which particular person is the offender, and the cognizance is taken of the offence. The course adopted by the official certainly tends to make a mockery of law. Moreover, he has not shown what was the outcome of the enquiry for which he had requested the higher authorities. (Paras 21 and 22)

Though, delay per se may not affect the credibility of the complainant's version, each individual case has to be tested to see whether delay has been properly explained. If there was inaction to deal with the information lodged with the police in October 1983, there was no reason for the complainant to wait for more than one year to approach the court by making a private complaint. The High Court has, therefore, rightly held this to be a vulnerable circumstance. (Para 23)

It is the duty of the court to the separate grain from the chaff. Falsity of a particular material witness or a material particular would not ruin it from the beginning to end. The maxim "*falsus in uno falsus in omnibus*" has no application in India and the witnesses cannot be branded as liars. The doctrine is a dangerous one especially in India for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an

(4)(iv) Powers, Role and Duty of police in respect of FIR - Refusal to register FIR *(contd.)*

untruth in some aspect, it is feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course is to discard the evidence in toto. (Paras 25 and 26)

The present case is one where it is really difficult to separate the grain from the chaff. If really there was merciless beating with such brutal force that a hockey stick broke and the beating was given for more than one hour, the result would not have been sixteen simple injuries with no fractures or internal rupture. Moreover, if the condition of the accused was so severe that he was not able to even stand on 15-10-1983 morning as claimed, it is not explained as to how the Magistrate who granted bail did not notice the condition or how even no grievance was made by the deceased before him while there is such a right under Section 54 CrPC. (Para 27)

As regards the evidence of PWs 1, 2 and 5, apart from the exaggerations about the assaults, the evidence shows even some doubtful features about their presence on the spot and suffers from many contradictions and infirmities. Taking the totality of the circumstances the High Court was right in directing acquittal of the accused. The judgment of acquittal does not call for interference. (Para 32)

However, there are several loose ends in the present case. Even according to the version of the accused, the deceased was taken to the hospital and was examined by DW 3. What was the occasion for this being done still remains shrouded in mystery. The post-mortem report reveals sixteen injuries, though of simple nature. If none of these injuries was sustained by the deceased in police custody, there was no necessity of bringing the deceased to the hospital on 15-10-1983 at 11.00 a.m. The court could have asked him as to what was the necessity for doing so. That admittedly has not been done. (Para 33)

The courts exist for doing justice to the persons who are affected. The trial/first appellate courts cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. The court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. to get at the truth, and oblivious to the active role to be played for which there is not only ample scope but sufficient powers conferred under CrPC. It has a greater duty and responsibility i.e. to render justice in a case where the role of the prosecuting agency itself is put in issue. (Para 34)

Courts have to ensure that accused persons are punished and if deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the deficiencies, deal with the same appropriately within the framework of law. Justice has no favourite, except the truth. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. (Para 35)

The present case is a fit one for exercise of the jurisdiction under Article 142 of the Constitution. The State Government is directed to pay compensation of Rs 1,00,000 to the mother and the children of the deceased. No compensation is being granted to the widow because she appears to have remarried. A sum of Rs 25,000 be given to the mother and balance to the children. The amounts paid are to be kept in a fixed deposit, and only the interest shall be allowed to be drawn by the mother and the children. If the children are minors, the fixed deposit shall be made in their names through a proper legal guardian till they attain majority. This amount of compensation shall be as a palliative measure and does not preclude the affected person(s) from bringing a suit to recover appropriate damages from the State Government and its erring officials if such a remedy is available in law. It is further directed that an enquiry be conducted by the Head of the police force of the State under the direct control of the Chief Secretary of the State, to find out as to who were the persons responsible for the injuries on the body of the deceased. If on further enquiry and on the basis of materials collected it appears that the accused who is being acquitted had a role to play, it shall be open to the authorities to initiate proceedings for action and the same shall be taken notwithstanding the order of acquittal passed by the High Court and affirmed herein. Action will also be taken against the officials who did not register the FIR and the authorities who were requested to conduct the Crime Branch enquiry but yet do not appear to have done anything in the matter. The awarding of compensation also shall not be considered as a factor to decide either way as to whether any particular official was responsible for custodial torture. (Para 36). *Shakila Abdul Gafar Khan* v. *Vasant Raghunath Dhoble*, (2003) 7 SCC 749: 2003 SCC (Cri) 1918: AIR 2003 SC 4567.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-9-2003]

Nisar Ali v. State of U.P., AIR 1957 SC 366: 1957 Cri LJ 550; Sohrab v. State of M.P., (1972) 3 SCC 751: 1972 SCC (Cri) 819; Ugar Ahir v. State of Bihar, AIR 1965 SC 277: (1965) 1 Cri LJ 256; Zwinglee Ariel v. State of M.P., AIR 1954 SC 15: 1954 Cri LJ 230; Balaka Singh v. State of Punjab, (1975) 4 SCC 511: 1975 SCC (Cri) 601; State of Rajasthan v. Kalki, (1981) 2 SCC 752: 1981 SCC (Cri) 593, followed

[1277] — S. 154 — Refusal by police to register the case — *Facts of the case indicating that police did not register the case of appellant while maintaining having conducted on investigation into the matter concerned — Under such circumstances, police directed to duly investigate into the said matter after registering the case of appellant. Mohindro* v. *State of Punjab*, (2001) 9 SCC 581: AIR 2001 SC 2113: 2001 Cri LJ 2587.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *B.N. Agrawal*, JJ. [Date of decision: 4-1-2001]

[1278] — Ss. 154, 156 & 157 and 190 & 200 to 203 — Information to police regarding commission of cognizable offence — No action taken by police — Course open to complainant — *Held, in such a case, complainant is given power under S. 190 read with S. 200 CrPC to lay down the complaint before the Magistrate concerned — Then the Magistrate is required to enquire into the complaint as provided in Ch. XV CrPC — Writ petition in such a case, held, not maintainable*

When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Criminal Procedure Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. A writ petition in such cases is not to be entertained. (Para 16). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India, (1996) 11 SCC 582: 1997 SCC (Cri) 303; Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404, relied on

(5) Interference by court

Synopsis

(i) Transfer of FIR **383**
(ii) Refusal to file FIR by police/ Direction to file FIR **384**
(iii) Quashing of FIR **385**
(iv) Practice and Procedure **388**

(i) Transfer of FIR

See also Ss. 177 and 178, below

[1279] — Ss. 154, 156, 177 and 178 — Transfer of FIR of case and its investigation from one police station to another (in this case, from police station of one State to another) — Power of High Court — *Constitution of India — Art. 226*

Only in the event an investigating officer, having regard to the provisions contained in Sections 154, 162, 177 and 178 CrPC had arrived at a finding that the alleged crime was not committed within his territorial jurisdiction, could he forward the first information report to the police having jurisdiction in the matter. Stricto sensu, therefore, the High Court should not have issued such a direction (transferring FIR of case and its investigation from police station of one State to another). Assuming, however, that the High Court could mould the relief, it was not a case where on the face of the allegations made in the complaint petition, the same could be said to be mala fide. (Paras 32 and 33). *Asit Bhattacharjee* v. *Hanuman Prasad Ojha*, (2007) 5 SCC 786: (2007) 3 SCC (Cri) 31: AIR 2007 SC 1925: 2007 Cri LJ 3181: (2007) 104 Cut LT 488: (2007) 4 All LJ 567: (2007) 54 AIC 38 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *C.K. Thakker*, JJ. [Date of decision: 15-5-2007]

[1280] — Ss. 154 and 162, 177 & 178 — Transfer of investigation to police station having jurisdiction to conduct the same — *Police officer, held, is entitled to transfer investigation* (Para 33). *Rasiklal Dalpatram Thakkar* v. *State of Gujarat*, (2010) 1 SCC 1.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 6-11-2009]

Satvinder Kaur v. State (NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503, relied on

(5) Interference by court *(contd.)*

(ii) Refusal to file FIR by police/ Direction to file FIR

See also Section 154, '(4)(iv) Refusal to register FIR', above, and

S. 156(3) and S. 190, below

See also CONSTITUTION OF INDIA, Arts. 32, 136 and 226 in Vol. 7, Vol. 8 and Vol. 9 of *Complete Digest of Supreme Court Cases,* 2nd Edn., respectively

[1281] — S. 154 — FIR — Refusal to register FIR — Interference in writ proceedings — When warranted — *On writ appeal to High Court, High Court refusing to interfere on the ground of the availability of an alternative remedy — Held, availability of alternative remedy or pendency of contempt petition in court in the matter concerned could not be a ground therefor* (Para 3). *Ramesh Kumari* v. *State (NCT of Delhi)*, (2006) 2 SCC 677: (2006) 1 SCC (Cri) 678: AIR 2006 SC 1322: 2006 Cri LJ 1622: (2006) 127 DLT 636: (2006) 2 KLT 404.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 21-2-2006]

[1282] — Ss. 154(3) & 36, 156(3), 200 and 482 — Interference by High Court or Supreme Court in matters of non-registration of FIR/improper investigation — Scope of — *Caution and approach of High Court laid down — High Court to discourage writ petitions or petitions under S. 482 CrPC where alternative remedies under S. 154(3) r/w S. 36 or S. 156(3) or S. 200 CrPC have not been exhausted, emphasised — Constitution of India — Art. 226* (Paras 27 and 28). *Sakiri Vasu* v. *State of U.P.*, (2008) 2 SCC 409: (2008) 1 SCC (Cri) 440: AIR 2008 SC 907: (2008) 62 AIC 236 (SC): (2008) 1 KLT 724: (2008) 2 Guj LR 1666.

Bench Strength **2**. Coram: *A.K. Mathur* and **Markandey Katju**, JJ. [Date of decision: 7-12-2007]

CBI v. State of Rajasthan, (2001) 3 SCC 333: 2001 SCC (Cri) 524; R.P. Kapur v. Sardar Pratap Singh Kairon, AIR 1961 SC 1117, relied on

[1283] — Ss. 154, 156 & 157 and 190, 200, 203 — CBI enquiry — Writ petition seeking Court's direction to conduct enquiry by CBI into murder of petitioner's son, no action having been taken by police on FIR lodged by him — *Held, cannot be entertained in view of relevant provisions of CrPC — Constitution of India — Art. 32*

When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. A writ petition in such cases is not to be entertained. It is the case of the petitioner that he is under constant threat by some persons and his life and property are in danger. If he seeks any protection, it is the duty of the police officials concerned to provide such security as is warranted in the circumstances in accordance with law. (Paras 4 to 6). *Hari Singh* v. *State of U.P.*, (2006) 5 SCC 733: (2006) 3 SCC (Cri) 63: AIR 2006 SC 2464: (2006) 130 DLT 591: (2006) 3 KLT 269: (2006) 5 All LJ 345: 2006 Cri LJ 3283.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 16-6-2006]

All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India, (1996) 11 SCC 582: 1997 SCC (Cri) 303; Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310, relied on

***Applied** in Aleque Padamsee v. Union of India, (2007) 6 SCC 171*

[1284] — Ss. 154, 190, 156 and 157 — Direction by High Court to register case and conduct investigation in offence which took place about 18 years ago — Challenge to, by aggrieved appellant — Sustainability — *Writ petition filed in 2004 by Respondent 3 seeking direction for registration of case against appellant in respect of case relating to year 1986 in which Respondent 3 was attacked and had suffered injuries — Impugned direction based on enquiry report of Dy. Inspector General, CID who conducted enquiry at the instance of High Court — Considering the peculiar facts and circumstances of the case, held, judgment of High Court not liable to be interfered with — Hence, upheld — Constitution of India — Art. 226*

A writ petition was filed by Respondent 3 before the High Court alleging inaction on the part of the police authorities in not registering his complaint and taking action against the persons who had caused injuries to him and his sons in an incident occurring on 8-11-1986. The Single Judge of the High Court directed the Director General of

Police (DGP) to appoint a senior police officer to conduct an enquiry into the matter. Pursuant to that order, the Dy. Inspector General, CID conducted the enquiry and submitted a report. The Single Judge held that once it was established that Respondent 3 had sustained injuries in the incident and injuries on his person were confirmed in the medical examination, the police authorities ought to have registered a case and taken appropriate steps in accordance with law. On the basis of the final report of the inquiry, the Single Judge directed the Superintendent of Police to register a case in the police station of competent jurisdiction and take action in accordance with law. The application filed by the appellant for recalling the said order was dismissed. Hence, the present appeal.

As per the appellant, he was tenant in the house of Respondent 3. Respondent 3 attempted to illegally evict the appellant from his rented house with the help of antisocial elements who came to his house armed with weapons on 8-11-1986. Respondent 3 along with his men started dismantling the house of the appellant without prior permission and/or notice to him. The appellant was seriously injured when he tried to obstruct them from dismantling the house. The appellant lodged a first information report under Sections 147/307 IPC against Respondent 3 and his men. Later, the said criminal case was withdrawn by the Public Prosecutor. The revision filed before the High Court against the said withdrawal was dismissed.

Before the Supreme Court the appellant contended that the High Court ought not to have passed any direction in the writ petition filed by Respondent 3 because it was filed after undue delay. The appellant was also aggrieved by the order of withdrawal of the prosecution against Respondent 3.

Dismissing the appeal,

Held :

The order of the High Court was primarily based on the report of the DIG, CID, Gwalior who had conducted the inquiry at the instance of the Court and submitted the report. On the basis of the inquiry report, the High Court directed the Superintendent of Police, Gwalior to take action for registration of the case and conduct the investigation and inquiry in accordance with law. (Para 21)

The impugned judgment of the High Court has been carefully examined. There is no infirmity therein. In the backdrop of the peculiar facts and circumstances of the case, no interference is called for. (Paras 22 and 23). *Ghanshyam* v. *State of M.P.*, (2006) 10 SCC 473: (2006) 3 SCC (Cri) 602.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[1285] — Ss. 154 and 156(3) — Duty of police to register FIR in case S. 156(3) is attracted — *Held, registration of an FIR involves only the process of entering the substance of the information relating to commission of the cognizable offence in a book kept by the officer in charge of the police station — Held, it is the duty of the officer in charge of the police station to register an FIR when investigation under S. 156(3) is directed by the Magistrate, even when the Magistrate explicitly does not say so*

Any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) CrPC. But if he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) CrPC that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII CrPC only thereafter. (Para 11). *Mohd. Yousuf* v. *Afaq Jahan*, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460: AIR 2006 SC 705: (2006) 1 KLT 939: (2006) 2 Guj LR 1742: (2006) 38 AIC 70 (SC): 2006 Cri LJ 788.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 2-1-2006]

Suresh Chand Jain v. State of M.P., (2001) 2 SCC 628: 2001 SCC (Cri) 377, relied on

Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986: (1961) 2 Cri LJ 39; Narayandas Bhagwandas Madhavdas v. State of W.B., (1960) 1 SCR 93: AIR 1959 SC 1118: 1959 Cri LJ 1368, considered

(iii) Quashing of FIR

See also CrPC, 1973, S. 482 pp. 1260 et seq. in Vol. 2

See also CONSTITUTION OF INDIA, Arts. 32, 136 and 226 in Vol. 7, Vol. 8 and Vol. 9, *Complete Digest of Supreme Court Cases*, 2nd Edn., respectively

[1286] — Ss. 154 and 482 — Appellant, sister of main accused, included in FIR on the ground that questioning her would be advantageous — FIR did not disclose any offence so far as she was concerned — Dismissal of her application under S. 482 by High Court — Sustainability — *Held, instant case falls within Category I of illustrations given in* Bhajan Lal case, *1992 Supp (1) SCC 335 — Therefore, proceedings relatable to the FIR as far*

(5)(iii) Interference by court - Quashing of FIR *(contd.)*

as appellant was concerned, quashed — Hence, appellant shall not be treated as an accused — However, it is open to the investigating agencies to examine her as a witness — Constitution of India — Art. 226 (Paras 2, 3 and 8). *Reshma Bano* v. *State of U.P.*, (2008) 5 SCC 791: (2008) 3 SCC (Cri) 86: (2008) 3 All LJ 607: (2008) 64 AIC 7 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 3-3-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[1287] — S. 154 — High Court dismissing writ petition for quashing FIR by applying ratio of the decision by which High Court had previously disposed of large number of cases involving more or less similar prayers to quash FIR in each case — Sustainability — *Held, on facts, impugned order of High Court does not show as to how the ratio of decision in a batch of writ petitions disposed by it previously had any application or relevance to the present case — Hence, impugned order of High Court set aside and matter remitted — Penal Code, 1860, Ss. 420 and 424 — U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (7 of 1986), Ss. 2 and 3 — Constitution of India — Art. 226* (Paras 2 to 6). *Ashfaq Khan* v. *State of U.P.*, (2008) 11 SCC 143: 2008 Cri LJ 1598: (2008) 2 All LJ 710.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 1-2-2008]

[1288] — Ss. 154, 155, 451 and 457 — FIR — Quashment of, in writ petition filed by third party — Impermissibility — *FIR against drivers and cleaners, but not against owners, of trucks for filling animals in trucks in a cruel manner and carrying them for slaughter contrary to statutory prohibition — Consequently, animals seized — Owners of trucks filing complaint against First Informant and police but not seeking quashment of FIR — They also seeking custody of seized animals but trial court rejecting that request and therefore they filing writ petition — Quashment of FIR in such writ petition, held, impermissible — Prevention of Cruelty to Animals Act, 1960, S. 11(1)(d) — Bombay Animal Preservation Act, 1954 (72 of 1954), Ss. 5, 6 and 8 — Penal Code, 1860, Ss. 395, 427, 506 Pt. II and S. 34 — Constitution of India — Art. 226* (Paras 19, 20 and 22). *Bharat Amratlal Kothari* v. *Dosukhan Samadkhan Sindhi*, (2010) 1 SCC 234.

Bench Strength **2**. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 4-11-2009]

Dosukhan Samdakhan Sindhi v. State of Gujarat, 2009 Cri LR 101 (Mah & Guj), reversed

[1289] — Ss. 154, 155 and 482 — FIR — Quashment of, under Art. 226 of Constitution — Hearing of First Informant, held, necessary — *More so when FIR was under various statutory provisions and the Court invoked one of them for convicting a party to writ petition before it — Prevention of Cruelty to Animals Act, 1960, S. 11(1)(d) — Bombay Animal Preservation Act, 1954 (72 of 1954), Ss. 5, 6 and 8 — Penal Code, 1860, S. 279* (Para 25). *Bharat Amratlal Kothari* v. *Dosukhan Samadkhan Sindhi*, (2010) 1 SCC 234.

Bench Strength **2**. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 4-11-2009]

Dosukhan Samdakhan Sindhi v. State of Gujarat, 2009 Cri LR 101 (Mah & Guj), reversed

[1290] — Ss. 154, 156, 157, 173 and 482 — Delay in completing investigation — When can FIR be quashed on ground of such delay — *On facts, held, no interference called for with quashing of FIR by High Court*

A case under S. 5(2) read with S. 5(1)(*e*) of the Prevention of Corruption Act was registered against the respondent, an officer in IPS in March 1984. The respondent was placed under suspension pending inquiry but on the basis of inquiry the State Government passed an order in September 1984 for stopping further action and for his reinstatement in service. However, by a subsequent order in July 1985, the government cancelled its earlier order and directed the respondent to show cause as to why the penalty of compulsory retirement should not be imposed on him. The respondent filed a writ petition before the High Court challenging the order. The writ petition was transferred to the Central Administrative Tribunal which held that the impugned order was illegal and beyond the powers of the government. The government being aggrieved filed an SLP before the Supreme Court which on November 16, 1988 dismissed the same in view of the fact that the respondent had already retired from service on attaining age of superannuation. Meanwhile the Anti-Corruption Bureau after completing its investigation in the criminal case had submitted its report in April 1987 to its Director-General who in turn had sent the same to the government on September 17, 1988. The respondent filed the criminal petition for quashing further proceedings pursuant to the registration of the first information report, inter alia, contending that there had been lull in the investigation for fairly long spell causing inordinate delay and that the prosecution had not filed its report contemplated under S. 173 CrPC till he filed the petition for quashing the proceedings in November 1987 though the case was registered in March 1984. The High Court on July

29, 1988 quashed the FIR and the subsequent proceedings on the ground of inordinate delay in the investigation. However, the appellant-government accorded sanction for prosecution of the respondent only on September 16, 1988 i.e. after nearly 50 days of the quashing of the FIR. Dismissing the appeal the State on the peculiar facts,

Held :

In view of the facts and circumstances and the various events following the suspension of the respondent culminating in his being allowed to retire on attaining the age of superannuation, it is not a fit case for interference.

No general and wide proposition of law can be formulated that wherever there is any inordinate delay on the part of the investigating agency in completing the investigation such delay is a ground to quash the FIR. *State of A.P.* v. *P.V. Pavithran*, (1990) 2 SCC 340: AIR 1990 SC 1266: 1990 Cri LJ 1306.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 1-3-1990]

[1291] — Ss. 154 and 482, 156 and 157 — Delay as ground for quashing FIR/proceedings — Right to speedy trial — Protracted criminal proceedings — Quashing of — Strict framing/applicability of guideline(s)/principle(s)/factor(s) — Impracticality of — *Various factors and grounds for quashing FIR/proceedings on ground of delay, stated — Constitution of India — Art. 21*

Whenever there is any allegation of violation of right to speedy trial (or delay on the part of the investigating agency in completing the investigation) the court has to perform by balancing the act by taking into consideration all attending circumstances and to decide whether the right to speedy trial has been denied in a given case or not. There is no general and wide proposition of law formulated that whenever there is delay on the part of the investigating agency in completing the investigation, such a delay can be a ground for quashing the FIR. It would be difficult to formulate inflexible guidelines or rigid principles in determining as to whether the accused has been deprived of fair trial on account of delay or protracted investigation; it would depend on various factors including whether such a delay was reasonably long or caused deliberately or intentionally to hamper the defence of the accused or whether the delay was inevitable in the nature of things or whether it was due to dilatory tactics adopted by the accused. It would depend upon certain peculiar facts and circumstances of each case i.e. the volume of evidence collected by the investigating agency and the nature and gravity of the offence for which the accused has been charge-sheeted in a given case. The nexus between whole and some of the above factors is of considerable relevance. Therefore, whether the accused has been deprived of fair trial on account of protracted investigation has to come on facts. He has also to establish that he had no role in the delay. Every delay does not necessarily occur because of the accused. (Paras 11 and 10). *Supdt. of Police, Karnataka Lokayukta* v. *B. Srinivas*, (2008) 8 SCC 580: (2008) 3 SCC (Cri) 587: (2008) 69 AIC 49 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 18-8-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578: 2002 SCC (Cri) 830; Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93; State of M.P. v. Ram Singh, (2000) 5 SCC 88: 2000 SCC (Cri) 886, relied on

Common Cause, A Registered Society v. Union of India, (1996) 4 SCC 33: 1996 SCC (Cri) 589; Common Cause, A Registered Society v. Union of India, (1996) 6 SCC 775: 1997 SCC (Cri) 42; Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507: 1998 SCC (Cri) 1692; Raj Deo Sharma (II) v. State of Bihar, (1999) 7 SCC 604: 1999 SCC (Cri) 1324, clarified

[1292] — Ss. 154 and 157 — FIR against public servant — Ground for quashing — Preliminary enquiry should be made before registering a case

In a perfect system of prevention and detection of crimes, undeniably the paramount duty of a police officer to whom the commission of a cognizable offence is reported, is to register a case without causing any delay and promptly commence the investigation without perverting or subverting the law. However, before a public servant is publicly charged with acts of dishonesty and corruption, and a first information report is lodged against him, there should be some suitable preliminary enquiry into the allegations by a responsible officer. *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604: 1992 Cri LJ 527.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 21-11-1990]

[1293] — Ss. 154 and 482 — Court not competent to quash FIR and proceedings taken in pursuance thereof thereby restraining the police authorities from performing their duties — *Held, High Court erred in quashing the FIR by not only examining the averments made in the FIR but also going into merits of the case before investigation and collection of evidence by the investigating agency. State of Punjab* v. *Dharam Singh*, 1987 Supp SCC 89: 1987 SCC (Cri) 621.

Bench Strength 2. Coram: *V. Balakrishna Eradi* and *S. Natarajan*, JJ. [Date of decision: 6-2-1987]

(5) Interference by court *(contd.)*

(iv) Practice and Procedure

[1294] — Ss. 154 and 174 — New plea — Plea that complaint was not registered within the police station which had jurisdiction, not urged before the courts below — *Raised before the Supreme Court at the time of addressing arguments — Held, could not be entertained at this belated stage — Constitution of India — Art. 136* (Para 19). *Ravi* v. *State*, (2004) 11 SCC 266: AIR 2004 SC 4164.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 12-8-2004]

(6) Non-initiation of proceedings after FIR lodged

[1295] — Ss. 154 and 173 — Person lodging FIR entitled to hearing when on the basis of police report Magistrate prefers to drop the proceedings instead of taking cognizance of offence — *Person injured or relative of the person who died in the incident complained of has no such right of hearing except a standing to appear before the Magistrate — Magistrate, of his own discretion can also give notice to them for hearing*

In a case where the Magistrate to whom a report is forwarded under S. 173(2)(*i*) decides not to take cognizance of the offence and to drop the proceedings or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. Unnecessary delay on account of the difficulty of effecting service of the notice on the informant cannot be a valid objection against this view because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under S. 173(2)(*i*). Moreover, the difficulty of service of notice on the informant cannot provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

The injured person or any relative of the deceased who is not an informant, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report; the Magistrate is bound to hear him. The Magistrate may also, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative or relatives of the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report. *Bhagwant Singh* v. *Commr. of Police*, (1985) 2 SCC 537: 1985 SCC (Cri) 267: AIR 1985 SC 1285: 1985 Cri LJ 1521.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *A.N. Sen* and *D.P. Madon*, JJ. [Date of decision: 25-4-1985]

(7) Miscellaneous

[1296] — Ss. 154, 156, 161 and 190 — Powers of legislature — Limits of — Impugned resolution passed by Vidhan Sabha containing directions as to how the criminal investigation into appellant's alleged wrongdoing should be conducted — Resolution also containing directions regarding filing of FIRs, custodial interrogation and to Vigilance Department — Improper intrusion on province of executive and judiciary — *Held, doctrine of separation of powers is an inseparable part of parliamentary democracy — Legislative body not entrusted with power of adjudicating a case once an appropriate forum is in existence under the constitutional scheme — For functions within domain of executive, role of legislature could at best be recommendatory — Determination of guilt or innocence is a role properly reserved for trial Judge — Only exception is when impugned acts have the effect of distorting, obstructing or threatening integrity of legislative proceedings, thereby warranting the exercise of privileges — Hence, a jurisdictional error was committed by Punjab Vidhan Sabha in passing said resolution — Constitution of India, Arts. 194(3), 105(3), 32, 136, 226, 73 and 162 — Central Vigilance Commission Act, 2003, Ss. 8 and 11*

The doctrine of separation of powers is an inseparable part of the evolution of parliamentary democracy itself. Renowned French philosopher Montesquieu had drawn the attention of political theorists to the dangers inherent in the concentration of legislative, executive and judicial powers in one authority and stressed on the necessity of checks and balances in constitutional governance. Our institutions of governance have been intentionally founded on the principle of separation of powers and the Constitution does not give unfettered power to any organ. All the three principal organs are expected to work in harmony and in consonance with the spirit and essence of the

Constitution. It is clear that a legislative body is not entrusted with the power of adjudicating a case once an appropriate forum is in existence under the constitutional scheme. (Para 87)

The impugned resolution (dated 10-9-2008) passed by the Punjab Vidhan Sabha contains directions as to how the investigation into the appellant's and petitioners' alleged wrongdoing should be conducted. The resolution directs the filing of first information reports (FIRs) and custodial interrogation in addition to directing the Vigilance Department, Punjab to find out where the appellant and the others have stored their "ill gotten wealth" and further directs the Vigilance Department to report back to the Speaker of the Punjab Vidhan Sabha. These functions are within the domain of the executive. It is up to the investigating agencies themselves to decide how to proceed with the investigation in a particular case. The role of the legislature in this regard can at best be recommendatory and the Speaker of a legislature may not assume the responsibility of monitoring an ongoing investigation. A determination of guilt or innocence by way of fact finding is a role properly reserved for the trial Judge. The only exception to this principle is when the impugned acts have the effect of distorting, obstructing or threatening the integrity of legislative proceedings or are likely to do the same, thereby warranting the exercise of privileges. There was an obvious jurisdictional error on part of the Punjab Vidhan Sabha in the present case. The observations cited above are self-explanatory and raise concerns about the overreach into the judicial domain in the present case. [Paras 89 to 91 and 92(*i*)]

The resolution passed by the Punjab Vidhan Sabha on 10-9-2008, directing the expulsion of the appellant for the remainder of the thirteenth term of the Vidhan Sabha is constitutionally invalid. Hence, restoration of the appellant's membership in the Punjab Vidhan Sabha is directed. However, nothing in this judgment should act as a hurdle against the investigation, if any, into the alleged role of the appellant and the petitioners in the improper exemption of land from the Amritsar Improvement Scheme that was notified on 13-1-2006. [Paras 93 and 92(*i*)]. *Amarinder Singh* v. *Punjab Vidhan Sabha*, (2010) 6 SCC 113.

Bench Strength 5. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran, P. Sathasivam, J.M. Panchal* and *R.M. Lodha*, JJ. [Date of decision : 26-4-2010]

Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1; Kilbourn v. Thompson, 26 L Ed 377: 103 US 168 (1880), referred to

[1297] — Ss. 154, 190, 195, 196, 197 and 200 — Prosecution against a former Chief Minister, Minister, Public Servant or person connected with the former administration can be initiated without setting up a Commission of Inquiry prior to such prosecution — *Commissions of Inquiry Act, 1952, S. 3 — Prevention of Corruption Act, 1947, S. 6*

Per Bhagwati, C.J. and Oza, J.

It would be perfectly legitimate for the successor Government to initiate a prosecution of a former Chief Minister or a person who has held high political office under the earlier regime without first having an inquiry made by a Commission of Inquiry, provided, of course, the investigation is fair and objective and there is sufficient material to initiate such prosecution. There are, under the existing law, sufficient safeguards for the purpose of ensuring that no public servant is harassed by false and vexatious prosecution or charges of corruption because no such prosecution can be initiated without sanction under S. 6 of the Prevention of Corruption Act or S. 197 of the Code of Criminal Procedure, 1973. These safeguards cannot be said to be inadequate even if they do not afford adequate protection in any particular case; the Magistrate is always there to protect an innocent accused because if in the opinion of the Magistrate, there is not sufficient evidence and the charge against the accused appears to be groundless, the Magistrate may straightway discharge the accused without taking any evidence. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] *and* **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

— S. 154(2) *See* Ss. 154(1), 154(2), 154(3), 157(1), 190(1)(a) and 200

— S. 154(3) *See* Ss. 154(1), 154(2), 154(3), 157(1), 190(1)(a) and 200

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See also Ss. 156, 157, 161 and 165
See also Ss. 156, 157, 169, 173 and 190
See also Ss. 156, 157, 170, 173(8) and 190
See also Ss. 156, 157 and 190
See also Ss. 156 & 157 and 190 & 200 to 203
See also Ss. 156, 157, 465, 401 and 397
See also Ss. 156(1) & 157 and 2(h)
See also Ss. 162, 154, 157 and 2(h)
See also Ss. 163, 161 and 157
See also Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311
See also Ss. 172, 168 and 157
See also Ss. 173(8), 156 and 157

See also Ss. 190, 154, 156 & 157
See also Ss. 190, 200 and 157
See also Ss. 190 & 200 to 203 and 156 & 157
See also Ss. 190, 200, 203 and 156 & 157
See also Ss. 193, 190, 156, 157 and 173
See also Ss. 231 & 242 and 173 & 157
See also Ss. 386 and 157
See also Ss. 438, 437 & 438 and 2(h), 155 to 157 and 41 to 44 & 46
See also Ss. 482 and 154, 155, 156, 157, 162, 169, 170, 173
See also Ss. 482, 154, 156(3) and 157
See also Ss. 482, 154 and 157
See also Ss. 482, 156, 154 & 157
See also Ss. 482 and 157 & 154
See also Ss. 482 and 193, 190, 156 & 157

— S. 157(1) *See* Ss. 41, 151, 2(c), 156 and 157(1)
See also Ss. 41, 151, 156 and 157(1)
See also Ss. 154 and 157(1)
See also Ss. 154(1), 154(2), 154(3), 157(1), 190(1)(a) and 200

— S. 157(1) proviso (b) *See* Ss. 156(3), 157(1) proviso (b) & (2), 190, 200 and 154

— S. 157(2) *See* Ss. 156(3), 157(1) proviso (b) & (2), 190, 200 and 154

— S. 158 *See* Ss. 154 to 173
See also Ss. 154 to 173 and 482
See also Ss. 154, 157 and 158
See also Ss. 154 and 158
See also Ss. 154, 158 and 157
See also Ss. 154, 158, 157 and 174
See also Ss. 157 to 161 and 172(2)
See also Ss. 157 to 161 and 173
See also Ss. 157 to 167
See also Ss. 157 to 172 and 198
See also Ss. 157 to 173
See also Ss. 159 and 158
See also Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311

— S. 159 *See* Ss. 154 to 173
See also Ss. 154 to 173 and 482
See also Ss. 154, 159, 190 and 482
See also Ss. 157, 156, 154, 159, 160, 161
See also Ss. 157, 156 and 159
See also Ss. 157 and 159
See also Ss. 157 to 161 and 172(2)
See also Ss. 157 to 167
See also Ss. 157 to 161 and 173
See also Ss. 157 to 172 and 198
See also Ss. 157 to 173
See also Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311

Section 155
§[1299], §[1308], §[1319], §[1342], §[1378], §[1436]

Section 155(4)
§[1356]

Section 156
§[1299] - §[1301], §[1308], §[1309], §[1311], §[1313]-§[1317], §[1320] - §[1336], §[1338]-§[1339], §[1341]-§[1346], §[1357] - §[1364], §[1366], §[1369], §[1372], §[1375], §[1380], §[1381], §[1383], §[1386], §[1410], §[1411], §[1424], §[1447], §[1474]-§[1477]

Section 156(1)
§[1302], §[1312], §[1393]

Section 156(2)
§[1312], §[1393]

Section 156(3)
§[1318], §[1340], §[1387] - §[1408]

Section 157
§[1299], §[1300], §[1302] - §[1310], §[1314], §[1317], §[1319], §[1320], §[1327], §[1331], §[1337], §[1347] - §[1359], §[1361] - §[1363], §[1365] - §[1386], §[1409] - §[1445], §[1448]-§[1473], §[1475] - §[1496], §[1500], §[1501]

Section 158
§[1376], §[1377], §[1414] , §[1415], §[1434], §[1451], §[1462], §[1479], §[1492], §[1497], §[1498]

Section 159
§[1309], §[1376], §[1377], §[1380], §[1414], §[1415], §[1434], §[1451], §[1462], §[1479], §[1482], §[1492], §[1498] - §[1500]

(1) Generally

[1298] **— Ss. 156, 155 and 157 — Investigation by police — Powers of, in respect of cognizable and non-cognizable offences — Police when obliged to investigate an offence** — *Held, obligation to register a case is not to be confused with the remedy if the same is not registered — Registration of a case does not ipso facto warrant the setting in motion of an investigation, as the same is subject to discretion of police subject to Ss. 157(1) proviso & 157(2) in case of cognizable offences, and scheme of S. 155 in case of non-cognizable offences — S. 156(3) vests a discretionary power on a Magistrate empowered under S. 190 to order an investigation by a police officer as contemplated in S. 156(1)*

In this connection, it may be noted that though a police officer cannot investigate a non-cognizable offence on his own as in the case of cognizable offence, he can investigate a non-cognizable offence under the order of a Magistrate having power to try such non-cognizable case or commit the same for trial within the terms under Section 155(2) CrPC but subject to Section 155(3) CrPC. Further, under Section 155(4), where a case relates to two offences to which at least one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offences are non-cognizable and, therefore, under such circumstances the police officer can investigate such offences with the same powers as he has while investigating a cognizable offence. (Para 69)

The obligation to register a case is not to be confused with the remedy if same is not registered. The answer to the question whether the registration of a criminal case under Section 154(1) CrPC ipso facto warrants the setting in motion of an investigation under Chapter XII CrPC is provided by Sections 157(1) proviso and 157(2) CrPC. Section 156(3) vests a discretionary power on a Magistrate empowered under Section 190 to order an investigation by a police officer as contemplated in Section 156(1). Section 156(3) does not empower a Magistrate to stop an investigation undertaken by the police. (Paras 70, 71 and 73). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193: AIR 2007 SC 1274: (2007) 51 AIC 623 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[1299] — Ss. 157 and 156 — Manner of conduct of investigation and lack of bona fides of investigating officer — Deprecated in strong terms — *Investigating officer (though retired) directed to attend hearing in Supreme Court and file explanatory affidavit* (Paras 25, 35, 36, 41 and 42). *Parminder Kaur* v. *State of U.P.*, (2010) 1 SCC 322.

Bench Strength 2. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 26-10-2009]

[1300] — Ss. 156, 195 & 340 and 341 — Bar under S. 195 — Applicability — Whether Ss. 195 and 340 affect the power of police to investigate into a cognizable offence — *Held, Ss. 195 and 340 do not control or circumscribe the power of the police to investigate — Once the investigation is completed, the court would not be competent to take cognizance in view of the embargo in S. 195 — But, the court can file a complaint for the offence on the basis of the FIR and the material collected during investigation provided it follows the procedure laid down in S. 340 — In such case no right to file an appeal under S. 341 is affected* (Para 8)

The accused-respondents contended that since the instant case fell under Section 195 CrPC, it was the provisions of Chapter XXVI CrPC which would apply and not that of Chapter XII CrPC. Thus, it was submitted that in such a case the only procedure which could be followed was to make an application to the court, but by not following the procedure laid down under Chapter XXVI the right of the respondents under Article 21 of the Constitution of India had been affected. The respondents argued that if an application had been made to the court and the court had taken a decision then under Section 341 CrPC an appeal could have been filed. It was submitted that by making a complaint to the police, who would then make a report to a court and the court would take cognizance the respondents were deprived of the right of appeal as provided under Section 341.

Rejecting the said submissions, the Supreme Court held as above. *M. Narayandas* v. *State of Karnataka*, (2003) 11 SCC 251: 2004 SCC (Cri) 118.

Bench Strength 2. Coram: **S.N. Variava** and *H.K. Sema*, JJ. [Date of decision: 19-9-2003]

State of Punjab v. Raj Singh, (1998) 2 SCC 391: 1998 SCC (Cri) 642, followed

[1301] — Ss. 156(1) & 157 and 2(h) — Investigation — Private funding of — *Statutory investigating agency cannot be directed to obtain financial assistance from private parties for meeting the expenses required for conducting the investigation*

An FIR was lodged by a company, having its headquarters at Shillong in Meghalaya, with the Shillong Police alleging that a Mumbai based company had cheated it to the tune of Rs 9 crores. The Shillong Company, having found that that the police was not moving ahead with the investigation as fast or as distant as the company expected, filed a writ petition before the High Court of Guwahati for appropriate directions. A Single Judge of the High Court directed that in case the said Company was "ready to deposit the amount which would be required to undertake the investigation and for the visit of the senior police officers to Bombay in connection with the investigation work the State Government shall allow them to do so" and directed the investigating team to proceed in right earnest and speedily. The Director General of Police, Meghalaya and the Home Secretary of the State filed an appeal along with the State before a Division Bench of the High Court challenging the said

(1) Generally *(contd.)*

direction issued by the Single Judge but the same was dismissed. The appellant was kept in dark about what all happened at Shillong but when he was called by the police in connection with the FIR lodged at Shillong, he learned about the facts which preceded till then. Hence he moved the High Court of Bombay in a writ petition under Article 226 of the Constitution for quashing the FIR and the further proceedings taken thereon. But a Division Bench of the Bombay High Court dismissed the writ petition on the sole ground that the High Court of Bombay had no jurisdiction under Article 226 of the Constitution to deal with an FIR registered at Shillong. In the present appeal before the Supreme Court, direction of the High Court to the Shillong Police to collect funds from the respondent Company, has been challenged. Setting aside the said direction,

Held :

The official investigation has to be totally extricated from any extraneous influence. The police investigation should necessarily be with the fund supplied by the State. It may be possible for a rich complainant to supply any amount of fund to the police for conducting investigation into his complaint. But a poor man cannot afford to supply any financial assistance to the police. Somebody who incurs the cost of anything would normally secure its control also. In our constitutional scheme, the police and other statutory investigating agency cannot be allowed to be hackneyed by those who can afford it. All complaints shall be investigated with equal alacrity and with equal fairness irrespective of the financial capacity of the person lodging the complaint. (Para 17)

Financial crunch of any State treasury is no justification for allowing a private party to supply funds to the police for conducting such investigation. Augmentation of the fiscal resources of the State for meeting the expenses needed for such investigations is the lookout of the executive. Failure to do it is no premise for directing a complainant to supply funds to the investigating officer. Such funding by interested private parties would vitiate the investigation contemplated in the Code. A vitiated investigation is the precursor for miscarriage of criminal justice. Hence any attempt, to create a precedent permitting private parties to supply financial assistance to the police for conducting investigation, should be nipped in the bud itself. No such precedent can secure judicial imprimatur. (Para 18). *Navinchandra N. Majithia* v. *State of Meghalaya*, (2000) 8 SCC 323: 2000 SCC (Cri) 1510: AIR 2000 SC 3275.

Bench Strength **3**. Coram: **K.T. Thomas**, *R.P. Sethi* and *S.N. Variava*, JJ. [Date of decision: 16-10-2000]

Navinchandra N. Majithia v. State of Maharashtra, (2000) 7 SCC 640; H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: 1955 Cri LJ 526; State of M.P. v. Mubarak Ali, AIR 1959 SC 707: 1959 Cri LJ 920; P. Sirajuddin v. State of Madras, (1970) 1 SCC 595: 1970 SCC (Cri) 240; State of Rajasthan v. Gurcharandas Chadha, (1980) 1 SCC 250: 1980 SCC (Cri) 208; R. Sarala v. T.S. Velu, (2000) 4 SCC 459: 2000 SCC (Cri) 823, relied on

Muddamma Malla Reddi, Re, 1954 Cri LJ 167 (Mad), approved

(1999) 1 Gau LR 498 (Gau), reversed

[1302] — S. 157 — Investigation — Object of — *Held, is to find out whether the offences alleged have been committed and, if so, who have committed it* (Para 11). *Kari Choudhary* v. *Sita Devi*, (2002) 1 SCC 714: 2002 SCC (Cri) 269: AIR 2002 SC 441: 2002 Cri LJ 923: (2002) 1 CHN (Supp) 108.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Phukan*, JJ. [Date of decision: 11-12-2001]

[1303] — S. 157 — Disclosure of information to media by investigating officers — *Held, premature disclosures or "leakage" to media in a pending investigation will jeopardise and impede further investigation, and may allow real culprit to escape from law — Hence, held, attempts to claim credit for imaginary investigational breakthroughs should be curbed* (Para 21). *Rajendran Chingaravelu* v. *R.K. Mishra*, (2010) 1 SCC 457.

Bench Strength **2**. Coram: **R.V. Raveendran** and *K.S. Radhakrishnan*, JJ. [Date of decision: 24-11-2009]

[1304] — S. 157 — Investigation — It is only a preliminary step for gathering of evidence. *Major G.S. Sodhi* v. *Union of India*, (1991) 2 SCC 382: 1991 SCC (Cri) 357: AIR 1991 SC 1617: (1991) 1 LLN 365: 1991 Cri LJ 1947.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 30-11-1990]

[1305] — S. 157 — Investigation — Media influence — Fair trial — Need for restraint by media — Distinction between trial by media and informative media to be maintained — *Trial by media to be avoided particularly at stage when suspect is entitled to constitutional protection — Reporting of sub judice matters to be subjected to checks and balances so as not to interfere with administration of justice — Constitution of India, Arts. 19(1)(a) and 21 — Contempt of Courts Act, 1971, S. 4*

Despite the significance of the print and electronic media in the present day, it is not only desirable but the least that is expected of the persons at the helm of affairs in the field, is to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defence of the accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial. There is danger of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if the media publishes statements which outrightly hold the suspect or the accused guilty even before such an order has been passed by the court. (Paras 297 and 298)

In the present case, certain articles and news items appearing in the newspapers immediately after the date of occurrence, did cause certain confusion in the mind of public as to the description and number of the actual assailants/suspects. It is unfortunate that trial by media did, though to a very limited extent, affect the accused, but not tantamount to a prejudice which should weigh with the court in taking any different view. The freedom of speech protected under Article 19(1)(*a*) of the Constitution has to be carefully and cautiously used, so as to avoid interference with the administration of justice and leading to undesirable results in the matters sub judice before the courts. (Para 299)

Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution. It is essential for the maintenance of dignity of the courts and is one of the cardinal principles of the rule of law in a free democratic country, that the criticism or even the reporting particularly, in sub judice matters must be subjected to checks and balances so as not to interfere with the administration of justice. (Para 301)

Every effort should be made by the print and electronic media to ensure that the distinction between trial by media and informative media should always be maintained. Trial by media should be avoided particularly, at a stage when the suspect is entitled to the constitutional protections. Invasion of his rights is bound to be held as impermissible. [Para 303(11)]. *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength 2. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

P.C. Sen, In re, AIR 1970 SC 1821: 1970 Cri LJ 1525; Reliance Petrochemicals Ltd. v. Indian Express Newspapers, Bombay (P) Ltd., (1988) 4 SCC 592; R.K. Anand v. Delhi High Court, (2009) 8 SCC 106: (2010) 2 SCC (Cri) 563; M.P. Lohia v. State of W.B., (2005) 2 SCC 686: 2005 SCC (Cri) 556; Anukul Chandra Pradhan v. Union of India, (1996) 6 SCC 354: 1996 SCC (Cri) 1338, relied on

[1306] — Ss. 157, 154 and 162 & 2(h) — Investigation when commences — Telephonic FIR

The question as to at what stage the investigation commences has to be considered and examined on the facts of each case, especially, when the information of a cognizable offence has been given on telephone. If the information given on telephone is not cryptic and on basis of that information, the officer in charge, is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including about the participants, shall be deemed to be a statement made by a person to the police officer "in the course of investigation", covered by S. 162 of the Code. *Ramsinh Bavaji Jadeja* v. *State of Gujarat*, (1994) 2 SCC 685: 1994 SCC (Cri) 609: 1994 Cri LJ 3067: (1994) 2 Punj LR 671: (1994) 1 MWN (Cri) 130: (1994) 1 GLH 329.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and **N.P. Singh**, JJ. [Date of decision: 1-3-1994]

[1307] — Ss. 157, 156 and 154, 155 — Duty of police after registration of FIR

The registration of the FIR empowers the officer in charge of the police station to commence investigation with respect to the crime reported to him. A copy of the FIR is required to be sent forthwith to the Magistrate empowered to take cognizance of such offence. After recording the FIR, the officer in charge of the police station is obliged to proceed in person or depute one of his subordinate officers not below such rank as the State Government may, by general or special order, prescribe in that behalf to proceed to the spot to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. (Para 5). *Bijoy Singh* v. *State of Bihar*, (2002) 9 SCC 147: AIR 2002 SC 1949: 2002 Cri LJ 2623.

Bench Strength 2. Coram: **R.P. Sethi** and *D.M. Dharmadhikari*, JJ. [Date of decision: 17-4-2002]

[1308] — Ss. 157, 156, 154, 159, 160 and 161 — Immediate medical aid to injured persons — State's obligation to preserve life — Professional obligation of all doctors, of government hospitals or private, to extend medical aid to the injured immediately — *Statutory procedural*

(1) Generally *(contd.)*

requirements of observance of police formalities or zoning of hospitals or formalities of evidence of doctor cannot delay/avoid rendering of immediate medical relief — In not waiting for completion of legal formalities doctors would not be violating any law — Lawyers, police and courts exhorted not to call the doctors for evidence or interrogation unless absolutely necessary and when called to treat them with respect and not be made to wait for long or suffer harassment — The 1985 decision of committee chaired by Director General of Health Services (quoted below), held, will become operative immediately — Governments of States and UTs can seek amendment in directions up to three months — Government media, Registry, law reports and Medical Council of India directed to inform all concerned, the Courts, medical colleges, practising doctors and to give wide publicity to this ruling Evidence Act, 1872 — S. 45. Parmanand Katara v. *Union of India*, (1989) 4 SCC 286: 1989 SCC (Cri) 721: AIR 1989 SC 2039: 1989 ALR 695.

Bench Strength **2**. Coram: **Ranganath Misra**[1] and **G.L. Oza**[2], JJ. [Date of decision: 28-8-1989]

[1309] — Ss. 157, 173, 24 and 243 — Fair trial — Meaning and scope — Rights of accused — Fair and impartial investigation and prosecution as well as fair trial, emphasised — Right against self-incrimination and double jeopardy — Scope — Reiterated — *Constitution of India — Arts. 21, 19 and 20 and 243*

In Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. An accused is presumed to be innocent till proved guilty. The alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India. (Para 197)

A person is entitled to be tried according to the law in force at the time of commission of offence. A person could not be punished for the same offence twice and most significantly cannot be compelled to be a witness against himself and he cannot be deprived of his personal liberty except according to the procedure established by law. The law in relation to investigation of offences and rights of an accused, has developed with the passage of time. On the one hand, power is vested in the investigating officer to conduct the investigation freely and transparently. Even the courts do not normally have the right to interfere with the investigation. It exclusively falls in the domain of the investigating agency. In exceptional cases the High Courts have monitored the investigation but again within a very limited scope. There, on the other a duty is cast upon the Prosecutor to ensure that rights of an accused are not infringed and he gets a fair chance to put forward his defence so as to ensure that a guilty does not go scot-free while an innocent is not punished. Even in the might of the State the rights of an accused cannot be undermined, he must be tried in consonance with the provisions of the constitutional mandate. The cumulative effect of this constitutional philosophy is that both the courts and the investigating agency should operate in their own independent fields while ensuring adherence to basic rule of law. (Para 198)

It is pertinent to note here that one of the established canons of just, fair and transparent investigation is the right of defence of an accused. An accused may be entitled to ask for certain documents during the course of enquiry/trial by the court. (Para 203)

It is not only the responsibility of the investigating agency but as well as that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of the criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law dehors his position and influence in the society. (Para 199)

The courts have even declined to accept the report submitted by the investigating officer where it is glaringly unfair and offends basic canons of criminal investigation and jurisprudence. *Contra veritatem lex nunquam aliquid permittit*: implies a duty on the court to accept and accord its approval only to a report which is the result of faithful and fruitful investigation. The court is not to accept the report which is *contra legem* but to ensure that the investigating agencies conduct judicious and fair investigation and submit a report in accordance with Section 173 of the Code which places a burden and obligation on the State Administration. The aim of criminal justice is two-fold. Severely punishing and really or sufficiently preventing the crime. Both these objects can be achieved only by fair investigation into the commission of crime, sincerely proving the case of the prosecution before the court and the guilty is punished in accordance with law. (Para 200)

Historically but consistently the view of the Supreme Court has been that an investigation must be fair and effective, must proceed in proper direction in consonance with the ingredients of the offence and not in haphazard manner. In some cases besides investigation being effective the accused may have to prove miscarriage of justice but once it is shown the accused would be entitled to definite benefit in accordance with law. The investigation should be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expansive power of police to make investigation. (Para 201). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

Kashmeri Devi v. Delhi Admn., 1988 Supp SCC 482: 1988 SCC (Cri) 864; Sasi Thomas v. State, (2006) 12 SCC 421: (2007) 2 SCC (Cri) 72; State (Inspector of Police) v. Surya Sankaram Karri, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225; T.T. Antony v. State of Kerala, (2001) 6 SCC 181: 2001 SCC (Cri) 1048; Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441: (2009) 1 SCC (Cri) 523, relied on

(2) Authority that may investigate and Role of court

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See also Sections 155 to 159, '(5) Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court', and

'(6) Power under Section 156(3) — Nature and Scope', below

See also Section 154, '(4) Powers, Role and Duty of police in respect of FIR', and

'(5) Interference by court', above

(i) Generally

[1310] — Ss. 156 and 190 — Power to investigate an offence, held, is exclusively reserved for police — Restrictions on said power, if any — Power of court to change IO — *Held, though the said power is unfettered, it must be legitimately exercised in strict compliance with the provisions under Ch. XII CrPC*

The investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII CrPC. However, unfettered discretion does not mean any unaccountable or unlimited discretion and act according to one's own choice. The power to investigate must be exercised strictly on the condition of which that power is granted by CrPC itself. (Para 39)

Therefore, the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither the accused nor the complainant or informant is entitled to choose its own investigating agency to investigate a crime in which it may be interested. (Para 40)

In the present case, the contents of the petition submitted by the victim and also the allegations made in the anonymous complaint reveal no cause for issuing directions relieving the investigating officer of his statutory power and duty to investigate the crime in question. Neither has the anonymous petition nor the complaint made by the victim been directed against the investigating officer complaining of any bias or any attempt on his part to destroy the available evidence. It is difficult to discern the basis for arriving at the conclusion that the entire attempt of the investigating officer was to exonerate the accused and make the complainant as the accused. The investigation was in progress as is evident from the case diary. The special investigation team also proceeded on the same lines as that of the investigating officer and similar observations as the one made by the investigating officer are found in the report of the special investigation team. (Paras 34, 35 and 37). *Divine Retreat Centre* v. *State of Kerala*, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9: AIR 2008 SC 1614: (2008) 1 KLT 1042: 2008 Cri LJ 1891.

Bench Strength **2**. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-3-2008]

(2)(i) Authority that may investigate and Role of court - Generally *(contd.)*

Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18; S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; M.C. Abraham v. State of Maharashtra, (2003) 2 SCC 649: 2003 SCC (Cri) 628; State of W.B. v. S.N. Basak, AIR 1963 SC 447: (1963) 2 SCR 52; Hazari Lal Gupta v. Rameshwar Prasad, (1972) 1 SCC 452: 1972 SCC (Cri) 208; Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521, relied on

M.C. Mehta (Taj Corridor Scam) v. Union of India, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264, considered

CBI v. Ravi Shankar Srivastava, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233; Popular Muthiah v. State, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404, distinguished

[1311] — Ss. 156(2) and 156(1) — Unassailability of investigation started under S. 156(1) — Nature and effect of protection afforded under S. 156(2) — *Held, S. 156(2) ensures that once an investigation is commenced under S. 156(1), the same is not interrupted on the ground that police officer was not empowered to investigate — S. 156(2) is in the nature of a "saving clause" in respect of investigations undertaken in respect of cognizable offences* (Para 24). *Rasiklal Dalpatram Thakkar* v. *State of Gujarat*, (2010) 1 SCC 1.

Bench Strength 2. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 6-11-2009]

[1312] — S. 156 — Circumstances warranting interference — Breach of fundamental rights — Allegations of corruption against incumbent Chief Minister — *Held, writ court can play corrective role where there is apathy, partiality, obstruction in investigation process, destruction of evidence or undue pressure from powerful interests, when a specific violation of fundamental rights is shown — In all of these circumstances, the writ court can only play a corrective role to ensure that the integrity of the investigation is not compromised — However, writ court cannot order initiation of investigation — Such a role lies in the domain of executive — The allegations came within ambit of PC Act, 1988, and investigating agencies such as State police, CBI or CVC could be moved for this purpose — Complainant has in the first instance to take resort to statutory remedies under law and only after exhausting such remedies, he can move writ court, that too the High Court first instead of directly approaching Supreme Court — Prevention of Corruption Act, 1988, S. 13 — Constitution of India — Arts. 32 and 226* (Paras 16 to 18). *Kunga Nima Lepcha* v. *State of Sikkim*, (2010) 4 SCC 513.

Bench Strength 3. Coram : **K.G. Balakrishnan, C.J.** and *P. Sathasivam* and *J.M. Panchal*, JJ. [Date of decision : 25-3-2010]

Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307, relied on

[1313] — Ss. 156, 157, 169, 173 and 190 — Powers of court during investigation — *While investigation is in progress, court cannot direct the investigating agency to submit a report in accordance with the court's own view — On facts held, High Court exceeded its jurisdiction under Art. 226 in directing the investigating officer to submit a charge-sheet — Constitution of India — Art. 226*

It is for the investigating agency to submit a report to the Magistrate after full and complete investigation. The investigating agency may submit a report finding the allegations substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But while it is open to the High Court, in appropriate cases, to give directions for prompt investigation etc. the High Court cannot direct the investigating agency to submit a report that is in accord with its views as that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the investigating agency. Even in a case where a report is submitted by the investigating agency finding that no case is made out for prosecution, it is open to the Magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct the investigating agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation. (Para 17)

In the instant case the investigation is in progress. It is the statutory duty of the investigating agency to fully investigate the matter and then submit a report to the Magistrate concerned. The Magistrate will thereafter proceed to pass appropriate order in accordance with law. It was not appropriate for the High Court in these circumstances to issue a direction that the case should not only be investigated, but a charge-sheet must be submitted. The High Court exceeded its jurisdiction in making this direction which deserves to be set aside. (Paras 17 and 18)

In the circumstances, therefore, the direction contained in the order of the High Court dated 10-1-2002 directing the arrest of the appellants is set aside. The direction made by the High Court directing the investigating agency to submit a charge-sheet is also set aside. However, the investigating agency must promptly take all necessary steps, conclude the investigation and submit its report to the Magistrate concerned. It is open to the investigating agency to submit such report as it considers appropriate, having regard to the facts and circumstances of the case and result of the investigation. After such a final report is submitted by the investigating agency, the Magistrate concerned will proceed to deal with the matter further in accordance with law without being influenced by any observation made by the High Court in the impugned orders. (Para 19). *M.C. Abraham* v. *State of Maharashtra*, (2003) 2 SCC 649: 2003 SCC (Cri) 628.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 20-12-2002]

State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; King Emperor v. Khwaja Nazir Ahmad, (1944) 71 IA 203: AIR 1945 PC 18; S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: 1968 Cri LJ 97, relied on

[1314] — S. 156 — PIL — Interference with investigation — Scope and parameters, reiterated — *Held, directions that may be passed are essentially to ensure performance of statutory duty by the investigating agency — Constitution of India — Arts. 226 and 32*

The impugned order must be held to be an order passed overstepping the limits of judicial interference. Even in public interest litigation proceedings, appropriate directions may be issued and the purpose in issuing such directions is essentially to ensure performance of statutory duty by the investigating agency. The duty of the court in such proceedings is to ensure that the agencies do their duties in compliance with law. (Paras 28 and 29). *D. Venkatasubramaniam* v. *M.K. Mohan Krishnamachari*, (2009) 10 SCC 488: (2009) 82 AIC 245 (SC): (2009) 3 APLJ 205 (SC).

Bench Strength 2. Coram: *R.V. Raveendran* and **B. Sudershan Reddy**, JJ. [Date of decision: 14-9-2009]

[1315] — Ss. 156, 165 and 173 — Court's power to interfere in and during investigation — Propriety of and maintainability of, order passed — *In the present case, Metropolitan Magistrate directing IO to add S. 307 IPC and investigate the matter — High Court also upholding the order passed by court below — Applying the decision in* M.C. Abraham case, *(2003) 2 SCC 649, held, order of High Court unsustainable and hence, set aside — Liberty given to IO to file fresh charge-sheet on the basis of material collected during investigation* (Paras 6 and 7). *Shariff Ahmed* v. *State (NCT of Delhi)*, (2009) 14 SCC 184: AIR 2009 SC 2691.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 24-4-2009]

M.C. Abraham v. State of Maharashtra, (2003) 2 SCC 649: 2003 SCC (Cri) 628, applied

[1316] — Ss. 156, 157, 170, 173(8) and 190 — Powers of court during investigation — Crime detection and crime punishment have clearly demarcated spheres of activity — *Investigation proceedings by police ends only when Magistrate takes cognizance of offence and courts should not interfere prior to that stage unless there is gross abuse of power — Constitution of India — Art. 226. State of Bihar* v. *J.A.C. Saldanha*, (1980) 1 SCC 554: 1980 SCC (Cri) 272: AIR 1980 SC 326: 1980 Cri LJ 98: 1980 MLJ (Cri) 382: (1980) 17 ACC 279: (1980) 28 BLJR 18.

Bench Strength 3. Coram: *R.S. Sarkaria*, **D.A. Desai** and *O. Chinnappa Reddy*, JJ. [Date of decision: 13-11-1979]

[1317] — Ss. 156(3), 154, 190, 200 and 203 — Invocation of writ jurisdiction bypassing these provisions — When proper — *Held, although there are adequate remedies provided under CrPC for person aggrieved by inaction on part of police or who is not getting proper response, and that it is for such person to seek relief with aid of those provisions but, held, as instant case (involving communal riots) is an "extraordinary case", hence, writ petition under Art. 226 by Respondent 1 was warranted — Constitution of India — Art. 226*

After the demolition of Babri Masjid on 6-12-1992, communal riots occurred in various parts of the country including Mumbai. At the material time, Respondent 2 was a PSI. On 10-1-1993, Respondent 2 and his staff, while on patrol duty, received a message from Wireless Control Room, that a mob of 2000 to 2500 people armed with deadly weapons is resorting to rioting and arson near Hari Masjid, Sewree, Bombay and, therefore, Respondent 2 rushed to the site. The DCP also arrived at the site and tried to control the mob in order to restore peace. However, the mob turned more violent and even started attacking the police by resorting to firing from the side of Hari Masjid. Therefore, in order to maintain law and order and to save innocent people, the DCP ordered Respondent 2 to open fire. In obedience to the orders of the superior police officer, Respondent 2 and his staff opened fire, which resulted in the death of six persons.

In respect of the said incident, FIR came to be lodged on 10-1-1993 under Sections 143 to 149, 151, 153-B and 307 IPC read with Sections 3 and 25, Arms Act, 1959, and under Section 37(*i*), Bombay Police Act, against 50 accused persons and about 2000-2400 unknown wanted accused

(2)(i) Authority that may investigate and Role of court - Generally *(contd.)*

persons and Respondent 1 was specifically named in the FIR. After completion of the investigation, charge-sheet came to be filed before the competent court and as far as Respondent 1 was concerned, the trial against him was separated by court's order dated 5-8-2005.

On 5-8-2006, Respondent 1 filed a complaint and sought registration of FIR against Respondent 2 and other police officers in respect of the Hari Masjid incident. On 1-8-2007, Respondent 1 filed writ petition before the High Court and sought a writ of mandamus directing the Government to prosecute Respondent 2. By the impugned order dated 18-12-2008, the High Court allowed the writ petition by treating the writ petition as public interest litigation and directed CBI to register the case and investigate the said incident. Challenging the said order, the State filed this present appeal.

The main grievances of the State with regard to entrusting the investigation to CBI were as follows:

(*i*) Since, the Supreme Court was seized of the same matter in issue by entertaining two writ petitions under Article 32 and pending decision, the High Court ought not to have exercised jurisdiction under Article 226.

(*ii*) The State itself had constituted Special Task Force (STF) and proceeded with the investigation.

(*iii*) When adequate remedy was available under CrPC, the writ petition under Article 226 before the High Court was not the proper remedy and the High Court ought not to have entertained the same.

Dismissing the appeal,

Held :

As regards the second objection, by a Gazette Notification dated 25-1-1993, the State had appointed a Commission headed by Justice B.N. Srikrishna to enquire into the riots and various incidents which occurred during the riots in Mumbai. The Report of the Commission was published on 16-12-1998. The High Court had also noted the Commission's finding about the role of Respondent 2 in the Hari Masjid incident which was referred to in the Commission's Report and in the High Court's order. The STF only proceeded on the basis of the version given by the police witnesses. The High Court had observed that it is completely one-sided investigation and it is difficult to countenance an investigation where the statement of none of the injured witnesses was recorded and which was confined to reaching a conclusion on the basis of the statements of the police officers who were present at the time of incident, when the Commission had prima facie indicted that some of these officers have committed serious offences. In view of the factual opinion about the investigation of the STF by the Commission, there is no error in the decision of the High Court in ordering investigation by a special agency like CBI. Accordingly, the second contention is also rejected. (Paras 16 to 18)

Coming to the last submission, if any person is aggrieved by the inaction on part of the police or not getting proper response, there are adequate remedies provided under CrPC and it is for such person to seek relief with the aid of those provisions. However, in the case on hand, in view of the demolition of Babri Masjid on 6-12-1992, and riots in various places all over India including Mumbai on 10-1-1993, specific allegation in the complaint of Respondent 1, who was an affected person, coupled with the findings of the Srikrishna Commission accepted by the State, about how the STF conducted investigation and further assertion that the State Police did not examine the injured witnesses who were available at the spot and suffered a lot, it is an "extraordinary case" and Respondent 1 herein is fully justified in approaching the High Court seeking extraordinary jurisdiction for direction for entrusting the investigation to independent and special agency like CBI. Accordingly, the last contention is also rejected. (Paras 24 and 25)

Moreover, after the Notification of the Government dated 7-2-2008, consenting CBI to investigate the incident relating to Hari Masjid, it is not understandable as to the opposition of the direction of the High Court ordering CBI inquiry. (Para 26)

About the direction by the High Court, in exercise of its jurisdiction under Article 226, requesting CBI to investigate a cognizable offence within the territory of a State without its consent, it is held that in order to protect civil liberties, fundamental rights and more particularly Article 21, the Supreme Court and High Courts can very well exercise the power, which, no doubt, must be exercised sparingly, cautiously and in exceptional situations. (Para 29)

In the light of the above discussion, the stand of the State is not accepted and the High Court was right in ordering investigation by CBI. Taking note of the fact that the incident related to 1993 and also of the fact that CBI has already examined several persons, it is directed that CBI would continue and complete the investigation into the incident and file a final report to the Court concerned within a period of six months. (Para 30). *State of Maharashtra* v. *Farook Mohammed Kasim Mapkar*, (2010) 8 SCC 582.

Bench Strength 2. Coram : **P. Sathasivam** and , JJ. [Date of decision : 30-7-2010]

Gangadhar Janardan Mhatre v. *State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404; Hari Singh* v. *State of U.P., (2006) 5 SCC 733: (2006) 3 SCC (Cri) 63; Aleque Padamsee* v. *Union of India, (2007) 6 SCC 171: (2007) 3 SCC (Cri) 1, considered*

State of W.B. v. *Committee for Protection of Democratic Rights, (2010) 3 SCC 571: (2010) 2 SCC (Cri) 401, relied on*

[1318] — Ss. 157 & 155 and 41 to 44 & 46 and Ss. 437 to 439 — Investigation and arrest — Scope of judicial interference — *Held, role of investigator is well defined and the jurisdictional scope of interference by court in process of investigation is limited — Court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence — Constitution of India — Arts. 226 and 136* (Para 19). *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303: 2005 SCC (Cri) 933: AIR 2005 SC 1057: (2005) 117 DLT 686: (2005) 2 Mah LJ 259: 2005 Cri LJ 1706.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 21-2-2005]

[1319] — Ss. 157, 156, 165 and 482 — Stay of investigations — Interference by court with investigation justified only if by not doing so will result in miscarriage of justice — *Hence routine police investigations should not be stayed by court, more so on mere oral petitions — Constitution of India — Article 136*

Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences. In a routine case where information of an offence or offences has been lodged, investigation commenced, search and seizure followed and suspects arrested. Resort to the unusual procedure of oral applications and oral appeals and interim stay order thereon would have the effect of interfering and staying the investigation of offences by investigating officer performing statutory duty under CrPC. *Eastern Spg. Mills* v. *Rajiv Poddar*, 1989 Supp (2) SCC 385: AIR 1985 SC 1668.

Bench Strength 3. Coram: *D.A. Desai, V. Balakrishna Eradi* and *R.B. Misra*, JJ. [Date of decision: 3-5-1984]

See also State of W.B. v. *Sampat Lal, (1985) 1 SCC 317*

(ii) Police

[1320] — S. 156 — Investigation by complainant police officer himself — Validity of — Nothing pointed out to show that the said investigation has caused prejudice or was biased against the accused — *Hence, held, valid — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 8(c) r/w S. 20(b)(ii)*

The appellants were found guilty of offences under Section 8(*c*) read with Section 20(*b*)(*ii*) of the NDPS Act. They were found in possession of narcotic drug (*hashish*). The case was registered against the appellants on the basis of the statement of PW 8 (Inspector) who had conducted the search. Before the Supreme Court, it was argued that PW 8 was the complainant and he himself conducted the investigation and hence the entire investigation of the case was vitiated.

Dismissing the appeals,

Held :

In the instant case, PW 8 conducted the search and recovered the contraband article and registered the case. Thereafter as part of his official duty he investigated the case and filed a charge-sheet. He was not in any way personally interested in the case. There is no bias in the process of investigation. The appellants also could not point out any circumstances by which the investigation caused prejudice or was biased against them. The appellants were thus rightly convicted and sentenced by the courts below. (Paras 3 and 4). *S. Jeevanantham* v. *State*, (2004) 5 SCC 230: 2004 SCC (Cri) 1584.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *B.N. Srikrishna*, JJ. [Date of decision: 21-4-2004]

Megha Singh v. *State of Haryana, (1996) 11 SCC 709: 1997 SCC (Cri) 267, impliedly distinguished*

State v. *V. Jayapaul, (2004) 5 SCC 223, followed*

[1321] — Ss. 156, 154, 173 and 482 — Investigation by the same police officer who lodged the FIR — *Held, not barred by law — If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of IO — The question of bias would depend on the facts and circumstances of each case — Not proper to lay down a broad and unqualified proposition that such investigation necessarily would be unfair or biased — Inspector of Police, Vigilance & Anti-Corruption (appellant) receiving information about commission of offences in question — Hence, he preparing the FIR and registering the crime — Thereafter, investigating the matter and submitting a final report to the court — Held, said investigation not vitiated on the ground of bias or the like factor — High Court erred in quashing the proceedings on the said ground*

On receiving information that the respondent was indulging in corrupt practices by extracting money from the drivers and owners of the motor vehicles while conducting check of the vehicles and making use of certain bogus notice forms in the process, the Inspector of Police (Vigilance & Anti-Corruption), Tiruchirapalli prepared the first information report and registered the crime under Sections 420 and 201 IPC and Section 13(2) read with Section 13(1)(*d*) of the Prevention of

(2)(ii) Authority that may investigate and Role of court - Police *(contd.)*

Corruption Act, 1988. He then proceeded to take up investigation, gathered information, examined the witnesses and filed the charge- sheet in the court. The respondent was implicated for the offences under Sections 465, 468 IPC and Sections 7 and 13(2) read with Section 13(1)(*d*) of the PC Act. The respondent then moved the High Court of Madras to quash the said proceedings. The ground on which the High Court quashed the proceedings was that the investigation by the very same police officer who registered the case by lodging the first information would cause prejudice to the accused.

Allowing the appeal and setting aside the impugned order of the High Court,

Held :

There is nothing in the provisions of the Criminal Procedure Code which precluded the appellant from taking up the investigation. The fact that the said police officer prepared the FIR on the basis of the information received by him and registered the suspected crime does not disqualify him from taking up the investigation of the cognisable offence. A *suo motu* move on the part of the police officer to investigate a cognisable offence impelled by the information received from some sources is not outside the purview of the provisions contained in Sections 154 to 157 of the Code or any other provisions of the Code. (Para 4)

There is no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased. (Para 6)

In the present case, the police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore he made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties will then be vulnerable to attack. Thus, there is no illegality in the process of investigation set in motion by the appellant police officer and his action in submitting the final report to the Court of Special Judge. (Paras 6 and 13). *State* v. *V. Jayapaul*, (2004) 5 SCC 223: 2004 SCC (Cri) 1607: 2004 Cri LJ 1819.

Bench Strength **2**. Coram: *Ruma Pal* and **P. Venkatarama Reddi**, JJ. [Date of decision: 22-3-2004]

State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 SC 221: (1964) 1 Cri LJ 140, relied on

Megha Singh v. State of Haryana, (1996) 11 SCC 709: 1997 SCC (Cri) 267; Bhagwan Singh v. State of Rajasthan, (1976) 1 SCC 15: 1975 SCC (Cri) 737, explained and distinguished on facts

[1322] — Ss. 156 and 161 — Investigation by the very police officer who lodged the complaint — *Held, not conducive to fair and impartial investigation — Appellant apprehended by Constables PWs 2 and 3 and a pistol and live cartridges without any licence recovered from him — Evidence of PWs 2 and 3 discrepant regarding the number of cartridges recovered and as to the place from where the pistol was recovered — No other independent witness examined — Nevertheless, the designated court convicting the appellant under S. 6(1) of TADA and S. 25 of Arms Act — Held, the evidence did not inspire confidence — Further, it was on the complaint of PW 3 that a formal FIR was lodged — He being the complainant, PW 3 should not have proceeded with the investigation himself — Such practice against fair and impartial investigation — Conviction therefore set aside — TADA Act, 1987 — S. 6(1) — Arms Act, 1959 — S. 25. Megha Singh* v. *State of Haryana*, (1996) 11 SCC 709: 1997 SCC (Cri) 267: AIR 1995 SC 2339.

Bench Strength **2**. Coram: *G.N. Ray* and *Faizan Uddin*, JJ. [Date of decision: 9-2-1995]

[1323] — S. 156 — Investigation by the complainant Head Constable himself of offence of offering bribe — *Held, improper — S. 165-A, IPC. Bhagwan Singh* v. *State of Rajasthan*, (1976) 1 SCC 15: 1975 SCC (Cri) 737: AIR 1976 SC 985: 1976 Cri LJ 713.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 14-8-1975]

[1324] — Ss. 156 and 198 — Dowry death — Investigation directed to be proceeded with by an officer not below the rank of S.P. — *Mandamus to the concerned States — Constitution of India — Art. 32. Jt. Women's Programme* v. *State of Rajasthan*, 1987 Supp SCC 707: AIR 1987 SC 2060.

Bench Strength **2**. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 24-3-1987]

[1325] — Ss. 156 and 198 — Dowry death — *State Government directed to create a Special Dowry Cell associating one or two leading women Social Workers. Jt. Women's Programme* v. *State of Rajasthan*, 1987 Supp SCC 707: AIR 1987 SC 2060.

Bench Strength **2**. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 24-3-1987]

(iii) Other Agencies (including CBI)

See also CONSTITUTION OF INDIA, Arts. 32, 136 and 226 in Vol. 7, Vol. 8 and Vol. 9, *Complete Digest of Supreme Court Cases*, 2nd Edn., respectively

[1326] — Ss. 156 & 157 and 190, 200 & 203 — CBI enquiry — Writ petition seeking Court's direction to conduct enquiry by CBI into murder of petitioner's son, no action having been taken by police on FIR lodged by him — *Held, cannot be entertained in view of relevant provisions of CrPC — Constitution of India — Art. 32*

When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. A writ petition in such cases is not to be entertained. It is the case of the petitioner that he is under constant threat by some persons and his life and property are in danger. If he seeks any protection, it is the duty of the police officials concerned to provide such security as is warranted in the circumstances in accordance with law. (Paras 4 to 6). *Hari Singh* v. *State of U.P.*, (2006) 5 SCC 733: (2006) 3 SCC (Cri) 63: AIR 2006 SC 2464: (2006) 130 DLT 591: (2006) 3 KLT 269: (2006) 5 All LJ 345: 2006 Cri LJ 3283.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 16-6-2006]

All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India, (1996) 11 SCC 582: 1997 SCC (Cri) 303; Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310, relied on

Applied in Aleque Padamsee v. Union of India, (2007) 6 SCC 171

[1327] — S. 156 — Criminal law can be set in motion by anybody — Hence prosecution initiated by CBI instead of bank or financial institution whose money was subject-matter of offence, held, not improper — *Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946)*

The officials of UCO Bank and National Housing Bank who helped Harshad Mehta (since deceased) in siphoning off public money of Rs 40 crores were also charged for criminal breach of trust, apart from being charged for criminal conspiracy.

Held :

It is not the law that complaint petition under all circumstances must be made by banks and financial institutions whose money had been the subject-matter of offence. It is also not the law that suffering of loss is a sine qua non for recording a judgment of conviction. Criminal law can be set in motion by anybody. The prosecution was initiated on the basis of information received by Central Bureau of Investigation (CBI). CBI is entitled to do so not only in regard to its statutory powers contained in the Delhi Special Police Act but it was also entitled to take cognizance in terms of the report submitted by the Janakiraman Committee. The money involved in transfer is public money belonging to public sector banks. If transaction was illegal, as a result whereof, a private person, who was not expected to reap fruits of "call money" was allowed to retain the same for a period to make an unlawful gain therefrom, offence of criminal breach of trust must be held to have been committed. It is for the same reason the submission that as nobody ultimately suffered any loss, an offence under Section 409 of the Penal Code was not made out, cannot be accepted. A bank or financial institution may not suffer ultimate loss but if money has been allowed to be used by another person illegally for illegal

(2)(iii) Authority that may investigate and Role of court - Other Agencies (including CBI) *(contd.)*

purpose, ingredients of Section 405 of the Penal Code would get attracted. A case involving temporary embezzlement also attracts ingredients of Section 405 of the Penal Code. (Paras 150, 152 and 153). *R. Venkatkrishnan* v. *CBI*, (2009) 11 SCC 737.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

[1328] — Ss. 156 and 154 — Investigation by complainant — Propriety — Held, there is no legal bar — *Merely because the complainant conducted the investigation, that would not be sufficient to cast doubt on the prosecution version to hold that the same makes the prosecution version vulnerable — Matter has to be decided on a case-to-case basis without any universal generalisation* (Para 8). *Bhaskar Ramappa Madar* v. *State of Karnataka*, (2009) 11 SCC 690: 2009 Cri LJ 2422.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 31-3-2009]

Bhagwan Singh v. State of Rajasthan, (1976) 1 SCC 15: 1976 SCC (Cri) 737; Megha Singh v. State of Haryana, (1996) 11 SCC 709: 1997 SCC (Cri) 267, limited to facts of case

[1329] — S. 156 — Investigation by CBI in cognizable offence which took place within territory of a State — Whether court can make order in respect of, without consent of State Govt. concerned — *Held, said question was required to be settled by a larger Bench — Matter directed to be placed before Chief Justice of India for appropriate orders — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946) — Ss. 5 & 6* (Para 11). *State of W.B.* v. *Committee for Protection of Democratic Rights*, (2006) 12 SCC 534: (2007) 2 SCC (Cri) 100.

Bench Strength 2. Coram: *B.N. Agrawal* and *P.P. Naolekar*, JJ. [Date of decision: 8-11-2006]

Advance Insurance Co. v. Gurudasmal, (1970) 1 SCC 633: (1970) 3 SCR 881; Kazi Lhendup Dorji v. CBI, 1994 Supp (2) SCC 116: 1994 SCC (Cri) 873, distinguished

[1330] — Ss. 156 and 157 — Investigation by CBI into Cogentrix case/Police investigation — Held, cannot be ordered by High Court on the basis of mere suspicion — Cogentrix Mangalore power project case — *Award of power project by State (Karnataka) to foreign company (Cogentrix) — Suspicion of receipt of kickbacks by authorities concerned based on mere surmise and conjecture — On such suspicion only and without analysing the rival submissions of the parties, held, High Court was not justified in directing the State Govt. to get an investigation done through CBI when neither specific crime nor persons involved in the crime nor place of crime is known — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946) — S. 4 — Constitution of India — Art. 226*

The Central Electricity Authority conducted a power survey in India which indicated that the southern region including the State of Karnataka would face acute power shortage both in terms of peaking capacity as well as energy requirement. The National Thermal Power Corporation (for short "NTPC") in collaboration with the erstwhile USSR evinced interest in setting up a 2420 MW coal-fired super thermal power plant at the site at which KPCL had intended to set up a project. This proposed project was, therefore, entrusted to NTPC which also obtained clearance from the Department of Ecology and Environment and Forests, Government of Karnataka. However, the proposal to set up the project by NTPC with the aid from USSR did not materialise for various reasons including the disintegration of USSR. The Government of India invited Cogentrix Inc. established in USA to attend a seminar on the power sector in the month of June 1992 when the representatives of Cogentrix met the officials of the Karnataka Government and thereafter, Cogentrix forwarded a draft memorandum of understanding to the Government of India. The Government of Karnataka entered into MoUs with Cogentrix for setting up a 2 x 250 MW coal-based thermal power station at Mangalore and Bangalore. A detailed report of the tour made by the Chief Minister to USA, UK and Italy for holding discussions with different foreign companies was placed in the Cabinet meeting when it was also made known that two MoUs had been signed with M/s Cogentrix for thermal power projects at Mangalore and Bangalore, the details of which had been set out in the Cabinet note. On 19-11-1992, a new Government assumed office in the State of Karnataka headed by a new Chief Minister. Under the directions of the new Government, all MoUs signed by the previous Government were to be re-examined and brought before the Cabinet for its consideration again. The Chief Secretary of Government of Karnataka conducted meetings to review all MoUs which was attended by the senior officers of the Government such as the Additional Chief Secretary, the Finance Commissioner, Secretary to the Energy Minister, the Energy Secretary and Chairman, Karnataka Electricity Board. M/s Cogentrix thereafter requested the Government to extend the MoU and stating that due to siting difficulties at Bangalore it was agreed that the Bangalore project be deferred and that a 1000 MW project be developed at Mangalore. A Cabinet meeting was held and it was decided to permit the appellant to set up a 1000 MW thermal power plant at Mangalore to be implemented in three phases of 334 MW (each phase consisting of 2 units of 167 MW). This was widely publicised by publication in the Karnataka Gazette. Thereafter various steps were taken and in the meanwhile the Government of India, Secretariat for Industrial Approvals, Ministry of Industry, conveyed its approval to the proposal to set up the power plant in Mangalore to M/s Cogentrix and by an amendment made, China Light and Power was permitted by the Government of India to acquire equity holdings in the project. Thereupon, the Mangalore Power Company was incorporated under the Companies Act, 1956. Thereafter steps were taken to enter into a power purchase agreement. They also consulted Tata Energy Research Institute of India (TERI), GOPA of Germany and SAIC of USA. The power projects agreement, which incorporates the recommended configuration of 4 x 250 MW units, was signed between KEB and M/s Cogentrix Inc. The press release was made announcing entry of China Light and Power to Mangalore Power Plant. The power purchase agreement was placed before the State Legislature. A detailed project report was sent to the Central Electricity Authority in compliance with Sections 29, 30 and 31 of the Electricity (Supply) Act, 1948 for obtaining techno-economic clearance. A scheme was published in terms of Section 28 read with Section 29(2) of the Electricity (Supply) Act. The power purchase agreement stood revised and techno-economic clearance was issued by the Central Electricity Authority. And in the meanwhile the Govt. again changed in the State of Karnataka twice.

The respondents filed writ petitions in the High Court seeking investigation by appropriate agencies into the various allegations made by them and initiation of criminal proceedings against the guilty persons as per law. It was also prayed to set aside the power project entered by KEB with Mangalore Power Corporation (MPC) and reallot the power project through an open bidding process. The necessity for establishing a thermal power station was, in detail, considered by the High Court of Karnataka in *Jana Jagruthi Samithi* v. *Union of India*, (1991) 2 Kar LJ 524. The circumstance in which the Government of Karnataka took the decision to invite foreign investors, the manner in which it was done, was also the subject of consideration in *Indian Council for Enviro-Legal Action* v. *Union of India*, ILR 1997 Kant 2956 and the High Court rejected objections thereto which was not interfered with in SLP by the Supreme Court and thus that order became final.

However, the High Court by an order made on 27-2-1998 granted some of the reliefs sought for in the writ petition. It inter alia directed that: the State of Karnataka shall get an FIR registered with CBI under the provisions of the Delhi Special Police Establishment Act for various cognizable offences, without however, naming any person or group of persons as accused; and upon registration of the FIR, the Director General of CBI shall direct the investigation to be conducted by an officer under the supervision and control of an official not below the rank of Deputy Director General of CBI.

Allowing the appeals,

Held :

It is difficult to visualise that when an agreement had been entered into with a foreign company it has been done under suspicious circumstances, particularly when it had stood the test of scrutiny under three different Governments headed by at least three different Chief Ministers and when the examination of the project and its approval was considered by different statutory and other agencies of the Government of India. It cannot still be said that there had been kickbacks to any one of them or all of them in the matter of entering into a memorandum of understanding or in continuation of the same. The acts of persons will not be the subject of criminal investigation unless a crime is reported to have been committed or reasonable suspicion thereto arises. On mere conjecture or surmise as a flight of fancy that some crime might have been committed, somewhere, by somebody, but the crime is not known, the persons involved in it or the place of crime unknown, cannot be termed to be a reasonable basis at all for starting a criminal investigation. However condemnable be the nature or extent of corruption in the country, not all acts could be said to fall in that category. The attempt made by the High Court in this case appears to be in the nature of a blind shot fired in the dark without even knowing whether there is a prey at all. That may create sound and fury but not result in hunting down the prey. The High Court has looked at different circumstances in the case with a jaundiced eye, without giving due weight to the rival submissions made by the parties. The High Court has not at all analysed the contentions put forth by either party. Hardly any reasons are forthcoming in the order. What is stated by the writ petitioners and the respondents is summarised. When the High Court steers itself clear of expressing any opinion one way or the other even as to whether a prima facie case exists or not and whether there is a reasonable suspicion of any crime having been committed, it is difficult to accept the view taken by the High Court. (Para 16)

(2)(iii) Authority that may investigate and Role of court - Other Agencies (including CBI) *(contd.)*

Therefore, the order made by the High Court has got to be set aside, but this order will not preclude the parties concerned on finding appropriate material to place the same before any authorised agency to register the case and investigate the matter and, in the event there is any inaction on their part, may seek relief in an appropriate court. (Para 18). *State of Karnataka* v. *Arun Kumar Agarwal*, (2000) 1 SCC 210: 2000 SCC (Cri) 135: AIR 2000 SC 411.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **S. Rajendra Babu**, JJ. [Date of decision: 13-12-1999]

Vineet Narain v. Union of India, (1996) 2 SCC 199: 1996 SCC (Cri) 264, distinguished

Arun Kumar Agrawal v. State of Karnataka, (1999) 1 Kant LJ 603, reversed

[1331] — S. 156 — Adroit financial manipulations — Investigation agency for — *Finding the police and CBI to be not equipped to deal with cases of, hope expressed that Government would set up a cell having expertise to unravel and trace such frauds — Penal Code, 1860 — Ss. 25 and 409* (Para 28). *Pramod Malhotra* v. *Union of India*, (2004) 3 SCC 415: (2004) 120 Comp Cas 137: (2004) 111 DLT 605.

Bench Strength **2**. Coram: **S.N. Variava** and *H.K. Sema*, JJ. [Date of decision: 26-2-2004]

[1332] — Ss. 156 and 173(8) — ISRO Espionage case — Withdrawal of the consent given under S. 6, Delhi Special Police Establishment Act, 1946 — Impermissibility — *Investigation transferred and entrusted to CBI pursuant to the consent given by the State Government under S. 6 — CBI completing the investigation and submitting its report under S. 173(2) CrPC — Even at this stage withdrawal of the said consent by the State Government to enable the State Police to further investigate the case, held, patently invalid — S. 156 CrPC does not lead to a different conclusion — Even otherwise, on facts, the notification, held, mala fide — Rs 1 lakh each awarded as costs to the accused — Words and phrases — "Further" — Penal Code, 1860 — S. 34 — Official Secrets Act, 1923 — Ss. 3 and 4 — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946) — Ss. 6, 5(1) & (3), 2 and 3 and Preamble*

On the complaint of a Police Inspector, a case was registered by the Kerala Police against *M* and *F* (appellants herein), for offences punishable under Sections 3 and 4 of the Official Secrets Act, 1923 read with Section 34 IPC on the allegation that in collusion with some Indians and foreigners they had committed acts prejudicial to the safety and sovereignty of India. During the investigation certain other persons (appellants in accompanying appeals) were arrested. Thereafter, a DIG of Police, who was the head of the team conducting the investigation, recommended the case for being investigated by the CBI. Pursuant to that recommendation the Government of Kerala by a notification dated 2-12-1994 accorded its consent under Section 6 of the Delhi Special Police Establishment Act ("Act" for short) to investigation of the case by the CBI. Accordingly, the CBI took up the investigation. After completion of the investigation, on 16-4-1996 the CBI filed its report in final form under Section 173(2) CrPC stating that the charges were not proved and were false. Accepting the report, the Magistrate discharged the accused-appellants. Thereafter on 27-6-1996 the Government of Kerala issued a notification withdrawing the consent earlier given to the CBI to investigate the said case. The object of the said notification was to enable a *reinvestigation of the case* by a team of State Police Officers. By an amendatory notification dated 8-7-1996, the words 'reinvestigation of the case' were substituted by the words 'further investigation of the case'. The State Government notification dated 27-6-1996 (as amended) was upheld by the High Court. The State opposed the instant appeals on the ground that under Section 156 CrPC parallel or simultaneous investigation by two different agencies was permissible. The State added that, unlike *Kazi Lhendup Dorji case*, in the instant case, as the CBI had already completed the investigation and submitted its report in final form and that therefore the State Government was fully justified in withdrawing the consent for making a proper investigation into the offence in question. Rejecting these contentions and allowing the appeals,

Held :

From Section 173 CrPC it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right of "further" investigation under sub-section (8) but not "fresh investigation" or "reinvestigation". The dictionary meaning of "further" (when used as an adjective) is "additional; more; supplemental". "Further" investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. This conclusion is supported also by the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a "further" report or reports — and not fresh report or reports — regarding the "further" evidence obtained during such investigation. Once it is accepted that an investigation undertaken by CBI pursuant to a consent granted under Section 6 of the Act is to be completed, notwithstanding withdrawal of the consent, and that "further investigation" is a continuation of such investigation which culminates in a further police report under Section 173(8), it necessarily means that withdrawal of consent in the instant case would not entitle the State Police, to further investigate into the case. To put it differently, if any further investigation is to be made it is the CBI alone which can do so, for it was entrusted to investigate into the case by the State Government. Resultantly, the notification issued withdrawing the consent to enable the State Police to further investigate into the case is patently invalid and unsustainable in law.

Moreover, even assuming that the State Government had the requisite power and authority to issue the impugned notification, still the same would be liable to be quashed on the ground of mala fide exercise of power. Eloquent proof thereof is furnished by the following facts and circumstances as appearing on the record:

(*i*) Since the DIG had recommended the case to be transferred to the CBI on the grounds that: (*a*) the incidents of the case were spread over several States; (*b*) that State police might not be able to interrogate senior military personnel whose complicity was very likely; and (*c*) that the case was fit for being transferred to the CBI, it is not conceivable that the State Government would be able to pursue the investigation effectively as those impediments would still be there. The State's contention that its police officers, with the assistance of related organisations of the Central Government, could carry on effective and purposeful investigation cannot be accepted as the Central Government was satisfied with the report of the CBI and no affidavit was filed by the Central Government or any of those organisations to support the State's contention.

(*ii*) If the State Government found that the conclusions drawn by the CBI were not proper, the only course left to the State Government, was to ask the Central Government to take a different view of the materials collected during investigation and persuade it to lodge a complaint in accordance with Section 13 of the Official Secrets Act.

(*iii*) Though the investigation of the case centered round espionage activities in ISRO no complaint was made by it to that effect nor did it raise any grievance on that score.

(*iv*) In view of the stand taken by the Government of India, any further investigation by the State Government would be an exercise in futility.

(*v*) Though the duty of the investigating agency is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth, yet the Kerala Government wants the instant case to be further investigated by a team nominated by it with the avowed object of establishing that the accused-appellants are guilty, even after the investigating agency of its choice, the CBI, found that no case had been made out against them. If before taking up further investigation an opinion has already been formed regarding the guilt of the accused and, that too, at a stage when the commission of the offence itself is yet to be proved, it is obvious that the investigation cannot and will not be fair — and its outcome appears to be a foregone conclusion. *K. Chandrasekhar* v. *State of Kerala*, (1998) 5 SCC 223: 1998 SCC (Cri) 1291: AIR 1998 SC 2001: 1998 Cri LJ 2897.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 29-4-1998]

Kazi Lhendup Dorji v. Central Bureau of Investigation, 1994 Supp (2) SCC 116: 1994 SCC (Cri) 873; Jamuna Chaudhary v. State of Bihar, (1974) 3 SCC 774: 1974 SCC (Cri) 250, relied on

***Explained and distinguished in** State of A.P. v. A.S. Peter, (2008) 2 SCC 383*

[1333] — S. 156 — Investigating agency — Communal riots in the State of Gujarat — Post-Godhra riot cases — Investigation by SIT — Progress by SIT, reviewed — In view of thoroughness of discharge of duties by SIT in these cases, SIT directed to continue investigation until completion of trial in all the cases — *SIT to complete pending investigations or any further investigation that may arise in course of trials — SIT further directed to file supplementary charge-sheets in the cases concerned where SIT had found further material and/or identified other accused — Chairman SIT, to keep track of progress of trials and to submit quarterly reports to Supreme Court — SIT also permitted to move Supreme Court for any further directions found necessary* [Paras 4 and 40(*i*), (*vii*), (*x*), (*xi*) & (*xiii*)]. *NHRC* v. *State of Gujarat*, (2009) 6 SCC 767.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 1-5-2009]

NHRC v. State of Gujarat, (2009) 6 SCC 342: (2009) 2 SCC (Cri) 1055, referred to

(2)(iii) Authority that may investigate and Role of court - Other Agencies (including CBI) *(contd.)*

[1334] — Ss. 156 and 173 — State police/investigating agencies — Scope — *CID, held, is not a different investigating agency but a part of the investigating authorities of the State*

Section 36 of the Criminal Procedure Code, 1973 empowers a police officer, superior in rank to an officer in charge of a police station, to exercise the same powers throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his police station. It is not correct to contend that the investigation was taken up by a different agency. CID is a part of the investigating authorities of the State. It was, therefore, permissible for the higher authority to carry out or direct further investigation in the matter. (Paras 11, 12 and 18). *State of A.P.* v. *A.S. Peter*, (2008) 2 SCC 383: (2008) 1 SCC (Cri) 427: AIR 2008 SC 1052.

Bench Strength 2. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-12-2007]

[1335] — S. 156 — Investigation by CB CID — Direction for — When warranted — Offences of cheating, criminal misappropriation, etc. occurring at several places within the State concerned and also in other States — *High Court transferring investigation from Calcutta to State of U.P. without specifying any particular police station for that purpose — On these facts, held, investigating officer attached to one police station may feel handicapped in carrying out the investigation within the entire State — Further, it may also be necessary to investigate the matter even in other States — Hence, in such a case, investigation directed to be carried out by CB CID of the State concerned*

The order passed by the Allahabad High Court has been complied with. Some offences at various places situated within the State of U.P. had been committed. The High Court had not issued any direction as to which investigating officer attached to which police station of U.P. will have jurisdiction in the matter. The direction of the High Court, in that way is vague and indefinite. Investigating officer attached to one police station may feel handicapped in carrying out the investigation within the entire State. In this case, it may be necessary for the investigating officer to make investigation even in other States for the aforementioned purpose. (Para 36)

Therefore, by exercising extraordinary jurisdiction under Article 142 of the Constitution to subserve the interest of justice, the appeal is disposed of with directions that (*i*) further investigation must be carried out by CB CID of the State of U.P., (*ii*) the accused must surrender before the Chief Judicial Magistrate, Allahabad and their applications for grant of bail, if any, may be considered by the said court on its own merits, (*iii*) investigation must be carried out inter alia on the premise that the jurisdiction to make investigation would be subject to the ultimate decision of the Court of the Chief Metropolitan Magistrate, Calcutta as if investigations are being carried out by CB CID of the State of U.P. in continuation of the investigation made by the police officer of Calcutta, and (*iv*) the report on completion of the investigation must be forwarded to the Chief Metropolitan Magistrate, Calcutta who would determine the question of his own jurisdiction at an appropriate stage. (Para 38). *Asit Bhattacharjee* v. *Hanuman Prasad Ojha*, (2007) 5 SCC 786: (2007) 3 SCC (Cri) 31: AIR 2007 SC 1925: 2007 Cri LJ 3181: (2007) 104 Cut LT 488: (2007) 4 All LJ 567: (2007) 54 AIC 38 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *C.K. Thakker*, JJ. [Date of decision: 15-5-2007]

[1336] — S. 157 — Directions passed in the interest of justice — Direction for CBI investigation and prompt disposal of pending proceedings — *Considering the delay in the disposal of the pending contempt petition (9 years) and registration of an FIR against a police officer, Supreme Court directing matter to be investigated by CBI within three months and directing the High Court to dispose of the contempt petition within three months — Contempt of Courts Act, 1971, S. 2(b) — Constitution of India, Art. 142* (Paras 6, 8, 9 and 10). *Ramesh Kumari* v. *State (NCT of Delhi)*, (2006) 2 SCC 677: (2006) 1 SCC (Cri) 678: AIR 2006 SC 1322: 2006 Cri LJ 1622: (2006) 127 DLT 636: (2006) 2 KLT 404.

Bench Strength 2. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 21-2-2006]

(iv) Ss. 156 and 202 — Relative scope

See also S. 202, below

[1337] — Ss. 156 and 202 — Distinction between — Investigation by police under — *Held, investigation envisaged under S. 156 relates to commission of cognizable offence which starts with entry in the station house diary by officer in charge of police station and culminates in the report filed by police under S. 173 — Where a Magistrate directs investigation under S. 156 he has to do so before taking cognizance — S. 202 contemplates investigation of a limited nature which is directed by Magistrate either to* *police or any other person after taking cognizance* (Paras 17 and 18). *Dilawar Singh* v. *State of Delhi*, (2007) 12 SCC 641: (2008) 3 SCC (Cri) 330: AIR 2007 SC 3234: 2007 Cri LJ 4709.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 5-9-2007]

Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460, relied on

[1338] — Ss. 156 and 202 — Investigation envisaged under — Difference between, discussed

An application was filed by the appellant before the CJM alleging that the accused with the help of the Bank Manager had forged his signature in the documents showing him as a guarantor. The CJM directed the police to register the FIR and to investigate the case. After investigation charge-sheet was filed by the police. Respondent 1 filed an application under Section 482 CrPC for quashing the FIR, the charge-sheet and the order of the Magistrate by which he had taken cognizance, and the order directing the police to investigate the case under Section 156(3) CrPC. By the impugned order the High Court quashed the charge-sheet on the ground that the Magistrate had no power to order registration of the case. Hence the present appeal.

Allowing the appeal,

Held :

Any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) CrPC. But if he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) CrPC that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII CrPC only thereafter. (Para 11)

The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 CrPC. The investigation contemplated in Chapter XII can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 CrPC. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence. (Para 8)

But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV CrPC. A reading of Section 202(1) CrPC makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him. (Paras 9 and 10)

Chapter XII of the Code contains provisions relating to "information to the police and their powers to investigate", whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII deals with powers of the police officers to investigate cognizable offences. True, Section 202, which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code. (Para 7). *Mohd. Yousuf* v. *Afaq Jahan*, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460: AIR 2006 SC 705: (2006) 1 KLT 939: (2006) 2 Guj LR 1742: (2006) 38 AIC 70 (SC): 2006 Cri LJ 788.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 2-1-2006]

Suresh Chand Jain v. State of M.P., (2001) 2 SCC 628: 2001 SCC (Cri) 377, relied on

Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986: (1961) 2 Cri LJ 39; Narayandas Bhagwandas Madhavdas v. State of W.B., (1960) 1 SCR 93: AIR 1959 SC 1118: 1959 Cri LJ 1368, considered

***Distinguished on facts** in Raghu Raj Singh Rousha v. Shivam Sundaram Promoters (P) Ltd., (2009) 2 SCC 363*

(2)(iv) Authority that may investigate and Role of court - Ss. 156 and 202 — Relative scope *(contd.)*

[1339] — Ss. 156(3), 202(1), 202(2), 203 and 193 — Difference between investigation under Ss. 156(3) and 202(1) — Explained — Magistrate's discretion to keep a case for his own enquiry under S. 202(1) instead of directing police investigation under S. 156(3) — Permissibility — *Held, investigation under S. 156(3) is permissible at pre-cognizance stage while enquiry under S. 202(1) is at post-cognizance stage — Held on facts, there was no illegality in Magistrate keeping a case for his own enquiry under S. 202(1) — Further held, it is also open to Magistrate to dismiss the complaint under S. 203 or to commit the case to Court of Session under S. 193*

The appellant's brother was found dead at the place of his work. Post-mortem was conducted but medical officer reported that it was a case of natural death. The investigating officer on the basis of post-mortem report and statements of relatives closed the case. Dissatisfied with closure of investigation, the appellant filed a complaint before the Magistrate alleging commission of offences under Sections 302, 114 read with Section 120-B of the Penal Code, 1860, and prayed to the Magistrate for ordering investigation under Section 156(3). The Magistrate treated the appellant's complaint as complaint under Section 200 CrPC, and kept it for court enquiry under Section 202(1) CrPC and postponed issuance of process. The appellant filed special criminal application in the High Court praying that the Magistrate ought to have ordered enquiry under Section 156(3). This application was dismissed by the High Court. The appellant thereafter filed SLP in the Supreme Court.

Dismissing the appeal,

Held :

An investigation ordered by the Magistrate under Chapter XII [containing Section 156(3)] is at pre-cognizance stage and inquiry and/or investigation ordered under Section 202 is at post-cognizance stage. Power to direct investigation to police authorities is available to the Magistrate both under Section 156(3) and Section 202 CrPC. The only difference is the stage at which the power may be invoked by the Magistrate. The Magistrate in the present case has chosen to adopt latter course and has treated protest petition filed by the appellant as a complaint under Section 200 and thereafter proceeded under Section 202, and kept the matter with himself for an enquiry in the facts of the case. There is nothing irregular in the manner in which the Magistrate has proceeded and if at the stage of Section 202(2), the Magistrate deems it fit, he may either dismiss the complaint under Section 203 or proceed in terms of Section 193 and commit the case to the Court of Session. There is therefore no reason to interfere with the order of the Magistrate. (Paras 24 to 27). *Rameshbhai Pandurao Hedau* v. *State of Gujarat*, (2010) 4 SCC 185.

Bench Strength 2. Coram : **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision : 19-3-2010]

Suresh Chand Jain v. State of M.P., (2001) 2 SCC 628: 2001 SCC (Cri) 377; Dharmeshbhai Vasudevbhai v. State of Gujarat, (2009) 6 SCC 576: (2009) 3 SCC (Cri) 76; Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380; Dilawar Singh v. State of Delhi, (2007) 12 SCC 641: (2008) 3 SCC (Cri) 330; Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460, relied on

[1340] — Ss. 156 and 202 — Investigation envisaged under Ss. 156 and 202 — Difference between

Section 156, falling within Chapter XII, deals with powers of the police officers to investigate cognizable offences. Section 202 which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code. The significant point to be noticed is that when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence. A Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) CrPC would convince that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. (Paras 7 to 9). *Suresh Chand Jain* v. *State of M.P.*, (2001) 2 SCC 628: 2001 SCC (Cri) 377: AIR 2001 SC 571.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 10-1-2001]

(v) Transfer of investigation

See also Ss. 177 and 178, below

[1341] — Ss. 156 and 155 — Transfer of investigation to CBI — Directions for time-bound disposal of investigation — Investigations under Ss. 22 and 33-H, DCA, 1940 — Authorities for conducting — High Court transferring certain investigations being conducted by State Police and CBI to CVC — *CVC not having necessary infrastructure therefor, said investigations directed* *to be conducted by CBI, if necessary by custodial interrogation, under supervision of CVC — CBI directed to conclude investigation and file report within six months of this order — Drugs and Cosmetics Act, 1940 — Ss. 22 and 33-H. Maharashtra Antibiotics & Pharmaceuticals Ltd.* v. *Democratic Youth Federation of India*, (2005) 12 SCC 162.

Bench Strength 3. Coram: *N. Santosh Hegde, D.M. Dharmadhikari* and *S.B. Sinha*, JJ. [Date of decision: 29-3-2005]

[1342] — S. 156 — Transfer of case to Customs Officers — When warranted — Customs Officer vis-à-vis "police officer in charge of station" — Scope and powers — *Customs Officer in terms of notification vested with powers of police officer — Customs Officer empowered to investigate into commission of a cognizable offence and could file a charge-sheet — However, such vesting of police powers on Customs Officer does not take away powers of officer in charge of police station — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 42 and 53* (Paras 14 and 21). *Raju Premji* v. *Customs, NER, Shillong Unit*, (2009) 16 SCC 496.

Bench Strength 2. Coram: **S.B. Sinha** and *R.M. Lodha*, JJ. [Date of decision: 6-5-2009]

[1343] — S. 156 — Transfer of investigations (relating to financial trand) in different cases to one agency — *Finance companies accepting deposits from a large number of persons but not repaying them — FIRs lodged by depositors against Directors of such companies at different places in different States — Prayer of accused persons for transferring the investigation in all such cases to CBI, rejected — Penal Code, 1860 — Ss. 420, 406, 409, 120-B, 467, 468 and 471 — Negotiable Instruments Act, 1881 — S. 138 — Constitution of India — Art. 32*

The petitioners' prayer that the investigations of all cases should be transferred to CBI has to be rejected. (Para 62). *Narinderjit Singh Sahni* v. *Union of India*, (2002) 2 SCC 210: AIR 2001 SC 3810.

Bench Strength 3. Coram: *G.B. Pattanaik*, **U.C. Banerjee** and *S.N. Variava*, JJ. [Date of decision: 12-10-2001]

[1344] — Ss. 156 and 173(8) — Transfer of investigation — Death in police custody — *Case against police of committing murder by torture and conducting partisan investigation to shield guilty policemen, prima facie made out — Trial court before which charge-sheet already submitted directed to exercise its powers under S. 173(8) CrPC to direct CBI to make proper and thorough investigation in independent and objective manner and submit additional charge-sheet, if any, in accordance with law — Constitution of India — Arts. 136 and 226 — Penal Code, 1860 — Ss. 302/304 and 323/34. Kashmeri Devi* v. *Delhi Admn.*, 1988 Supp SCC 482: 1988 SCC (Cri) 864: AIR 1988 SC 1323.

Bench Strength 2. Coram: *K.N. Singh* and *M.H. Kania*, JJ. [Date of decision: 25-4-1988]

[1345] — S. 156 and Ss. 177, 178 & 181 — Order of High Court transferring investigation from one police station to other — Whether sustainable — *FIR lodged by appellant on 23-12-2006 at Vadodara Police Station under Ss. 406, 420 & 120-B IPC against respondents — Application for transfer of investigation filed by the respondents within a few days i.e. on 26-12-2006 — High Court by the impugned order passed on 28-12-2006 allowing the application and directing investigation to be transferred to Waghodia Police Station within whose jurisdiction respondent institution was situated — Transfer ordered without issuing notice to appellant informant and neither impleading him, considering the fact that Additional Public Prosecutor (APP) had waived service on behalf of opponent State — High Court neither assigning any reason while passing the impugned order, nor adverting to the question as to whether it had any jurisdiction to pass such order — Reason why the APP had made such a concession on first day of hearing also not known — Held, power of the court to interfere with an investigation is limited — Police authorities in terms of S. 156 CrPC exercise the statutory power to direct transfer of an investigation from one police station to another in the event it is found that they do not have any jurisdiction in the matter — Court should not interfere in the matter at an initial stage in regard thereto — If it is found that the investigation has been conducted by an investigating officer who did not have any territorial jurisdiction in the matter, the same should be transferred by him to the police station having the requisite jurisdiction — Investigation had to be carried out on the basis of the allegations made — Informant was required to be examined; statements of his witnesses were required to be taken; the accused were also required to be interrogated — Undue haste with which High Court exercised its jurisdiction, held, cannot be encouraged — FIR prima facie shows that a part of cause of action arose within the territorial jurisdiction of Vadodara Police Station — Waghodia Police Station where* the "institution" in question was situated was within the jurisdiction of Vadodara (District) and hence, it was not a case where the accused would have been even otherwise gravely prejudiced in joining the investigation (Paras 2 to 7, 9, 10 and 13). *Naresh Kavarchand Khatri* v. *State of Gujarat*, (2008) 8 SCC 300: (2008) 3 SCC (Cri) 614: AIR 2008 SC 2180: (2008) 2 KLT 747.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 8-5-2008]

Satvinder Kaur v. State (Govt. of NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503; Asit Bhattacharjee v. Hanuman Prasad Ojha, (2007) 5 SCC 786: (2007) 3 SCC (Cri) 31, relied on

(3) Investigation when may be initiated by Police Officer

See also Sections 155 to 159, '(5) Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court', below

[1346] — Ss. 157, 154 and 162 & 2(h) — Investigation when commences — Telephonic FIR

The question as to at what stage the investigation commences has to be considered and examined on the facts of each case, especially, when the information of a cognizable offence has been given on telephone. If the information given on telephone is not cryptic and on basis of that information, the officer in charge, is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including about the participants, shall be deemed to be a statement made by a person to the police officer "in the course of investigation", covered by S. 162 of the Code. *Ramsinh Bavaji Jadeja* v. *State of Gujarat*, (1994) 2 SCC 685: 1994 SCC (Cri) 609: 1994 Cri LJ 3067: (1994) 2 Punj LR 671: (1994) 1 MWN (Cri) 130: (1994) 1 GLH 329.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **N.P. Singh**, JJ. [Date of decision: 1-3-1994]

[1347] — Ss. 157 and 154 — There cannot be an enquiry without registering a criminal case. *Mohindro* v. *State of Punjab*, (2001) 9 SCC 581: AIR 2001 SC 2113: 2001 Cri LJ 2587.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *B.N. Agrawal*, JJ. [Date of decision: 4-1-2001]

[1348] — S. 157 — 'Reason to suspect'

The words 'reasons to suspect' in the context of the expression "reason to suspect the commission of an offence" would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the first information report as well in the annexures, if any, enclosed and any attending circumstances which may not amount to proof. *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604: 1992 Cri LJ 527.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 21-11-1990]

[1349] — S. 157 — 'Reason to suspect' — *Sufficient to commence investigation under — 'Reasonable suspicion' not required — S. 41(a) and (g) compared*

The expression "reason to suspect" as occurring in S. 157(1) is not qualified as in S. 41(*a*) and (*g*) of the Code, wherein the expression 'reasonable suspicion' is used. Therefore, what S. 157(1) requires is that the police officer should have 'reason to suspect' with regard to the commission of an offence. *Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260: 1993 SCC (Cri) 1171: AIR 1993 SC 1082: 1993 Cri LJ 859.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 17-12-1992]

[1350] — S. 157 — Conditions precedent to commencement of investigation by police — S. 157(1) and proviso (b) — Reason to suspect the commission of a cognizable offence and sufficiency of ground for entering on an investigation — *Both reason to suspect and sufficiency of ground must be based only on allegations made in FIR — 'Reason to suspect' — Meaning of*

The commencement of investigation by a police officer is subject to two conditions, firstly, the police officer should have reason to suspect the commission of a cognizable offence as required by S. 157(1) and secondly, the police officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated under clause (*b*) of the proviso to S. 157(1) of the Code.

The expression "*reason to suspect*" as occurring in S. 157(1) is not qualified as in S. 41(*a*) and (*g*) of the Code, wherein the expression, "reasonable suspicion" is used. As the words 'reason to suspect' are apparently clear, plain and unambiguous, considering the context and the object of the procedural provision in question, only the plain meaning rule is to be adopted so as to avoid any hardship or absurdity resulting therefrom and the words are used and also to be understood only in common parlance.

So read the expression "reason to suspect the commission of an offence" would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the first information report as well in the annexures, if any, enclosed and any attending circumstances which may not amount to proof. Therefore, the existence of the reason to suspect the commission of a cognizable offence has to be, prima facie, disclosed by the allegations made in the first information laid before the police officer under S. 154(1). The meaning of the expression "reason to suspect" has to be governed and dictated by the facts and circumstances of each case and at that stage the question of adequate proof of facts alleged in the first information report does not arise.

As clause (b) of the proviso to S. 157 permits the police officer to satisfy himself about the sufficiency of the ground even before entering on an investigation, it postulates that the police officer has to draw his satisfaction only on the materials which were placed before him at that stage, namely, the first information together with the documents, if any, enclosed. In other words, the police officer has to satisfy himself only on the allegations mentioned in the first information before he enters on an investigation as to whether those allegations do constitute a cognizable offence warranting an investigation. *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604: 1992 Cri LJ 527.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 21-11-1990]

[1351] — S. 157 — Initiation of investigation of cognizable offence — Basis for — Level of satisfaction of police office concerned required — "Reason to suspect the commission of a [cognizable] offence" — Import of — Suspicion if enough — *For taking up investigation in a cognizable case, it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed — If the police officer has reasons to suspect so, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation — There is no need for the police officer to be satisfied about the truthfulness of the information at this stage — Matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence, stated — Where the General Diary entry recorded on the basis of a telephonic information disclosed commission of a cognizable offence under S. 13 of the PC Act, 1988, held the SP, CBI rightly proceeded to intercept the accused and investigate the case*

The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. Further, at this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not furnish all the details, the police officer concerned must find out those details in the course of investigation and collect all the necessary evidence. (Para 20)

In the instant case, the information received by the Superintendent of Police, CBI clearly spells out the offence of criminal misconduct under Section 13 of the Prevention of Corruption Act, 1988. The allegation certainly gives rise to a suspicion that a cognizable offence may have been committed by the respondent, which the Superintendent of Police, CBI was empowered to investigate. Therefore if the Superintendent of Police, CBI proceeded to intercept the respondent and investigate the case, he did only that which he was in law obliged to do. His taking up the investigation, therefore, cannot be faulted. (Para 21)

The judgment and order of the High Court is set aside and the appellants are directed to proceed with the investigation in accordance with law and thereafter to take all steps as are required to be taken in law. (Para 24). *CBI* v. *Tapan Kumar Singh*, (2003) 6 SCC 175: 2003 SCC (Cri) 1305: AIR 2003 SC 4140: 2003 Cri LJ 2322.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 10-4-2003]

(3) Investigation when may be initiated by Police Officer *(contd.)*

[1352] — Ss. 157, 154 and 2(h) — Investigation, inquest and FIR — Validity, authenticity and evidentiary value — Telephonic information being basis of investigation and inquest — Formal FIR being lodged afterwards — *Held, investigation and inquest can start with telephonic information even prior to lodging of formal FIR and it would not affect trial and evidence in court — Submission that FIR loses its authenticity if lodged after inquest is a general proposition and cannot be universally applied — Prosecution case cannot be dismissed only because there is discrepancy in inquest report — Neither FIR, nor inquest report nor post-mortem report can be regarded as substantive pieces of evidence — FIR or inquest report may only be used to contradict or corroborate the maker thereof — Non-mention of accused in inquest report, held, may not mean that FIR was non-existent prior to inquest CrPC, 1973 — Ss. 154, 157, 2(h) and 174*

Submission that FIR loses its authenticity if it is lodged after the inquest report is recorded is a general proposition and cannot be universally applied. No doubt the inquest report was prepared by PW 8 at 9.30 p.m. and the formal FIR was lodged by PW 1 at 11.30 p.m. But it is also relevant that the investigation was started by PW 8 after receipt of telephonic information from PW 3 at 6:30 pm that the deceased was lying in a serious condition. And thereafter inquest report was prepared. (Paras 21 and 20)

The principle of law in Sections 2(*h*) and 157 CrPC is that when information regarding a cognizable offence is furnished to the police that information will be regarded as the FIR and all enquiries held by the police subsequent thereto would be treated as investigation, even though the formal registration of the FIR takes place only later. (Paras 26 to 31)

Neither FIR, nor inquest report nor post-mortem can be regarded as substantive pieces of evidence. FIR or inquest report may only be used to contradict or corroborate the maker thereof. Therefore, there is no merit in the submission of the counsel for the appellants. Any discrepancy occurring in the inquest report can neither be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. Assuming that some report was made on telephone and that was the real first information report, this by itself would not affect the appreciation of evidence made by the Sessions Judge and the conclusions of fact drawn by him. (Paras 31, 23 and 25)

The object of the inquest proceedings under Section 174 CrPC is to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what the cause of death is. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is foreign to the ambit and scope of the proceedings under Section 174 CrPC. Mention of the name of the accused and eyewitness in the inquest report is not necessary. Due to non-mentioning of the name of the accused in the inquest report, it cannot be inferred that FIR was not in existence at the time of inquest proceedings. (Paras 22 and 24). *Sambhu Das* v. *State of Assam*, (2010) 10 SCC 374: AIR 2010 SC 3300.

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **H.L. Dattu**, JJ. [Date of decision: 15-9-2010]

Maha Singh v. State (Delhi Admn.), (1976) 1 SCC 644: 1976 SCC (Cri) 135; State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 SC 221: (1964) 1 Cri LJ 140; Pedda Narayana v. State of A.P., (1975) 4 SCC 153: 1975 SCC (Cri) 427; George v. State of Kerala, (1998) 4 SCC 605: 1998 SCC (Cri) 1232; Suresh Rai v. State of Bihar, (2000) 4 SCC 84: 2000 SCC (Cri) 764, relied on

Balaka Singh v. State of Punjab, (1975) 4 SCC 511: 1975 SCC (Cri) 601; Ramesh Baburao Devaskar v. State of Maharashtra, (2007) 13 SCC 501: (2009) 1 SCC (Cri) 212, considered

[1353] — S. 157 — Police when obliged to investigate an offence — *Held, obligation to register a case is not to be confused with the remedy if the same is not registered — Registration of a case does not ipso facto warrant the setting in motion of an investigation, as the same is subject to discretion of police subject to Ss. 157(1) proviso & 157(2) in case of cognizable offences, and scheme of S. 155 in case of non-cognizable offences — S. 156(3) vests a discretionary power on a Magistrate empowered under S. 190 to order an investigation by a police officer as contemplated in S. 156(1)*

In this connection, it may be noted that though a police officer cannot investigate a non-cognizable offence on his own as in the case of cognizable offence, he can investigate a non-cognizable offence under the order of a Magistrate having power to try such non-cognizable case or commit the same for trial within the terms under Section 155(2) CrPC but subject to Section 155(3) CrPC. Further, under Section 155(4), where a case relates to two offences to which at least one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offences are non-cognizable and, therefore, under such circumstances the police officer can investigate such offences with the same powers as he has while investigating a cognizable offence. (Para 69)

The obligation to register a case is not to be confused with the remedy if same is not registered. The answer to the question whether the registration of a criminal case under Section 154(1) CrPC ipso facto warrants the setting in motion of an investigation under Chapter XII CrPC is provided by Sections 157(1) proviso and 157(2) CrPC. Section 156(3) vests a discretionary power on a Magistrate empowered under Section 190 to order an investigation by a police officer as contemplated in Section 156(1). Section 156(3) does not empower a Magistrate to stop an investigation undertaken by the police. (Paras 70, 71 and 73). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193: AIR 2007 SC 1274: (2007) 51 AIC 623 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[1354] — S. 157 — Investigation when may be commenced — Judicial interference when warranted — *Police investigation under, can be commenced only if FIR prima facie discloses commission of a cognizable offence — Where such offence is not disclosed, held, court is justified in interfering with the investigation and quashing the same — Constitution of India — Arts. 226 and 136*

Per Chandrachud, C.J. (Varadarajan, J. concurring)

The police do not have an unfettered discretion to commence investigation under S. 157 of the Code. Their right of enquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in *Khwaja Nazir Ahmad* case will apply. The court has then no power to stop the investigation. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received.

In the present case the FIR does not allege, directly or indirectly, that the firm was promoting or conducting a scheme for the making of quick or easy money, *dependent on any event or contingency relative or applicable to the enrolment of members into the scheme* ; nor does it contain any allegation whatsoever that persons who advanced or deposited their monies with the firm were participants of a scheme for the making of quick or easy money, *dependent upon any such event or contingency.* Since the FIR did not allege or disclose that the essential requirements of S. 2(*c*) read with Ss. 4 and 3 of the Act are prima facie satisfied, it cannot be said in the absence of any allegation whatsoever in that behalf, that there is "reason to suspect" the commission of that offence within the meaning of S. 157 of the Code of Criminal Procedure, so as to justify the investigation undertaken by the State authorities.

Therefore, the investigation which has been commenced upon the FIR is without jurisdiction and must, therefore, be quashed.

Per A.N. Sen, J. (concurring)

Whether an offence into which an investigation is made or to be made is disclosed or not must necessarily depend on the facts and circumstances of each particular case and in considering that question the court has mainly to take into consideration the complaint or FIR On a consideration of all the relevant materials, the court has to come to the conclusion whether an offence is disclosed or not. If on such consideration, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. If on the other hand, the court is satisfied that no offence is disclosed, it will be the duty of the court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.

As on facts and in the circumstances of the present case no offence under the Act is at all disclosed, it will be manifestly unjust to allow the process of Criminal Code to be issued or continued against the firm and to allow any investigation which will be clearly without any authority.

The proceedings against the firm and its partners arising out of the FIR must be quashed as the FIR and the other materials do not disclose any offence under the Act and as such no investigation into the affairs of the firm under the Act can be permitted or allowed to be continued. *State of W.B.* v. *Swapan Kumar Guha*, (1982) 1 SCC 561: 1982 SCC (Cri) 283: AIR 1982 SC 949: 1982 Cri LJ 819: (1982) 1 Comp LJ 217.

Bench Strength 3. Coram: **Y.V. Chandrachud, C.J.**[1] and **A. Varadarajan**[2] and **A.N. Sen**[3], JJ. [Date of decision: 2-2-1982]

(4) Section 155(4)

[1355] — Ss. 155(4), 157 and 198 — Facts disclosing both cognizable and non-cognizable offences relating to offences concerning marriage — Complaint not filed by aggrieved party — Police not debarred from investigating non-cognizable cases also and including them in the charge-sheet — *Complaint to the police in respect of offences under Ss. 498-A and 494 IPC lodged by the Women's Commission and not by the wife herself — Offence under S. 494 IPC being non-cognizable — Held, the High Court was not justified in quashing the charge under S. 494 IPC — Penal Code, 1860 — Ss. 494 and 498-A*

Sub-section (4) of Section 155 creates a legal fiction and provides that although a case may comprise of several offences of which some are cognizable and others are not, it would not be open to the police to investigate the cognizable offences only and omit the non-cognizable offences. Since the whole case (comprising cognizable and non-cognizable offences) is to be treated as cognizable, the police had no option but to investigate the whole of the case and to submit a charge-sheet in respect of all the offences, cognizable or non-cognizable both, provided it is found by the police during investigation that the offences appear, prima facie, to have been committed.

The statutory provision is specific, precise and clear and there is no ambiguity in the language employed in sub-section (4). It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in sub-section (4) provides that even a non-cognizable case shall, in that situation, be treated as cognizable. *State of Orissa* v. *Sharat Chandra Sahu*, (1996) 6 SCC 435: 1996 SCC (Cri) 1387: AIR 1997 SC 1.

Bench Strength **2**. Coram: *Kuldip Singh* and **S. Saghir Ahmad**, JJ. [Date of decision: 8-10-1996]

(5) Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court

See also CONSTITUTION OF INDIA, Arts. 32, 136 and 226 in Vol. 7, Vol. 8 and Vol. 9, *Complete Digest of Supreme Court Cases*, 2nd Edn., respectively

See also Sections 155 to 159 '(2) Authority that may investigate and Role of court', above, and

'(10) Defective investigation', and

'(11) Illegal/Partisan/Mala fide investigation — Effect and Quashment', below

See also Ss. 190 and 202, below

See also S. 154, '(4) Powers, Role and Duty of police in respect of FIR', and

'(5) Interference by court', above

[1356] — Ss. 156 & 157 and 190 & 200 to 203 — Information to police regarding commission of cognizable offence — No action taken by police — Course open to complainant — *Held, in such a case, complainant is given power under S. 190 read with S. 200 CrPC to lay down the complaint before the Magistrate concerned — Then the Magistrate is required to enquire into the complaint as provided in Ch. XV CrPC — Writ petition in such a case, held, not maintainable*

When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Criminal Procedure Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. A writ petition in such cases is not to be entertained. (Para 16). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India, (1996) 11 SCC 582: 1997 SCC (Cri) 303; Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404, relied on

[1357] — Ss. 156, 154 and 157 — FIR and investigation — Interference by Chief Minister of State (CM) — Invalidity and unwarrantedness — FIR alleging illegal moneylending under 1946 Bombay Act — *CM and his PS instructing Collector and police station concerned respectively not to lodge FIR and not to initiate action on any complaint lodged against an MLA and his family members and to seek legal opinion from Govern-*

ment Pleader — Said instructions and interference, held (per curiam), illegal, unwarranted, against equality and social justice — CM should have understood necessity of implementing Moneylenders Act and ground realities that many farmers were committing suicide due to atrocities of moneylenders — Said instructions therefore, condemned and set aside — Exemplary costs of Rs 10 lakhs imposed on State — Bombay Moneylenders Act, 1946 (31 of 1947), S. 32-B — Penal Code, 1860, Ss. 341, 342, 363, 392 and 504 r/w S. 34

The Collector in his order dated 5-6-2006 to the District Superintendent of Police referred to the meeting and instructions of the Chief Minister on 1-6-2006 and accordingly directed that if any complaint is received against a specified MLA or his family members, the said matter/complaint be placed for decision before the District Anti-Moneylending Committee and the said Committee should obtain the legal opinion of the District Government Pleader and then only take decision on the same and take appropriate legal action accordingly.

A complaint was lodged by Respondent 1 against the said MLA/family members under Sections 341, 342, 363, 392, 504 read with Section 34 IPC and Section 32-B of the Bombay Moneylenders Act, 1946. Station diary entry of the police station concerned where complaint had been lodged revealed that PS to the Chief Minister telephoned twice to the police station and directed that no action should be taken as instructed by the Chief Minister and that no offence should be registered.

The High Court after examining the provisions of the Bombay Moneylenders Act and also the materials on record held that the letter dated 5-6-2006 and the telephonic message recorded in the station diary entry exhibited gross abuse of power by the authority concerned and struck down both the communications.

Dismissing the appeal with costs of Rs 10 lakhs,

Held :

Per A.K. Ganguly, J. (for Singhvi, J. and himself)

The instruction of the Chief Minister to the Collector in their meeting dated 1-6-2006 as reflected in the Collector's order dated 5-6-2006 to the District Superintendent of Police has no warrant in law and is unconstitutional and is quashed. The order of the High Court is affirmed. Such instructions should not have come from the Chief Minister of a State which is governed under a Constitution which resolves to constitute India into a socialist, secular, democratic republic. The Chief Minister's instructions are so incongruous and anachronistic, being in defiance of all logic and reason, that it deeply disturbs the conscience. The same is condemned in no uncertain terms. (Paras 47 and 46)

If the information lodged with the police discloses cognizable offence, the police shall record the same in accordance with and under Section 154 CrPC. The police officer's power to investigate in case of a cognizable offence without order of the Magistrate is statutorily recognised under Section 156 CrPC. The police officer in charge of a police station, on the basis of information received or otherwise, can start investigation if he has reasons to suspect the commission of any cognizable offence. This is subject to Section 157 provisos (*a*) and (*b*) CrPC which leave discretion with the police officer in charge of police station to consider if the information is not of a serious nature, he may depute a subordinate officer to investigate and if it appears to the officer-in-charge that there does not exist sufficient ground, he shall not investigate. (Paras 29 and 30)

The law does not accord any special treatment to any person in respect of any complaint having been filed against him when it discloses the commission of any cognizable offence. It is a vital component of the rule of law. (Para 31)

The direction of the then Chief Minister to give special treatment to the MLA concerned and his family about registering of complaint filed against them is totally unwarranted in law. The way interference was caused first from the office of the Chief Minister by his Private Secretary by two telephone calls on 31-5-2006 and the manner in which the District Collector was summoned by the Chief Minister on the very next day i.e. 1-6-2006 for giving instructions to specially treat any complaints filed against the said MLA and his family has no precedent either in law or in public administration. (Paras 31 and 28)

From the affidavit filed by the Police Inspector concerned it is clear that 34 cases were filed against the said MLA and his family in respect of allegation of moneylending. From the communication of the Collector containing the instructions of the then Chief Minister, it is clear that the Chief Minister was aware of the various complaints. Even then the Chief Minister passed an order for special treatment in favour of the said family which is unknown to law and which is not available to other similarly placed persons. The Chief Minister was acting solely on political considerations to screen the family of the said MLA from the normal process of law. (Paras 32 to 34 and 20)

(5) Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court *(contd.)*

The argument that some of the cases in which complaints were filed against the family of the said MLA, were investigated and charge-sheets were filed, is a poor consolation and does not justify the issuing of the wholly unauthorised and unconstitutional instructions to the Collector. It is not known in how many cases investigation has been totally scuttled in view of the impugned directions. Records disclosed in this case show that out of 74 cases only in seven cases were charge-sheets filed and the rest of the cases were either compromised or withdrawn. How can poor farmers sustain their complaints in the face of such directions and how can the subordinate police officers carry on investigation ignoring such instructions of the Chief Minister? Therefore, the instructions of the Chief Minister have completely subverted the rule of law. (Paras 40 and 41)

The Chief Minister of the State of Maharashtra was expected to know that the farmers of the State specially those in the Vidarbha region are going through a great deal of suffering and hardship in the hands of moneylenders. (Para 31)

This being the ground reality, the Chief Minister of the State who holding a position of great responsibility as a high constitutional functionary, certainly acted beyond all legal norms by giving the impugned directions to the Collector to protect members of a particular family who are dealing in moneylending business, from the normal process of law. This amounts to bestowing special favour to some chosen few at the cost of the vast number of poor people who as farmers have taken loans and who have come to the authorities of law and order to register their complaints against torture and atrocities by the moneylenders. The instructions of the Chief Minister will certainly impede their access to legal redress and bring about a failure of the due process. (Para 38)

The aforesaid action of the Chief Minister is completely contrary to and inconsistent with the constitutional promise of equality and also the Preambular resolve of social and economic justice. As the Chief Minister of the State, he had taken a solemn oath of allegiance to the Constitution but the directions which he gave are wholly unconstitutional and seek to subvert the constitutional norms of equality and social justice. (Para 39)

Per G.S. Singhvi, J. (supplementing)

The instructions given by the Chief Minister to District Collector were *ex facie ultra vires* the provisions of the Act which do not envisage any role of the Chief Minister in cases involving violation of the provisions of the Act and amounted to an unwanted interference with the functioning of the authorities entrusted with the task of enforcing the Act enacted for regulating, controlling transactions of moneylending and protecting unsuspecting borrowers against oppression and harassment at the hands of unscrupulous moneylenders. The District Anti-Moneylending Committee was constituted by the Government of Maharashtra for protecting the farmers against unscrupulous moneylenders and not for protecting the wrong-doers, but in total disregard of the scheme of the Act, the Chief Minister gave instructions which had the effect of frustrating the object of the legislation enacted for protection of the farmers. (Para 71)

The camouflage of sophistry used by the Chief Minister in the instructions given by him and the affidavit filed before the Supreme Court is clearly misleading. The message to the authorities was loud and clear i.e. they were not to take the complaints against the family concerned seriously and not to proceed against them. The District Magistrate, the District Superintendent of Police and officers subordinate to them were bound to comply with the same in their letter and spirit. They could disregard those instructions at their own peril and none of them was expected to do so. (Para 70). *State of Maharashtra* v. *Sarangdharsingh Shivdassingh Chavan*, (2011) 1 SCC 577.

Bench Strength **2**. Coram: **G.S. Singhvi**^{2} and **A.K. Ganguly**^{1}, JJ. [Date of decision: 14-12-2010]

Lalita Kumari v. Govt. of U.P., (2008) 14 SCC 337: (2009) 2 SCC (Cri) 812, distinguished

[Ed.: *See also* Criminal Procedure Code, 1973, Ss. 155 to 159, '(5) Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court', pp. 404 et seq. in **Vol. 16**; and

S. 154, '(4)(i) — Powers, Role and Duty of police in respect of FIR — Generally', pp. 367 et seq. also in **Vol. 16**, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

[1358] — Ss. 156, 154, 157 and 190 — Refusal of police to initiate proceedings — Availability of a remedy under S. 156 r/w S. 190 CrPC bar to petition under Art. 227 of the Constitution of India — *Petition seeking directions to police station officers to take immediate cognizance of the complaints made by the petitioner (respondent before Supreme Court) and to register offences against certain persons — High Court disposing of the petition at the stage of admission itself and issuing certain directions — Held, High Court erred in entertaining the petition when remedy was available under S. 156 CrPC — Constitution of India — Art. 227* (Paras 3, 5 and 7). *Anandwardhan* v. *Pandurang*, (2005) 11 SCC 195.

Bench Strength **2**. Coram: *B.P. Singh* and *Arun Kumar*, JJ. [Date of decision: 24-1-2005]

[1359] — Ss. 156, 190 and 200 — Investigation by police in cognizable offence — Interference by writ court — Grounds for — Non-initiation of investigation by police — Remedy available to informant in case of — *Held, Higlh Court in exercise of its writ jurisdiction under Art. 226 can interfere with investigation only in the rarest of the rare case where a case of abuse of power of investigation and non-compliance with the provisions under Ch. XII CrPC is clearly made out — But, even in such cases, High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in CrPC — Where no action is taken by police on the information given to it, the informant's remedy lies under Ss. 190 and 200 CrPC and no writ petition in such a case must be entertained*

The High Court in exercise of its power under Article 226 can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and non-compliance with the provisions falling under Chapter XII CrPC is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in CrPC. Even in cases where no action is taken by the police on the information given to it, the informant's remedy lies under Sections 190 and 200 CrPC, but a writ petition in such a case is not to be entertained. (Paras 41 and 42). *Divine Retreat Centre* v. *State of Kerala*, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9: AIR 2008 SC 1614: (2008) 1 KLT 1042: 2008 Cri LJ 1891.

Bench Strength **2**. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-3-2008]

Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404, relied on

[1360] — Ss. 156 and 157 — Fair and impartial investigation — Right to — Scope of — Locus standi to seek enforcement of such right — *State has a duty to ensure such investigation against any person including its own officers, accused of commission of cognizable offence — Accused, victim and in certain situations even a witness to the crime can seek enforcement of their rights — Constitution of India — Arts. 21, 32 and 226*

The words "life" and "personal liberty" are used in Article 21 as compendious terms to include within themselves all the varieties of life which go to make up the personal liberties of a man and not merely the right to the continuance of a person's animal existence. All those aspects of life, which make a person live with human dignity are included within the meaning of the word "life". The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. Article 21 in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. In certain situations even a witness to the crime may seek for and shall be granted protection by the State. The right to life and personal liberty is paramount. Likewise, if Articles 14 and 19 are put out of operation, Article 32 will be drained of its life blood. [Paras 68(*ii*), 60, 61, 62 and 64]

Being the protectors of civil liberties of the citizens, the Supreme Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly. Therefore, a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. (Para 69). *State of W.B.* v. *Committee for Protection of Democratic Rights*, (2010) 3 SCC 571.

Bench Strength 5. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran, D.K. Jain, P. Sathasivam* and *J.M. Panchal*, JJ. [Date of decision : 17-2-2010]

[1361] — Ss. 156 and 157 — Investigation — Interference with — Power of writ court — Scope — *Held, ordinarily a writ court cannot direct investigative agency to carry out investigation in a particular manner — It can interfere with functioning of investigative agency only in exceptional cases — No such case was made out herein — Constitution of India — Arts. 226 and 32* (Para 30). *Shashikant* v. *CBI*, (2007) 1 SCC 630: (2007) 1 SCC (Cri) 406: AIR 2007 SC 351: (2007) 49 AIC 292 (SC): 2007 Cri LJ 995: (2007) 103 Cut LT 511.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 7-11-2006]

(5) **Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court** *(contd.)*

[1362] — Ss. 156 and 157 — Investigation — Judicial review of

It may be that in a given case permission granted by the Magistrate for investigation by a police officer of a rank lower than the designated rank may be judicially reviewable. The court would not attach any importance to any illegality in the matter of investigation if it is relied upon at the conclusion of a trial in the absence of prejudice pleaded and proved. *A.R. Antulay* v. *Ramdas Sriniwas Nayak*, (1984) 2 SCC 500: 1984 SCC (Cri) 277: AIR 1984 SC 718: 1984 Cri LJ 647: 1984 Bom LR 228.

Bench Strength 5. Coram: **D.A. Desai**, *R.S. Pathak*, *O. Chinnappa Reddy*, *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

[1363] — Ss. 156 and 482 — Interference in investigation and arrest in exercise of inherent powers of High Court — *12 cases pending between appellant and Respondent 6, while 8 cases pending between appellant and Respondent 5 — Appellant alleging that Respondents 5 and 6 were deliberately and intentionally implicating him by making false calls to the police, and that Respondent 4, who was a police officer, had searched his vehicle thrice with mala fide intention, but was unable to find any incriminating material — His attempt of getting his complaint registered having failed, he filed a petition under S. 482 CrPC for a direction to register a criminal case against Respondents 4 to 6 — High Court finding that Respondent 4 was only doing his duty and had no mala fide motive in searching appellant's vehicle — It also found no fault with alleged role played by Respondents 5 and 6 but left it open for the appellant to avail alternative remedy — In the SLP filed thereagainst, Supreme Court directing officer of rank of DIG, under direct supervision of DGP to make independent investigation as to whether Respondent 4 had attempted to harass the appellant by making endeavours to lodge cases under NDPS Act — Affidavit filed by DGP mentioning search of appellant's vehicle by Respondent 4 — Version given by Respondent 4 about secret information being conveyed to SP, not supported by the SP, while version given by the appellant that Respondent 4 had tried to take the car to police station, but he himself rushed to SP's residence, found correct — Further, it was also found that such search was not directed by SP — DGP finding that Respondent 4 and other local officers had acted in a male fide manner — In such circumstances, held, there was a need for investigation into the allegations — Hence, officer of the rank of DIG directed to investigate the case unbiasedly and independently taking into account previous history of litigation between parties — However, appellant's prayer for handing over investigation to CBI rejected — Constitution of India — Art. 136* (Paras 2 and 11 to 16). *Sarvsheel Mago* v. *State of Haryana*, (2008) 11 SCC 703: (2008) 3 SCC (Cri) 882.

Bench Strength 2. Coram: *S.B. Sinha* and **V.S. Sirpurkar**, JJ. [Date of decision: 25-3-2008]

[1364] — Ss. 157, 160 and 161 — Investigation — Court should not monitor investigation process unless such investigation transgresses any provision of law. *Dukhishyam Benupani* v. *Arun Kumar Bajoria*, (1998) 1 SCC 52: 1998 SCC (Cri) 261: AIR 1998 SC 696: (1998) 91 Comp Cas 413: 1998 Cri LJ 841.

Bench Strength 2. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 28-11-1997]

[1365] — Ss. 157, 156, 154 and 190 — Direction by High Court to register case and conduct investigation in offence which took place about 18 years ago — Challenge to, by aggrieved appellant — Sustainability — *Writ petition filed in 2004 by Respondent 3 seeking direction for registration of case against appellant in respect of case relating to year 1986 in which Respondent 3 was attacked and had suffered injuries — Impugned direction based on enquiry report of Dy. Inspector General, CID who conducted enquiry at the instance of High Court — Considering the peculiar facts and circumstances of the case, held, judgment of High Court not liable to be interfered with — Hence, upheld — Constitution of India — Art. 226*

A writ petition was filed by Respondent 3 before the High Court alleging inaction on the part of the police authorities in not registering his complaint and taking action against the persons who had caused injuries to him and his sons in an incident occurring on 8-11-1986. The Single Judge of the High Court directed the Director General of Police (DGP) to appoint a senior police officer to conduct an enquiry into the matter. Pursuant to that order, the Dy. Inspector General, CID conducted the enquiry and submitted a report. The Single Judge held that once it was established that Respondent 3 had sustained injuries in the incident and injuries on his person were confirmed in the medical examination, the police authorities ought to have registered a case and taken appropriate steps in accordance with law. On the basis of the final report of the inquiry, the Single Judge directed the Superintendent of Police to register a case in the police station of competent jurisdiction and take action in accordance with law. The application filed by the appellant for recalling the said order was dismissed. Hence, the present appeal.

As per the appellant, he was tenant in the house of Respondent 3. Respondent 3 attempted to illegally evict the appellant from his rented house with the help of antisocial elements who came to his house armed with weapons on 8-11-1986. Respondent 3 along with his men started dismantling the house of the appellant without prior permission and/or notice to him. The appellant was seriously injured when he tried to obstruct them from dismantling the house. The appellant lodged a first information report under Sections 147/307 IPC against Respondent 3 and his men. Later, the said criminal case was withdrawn by the Public Prosecutor. The revision filed before the High Court against the said withdrawal was dismissed.

Before the Supreme Court the appellant contended that the High Court ought not to have passed any direction in the writ petition filed by Respondent 3 because it was filed after undue delay. The appellant was also aggrieved by the order of withdrawal of the prosecution against Respondent 3.

Dismissing the appeal,

Held :

The order of the High Court was primarily based on the report of the DIG, CID, Gwalior who had conducted the inquiry at the instance of the Court and submitted the report. On the basis of the inquiry report, the High Court directed the Superintendent of Police, Gwalior to take action for registration of the case and conduct the investigation and inquiry in accordance with law. (Para 21)

The impugned judgment of the High Court has been carefully examined. There is no infirmity therein. In the backdrop of the peculiar facts and circumstances of the case, no interference is called for. (Paras 22 and 23). *Ghanshyam* v. *State of M.P.*, (2006) 10 SCC 473: (2006) 3 SCC (Cri) 602.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[1366] — Ss. 157, 160, 167, 170, 190 and 319 — Investigation — Court cannot direct IO that any person be included as an accused. *CBI v. Niyamavedi*, (1995) 3 SCC 601: 1995 SCC (Cri) 558: 1995 Cri LJ 2917.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and *K.S. Paripoornan* and **Sujata V. Manohar**, JJ. [Date of decision: 5-4-1995]

[1367] — Ss. 157, 162, 173(6) and 172 — Interference by Courts in investigation — Statement recorded by police during investigation and police diaries — Use of — *ISRO Espionage case — Court should not disclose material contained in police diaries and statements recorded during investigation — Nor should it make comments on manner of investigation or make observations amounting to interference in investigation — Directions given by the High Court to the Director, CBI in regard to the investigation matters disapproved — However, High Court was right in expressing a general view that the investigation agency must act in an efficient and vigilant manner without being pressurised. CBI* v. *Niyamavedi*, (1995) 3 SCC 601: 1995 SCC (Cri) 558: 1995 Cri LJ 2917.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and *K.S. Paripoornan* and **Sujata V. Manohar**, JJ. [Date of decision: 5-4-1995]

[1368] — Ss. 156 and 157 — Interference with criminal investigation — Monitoring of investigations by courts in respect of offences allegedly committed, when investigation had already commenced by investigating agency — When warranted — *Land dispute between appellant and respondent landowners — Respondents commencing various litigations against appellant — FIR filed in relation thereto — High Court, in writ concerned, directing investigating authority concerned to submit action-taken report with respect to investigation carried out in FIR — Sustainability — Held, normally investigation of offences is function of investigating agencies and courts do not ordinarily interfere with the same — But, at the same time, High Court is vested with such powers, though the same are invoked only in cases where extraordinary facts are involved, necessitating such monitoring by courts — When required, not only can High Court or Supreme Court direct investigating agencies to conduct investigation in a fair and unbiased manner, but in exercise of powers under Art. 142, Supreme Court can also issue directions for enforcement of fundamental rights and to ensure that complete justice is done to parties — Therefore, in appropriate cases, courts may monitor investigation into offence, when it is satisfied that either investigation is not being proceeded with or is being influenced by interested persons — On facts, progress of investigation herein was tardy and slow — Hence, High Court rightly adopted procedure for keeping a watch over investigation in order to prevent a miscarriage of justice — It repeatedly intervened and passed orders to ensure that investigation was being conducted diligently — Periodical status reports were required in that regard — Only after High Court began monitoring progress of investigation that investigating authorities began to deal with the matter with some amount of seriousness — Hence, no interference warranted*

(5) **Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court** *(contd.)*

with orders of High Court — Investigating authorities directed to proceed in the manner indicated by High Court — Constitution of India — Arts. 226, 227, 32, 136 and 142 (Paras 13, 41, 49, 51, 42, 43, 47 and 52). *Babubhai Jamnadas Patel* v. *State of Gujarat*, (2009) 9 SCC 610.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 2-9-2009]

S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; Kashmeri Devi v. Delhi Admn., 1988 Supp SCC 482: 1988 SCC (Cri) 864; State of Bihar v. Ranchi Zila Samta Party, (1996) 3 SCC 682; Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307; State of W.B. v. Nuruddin Mallick, (1998) 8 SCC 143: 1999 SCC (L&S) 144; Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441: (2009) 1 SCC (Cri) 523; Gudalure M.J. Cherian v. Union of India, (1992) 1 SCC 397; Comptroller and Auditor General of India v. K.S. Jagannathan, (1986) 2 SCC 679: 1986 SCC (L&S) 345: (1986) 1 ATC 1, relied on

[1369] — S. 157 — Investigation — Non-investigation after lodging of FIR — Interference by Supreme Court — *Police not proceeding/investigating FIR on ground that custody of accused could not be taken — Accused involved in other cases against him in Kanpur and Delhi, pending at various stages — Custody of petitioner applicant directed to be taken by Mumbai police in present case after cases in Kanpur and Delhi were over, and matter to proceed thereafter. Om Prakash Srivastava* v. *Union of India*, (2005) 12 SCC 458.

Bench Strength **2**. Coram: *S.N. Variava* and *H.K. Sema*, JJ. [Date of decision: 24-1-2005]

[1370] — S. 157 — Investigation — Stay of — Issuance of show-cause notice to investigating agencies by High Court — Effect — *Held, issuance of show-cause notice does not necessarily mean that further investigation cannot be done. Directorate of Enforcement* v. *Guru Swarup Srivastava*, (2006) 6 SCC 350: (2006) 3 SCC (Cri) 211.

Bench Strength **2**. Coram: *Arijit Pasayat* and *Altamas Kabir*, JJ. [Date of decision: 14-6-2006]

[1371] — Ss. 157 and 156 — Investigation by police — Power of police not unrestricted — *In case of illegal and improper exercise of investigatory powers in violation of statutory provisions Court would interfere*

The investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds. A noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. No one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will tantamount to recognition of 'Divine Power' which no authority on earth can enjoy. *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604: 1992 Cri LJ 527.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 21-11-1990]

[1372] — S. 157 — Police Investigation — Interference with by the court — Limitations — *Held, interference by the court at the investigation stage is not called for — However, the investigating agency cannot be given the latitude of protracting the conclusion of the investigation without any limit of time* (Para 5). *Mahendra Lal Das* v. *State of Bihar*, (2002) 1 SCC 149: 2002 SCC (Cri) 110: AIR 2001 SC 2989.

Bench Strength **2**. Coram: *M.B. Shah* and **R.P. Sethi**, JJ. [Date of decision: 12-10-2001]

[1373] — S. 157 — Investigation when may be commenced — Judicial interference when warranted — *Police investigation under, can be commenced only if FIR prima facie discloses commission of a cognizable offence — Where such offence is not disclosed, held, court is justified in interfering with the investigation and quashing the same — Constitution of India — Arts. 226 and 136*

Per Chandrachud, C.J. (Varadarajan, J. concurring)

The police do not have an unfettered discretion to commence investigation under S. 157 of the Code. Their right of enquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in *Khwaja Nazir Ahmad* case will apply. The court has then no power to stop the investigation. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received.

In the present case the FIR does not allege, directly or indirectly, that the firm was promoting or conducting a scheme for the making of quick or easy money, *dependent on any event or contingency relative or applicable to the enrolment of members into the scheme* ; nor does it contain any allegation whatsoever that persons who advanced or deposited their monies with the firm were participants of a scheme for the making of quick or easy money, *dependent upon any such event or contingency.* Since the FIR did not allege or disclose that the essential requirements of S. 2(*c*) read with Ss. 4 and 3 of the Act are prima facie satisfied, it cannot be said in the absence of any allegation whatsoever in that behalf, that there is "reason to suspect" the commission of that offence within the meaning of S. 157 of the Code of Criminal Procedure, so as to justify the investigation undertaken by the State authorities.

Therefore, the investigation which has been commenced upon the FIR is without jurisdiction and must, therefore, be quashed.

Per A.N. Sen, J. (concurring)

Whether an offence into which an investigation is made or to be made is disclosed or not must necessarily depend on the facts and circumstances of each particular case and in considering that question the court has mainly to take into consideration the complaint or FIR On a consideration of all the relevant materials, the court has to come to the conclusion whether an offence is disclosed or not. If on such consideration, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. If on the other hand, the court is satisfied that no offence is disclosed, it will be the duty of the court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.

As on facts and in the circumstances of the present case no offence under the Act is at all disclosed, it will be manifestly unjust to allow the process of Criminal Code to be issued or continued against the firm and to allow any investigation which will be clearly without any authority.

The proceedings against the firm and its partners arising out of the FIR must be quashed as the FIR and the other materials do not disclose any offence under the Act and as such no investigation into the affairs of the firm under the Act can be permitted or allowed to be continued. *State of W.B.* v. *Swapan Kumar Guha*, (1982) 1 SCC 561: 1982 SCC (Cri) 283: AIR 1982 SC 949: 1982 Cri LJ 819: (1982) 1 Comp LJ 217.

Bench Strength 3. Coram: **Y.V. Chandrachud, C.J.**[1] and **A. Varadarajan**[2] and **A.N. Sen**[3], JJ. [Date of decision: 2-2-1982]

[1374] — Ss. 157 & 156 — Fresh investigation — When can be directed by court — Ordinarily further investigation, not reinvestigation, permissible — "Ordinary" excludes extraordinary — *Court's interference with investigation warranted only in extraordinary or exceptional cases of gross abuse of power and failure of justice — Court would direct de novo investigation to prevent miscarriage of justice, if investigation is tainted and biased, suffers from irregularities and conducted in mala fide exercise of power by police causing serious prejudice and harassment to any party — Charge-sheet filed and any other order issued by investigating agency pursuant to such vitiated investigation also liable to be quashed — Constitution of India — Arts. 136 and 14*

Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer "is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth". (Paras 45 and 32)

(5) Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court *(contd.)*

Where the court comes to the conclusion that there was a serious irregularity in the investigation that had taken place, the court may direct a further investigation under Section 173(8) CrPC, even transferring the investigation to an independent agency, rather than directing a reinvestigation. Scheme of investigation, particularly, Section 173(8) CrPC provides for further investigation and not reinvestigation. Therefore, if the court comes to the conclusion that the investigation has been done in a manner with an object of helping a party, the court may direct for further investigation and *ordinarily* not for reinvestigation. The expression "*ordinarily*" means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. "Ordinarily" excludes "extraordinary" or "special circumstances". Therefore, unless an extraordinary case of gross abuse of power is made out by those in charge of the investigation, the court should be quite loathe to interfere with the investigation, a field of activity reserved for the police and the executive. In exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary, may direct for investigation de novo wherein the case presents exceptional circumstances. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation. Thus, in case of a mala fide exercise of power by a police officer the court may interfere. (Paras 37, 40, 41, 38, 42 and 45)

In the instant case, admittedly, the High Court has given detailed reasons for coming to the conclusion that the investigation has been totally one-sided, biased and mala fide. One party has been favoured by the investigating agency. The natural corollary to this finding is that the other party has been harassed in an unwarranted manner. Thus, the cause of the other party has been prejudiced. Even before the High Court conduct of the party and investigating agency was found to have not been fair. (Paras 43 and 29)

The charge-sheets filed by the investigating agency in both the cases are against the same set of accused. A charge-sheet is the outcome of an investigation. If the investigation has not been conducted fairly, such investigation would ultimately prove to be a precursor of miscarriage of criminal justice. In such a case the court would simply try to decipher the truth only on the basis of guess or conjectures as the whole truth would not come before it. It will be difficult for the court to determine how the incident took place wherein three persons died and so many persons including the complainant and the accused got injured. (Para 44)

Thus, the order of the High Court requires modification to the extent that the charge-sheets in both the cases and any order consequent thereto stand quashed. In case any of the accused could not get bail because of the pendency of these appeals before the Supreme Court, it shall be open to him to apply for bail or any other relief before the appropriate forum. (Para 46). *Babubhai* v. *State of Gujarat*, (2010) 12 SCC 254.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 26-8-2010]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; Jamuna Chaudhary v. State of Bihar, (1974) 3 SCC 774: 1974 SCC (Cri) 250; Mahmood v. State of U.P., (1976) 1 SCC 542: 1976 SCC (Cri) 72; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Navinchandra N. Majithia v. State of Meghalaya, (2000) 8 SCC 323: 2000 SCC (Cri) 1510; K. Chandrasekhar v. State of Kerala, (1998) 5 SCC 223: 1998 SCC (Cri) 1291; Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631; Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047; Kishan Lal v. Dharmendra Bafna, (2009) 7 SCC 685: (2009) 3 SCC (Cri) 611; S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; Kashmeri Devi v. Delhi Admn., 1988 Supp SCC 482: 1988 SCC (Cri) 864; Kailash Chandra v. Union of India, AIR 1961 SC 1346; Eicher Tractors Ltd. v. Commr. of Customs, (2001) 1 SCC 315; State of A.P. v. V. Sarma Rao, (2007) 2 SCC 159: (2007) 1 SCC (Cri) 535; Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441: (2009) 1 SCC (Cri) 523; Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1: (2010) 2 SCC (Cri) 1385, relied on

[1375] — Ss. 157 to 173 — Criminal investigation open to challenge on ground of violation of Art. 21 if investigation not conducted with due observance of procedure. *State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192: AIR 1991 SC 1260.

Bench Strength **2**. Coram: **Kuldip Singh**[1] and **K. Ramaswamy**[2], JJ. [Date of decision: 2-4-1991]

[1376] — Ss. 157 to 173 — Investigation — Scope of judicial review — Mala fide exercise of power by investigator open to court's interference — *Function of judiciary in the course of police investigation is complementary — Except to the extent expressly prohibited by the Code, the Evidence Act and the Constitution, full freedom should be accorded to the investigator to conduct investigation and collect evidence*

Per K. Ramaswamy, J.

The Magistrate is empowered to consider the police report and on satisfying himself that the accused prima facie committed the offence, take cognizance of the offence and would issue process or warrant to the accused, if on bail, to appear on a date fixed for trial or to commit him for trial to the Court of Session. It is not incumbent upon the Magistrate to accept the report of the investigating officer that there is no sufficient evidence or reasonable ground to connect the accused with the commission of the crime; he may direct further investigation or suo motu the investigator may himself submit supplemental charge-sheet under S. 173(8) if he subsequently becomes aware of certain facts or itself or through a subordinate Magistrate to make further enquiry or to take cognizance of the offence upon consideration of the material so placed before him and take further steps as aforesaid. Then only proceedings in a criminal case stands commenced. Taking cognizance of the offence is coterminus with the power of the police to investigate in the crime. Until then there is no power to the Magistrate except on a private complaint in a cognizable/non-cognizable offence to direct the police to investigate into the offence. The Magistrate is not empowered to interfere with the investigation by the police.

However, in an appropriate case where after registering the crime if no expeditious investigation for unexplained reasons was done the Magistrate or the High Court, on satisfying the grounds, may direct completion of the investigation within a reasonable time.

"The function of the judiciary and the police are complementary, not overlapping" and "the court's functions begin when a charge is preferred before it, and not until then". *State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192: AIR 1991 SC 1260.

Bench Strength **2**. Coram: **Kuldip Singh**[1] and **K. Ramaswamy**[2], JJ. [Date of decision: 2-4-1991]

S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: (1970) 3 SCR 946; State of Bihar v. J.A.C. Saldhana, (1980) 1 SCC 554: 1980 SCC (Cri) 272: (1980) 2 SCR 16; State of W.B. v. Sampat Lal, (1985) 1 SCC 317: 1985 SCC (Cri) 62, relied on

[1377] — Ss. 157 & 155 and 190 — Investigation by police and cognizance by Magistrate — Grounds for — Effect of complaint having been filed by political opponent — Effect of actuation by malice — *Held, merely because a political opponent was the complainant does not per se lead to an inference that the complaint has to be thrown out — If the use of the power is for fulfilment of a legitimate object, the actuation or catalysation by malice is not fatal — The ultimate test is whether the allegations have any substance*

So far as the allegation that a political opponent had lodged the complaint is concerned, that itself is not sufficient for the court to interfere. When the allegation is made, investigation is undertaken to find out whether there is any substance in the allegation. Merely because the political opponent was the complainant that does not per se lead to an inference that the complaint has to be thrown out or that no notice should be taken thereof. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained. (Paras 62, 72 and 74). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193: AIR 2007 SC 1274: (2007) 51 AIC 623 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[1378] — Ss. 157 & 155 and 190 — Investigation by police and cognizance by Magistrate — Grounds for — Effect of complaint having been filed by political opponent — Effect of actuation by malice — *Held, reiterating the view taken in* Parkash Singh Badal case, *(2007) 1 SCC 1, even though there may be an element of personal or political rivalry, it is not the credibility of the person who makes the allegations but the existence of materials necessitating investigation which is relevant — However, in light of certain materials not having been before High Court, High Court directed to consider the matter relating to plea of mala fides, for which parties permitted to place relevant materials on record* (Paras 5 and 11). *K. Karunakaran* v. *State of Kerala*, (2007) 1 SCC 59: (2007) 1 SCC (Cri) 251: (2007) 1 KLT 58: (2007) 208 ELT 322: (2007) 208 ELT 322: (2007) 51 AIC 621 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183: 1984 SCC (Cri) 172; Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1, followed

[1379] — Ss. 157, 156 and 159 — Magistrate cannot normally interfere with the police investigation proceeding in compliance with the statutory provisions — *Magistrate can intervene only when police officer decides not to investigate*

After registration of a case under S. 154(1), the police have a statutory right under S. 156(1) to investigate any cognizable case without requiring sanction of a Magistrate. The core of Ss. 156, 157 and 159 of the Code is that if a police officer has reason to suspect the commission of a cognizable

(5) **Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court** *(contd.)*

offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate; that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code. *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604: 1992 Cri LJ 527.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 21-11-1990]

[1380] — Ss. 157, 156, 169, 170, 173 and 190 & 173(8) — Investigation — Interference with, by Magistrate — *Held, Magistrate cannot interfere with the investigation — Position same for corruption cases — Prevention of Corruption Act, 1947 — S. 7-A — Prevention of Corruption Act, 1988 — S. 22*

The provision in Chap. XII CrPC shows that detailed and elaborate provisions have been made for securing that an investigation takes place regarding an offence of which information has been given and the same is done in accordance with the provisions of the Code. The manner and the method of conducting the investigation are left entirely to the officer in charge of the police station or a subordinate officer deputed by him. A Magistrate has no power to interfere with the same. The formation of the opinion whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to a Magistrate or not as contemplated by Sections 169 and 170 is to be that of the officer in charge of the police station and a Magistrate has absolutely no role to play at this stage. Similarly, after completion of the investigation while making a report to the Magistrate under Section 173, the requisite details have to be submitted by the officer in charge of the police station without any kind of interference or direction of a Magistrate and this will include a report regarding the fact whether any offence appears to have been committed and if so, by whom, as provided by clause (*d*) of sub-section (2)(*i*) of this section. These provisions will also be applicable in cases under the Prevention of Corruption Act, 1947 by virtue of Section 7-A thereof and the Prevention of Corruption Act, 1988 by virtue of Section 22 thereof. (Para 13). *Union of India* v. *Prakash P. Hinduja*, (2003) 6 SCC 195: 2003 SCC (Cri) 1314: AIR 2003 SC 2612: 2003 Cri LJ 3117.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 7-7-2003]

[1381] — Ss. 157 and 482 — Direction to initiate investigation against an institution by High Court — Grant of opportunity of hearing to institution prior to said direction — Necessity — *High Court on entertaining an anonymous petition directing investigation against the institution in question in respect of which even no complaint/information was lodged with the police — Director of the institution was a party to the petition and the whole of the allegations in the petition were levelled against the institution — Held, in such a situation, it was imperative for the High Court to put the institution on notice before passing the said order — Hence, the impugned order passed without providing any opportunity of hearing to the institution was violative of principles of natural justice*

No judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic consequences of affecting one's own reputation. The impugned order of the High Court directing enquiry and investigation into allegations against the appellant institution in respect of which not even a complaint/information has been lodged with the police is violative of principles of natural justice. The Director of the appellant institution has been impleaded as a party respondent in the criminal petition and the whole of the allegations in the anonymous petition are levelled against the appellant and in such a situation it was imperative for the High Court to put the appellant on notice before passing the impugned order. The appellant undoubtedly is aggrieved by the impugned order and, therefore, entitled to invoke the jurisdiction under Article 136 of the Constitution. (Paras 51 to 53). *Divine Retreat Centre* v. *State of Kerala*, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9: AIR 2008 SC 1614: (2008) 1 KLT 1042: 2008 Cri LJ 1891.

Bench Strength **2**. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-3-2008]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260: 1993 SCC (Cri) 1171, distinguished on facts

[1382] — Ss. 156, 157, 154, 190 and Ch. XII — Remedies open to aggrieved person against improper investigation — Interference in the process of investigation — Permissibility and extent of — *Reiterated, aggrieved person can claim investigation and proper investigation but has no right to claim investigation by any particular agency like CBI — Constitution of India — Arts. 21 & 226*

If a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation. (Para 11)

Even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) CrPC. (Para 13)

Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same. (Para 15)

Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation. (Para 17). *Sakiri Vasu* v. *State of U.P.*, (2008) 2 SCC 409: (2008) 1 SCC (Cri) 440: AIR 2008 SC 907: (2008) 1 KLT 724: (2008) 2 Guj LR 1666.

Bench Strength **2**. Coram: *A.K. Mathur* and **Markandey Katju**, JJ. [Date of decision: 7-12-2007]

CBI v. Rajesh Gandhi, (1996) 11 SCC 253: 1997 SCC (Cri) 88, relied on

[1383] — S. 157 — Investigation — Inaction of police — Responsibility of officers concerned — Proceedings that may be initiated — Investigation by particular agency (CBI) — Directions for — *Petitioner claiming various reliefs — However, Supreme Court finding that only grievance worth entertaining under Art. 32, and as highlighted by amicus curiae, was remissness on part of police officials concerned in investigating crime allegedly committed against petitioner — Police having identified negligent officer, and as criminal proceedings in respect of said crime pending, Supreme Court not making any observations in respect thereof — Leaving it open to State Government to take appropriate departmental action against negligent officer concerned if criminal court seized of matter, came to such a finding — Constitution of India — Art. 32* (Paras 11 to 13). *K. Vidya Sagar* v. *State of U.P.*, (2005) 5 SCC 581: 2005 SCC (Cri) 1345: AIR 2005 SC 2911: 2005 All LJ 2450.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and *H.K. Sema* and **G.P. Mathur**, JJ. [Date of decision: 12-7-2005]

[**Ed.**: *See also* (1983) 3 SCC 344; *see generally* Art. 32, '(b)(11)(iii) Interference in particular kinds of matters/rights — Criminal matters...' pp. 400 et seq., and '(e)(6)(xv) Orders/Directions relating to particular aspects/matters — Police inaction/atrocities', pp. 593 et seq. in **Vol. 7**, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

[1384] — S. 157 — Non-compliance with requirements of — Conclusion of High Court in respect of — On facts, not justified

It has not been indicated as to why and how the High Court came to the conclusion about non-compliance with the requirements of Section 157 CrPC. It was only stated that there was no proof of compliance with Section 157 CrPC. It has not been indicated as to what is the requirement and what proof was required to be adduced. (Para 8). *State of M.P.* v. *Mansingh*, (2003) 10 SCC 414.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 13-8-2003]

(5) Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court *(contd.)*

[1385] — Ss. 157, 156 and 169 — Non-prosecution by police — Effect — Conviction upheld on the ground that testimony of prosecutrix stood corroborated by the medical report and her father's testimony — *Police abandoning case of rape on ground of complaint being not genuine — Report of Chemical Examiner on vaginal swabs for semen withheld by police — Held, in such circumstances, at the trial based on private complaint by the prosecutrix, defence cannot rely on non-prosecution by the police — Penal Code, 1860 — S. 376*

It is curious that in spite of the statements of the girl and her father and the medical report, the police was not satisfied even prima facie as to the truth of the allegations against the appellants. The police officers including the Superintendent of Police, did not even consider it their duty to produce before the court the report of examination by the Chemical Examiner of the vaginal swabs of the prosecutrix as to the presence of semen and spermatozoa. There is no explanation why such a very important and vital evidence has been withheld from the court. In the circumstances, no importance whatsoever should be given to the fact that the police was not satisfied about the genuineness of the prosecution case. *Balwant Singh* v. *State of Punjab*, (1987) 2 SCC 27: 1987 SCC (Cri) 249: AIR 1987 SC 1080: 1987 Cri LJ 971.

Bench Strength **2**. Coram: *G.L. Oza* and **M.M. Dutt**, JJ. [Date of decision: 10-2-1987]

(6) Power under Section 156(3) — Nature and Scope

See also Sections 155 to 159, '(2)(iv) Ss. 156 and 202 — Relative scope', and

(5) Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court', above

See also Ss. 190 and 202, below

[1386] — Ss. 156(3) and 190 — Relative scope — Two sections are mutually exclusive — S. 156(3) operates at pre-cognizance stage — *A Magistrate on receiving complaint under S. 190 may not take cognizance and order investigation under S. 156(3) (even if offence charged is exclusively triable by Court of Session) — Having done so he is not debarred on receiving final report of police from taking cognizance and proceeding with the complaint according to Ss. 200 and 204. Tula Ram* v. *Kishore Singh*, (1977) 4 SCC 459: 1977 SCC (Cri) 621: AIR 1977 SC 2401: 1978 Cri LJ 8.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.S. Kailasam*, JJ. [Date of decision: 5-10-1977]

[1387] — Ss. 156(3), 157(1) proviso (b) & (2), 190, 200 and 154 — Power of Magistrate to direct investigation — When arises — Effect of order under S. 156(3) — *Held, the said power arises in two situations: (i) when FIR is refused to be lodged; and (ii) when statutory power of investigation for some reason or the other is not exercised — Further held, when order is passed under S. 156(3), investigation must be carried out, which culminates in filing a charge-sheet if prima facie case is made out — When however, IO finds that alleged offence has not been committed, a report to that effect needs to be submitted* (Paras 6 and 7). *Dharmeshbhai Vasudevbhai* v. *State of Gujarat*, (2009) 6 SCC 576.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 5-5-2009]

S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380; Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927; K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88; Everest Advertising (P) Ltd. v. State (Govt. of NCT of Delhi), (2007) 5 SCC 54: (2007) 2 SCC (Cri) 444; Dinesh Dalmia v. CBI, (2007) 8 SCC 770: (2008) 1 SCC (Cri) 36; S. Suresh v. Annappa Reddy, (2004) 13 SCC 424, followed

[1388] — Ss. 156(3) & 320 and 482 & 483 — Power of Magistrate to recall order for investigation passed by him under S. 156(3) or for withdrawal of investigation — Unavailability of — Inherent powers, if any — *Held, powers of Magistrate are limited and he has no inherent powers — Ordinarily he has no power to recall his order — In the instant case investigation was directed by Magistrate in terms of S. 156(3) — He had no jurisdiction to recall said order — High Court erred in not interfering with his order recalling the investigation — Further held, High Court could have interfered therewith even suo motu when it was brought to its notice — CrPC, 1898, S. 561-A — Penal Code, 1860, Ss. 406, 420, 423, 465, 477, 468, 471, 120-B, 124 and 34* (Paras 8 to 11)

The appellants were depositors in a cooperative bank. Some of the borrowers had mortgaged their properties with the Bank. Alleging commission of offences under Ss. 406, 420, 423, 465, 477, 468, 471, 120-B, 124 and 34 IPC, Bank filed complaint petition before Judicial Magistrate against respondent-accused seeking direction against the police to register and investigate the case under S. 156(3) CrPC. The Magistrate upon considering the allegations granted the prayer. However, the complainant thereafter filed an application before Magistrate informing him that a compromise had been entered into by and between the accused and the Bank. Pursuant thereto, order directing enquiry was recalled by the Magistrate. A writ petition was filed by appellants challenging the same. The High Court by impugned judgment declined to interfere with the said order. Hence, the present appeal.

Allowing the appeals, the Supreme Court held as above. *Dharmeshbhai Vasudevbhai* v. *State of Gujarat*, (2009) 6 SCC 576.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 5-5-2009]

S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380; Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927; K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88; Everest Advertising (P) Ltd. v. State (Govt. of NCT of Delhi), (2007) 5 SCC 54: (2007) 2 SCC (Cri) 444; Dinesh Dalmia v. CBI, (2007) 8 SCC 770: (2008) 1 SCC (Cri) 36; S. Suresh v. Annappa Reddy, (2004) 13 SCC 424, followed

[1389] — S. 156(3) — Direction for investigation by Magistrate under — Requirements for — Power if properly exercised — *Magistrate allowing application filed by respondent SEPCO under S. 156(3) CrPC, and forwarding original complaint alleging commission of offences under Ss. 405, 406, 418, 420, 427, 503, 504, 506/34 and 120-B IPC, to SHO concerned directing him to register FIR after due enquiry, and to submit charge-sheet after investigation — Sustainability — Held, for proceeding under S. 156(3) what is required is a bare reading of complaint and whether it discloses a cognizable offence — Magistrate then instead of applying his mind to the complaint for deciding whether or not there are sufficient grounds for proceeding, may direct police to investigate — In instant case, offences alleged were all cognizable offences, and hence, Magistrate committed no illegality in passing direction for investigation, warranting any interference by High Court under Art. 226 of the Constitution — Single Judge as well as Division Bench rightly refused to interfere with such limited order — Moreover, challenge at this stage by appellants was premature and High Court rightly rejected their request — Constitution of India — Arts. 226 and 136 — Penal Code, 1860, Ss. 405, 406, 418, 420, 427, 503, 504, 506/34 and 120-B* (Paras 15 to 24)

The Magistrate only ordered investigation under Section 156(3) CrPC. The Magistrate perused the complaint without examining the merits of the claim that there is sufficient ground for proceeding or not and directed the police officer concerned for investigation under Section 156(3) CrPC. As rightly observed by the Single Judge of the High Court, the Magistrate did not bring into motion the machinery of Chapter XV CrPC. He did not examine the complainant or his witnesses under Section 200 CrPC which is the first step in the procedure prescribed under the said Chapter. The question of taking the next step of the procedure envisaged in Section 202 did not arise. Instead of taking cognizance of the offence, the Magistrate has merely allowed the application filed by the complainant/SEPCO under Section 156(3) CrPC and sent the same along with its annexure for investigation by the police officer concerned. (Para 22)

To proceed under Section 156(3) CrPC, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation. In the case on hand, the Single Judge and the Division Bench of the High Court rightly pointed out that the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding and, therefore, the Magistrate has not committed any illegality in directing the police for investigation. As a matter of fact, even after receipt of a report under Section 173, the Magistrate under Section 190(1)(*b*) may or may not take cognizance of offence. In other words, he is not bound to take cognizance upon submission of the police report by the investigating officer, hence, by directing the police to file charge-sheet or final report and to hold investigation, it cannot be construed that the Magistrate has exceeded his power as provided in Section 156(3). (Para 23). *Srinivas Gundluri* v. *SEPCO Electric Power Construction Corpn.*, (2010) 8 SCC 206.

Bench Strength 2. Coram : **P. Sathasivam** and *Anil R. Dave*, JJ. [Date of decision : 30-7-2010]

Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380; Tula Ram v. Kishore Singh, (1977) 4 SCC 459: 1977 SCC (Cri) 621, relied on

Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234, distinguished on facts

Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521, cited

[1390] — Ss. 156(3), 190 and 200 — Exercise of jurisdiction — Need for prima facie satisfaction of Magistrate that offence has been committed — Need to examine complainant and witnesses, if any — *Summoning of accused in a criminal case being a serious matter, application of mind by Magistrate, emphasised*

The Chief Judicial Magistrate noticed that the Bank deceived the Company by filing false suit before DRT by making false submissions and producing false affidavit. Hence the complaint necessitated investigation by the police. Whether

(6) Power under Section 156(3) — Nature and Scope *(contd.)*

such a suit is maintainable and/or is ultimately to be decreed or disposed of is a question which has to be gone into in the suit itself. A criminal court cannot even take that factor into consideration. (Paras 10 and 14)

Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. (Paras 13 and 15). *Maksud Saiyed* v. *State of Gujarat*, (2008) 5 SCC 668: (2008) 2 SCC (Cri) 692: (2007) 140 Comp Cas 590.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400, relied on

[1391] — Ss. 156(3) and 200 — Power of Magistrate under S. 156(3) — *Magistrate, before taking cognizance of an offence and without examining the complainant on oath, if could direct the police to register an FIR and investigate the matter concerned — Prize Chits and Money Circulation Schemes (Banning) Act, 1978 — S. 3 — Penal Code, 1860 — S. 420*

Any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) CrPC. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter. (Para 10). *Suresh Chand Jain* v. *State of M.P.*, (2001) 2 SCC 628: 2001 SCC (Cri) 377: AIR 2001 SC 571.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 10-1-2001]

Ram Narain v. Lokuram, (1986) 37 Raj LW 143, distinguished

Suresh Kumar v. State of Haryana, (1996) 3 Rec Cri R 137, overruled

Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986: (1961) 2 Cri LJ 39; Tula Ram v. Kishore Singh, (1977) 4 SCC 459: 1977 SCC (Cri) 621: AIR 1977 SC 2401, followed

[1392] — Ss. 156(3) and 177, 178, 181 and Ss. 156(2) & (1) & 190 — Nature and scope of Magistrate's power under S. 156(3) explained — Magistrate's direction under S. 156(3) to police officer for conducting investigation — Whether police officer can file a report that he does not have territorial jurisdiction to conduct investigation — *Held, not permissible — Magistrate exercises power at a stage prior to taking decision whether or not he has requisite jurisdiction to issue process — Such a decision can be taken by Magistrate only when he has complete facts before him on the basis of investigation conducted by police — On facts also held, cause of action had partly arisen in Ahmedabad (in State of Gujarat) and therefore Economic Offences Wing, CID (Crime), Ahmedabad, could not refuse to investigate on the ground that it did not have territorial jurisdiction — Multi-State Cooperative Societies Act, 2002, S. 119*

The appellant had taken a loan from a cooperative Bank which had its business operations in the States of Gujarat, Maharashtra and other States. The Bank filed criminal complaints against the appellant in Ahmedabad in the State of Gujarat. The Magistrate issued a direction under Section 156(3) CrPC to the Economic Offences Wing, CID (Crime), Ahmedabad to conduct an investigation against the appellant. The police however filed a report that the alleged offences were committed in the State of Maharashtra inasmuch as the loan was taken by the appellant from a branch of the cooperative Bank which was situated and registered in Maharashtra, and therefore the Gujarat police did not have territorial jurisdiction to conduct investigation. It was further prayed that the competent agency to conduct the investigation was Maharashtra police. It was however on record that the appellant had applied for a loan to the Head Office of the cooperative Bank in Gujarat and loan was sanctioned by the Head Office.

The High Court held that police in Ahmeda- bad could not refuse to conduct investigation on the ground that it did not have territorial jurisdiction contending that the cause of action had arisen in Maharashtra.

Affirming the judgment of the High Court and dismissing the appeal,

Held :

It was not within the jurisdiction of investigating agency to refrain itself from holding a proper and complete investigation merely upon arriving at a conclusion that the offences had been committed beyond its territorial jurisdiction. The material before the Magistrate indicates that a major part of loan transaction had, in fact, taken place in the State of Gujarat and that having regard to provisions of Section 156(2) CrPC, proceedings of investigation could not be questioned on the ground of jurisdiction of the officer to conduct such investigation. It was open to the Magistrate to direct an investigation under Section 156(3) CrPC without taking cognizance on complaint and where an investigation is undertaken at the instance of the Magistrate, a police officer empowered under Section 156(1) is bound, except in specific and especially exceptional cases, to conduct such an investigation even if he was of the view that he did not have jurisdiction to investigate the matter. (Paras 27 and 28)

A complaint made in a criminal case follows the place where the cause arises, but the distinguishing feature in the instant case is that the stage of taking cognizance was yet to arrive. The investigating agency was required to place facts elicited during investigation before the court in order to enable the court to come to a conclusion as to whether it had jurisdiction to entertain the complaint or not. Without conducting such an investigation, it was improper on the part of investigating agency to forward its report with the observation that since the entire cause of action for the alleged offence had purportedly arisen in the city of Mumbai within the State of Maharashtra, the investigation should be transferred to the police station concerned in Mumbai. (Para 30)

Section 156(3) contemplates a stage where the Magistrate is not convinced as to whether process should issue on the facts disclosed in the complaint. Once the facts are received, it is for the Magistrate to decide his next course of action. In this case, there are materials to show that the appellant had filed his application for a loan with the Head Office of the Bank at Ahmedabad and that processing and sanction of loan was also done in Ahmedabad, which clearly indicates that a major part of the cause of action for complaints arose within the jurisdiction of the Chief Metropolitan Magistrate, Ahmedabad. It was not, therefore, desirable on the part of the investigating agency to make an observation that it did not have territorial jurisdiction to proceed with the investigation, and which was required to be transferred to the police station having jurisdiction to do so. (Paras 31 and 33). *Rasiklal Dalpatram Thakkar* v. *State of Gujarat*, (2010) 1 SCC 1.

Bench Strength 2. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 6-11-2009]

Agencia Commercial International Ltd. v. Custodian of the Branches of Banco Nacional Ultramarino, (1982) 2 SCC 482; Satvinder Kaur v. State (NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503; Naresh Kavarchand Khatri v. State of Gujarat, (2008) 8 SCC 300: (2008) 3 SCC (Cri) 614; Asit Bhattacharjee v. Hanuman Prasad Ojha, (2007) 5 SCC 786: (2007) 3 SCC (Cri) 31, distinguished on facts

[1393] — Ss. 156(3) and 181(4) — Magistrate's direction under S. 156(3) to police for conducting investigation in a case involving criminal misappropriation or criminal breach of trust — Magistrate's territorial jurisdiction if restricted by S. 181(4) — *Held, direction for investigation given by Magistrate under S. 156(3) is not restricted by territorial limit laid down in S. 181(4) — Direction for investigation under S. 156(3) can therefore be given by Magistrate irrespective of territorial limit for enquiry or trial under S. 181(4) — Penal Code, 1860, Ss. 403 and 405* (Paras 25 and 26). *Rasiklal Dalpatram Thakkar* v. *State of Gujarat*, (2010) 1 SCC 1.

Bench Strength 2. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 6-11-2009]

[1394] — S. 156(3) and Ch. XII — Incidental/Implied powers of Magistrate to direct/monitor police investigation, laid down — Doctrine of implied powers applied — *Held, S. 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation* (Paras 17 to 23). *Sakiri Vasu* v. *State of U.P.*, (2008) 2 SCC 409: (2008) 1 SCC (Cri) 440: AIR 2008 SC 907: (2008) 1 KLT 724: (2008) 2 Guj LR 1666.

Bench Strength 2. Coram: *A.K. Mathur* and **Markandey Katju**, JJ. [Date of decision: 7-12-2007]

ITO v. M.K. Mohammad Kunhi, AIR 1969 SC 430; Union of India v. Paras Laminates (P) Ltd., (1990) 4 SCC 453: 1991 SCC (L&S) 208: (1990) 14 ATC 798; RBI v. Peerless General Finance and Investment Co. Ltd., (1996) 1 SCC 642; CEO & Vice-Chairman, Gujarat Maritime Board v. Haji Daud Haji Harun Abu, (1996) 11 SCC 23; J.K. Synthetics Ltd. v. CCE, (1996) 6 SCC 92; State of Karnataka v. Vishwabharathi House Building Coop. Society, (2003) 2 SCC 412; Savitri v. Govind Singh Rawat, (1985) 4 SCC 337: 1985 SCC (Cri) 556, applied

Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460; Dilawar Singh v. State of Delhi, (2007) 12 SCC 641; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272, relied on

Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195: 2003 SCC (Cri) 1314, clarified

***Doubted** in Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441*

(6) Power under Section 156(3) — Nature and Scope *(contd.)*

[1395] — S. 156(3) — CJM directing CBI to investigate a case — Competence of the Magistrate to issue such direction — What kind of cases should be entrusted to CBI for investigation — *Routine case of theft of muddamal property not such a case — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946)*

In *CBI* v. *State of Rajasthan* the Supreme Court held that magisterial power cannot be stretched under Section 156(3) beyond directing the officer in charge of a police station to conduct the investigation and no such direction can be given to CBI. In the instant case, the first information report was already registered and in that sense Section 156(3) CrPC had no application. There is substance in the plea that routine matters should not be entrusted to CBI as the investigating agencies of various States can effectively investigate such matters. Of course, where it is shown that the investigating agency is not doing proper investigation and/or that there is reason to believe that there is laxity in the investigation, a direction may be given to CBI to investigate the matter in appropriate cases. This case is not one where any complexity was involved. It was a routine case of theft of muddamal property. The Sessions Judge, therefore, rightly appears to have set aside the orders passed by the Chief Judicial Magistrate. The High Court had no basis to doubt the bona fides of CBI in moving the application before it under Section 397 CrPC. There was no bar for the High Court to entertain the said petition. The criticism levelled against CBI and its officers and costs imposed do not have any legal sanction. They are accordingly set aside. (Para 5). *CBI* v. *State of Gujarat*, (2007) 6 SCC 156: (2007) 3 SCC (Cri) 65: AIR 2007 SC 2522: (2007) 56 AIC 65 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *B.P. Singh*, JJ. [Date of decision: 21-6-2007]

CBI v. State of Rajasthan, (2001) 3 SCC 333: 2001 SCC (Cri) 524, relied on

[1396] — S. 156(3) — Magistrate's power to order investigation — When available — *Held, where FIR already registered, S. 156(3) has no application* (Para 5). *CBI* v. *State of Gujarat*, (2007) 6 SCC 156: (2007) 3 SCC (Cri) 65: AIR 2007 SC 2522: (2007) 56 AIC 65 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *B.P. Singh*, JJ. [Date of decision: 21-6-2007]

[1397] — S. 156(3) — Non-application of mind — Order for police investigation — Untenable assumptions — Magistrate assuming submission of false affidavit by Company in a pending civil suit — *Held, whether such a suit is maintainable and/or is ultimately to be decreed or disposed of is a question which has to be gone into in the suit itself — A criminal court cannot even take that factor into consideration*

The jurisdiction of the High Court to quash an FIR in exercise of its jurisdiction under Section 482 CrPC is well known. The Court may not enter into determination of a disputed question of fact at that stage. It may, however, take note of the allegations made in the complaint petition vis-à-vis the conduct of the parties. Allegations contained in the complaint petition, as noticed by the Magistrate, may give rise to tortious liability on the part of the Bank. Principal allegations were made against the Bank. Who had acted on behalf of the Bank was not disclosed. The acts of omission and commission on the part of the Bank, if any, by withholding export bills of the Bank may give rise to a statutory violation on its part but the respondents were not personally liable therefor. (Paras 6 and 11)

IPC does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. (Para 13). *Maksud Saiyed* v. *State of Gujarat*, (2008) 5 SCC 668: (2008) 2 SCC (Cri) 692: (2007) 140 Comp Cas 590.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400, relied on

[1398] — Ss. 156(3) and 202 — Scope of order made under S. 156(3) — Compared with order under S. 202

An order made under sub-section (3) of S. 156 is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under S. 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under S. 156 and ends with a report or charge-sheet under S. 173.

On the other hand the object of an investigation under S. 202 is not to initiate a fresh case on police report but to assist the magistrate in completing proceedings already instituted upon a complaint before him. *Devarapally Lakshminarayana Reddy* v. *V. Narayana Reddy*, (1976) 3 SCC 252: 1976 SCC (Cri) 380: AIR 1976 SC 1672: 1976 Cri LJ 1361.

Bench Strength 3. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *Jaswant Singh*, JJ. [Date of decision: 4-5-1976]

[1399] — S. 156(3) — Scope of power of Magistrate under, in respect of investigations — Held, S. 156(3) does not empower a Magistrate to stop an investigation undertaken by the police (Para 71). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193: AIR 2007 SC 1274: (2007) 51 AIC 623 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

State of Punjab v. Gurdial Singh, (1980) 2 SCC 471; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404, relied on

[1400] — S. 156(3) — Order passed under — Nature of — Whether a judicial order or an administrative order — *Question not gone into* (Para 39). *Asit Bhattacharjee* v. *Hanuman Prasad Ojha*, (2007) 5 SCC 786: (2007) 3 SCC (Cri) 31: AIR 2007 SC 1925: 2007 Cri LJ 3181: (2007) 104 Cut LT 488: (2007) 4 All LJ 567: (2007) 54 AIC 38 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *C.K. Thakker*, JJ. [Date of decision: 15-5-2007]

[1401] — Ss. 156(3), 173(2), 154 and 190(1)(a) & (b) — Complaint to Magistrate disclosing cognizable offence — Direction by Magistrate asking the police to register a case and investigate into the same — Held, not illegal — *In such a situation the complaint transforms itself to a first information report — Even in the absence of a direction to register a case the police is bound to formally register a case and then investigate into the same — On police report submitted under S. 173(2) after completion of investigation the Magistrate may take cognizance under S. 190(1)(b) and not S. 190(1)(a) — Proper direction under S. 156(3) to the police would be "to register a case treating the complaint as the FIR and investigate into the same"*

When a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same under Section 190(1)(*a*) of the Code *and* proceed with the same in accordance with the provisions of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate police station under Section 156(3) for investigation. Once such a direction is given under sub-section (3) of Section 156 the police is required to investigate into that complaint under sub-section (1) thereof and on completion of investigation to submit a "police report" in accordance with Section 173(2) on which a Magistrate may take cognizance under Section 190(1)(*b*) — but not under Section 190(1)(*a*). Since a complaint filed before a Magistrate cannot be a "police report" in view of the definition of "complaint" referred to earlier and since the investigation of a "cognizable case" by the police under Section 156(1) has to culminate in a "police report" the "complaint" — as soon as an order under Section 156(3) is passed thereon — transforms itself to a report given in writing within the meaning of Section 154 of the Code, which is known as the first information report (FIR). As under Section 156(1), the police can only investigate a cognizable "case", it has to formally register a case on that report.

Whenever a Magistrate directs an investigation on a "complaint" the police has to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements of the above Rules. Therefore, it cannot be said that the direction of a Magistrate asking the police to "register a case" makes an order of investigation under Section 156(3) legally unsustainable. Indeed, even if a Magistrate does not pass a direction to register a case, still in view of the provisions of Section 156(1) of the Code which empowers the police to investigate into a cognizable "case" and the Rules framed under the Indian Police Act, 1861 it (the police) is duty-bound to formally register a case and then investigate into the same. The provisions of the Code, therefore, do not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same. when an order for investigation under Section 156(3) of the Code is to be made the proper direction to the police would be "to register a case at the police station treating the complaint as the first information report and investigate into the same". *Madhu Bala* v. *Suresh Kumar*, (1997) 8 SCC 476: AIR 1997 SC 3104: 1997 Cri LJ 3757.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S. Saghir Ahmad*, JJ. [Date of decision: 23-7-1997]

Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986: (1961) 2 Cri LJ 39: (1961) 1 MLJ (SC) 217; Tula Ram v. Kishore Singh, (1977) 4 SCC 459: 1977 SCC (Cri) 621, distinguished

[1402] — Ss. 156(3), 173(8), 190, 200 and 204 — A Judicial Magistrate, after taking cognizance of an offence on the basis of police report and after appearance of the accused, cannot order of

(6) **Power under Section 156(3) — Nature and Scope** *(contd.)*

his own further investigation in the case — *Order of the Magistrate directing further investigation set aside with a direction to dispose of the case either by framing the charge or discharge the accused on the basis of the material already on the record — If the order be of discharge, further investigation by the police on its own would be permissible. Randhir Singh Rana* v. *State (Delhi Admn.)*, (1997) 1 SCC 361: AIR 1997 SC 639: 1997 Cri LJ 779.

Bench Strength **2**. Coram: *G.N. Ray* and **B.L. Hansaria**, JJ. [Date of decision: 20-12-1996]

Abhinandan Jha v. Dinesh Mishra, (1967) 3 SCR 668: AIR 1968 SC 117; Tula Ram v. Kishore Singh, (1977) 4 SCC 459: 1977 SCC (Cri) 621; Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479; State v. Mehar Singh, 1974 Cri LJ 970: ILR (1973) 2 Punj 561 (P&H); Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380; State v. Sankar Halder, 89 CWN 1063; State of Rajasthan v. Aruna Devi, (1995) 1 SCC 1: 1995 SCC (Cri) 1, distinguished

[1403] — S. 156(3) — A Magistrate under S. 156(3) has no power to direct CBI to conduct investigation into any offence. *CBI* v. *State of Rajasthan*, (2001) 3 SCC 333: 2001 SCC (Cri) 524: AIR 2001 SC 668: (2001) 1 KLT 563: 2001 Cri LJ 968.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 19-1-2001]

[1404] — Ss. 156(3) and 36 — Power of Magistrate to direct superior police officer, if any — *S. 156(3) confers power on Magistrate to order an "officer in charge of a police station" to investigate any cognizable case over which the Magistrate has jurisdiction — Though Magistrate cannot direct a superior police officer to conduct the investigation but if the superior officer conducts the investigation suo motu or on direction of a superior officer, such investigation would be deemed to be one conducted by the officer in charge of the police station — S. 36 is only meant to supplement the powers of the officer in charge of the police station*

What is contained in sub-section (3) of Section 156, is the power of a Magistrate to order an "officer in charge of a police station" to conduct an investigation referred to in sub-section (1), because the words "order such an investigation as abovementioned" in sub-section (3) are unmistakably clear as referring to the other sub-section. The two expressions "police station" and "officer in charge of a police station" have been given separate definitions in the Code in Sections 2(*o*) and 2(*s*) respectively. A place or post declared by the Government as police station, must have a police officer in charge of it and if he, for any reason, is absent in the station house, the officer who is in the next junior rank present in the police station, shall perform the function as officer in charge of that police station. The primary responsibility for conducting investigation into offences in cognizable cases vests with such police officer. Section 156(3) of the Code empowers a Magistrate to direct such officer in charge of the police station to investigate any cognizable case over which such Magistrate has jurisdiction. Though a Magistrate under Section 156(3) can only direct an officer in charge of a police station to conduct such investigation and not a superior police officer, nevertheless, when such an order is passed, any police officer superior in rank of such officer, can as well exercise the power to conduct an investigation, and all such investigations would then be deemed to be the investigation conducted by the officer in charge of a police station. Section 36 of the Code is not meant to substitute the magisterial power envisaged in Section 156(3) of the Code, though it could supplement the powers of an officer in charge of a police station. It is permissible for any superior officer of police to take over the investigation from such officer in charge of the police station either suo motu or on the direction of the superior officer or even that of the Government. However, the magisterial power cannot be stretched under Section 156(3) beyond directing the officer in charge of a police station to conduct the investigation. A Magistrate cannot direct CBI to conduct investigation in exercise of his powers under Section 156(3) of the Code. (Para 16)

However, powers of the High Court under Article 226 of the Constitution and of the Supreme Court under Article 32 or Article 142(1) of the Constitution can be invoked, though sparingly, for giving such direction to CBI to investigate in certain cases. But the present case is not concerned with that aspect of the matter. (Paras 14 and 16). *CBI* v. *State of Rajasthan*, (2001) 3 SCC 333: 2001 SCC (Cri) 524: AIR 2001 SC 668: (2001) 1 KLT 563: 2001 Cri LJ 968.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 19-1-2001]

State of Kerala v. Kolakkacan Moosa Haji, (1993) 2 KLT 609: 1994 Cri LJ 1288 (Ker), approved

State of W.B. v. Sampat Lal, (1985) 1 SCC 317: 1985 SCC (Cri) 62, distinguished

Kashmeri Devi v. Delhi Admn., 1988 Supp SCC 482: 1988 SCC (Cri) 864; Maniyeri Madhavan v. Sub-Inspector of Police, (1994) 1 SCC 536: 1994 SCC (Cri) 442; Mohd. Anis v. Union of India, 1994 Supp (1) SCC 145: 1994 SCC (Cri) 251, relied on

[1405] — Ss. 156(3) and 154 — Duty of police to register FIR in case S. 156(3) is attracted — *Held, registration of an FIR involves only the process of entering the substance of the information relating to commission of the cognizable offence in a book kept by the officer in charge of the police station — Held, it is the duty of the officer in charge of the* *police station to register an FIR when investigation under S. 156(3) is directed by the Magistrate, even when the Magistrate explicitly does not say so*

Any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) CrPC. But if he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) CrPC that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII CrPC only thereafter. (Para 11). *Mohd. Yousuf* v. *Afaq Jahan*, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460: AIR 2006 SC 705: (2006) 1 KLT 939: (2006) 2 Guj LR 1742: (2006) 38 AIC 70 (SC): 2006 Cri LJ 788.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 2-1-2006]

Suresh Chand Jain v. State of M.P., (2001) 2 SCC 628: 2001 SCC (Cri) 377, relied on

Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986: (1961) 2 Cri LJ 39; Narayandas Bhagwandas Madhavdas v. State of W.B., (1960) 1 SCR 93: AIR 1959 SC 1118: 1959 Cri LJ 1368, considered

[1406] — Ss. 156(3), 340 and 195 — Offence under S. 182 IPC — Essential ingredients — Application under S. 156(3) CrPC, moved by the petitioner against the respondents in the Court of Special Sessions Judge (SSJ), not disclosing the fact that a criminal complaint by the petitioner against the respondents was already pending before CJM — *Case registered on directions of SSJ — High Court, due to concealment of fact, staying the order of SSJ and enabling the parties to get the dispute decided by SSJ in accordance with law — SSJ initiating proceedings under S. 182 IPC against petitioner — High Court affirming it further directing to proceed and comply with the formalities under S. 340 r/w S. 195 CrPC — Mere failure to mention the pendency of complaint in petition under S. 156(3) CrPC, held, would not be enough to bring home the charge under S. 182 IPC unless all the ingredients set out therein are established — Orders of High Court and SSJ set aside — Order of High Court to be followed if all the ingredients of S. 182 IPC established — Penal Code, 1860 — S. 182. Subhash Chandra* v. *State of U.P.*, (2000) 9 SCC 356: 2001 SCC (Cri) 320.

Bench Strength 2. Coram: *S. Saghir Ahmad* and *D.P. Wadhwa*, JJ. [Date of decision: 12-1-2000]

[1407] — Ss. 156(3), 190(1), 200 and 4 — "Private complaint" under MCOCA — Taking cognizance of — Prerequisites as to — Compliance with S. 23, MCOCA — Necessity of — Invocation of S. 156(3) CrPC for ordering inquiry/investigation into such private complaint and taking cognizance thereupon, without complying with S. 23, MCOCA — Power as to — *Held, although the Special Judge is entitled to take cognizance of offences under MCOCA even on a private complaint, but after due compliance with S. 23(2) thereof — Bar under S. 23(2) continues to remain operative in respect of complaints, either of a private nature or on a police report — Hence, on receipt of a private complaint, Special Judge has to forward the same to the officer indicated in S. 23(1)(a) to have an inquiry conducted into the complaint by a police officer mentioned in S. 23(1)(b) — It is only thereafter that Special Judge can take cognizance of the offence complained of, if sanction is accorded to the Special Court to take cognizance of such offence under S. 23(2) — Special Judge cannot invoke provisions of S. 156(3) CrPC to order a special inquiry on such private complaint and take cognizance thereupon, without traversing the route indicated in S. 23 — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999), Ss. 9(1), 23 and 25. Jamiruddin Ansari* v. *CBI*, (2009) 6 SCC 316.

Bench Strength 2. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 6-5-2009]

(7) Section 157(1) proviso (b) — Sufficient grounds for non-investigation

[1408] — S. 157 — Compliance with S. 157(1) and proviso (b) — Necessity of — *Where a preliminary inquiry was conducted on the basis of an anonymous complaint without registering FIR, held, it was not necessary to comply with the provisions of the proviso (b) appended to sub-s. (1) of S. 157 — Further, having regard to the fact that the identity of the appellant was being unknown, the question of complying with the said provisions, even if it be held that the same was applicable, did not arise* (Para 26). *Shashikant* v. *CBI*, (2007) 1 SCC 630: (2007) 1 SCC (Cri) 406: AIR 2007 SC 351: (2007) 49 AIC 292 (SC): 2007 Cri LJ 995: (2007) 103 Cut LT 511.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 7-11-2006]

(8) Procedure and Duty and Powers of investigating officer

See also Sections 155 to 159, '(5) Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court', above and

'(10) Defective investigation', and

'(11) Illegal/Partisan/Mala fide investigation — Effect and Quashment', below

[1409] — Ss. 156, 157, 161 and 165 — Investigation — Procedure reiterated — *Evidence Act, 1872, S. 27*

Per K. Ramaswamy, J.

Section 154 in Chapter XII of the Code, contemplates laying of information of cognizable offences either orally or in writing to an officer of a police station who is enjoined to reduce it into writing, if made orally or under his direction and the substance thereof entered in the book kept in the police station in the manner prescribed by the State Government. The officer in charge of the police station is prohibited to investigate only into non-cognizable cases without an order of the Magistrate concerned under S. 155(2). But if the facts disclose both cognizable and non-cognizable offence, by operation of sub-section (4) of S. 155, CrPC the case shall be deemed to be cognizable case and the police officer shall be entitled to investigate, without any order of the Magistrate, into non-cognizable offence as well. Section 156 gives statutory power to a competent police officer or a subordinate under his direction to investigate into cognizable offences. In cases of cognizable offences receipt or recording of a first information report is not a condition precedent to setting in motion of criminal investigation. Section 157 provides the procedure for investigation. If the police officer in charge of the police station, on receipt of information or otherwise, has reason to suspect the commission of a cognizable offence and is empowered to investigate into, he shall proceed in person or shall depute one of his subordinate officers not below the rank of the prescribed officer to the spot to investigate the facts and circumstances and if necessary to take measures for the discovery and arrest of the offender. The provisos (*a*) and (*b*) thereof give power, in cases of minor offences to depute some other subordinate officer or if the investigating officer is of the opinion that there is no sufficient ground for entering on investigation he shall not investigate the case. *State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192: AIR 1991 SC 1260.

Bench Strength 2. Coram: **Kuldip Singh**[1] and **K. Ramaswamy**[2], JJ. [Date of decision: 2-4-1991]

[1410] — Ss. 156, 157 and 482 — Fair investigation — Right to — Protected under Arts. 20 and 21 of the Constitution — Investigation must be fair, transparent and judicious — *Tainted and biased investigation and consequent prejudice and harassment to any party cannot be permitted to continue — Hence quashed — Constitution of India — Arts. 21 and 20*

Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer "is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth". (Paras 45 and 32)

Where the court comes to the conclusion that there was a serious irregularity in the investigation that had taken place, the court may direct a further investigation under Section 173(8) CrPC, even transferring the investigation to an independent agency, rather than directing a reinvestigation. Scheme of investigation, particularly, Section 173(8) CrPC provides for further investigation and not reinvestigation. Therefore, if the court comes to the conclusion that the investigation has been done in a manner with an object of helping a party, the court may direct for further investigation and *ordinarily* not for reinvestigation. The expression "*ordinarily*" means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. "Ordinarily" excludes "extraordinary" or "special circumstances". Therefore, unless an extraordinary case of gross abuse of power is made out by those in charge of the investigation, the court should be quite loathe to interfere with the investigation, a field of activity reserved for the police and the executive. In exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary, may direct for investigation de novo wherein the case presents exceptional circumstances. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation. Thus, in case of a mala fide exercise of power by a police officer the court may interfere. (Paras 37, 40, 41, 38, 42 and 45)

In the instant case, admittedly, the High Court has given detailed reasons for coming to the conclusion that the investigation has been totally one-sided, biased and mala fide. One party has been favoured by the investigating agency. The natural corollary to this finding is that the other party has been harassed in an unwarranted manner. Thus, the cause of the other party has been prejudiced. Even before the High Court conduct of the party and investigating agency was found to have not been fair. (Paras 43 and 29)

The charge-sheets filed by the investigating agency in both the cases are against the same set of accused. A charge-sheet is the outcome of an investigation. If the investigation has not been conducted fairly, such investigation would ultimately prove to be a precursor of miscarriage of criminal justice. In such a case the court would simply try to decipher the truth only on the basis of guess or conjectures as the whole truth would not come before it. It will be difficult for the court to determine how the incident took place wherein three persons died and so many persons including the complainant and the accused got injured. (Para 44)

Thus, the order of the High Court requires modification to the extent that the charge-sheets in both the cases and any order consequent thereto stand quashed. In case any of the accused could not get bail because of the pendency of these appeals before the Supreme Court, it shall be open to him to apply for bail or any other relief before the appropriate forum. (Para 46). *Babubhai* v. *State of Gujarat*, (2010) 12 SCC 254.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 26-8-2010]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; Jamuna Chaudhary v. State of Bihar, (1974) 3 SCC 774: 1974 SCC (Cri) 250; Mahmood v. State of U.P., (1976) 1 SCC 542: 1976 SCC (Cri) 72; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Navinchandra N. Majithia v. State of Meghalaya, (2000) 8 SCC 323: 2000 SCC (Cri) 1510; K. Chandrasekhar v. State of Kerala, (1998) 5 SCC 223: 1998 SCC (Cri) 1291; Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631; Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047; Kishan Lal v. Dharmendra Bafna, (2009) 7 SCC 685: (2009) 3 SCC (Cri) 611; S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; Kashmeri Devi v. Delhi Admn., 1988 Supp SCC 482: 1988 SCC (Cri) 864; Kailash Chandra v. Union of India, AIR 1961 SC 1346; Eicher Tractors Ltd. v. Commr. of Customs, (2001) 1 SCC 315; State of A.P. v. V. Sarma Rao, (2007) 2 SCC 159: (2007) 1 SCC (Cri) 535; Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441: (2009) 1 SCC (Cri) 523; Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1: (2010) 2 SCC (Cri) 1385, relied on

[1411] — S. 157 — Investigation — Requirements of proper investigation — *Held, the same must be fair and effective; must proceed in the right direction in consonance with ingredients of the offence and not in a haphazard manner, more so in serious cases based on circumstantial evidence*

Proper and fair investigation on the part of the investigating officer is the backbone of rule of law. The job of the investigating officer is to make investigation in right direction. The investigation must be in consonance with the ingredients of the offence. It cannot be haphazard or unmethodical. A proper and effective investigation into a serious offence and particularly in a case where there is no direct evidence assumes great significance as collection of adequate materials to prove the circumstantial evidence becomes essential. Unfortunately, the appellant has not been treated fairly. When a death has occurred in a suspicious circumstance and in particular when an attempt had been made to bury the dead body hurriedly and upon obtaining apparently an incorrect medical certificate, it was expected that upon exhumation of the body, the investigating authorities of the State shall carry out their statutory duties fairly. The appellant alleges that no fair investigation has been conducted. It is clearly a matter of great concern that the authorities did not become alive to the situation. (Paras 15 and 18). *Sasi Thomas* v. *State*, (2006) 12 SCC 421: (2007) 2 SCC (Cri) 72: (2007) 50 AIC 385 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

[1412] — S. 157 — Need for caution and circumspection on the part of investigating agency and for sincere and dispassionate investigation stressed — *Fabrication of record by Investigating Officer deprecated — Introduction of new and scientific methods of investigation suggested*

Weaker the person accused of an offence, greater the caution and higher the responsibility of the law enforcement agencies. Before accusing an innocent person of the commission of a grave crime like the one punishable under S. 302, IPC, an honest, sincere and dispassionate investigation has to be made so as to feel sure that the person suspected of the crime alone was responsible to commit the offence. Indulging in free fabrication of the record is a deplorable conduct on the part of an

(8) Procedure and Duty and Powers of investigating officer *(contd.)*

investigating officer which undermines the public confidence reposed in the investigating agency. Therefore, greater care and circumspection are needed by the investigating agency in this regard. It is time that the investigating agencies evolve new and scientific investigating methods, taking aid of rapid scientific development in the field of investigation. It is also the duty of the State, i.e. Central or State Governments to organise periodical refresher courses for the investigating officers to keep them abreast of the latest scientific development in the art of investigation and the march of law so that the real offender would be brought to book and the innocent would not be exposed to prosecution. (Para 12). *Kishore Chand* v. *State of H.P.*, (1991) 1 SCC 286: 1991 SCC (Cri) 172: AIR 1990 SC 2140: 1990 Cri LJ 2289.

Bench Strength **2**. Coram: *P.B. Sawant* and **K. Ramaswamy**, JJ. [Date of decision: 29-8-1990]

Distinguished in Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516: (2008) 1 SCC (Cri) 109

[1413] — Ss. 157 to 173 — Nature and scope of investigation stated

Per K. Ramaswamy, J.

The investigating officer is the arm of the law and plays pivotal role in the dispensation of criminal justice and maintenance of law and order. The police investigation is, therefore, the foundation-stone on which the whole edifice of criminal trial rests — an error in its chain of investigation may result in miscarriage of justice and the prosecution entails (*sic*) with acquittal. The duty of the investigating officer, therefore, is to ascertain facts, to extract truth from half-truth or garbled version, connecting the chain of events. Investigation is a tardy and tedious process. Enough power, therefore, has been given to the police officer in the area of investigatory process, granting him or her great latitude to exercise his discretionary power to make a successful investigation. It is by his action that law becomes an actual positive force. Often crimes are committed in secrecy with dexterity and at high places. The investigating officer may have to obtain information from sources disclosed or undisclosed and there is no set procedure to conduct investigation to connect every step in the chain of prosecution case by collecting the evidence except to the extent expressly prohibited by the Code or the Evidence Act or the Constitution. In view of the arduous task involved in the investigation he has been given free liberty to collect the necessary evidence in any manner he feels expedient, on the facts and in given circumstances. His/her primary focus is on the solution of the crime by intensive investigation. It is his duty to ferret out the truth. Laborious hard work and attention to the details, ability to sort through mountainous information, recognised behavioural patterns and above all, to co-ordinate the efforts of different people associated with various elements of the crime and the case, are essential. Diverse methods are, therefore, involved in making a successful completion of the investigation.

The function of the judiciary in the course of investigation by the police should be complementary and full freedom should be accorded to the investigator to collect the evidence connecting the chain of events leading to the discovery of the truth, viz., the proof of the commission of the crime. Often individual liberty of a witness or an accused person are involved and inconvenience is inescapable and unavoidable. The investigating officer would conduct in-depth investigation to discover truth while keeping in view the individual liberty with due observance of law. At the same time he has a duty to enforce criminal law as an integral process. No criminal justice system deserves respect if its wheels are turned by ignorance. It is never his business to fabricate the evidence to connect the suspect with the commission of the crime. Trustworthiness of the police is the primary insurance. Reputation for investigative competence and individual honesty of the investigator are necessary to enthuse public confidence. Total support of the public also is necessary. *State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192: AIR 1991 SC 1260.

Bench Strength **2**. Coram: **Kuldip Singh**[1] and **K. Ramaswamy**[2], JJ. [Date of decision: 2-4-1991]

[1414] — Ss. 157 and 173 — Details of investigation — Investigating officer should adduce evidence in court explaining step by step how investigation proceeded

There are clueless crimes committed. The factum of a cognizable crime having been committed is known but neither the identity of the accused is disclosed nor is there any indication available of the witnesses who would be able to furnish useful and relevant evidence. Such offences put to test the wits of an investigating officer. A vigilant investigating officer, well versed with the techniques of the job, is in a position to collect the threads of evidence finding out the path which leads to the culprit. The ends, which the administration of criminal justice serves, are not achieved merely by catching hold of the culprit. The accusation has to be proved to the hilt in a court of law. The evidence of the investigating officer given in the court should have a rhythm explaining step by step how the investigation proceeded leading to detection of the offender and collection of evidence against him. This is necessary to exclude the likelihood of any innocent having been picked up and branded as a culprit and then the gravity of the offence arousing human sympathy persuading the mind to be carried away by doubtful or dubious circumstances treating them as of "beyond doubt" evidentiary value. (Para 26). *Subhash Chand* v. *State of Rajasthan*, (2002) 1 SCC 702: 2002 SCC (Cri) 256.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 16-10-2001]

[1415] — S. 157 — Investigation — Each and every suggestion of the defence at the investigation need not be followed by Investigating Officer — *Suggestion made by defence after recording of FIR that a suspicious was entertained in the village that another person and not the accused had committed the crime — When suggestion not supported by any material it need not be gone into by the Investigating Officer. Kirtan Bhuyan* v. *State of Orissa*, 1993 Supp (1) SCC 558: 1993 SCC (Cri) 351: AIR 1992 SC 1579.

Bench Strength **3**. Coram: *M.M. Punchhi, M. Fathima Beevi* and *S.C. Agrawal*, JJ. [Date of decision: 31-3-1992]

[1416] — Ss. 157 and 161 — Manner in which investigation to be carried out — Held, a fair investigation is expected from the prosecution — *Investigation to be carried out not only from the stand of the prosecution, but also the defence, particularly in view of the fact that the onus of proof may shift to the accused at a later stage — Prevention of Corruption Act, 1988 — S. 17 — Prevention of Corruption Act, 1947 — S. 5-A* (Para 19). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

[1417] — S. 157 — Harassment of victim (harassed with unwelcome amorous advances, stalked and finally raped and murdered) and her parents — Conduct of police officials condemned as reprehensible — *Penal Code, 1860 — Ss. 375 and 376* (Para 80). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

[1418] — S. 157 — Investigation — Duty of investigation agency to act honestly and fairly and not resort to fabricating false evidence only with a view to secure conviction

"The quality of a nation's civilisation," it is said, "can be largely measured by the methods it uses in the enforcement of criminal law". In every civilised society the police force is invested with the powers of investigation of the crime to secure punishment for the criminal and it is in the interest of the society that the investigating agency must act honestly and fairly and not resort to fabricating false evidence or creating false clues only with a view to secure conviction because such acts shake the confidence of the common man not only in the investigating agency but in the ultimate analysis in the system of dispensation of criminal justice. Let no guilty man go unpunished but let the end not justify the means! The courts must remain ever alive to this truism. Proper results must be obtained by recourse to proper means — otherwise it would be an invitation to anarchy. *Rampal Pithwa Rahidas* v. *State of Maharashtra*, 1994 Supp (2) SCC 73: 1994 SCC (Cri) 851: 1994 Cri LJ 2320: (1994) 1 Crimes 1017.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 1-3-1994]

[1419] — S. 157 — Investigation — Duty of IO — *Investigating officer has duty to find out cause of injury sustained by an accused in the course of the same incident in which some of the members of the prosecution party sustained injury*

The investigating officer, having found one of the accused having sustained injuries in the course of the same incident in which those belonging to the prosecution party sustained injuries, should have at least made an effort at investigating the cause of, and the circumstances resulting in, injuries on the person of the accused. If only this would have been done, the defence version of the incident would have been before the investigating officer and the investigation would not have been one-sided. Investigation officer having failed to do so the investigation suffers from a serious infirmity which has prejudiced the accused in their defence. (Paras 20 and 22). *Kashiram* v. *State of M.P.*, (2002) 1 SCC 71: 2002 SCC (Cri) 68: AIR 2001 SC 2902.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 17-10-2001]

(8) Procedure and Duty and Powers of investigating officer *(contd.)*

[1420] — S. 157 — Investigation of cases under TADA must be thorough and of high order, having regard to the special features of the Act — *Prosecution launched in a cavalier manner deprecated — TADA, 1987 — Ss. 3 and 4*. *Balbir Singh* v. *State of Haryana*, (1987) 1 SCC 533: 1987 SCC (Cri) 193: AIR 1987 SC 1053: 1987 Cri LJ 853.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 20-1-1987]

[1421] — S. 157 — Castigation of investigation if justified on acquittal of accused — Courts should while ordering acquittal ordinarily desist from castigating the investigation

Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit the accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. The court need make such deprecatory remarks only when it is absolutely necessary in a particular case, and that too by keeping in mind the broad realities indicated above. (Para 41). *State of W.B.* v. *Mir Mohammad Omar*, (2000) 8 SCC 382: 2000 SCC (Cri) 1516: AIR 2000 SC 2988.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 29-8-2000]

[1422] — Ss. 157, 172 and 173 — It is unfair to condemn any omission by investigating officer if no opportunity was given to him at the trial to explain it. *State of U.P.* v. *Shanker*, 1980 Supp SCC 489: 1981 SCC (Cri) 428: AIR 1981 SC 897: 1981 Cri LJ 23.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 24-10-1980]

[1423] — Ss. 157 and 156 — Role of the IO — Deprecated — SI refusing to register the offence — Investigation defective and casual — Statements recorded by him cryptic and favourable to the accused — *He not even ascertaining the age of the victim — Circumstances suggesting that SI deliberately refused to register the offence in order to help the accused at the cost of prosecutrix — His conduct deprecated and commented upon by trial court and the High Court — Supreme Court while expressing shock at his behaviour observing that conduct of the SI in not registering a grievous offence like rape, despite the fact that the prosecutrix had categorically stated that the accused had forcible sexual intercourse with her, would lead to the losing of confidence of the public in the police establishment* (Paras 6, 26 and 27). *Vishnu* v. *State of Maharashtra*, (2006) 1 SCC 283: (2006) 1 SCC (Cri) 217: AIR 2006 SC 508: (2006) 37 AIC 310 (SC): 2006 Cri LJ 303.

Bench Strength **2**. Coram: **H.K. Sema** and *Tarun Chatterjee*, JJ. [Date of decision: 24-11-2005]

[1424] — S. 157 — Invocation of relevant law — Discretion of police — *Attack on Parliament House on 13-12-2001 — Failure to invoke provisions of special law dealing with terrorist acts (POTA) against accused co-conspirators from very initiation of investigation, having regard to nature and manifestations of the crime — Permissibility and effect — Discretion open to police to invoke said law — Prevention of Terrorism Act, 2002 — Ss. 50 and 3*

Though the POTO [POTA] provisions could have been invoked on the very first day having regard to the nature and manifestations of this grave crime there is no justification to characterise the action of the police officers concerned in not having done so as mala fide or motivated. It cannot be disputed that POTA contains drastic and stringent provisions, both substantive and procedural, for dealing with special categories of offences which have bearing on the security and integrity of the country. In view of this special feature of the law, it is necessary to bestow sufficient care and thought before prosecuting an offender under this special law instead of proceeding under the ordinary law. This aspect has been emphasised in more than one decision of the Supreme Court dealing with the TADA provisions. No fault can be found with the investigating officers in going slow in bringing

POTA into picture. At any rate, it may be a case of bona fide error or overcautious approach. Once the action of the police authorities in deferring the invocation of POTA is held to be not mala fide, it is not possible to countenance the contention that the provisions of POTA, especially those contained in Chapter V and Section 52 ought to have been complied with even before 19th December, 2001, when POTA was invoked. There is nothing on record to hold that the investigating officials deliberately and without semblance of justification decided to bypass the provisions of POTO [POTA]. (Paras 21, 22 and 23)

The propriety or otherwise of the action of the investigating agency in adding POTA at a later stage is one thing; whether the offence under POTA is made out, in addition to the offences under IPC, is a distinct point, one shall not be mixed up with the other. (Para 240). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47; Usmanbhai Dawoodbhai Memon v. State of Gujarat, (1988) 2 SCC 271: 1988 SCC (Cri) 318, relied on

[1425] — S. 157 — Investigation — Interception of communications — Interception of telephone calls — Appreciation of evidence — Call records of (cellular) telephones — Presence of duplicate entries in — Effect — *Telegraph Act, 1885 — S. 5 — Prevention of Terrorism Act, 2002 — S. 36*

The same call has been recorded two times in the records. The computer, at the first instance, instead of recording the IMEI number of the mobile instrument, had recorded the IMEI and cell ID (location) of the person calling/called by the subscriber. The computer rectified this obvious error immediately and modified the record to show the correct details viz. the IMEI and the cell ID of the subscriber only. The document is self-explanatory of the error. An innocuous error in the computer recording is being magnified to discredit the entire document containing the details without any warrant. The fact that the same call has been recorded twice in the call records of the calling and called party simultaneously, demonstrates beyond doubt that the correctness or genuineness of the call is beyond doubt. (Para 152)

Far from supporting the contention of the defence, the above facts, evident from the perusal of the call records, would clearly show that the system was working satisfactorily and it promptly checked and rectified the mistake that occurred. (Para 152)

It was not suggested nor could it be suggested that there was any manipulation or material deficiency in the computer on account of these two errors. Above all, the printouts pertaining to the call details exhibited by the prosecution are of such regularity and continuity that it would be legitimate to draw a presumption that the system was functional and the output was produced by the computer in regular use, whether this fact was specifically deposed to by the witness or not. Therefore the call records are admissible and reliable and rightly made use of by the prosecution. (Para 152)

The IMEI number of the Nokia phone found in the truck was noted as 350102209452432. That means the last digit '2' varies from the call records wherein it was noted as 350102209452430. Thus, there is a seeming discrepancy as far as the last digit is concerned. This discrepancy stands explained by the evidence of PW 78, a computer engineer working as Manager, Siemens. He stated, while giving various details of the 15 digits, that the last one digit is a spare digit and the last digit, according to GSM specification should be transmitted by the mobile phone as '0'. (Para 195). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

[1426] — S. 157 — Interception of communications — Interception of telephone calls — Intercepts illegally obtained — Admissibility of — *Held, are admissible under S. 7, Evidence Act, 1872 since there is no specific embargo against their admissibility in the Telegraph Act or Rules, which govern the same — In any case, on facts, intercepts in question duly conformed to requirements laid down in* Col. Ram Singh case, *1985 Supp SCC 611 — Telegraph Act, 1885 — S. 5 — Telegraph Rules, 1951, R. 419-A — Evidence Act, 1872 — S. 7 — Prevention of Terrorism Act, 2002 — S. 45*

On the relevant day, the interception of telephone messages was governed by Section 5(2) of the Telegraph Act, 1885 read with Rule 419-A of the Telegraph Rules, 1951. The substantive power of interception by the Government or the authorised officer is conferred by Section 5. The modalities and procedure for interception is governed by the said Rules. (Para 153)

There is warrant for the proposition that even if evidence is illegally obtained it is admissible. It would be a dangerous obstacle to the administration of justice if it were held, because evidence was

(8) Procedure and Duty and Powers of investigating officer *(contd.)*

obtained by illegal means, it could not be used against a party charged with an offence. There is of course always a word of caution. It is that the judge has a discretion to disallow evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused. That caution is the golden rule in criminal jurisprudence. (Para 154)

Even if the interception did not take place in strict conformity with Rule 419-A that does not affect the admissibility of the communications so recorded. The illegality or irregularity in the interception does not affect its admissibility in evidence, there being no specific embargo against the admissibility in the Telegraph Act or in the Rules. (Para 153)

Unlike the proviso to Section 45 of POTA, Section 5(2) of the Telegraph Act or Rule 419-A does not deal with any rule of evidence. The non-compliance or inadequate compliance with the provisions of the Telegraph Act does not *per se* affect the admissibility. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible as *res gestae* under Section 7 of the Evidence Act. (Para 154)

Deficiencies such as in this case, of the officer concerned of the government who authorised the interception not being of the rank prescribed and the confirmation orders being made prospectively, though unfortunate, cannot preclude the admission of intercepted telephonic communication in evidence. (Para 154)

In the instant case, the tape-recorded conversation which has been duly proved and conforms to the requirements laid down by the Supreme Court in *Col. Ram Singh case*, 1985 Supp SCC 611, can be pressed into service against the accused concerned in the joint trial for the offences under the Penal Code as well as POTA. (Para 155)

Such evidence cannot be shut out by applying the embargo contained in Section 45 of POTA when on the date of interception, the procedure under Chapter V of POTA was not required to be complied with. Chapter V of POTA governing the procedure for interception and admission of the intercepted communications presupposes that there is an investigation of a terrorist act under POTA which has been set in motion. The procedural requirements of Chapter V have not been complied with when such interceptions took place on 14-12-2001. On that date POTA was not in the picture and the investigation did not specifically relate to the offences under POTA. The non-inclusion of the POTO offences even at the threshold of investigation cannot be legally faulted and that such non-inclusion was not deliberate. The question of applying the proviso to Section 45 of POTA does not, therefore, arise as the proviso applies only in the event of the communications being legally required to be intercepted under the provisions of POTA. The proviso to Section 45 cannot be so read as to exclude such material in relation to the POTA offences if it is otherwise admissible under the general law of evidence. The admissibility or the evidentiary status of the two intercepted conversations should, therefore, be judged dehors the provisions of POTO/POTA. (Paras 153 and 155). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Ram Singh v. Col. Ram Singh, 1985 Supp SCC 611, applied

R.M. Malkani v. State of Maharashtra, (1973) 1 SCC 471: 1973 SCC (Cri) 399; R. v. Shephard, 1993 AC 380: (1993) 1 All ER 225: (1993) 2 WLR 102 (HL); Kuruma v. R., (1955) 1 All ER 236: 1955 AC 197: (1955) 2 WLR 223 (PC); Pooran Mal v. Director of Inspection (Investigation), (1974) 1 SCC 345: 1974 SCC (Tax) 114: (1974) 2 SCR 704; State v. N.M.T. Joy Immaculate, (2004) 5 SCC 729: 2004 SCC (Cri) 1722, relied on

[1427] — S. 157 — Call records of (cellular) telephones — Proof of — Burden to be discharged — Experts if necessary — *Call records of cellular phones being stored in huge servers that cannot be easily moved and produced in court, held, secondary evidence in respect thereof can be given under Ss. 63 and 65, regardless of compliance with S. 65-B(4) — Further held, nature of evidence to show that there has been no improper use of the computer and that it was operating properly will vary from case to case — It will be very rarely necessary to call an expert — In most cases it will be possible to discharge said burden by calling a witness who is familiar with the operation of the computer concerned — Telegraph Act, 1885 — S. 5 — Prevention of Terrorism Act, 2002 — S. 36 — Evidence Act, 1872 — Ss. 63, 65, 65-B and 45*

The information contained in the call records of the cellular phones of the accused is stored in huge servers which cannot be easily moved and produced in the court. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. It may be that the certificate containing the details in Section 65-B(4) is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65. Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. (Para 150)

The nature of the evidence to discharge the burden of showing that there has been no improper use of the computer and that it was operating properly will inevitably vary from case to case. The evidence must be tailored to suit the needs of the case. It will very rarely be necessary to call an expert and in the vast majority of cases it will be possible to discharge the burden by calling a witness who is familiar with the operation of the computer in the sense of knowing what the computer is required to do and who can say that it is doing it properly. (Para 151)

Both the witnesses who were examined in respect of the call records were responsible officials of the companies concerned who deposed to the fact that they were the printouts obtained from the computer records. In fact the evidence of PW 35 shows that he is fairly familiar with the computer system and its output. If there had been some questioning vis-à-vis specific details or specific suggestion of fabrication of printouts, it would have been obligatory on the part of the prosecution to call a technical expert directly in the know of things. But there was no such questioning. (Para 151). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

R. v. Shephard, 1993 AC 380: (1993) 1 All ER 225: (1993) 2 WLR 102 (HL), followed

[1428] — S. 157 — Applicability — Interception of phone calls — Details of investigation of calls made or received from one of many numbers authorised in sanction order — Non-adduction of — Effect — *Held, no adverse inference can be drawn from the same — Telegraph Act, 1885 — S. 5 — Prevention of Terrorism Act, 2002 — S. 36 — Evidence Act, 1872 — S. 114(g)*

The *second circumstance* is the frequent telephonic contacts which Afzal had established with Mohammed, the ring-leader of the five terrorists who carried out the attack on Parliament House. Even minutes before the attack, as many as three calls were made by Mohammed to Afzal at 10:43, 11:08 and 11.25 a.m. from his cellular phone recovered from Mohammed's body. The SIM card relating thereto was also found in Mohammed's purse. Not only that, there is clear evidence to the effect that the mobile instruments were being freely exchanged between Afzal and Mohammed and other terrorists. This is the *third circumstance*. There is unshakeable evidence to this effect [discussed in paras 192 to 201]. (Paras 191 and 202)

No adverse inference can be drawn from the fact that there is no evidence regarding the details of investigation of the calls made or received from one other number for which interception was authorised in the sanction order. It is quite probable that the investigator would have entertained some suspicion in this regard and would have, by way of caution sought permission to intercept. That does not cast a cloud on the prosecution case built up on the basis of the call records pertaining to the phones used by the accused. (Para 203). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

[1429] — S. 157 — Offence of dacoity and murder — Accused named along with unknown persons in charge-sheet — Enmity between accused and victims admitted — *Duty of police to carefully investigate. Ram Lakhan Singh* v. *State of U.P.*, (1977) 3 SCC 268: 1977 SCC (Cri) 474: AIR 1977 SC 1936: 1977 Cri LJ 1566.

Bench Strength 3. Coram: **P.K. Goswami**, *A.C. Gupta* and *P.N. Shinghal*, JJ. [Date of decision: 6-5-1977]

[1430] — S. 157 — Test Identification of photographs of corpses of co-conspirators of accused recovered from site of offence — When not necessary — *Identifying witnesses pointed out by accused themselves — Sufficient interaction having taken place between accused, deceased co-conspirators and witnesses identifying them, it not being a case of "fleeting glimpse" — Small time-lag between said interaction and identification of said photographs — Further, photographs being quite clear — Given the above facts, test identification of said photographs, though would have given better assurance of the reliability of identification, failure to do so cannot warrant eschewal of the said evidence — Evidence Act, 1872 — S. 9. State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

(8) Procedure and Duty and Powers of investigating officer *(contd.)*

[1431] — S. 157 — Test Identification parade — When not necessary — *Identifying witnesses pointed out by accused themselves — Sufficient interaction having taken place between accused and witnesses identifying them, it not being a case of "fleeting glimpse" — Small time lag between said interaction and identification of accused — Held, all the above were reasons which sufficiently obviated need for holding test identification parade — Evidence Act, 1872 — S. 9*

Conducting a test identification parade relates to the stage of investigation and the omission to conduct the same will not always affect the credibility of the witness who identifies the accused in the court. (Para 227)

There is no substance in the contentions that test identification should have been conducted to assure credibility of the evidence in the identification of Afzal by the shopkeepers and that the photograph of the deceased Mohammed should have been mixed up with the other photographs in order to impart credibility to the version of witnesses who claimed to have seen him. (Para 226)

In the present case, the accused persons themselves led the witnesses to the shops and the places concerned and pointed out the witnesses. Therefore, the question of holding TIP thereafter does not arise. The evidence of the prosecution witnesses who could identify the two accused persons can be safely relied upon for more than one reason. Firstly, the time lag between the date of the first and next meeting was not much, it was just a few days or at the most two weeks. Secondly, there was scope for sufficient interaction so that the identity of the accused could be retained in their memory. It was not a case of mere "fleeting glimpse". For the same reasons, they could identify Mohammed by his photograph which was quite clear. If the step was taken by the IO to have the test identification of photographs of dead bodies, it would have given better assurance of the reliability of identification. However, the failure to do so cannot be a ground to eschew the testimony of the witnesses whose evidence was concurrently accepted by the trial court and the appellate court. It is not the case of the appellant or any of the accused that the identification by photographs is not permissible under law. (Para 229). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Malkhan Singh v. State of M.P., (2003) 5 SCC 746: 2003 SCC (Cri) 1247, relied on

(9) Hearing to accused during investigation

See also under S. 173, below

[1432] — Ss. 157, 173(8) and 166-A — Right, if any, of the accused to be heard at the stage of investigation — Held, accused has no such right — *He cannot therefore obstruct further investigation under S. 173(8) on the ground that procedure laid down in S. 166-A for investigation outside India has not been followed — Accused can however assail validity of evidence so collected during the course of trial*

The deceased was a Canadian citizen of Indian origin. She was alleged to have been murdered in Mumbai. Her dead body was sent back to Canada where second autopsy was performed and genetic material relating to her was preserved. At the request of husband of the deceased, the Chief Coroner of the Province of Ontario in Canada wrote to Commissioner of Police in Mumbai that they were ready to assist Mumbai Police with the help of genetic material preserved by them. Husband of the deceased also filed a criminal writ petition in the High Court seeking a direction to Mumbai Police to seek the assistance of Chief Coroner in accordance with Section 166-A CrPC. Mumbai Police expressed its inclination to avail of assistance of the Chief Coroner. The High Court directed Mumbai Police to get the material collected in the course of investigation examined in Canada and report so obtained would form part of medical and forensic investigation. Such report would be filed in the trial court under Section 173(8) CrPC. The appellant objected to the High Court order on the ground that requirements of Section 166-A had not been fulfilled. The issue before the Supreme Court was whether accused persons could raise any objection at the stage of investigation.

Dismissing the appeals and affirming the High Court order, the Supreme Court held as above.

Held :

The accused has no right to be heard at the stage of investigation. The prosecution will however have to prove its case at the trial when the accused will have full opportunity to rebut/question the validity and authenticity of the prosecution case. The accused can avail himself of an opportunity to cross-examine and/or otherwise controvert the authenticity, admissibility or legal significance of material evidence gathered in the course of further investigations. Further, in light of the views expressed by the investigating officer in his affidavit before the High Court, it is apparent that the investigating authorities would inevitably have conducted further investigation with the aid of CFS under Section 173(8) of the Code. What is the evidentiary value can be tested during trial. At this juncture it would not be proper to interfere in the matter. (Paras 11 to 13). *Narender G. Goel* v. *State of Maharashtra*, (2009) 6 SCC 65.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 8-5-2009]

Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P., (1999) 5 SCC 740: 1999 SCC (Cri) 1047, relied on

[**Ed.**: *See also* 1993 Supp (4) SCC 260 and (1996) 11 SCC 253.]

[1433] — Ss. 157 to 167 — Role of investigating officer — He is not required to afford any opportunity of hearing to the accused while collecting material against him. *K. Veeraswami* v. *Union of India*, (1991) 3 SCC 655: 1991 SCC (Cri) 734.

Bench Strength 5. Coram: **B.C. Ray**[1], **K. Jagannatha Shetty**[2], **L.M. Sharma**[3], *M.N. Venkatachaliah*[2] and **J.S. Verma**[4], JJ. [Date of decision: 25-7-1991]

[1434] — Ss. 157 and 173(2) — At the stage of collection of material under S. 157, CrPC to make out a prima facie case for a full-fledged enquiry, the rule of audi alteram partem cannot be invoked by the accused — *Accused has no say against manner and method of investigation — Hearing to accused is provided by CrPC under specified circumstances but not under Chap. XII — Constitution of India — Arts. 21 and 22. Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260: 1993 SCC (Cri) 1171: AIR 1993 SC 1082: 1993 Cri LJ 859.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 17-12-1992]

(10) Defective investigation

See also Sections 155 to 159, '(5) Refusal to investigate or Improper investigation — Monitoring of investigations and Role of court', and

'(8) Procedure and Duty and Powers of investigating officer', above

'(11) Illegal/Partisan/Mala fide investigation — Effect and Quashment', below

[1435] — Ss. 157 and 155 — Defect in investigation — Effect — *Held, does not by itself vitiate the trial based on such defective investigation*

Even a defect, if any, found in investigation, however serious, has no direct bearing on the competence or the procedure relating to the cognizance or the trial. A defect or procedural irregularity, if any, in investigation itself cannot vitiate and nullify the trial based on such erroneous investigation. (Para 18). *Paramjit Singh* v. *State of Punjab*, (2007) 13 SCC 530: AIR 2008 SC 441.

Bench Strength 2. Coram: *P.P. Naolekar* and **B. Sudershan Reddy**, JJ. [Date of decision: 31-10-2007]

[1436] — S. 157 — Allegation that investigating police officers were prejudiced against the accused based on contempt application moved by the accused — *But none of the police officers in charge of the investigation referred to in the complaint — In the circumstances held, allegation of prejudice cannot be sustained merely on ground that brotherhood of the uniform created a prejudice in absence of anything to show that the investigating officers had any prejudice. Darshan Singh* v. *State of Punjab*, (1988) 1 SCC 618: 1988 SCC (Cri) 214: AIR 1988 SC 747.

Bench Strength 3. Coram: **G.L. Oza**, *B.C. Ray* and *K. Jagannatha Shetty*, JJ. [Date of decision: 29-1-1988]

[1437] — S. 157 — Defective investigation — Effect — *Held, criminal justice should not be made a casualty for wrongs committed by IOs — If court is convinced that testimony of witness to occurrence is true, court is free to act on it albeit IO's suspicious role — Hence, even if IO failed to reveal as to how he came to know about presence of PWs 2 to 4 at scene of occurrence, said fact immaterial in face of their clinching evidence.* (Paras 36 and 37). *Abu Thakir* v. *State of T.N.*, (2010) 5 SCC 91.

Bench Strength 2. Coram : **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision : 19-4-2010]

State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715: 2000 SCC (Cri) 61, followed

[1438] — Ss. 157 and 162 — Defective investigation — Effect of — *Defence case that accused also sustained injury in the same occurrence in which deceased died — IO did not carry out investigation in relation thereto having not felt necessity therefor — Trial court made a caustic remark — Held, that IO performed his statutory duty properly or not may be a subject-matter of comment, but court cannot be swayed by that fact alone* (Para 18). *Ramappa Halappa Pujar* v. *State of Karnataka*, (2007) 13 SCC 31: (2007) 55 AIC 191 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 27-4-2007]

[1439] — Ss. 157 and 174 — Lapses in investigation — Effect — *Held, cannot affect credibility of witnesses — Further held, plea that name of accused was not mentioned in inquest report hence adding to vulnerability of prosecution version, clearly unsustainable* (Para 18). *Aqeel Ahmad* v. *State of U.P.*, (2008) 16 SCC 372: AIR 2009 SC 1271: (2009) 2 All LJ 178: (2009) 75 AIC 248 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 19-12-2008]

Ram Bali v. State of U.P., (2004) 10 SCC 598: 2004 SCC (Cri) 2045, relied on

(10) Defective investigation *(contd.)*

[1440] — S. 157 — Deficiencies in investigation — When not relevant — Held, cannot be a ground to discard the prosecution version which is authentic, credible and cogent (Para 12). *State of M.P.* v. *Mansingh*, (2003) 10 SCC 414.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 13-8-2003]

[1441] — Ss. 157 to 159 — Investigation — Mode and manner of investigation — Promptness in intimating Magistrate concerned about commission of cognizable offence — Investigation of unidentified body — *Contradictions, inconsistencies, exaggerations or embellishments — Doubtful evidence regarding time of lodging FIR and identity of deceased in doctor's intimation — Murder witnessed (with the help of scooter headlight) by PW 1/complainant at about 9.30 p.m. while returning from office — PW 1 saw A-1 and A-2 stabbing the deceased with knife — PW 1 lodged FIR with the help of G (PW 3, a local Councillor) — PW 4 (police constable) and PW 3 took deceased to hospital — Though PW 4 informed about the identity of the deceased by PWs 1 and 3, he not disclosing the same to doctor — Doctor, in Ext. C-1 (doctor's intimation) stating that body of deceased was unidentified — No evidence/explanation as to why PW 4 chose not to reveal identity of deceased to the doctor — Mode and manner of investigation by police in case of unidentified body, held, is different — PW 17, IO's statement in this regard was full of contradictions — S. 157(1) CrPC intimation/report also delayed by 15 hours — No explanation for the delay caused — PW 1's failure to give details of scooter number, model, etc. held, fatal — On facts, held, prosecution failed to establish the accusations, and so appellants entitled to acquittal* (Paras 8 and 10 to 13). *N.H. Muhammed Afras* v. *State of Kerala*, (2008) 15 SCC 315: (2009) 3 SCC (Cri) 982: AIR 2009 SC 731: (2008) 72 AIC 78 (SC): (2009) 2 ECrN 21 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-11-2008]

[1442] — Ss. 157, 161 and 173 — Investigation — Delay in conducting due to giving medical assistance to the injured — On facts, held, not mala fide — *Assailants inflicting serious injuries on three victims — Intestines of one of them coming out and a piece thereof even found lying on the spot and blood was found shed all round — In such circumstances, Investigating Officer's anxiety to remove the injured to hospital instead of interrogating the persons present to find out the cause of assault, held, not improper — On facts, held, statements of the injured were recorded on the earliest available opportunity thereafter — Hence, although the Investigating Officer could have acted more promptly, it could not be said that he was guilty of mala fide intention — Penal Code, 1860 — Ss. 302, 307, 326, 324, 323, 342, 452 and 149* (Para 15). *Ramanbhai Naranbhai Patel* v. *State of Gujarat*, (2000) 1 SCC 358: 2000 SCC (Cri) 113: 1999 Cri LJ 5013.

Bench Strength **2**. Coram: **S.B. Majmudar** and *U.C. Banerjee*, JJ. [Date of decision: 30-11-1999]

[1443] — Ss. 157 and 161 — Defective investigation — Effect of, on proving guilt of accused — *Held, the same by itself may not lead to a conclusion that the accused is innocent* (Para 60). *Acharaparambath Pradeepan* v. *State of Kerala*, (2006) 13 SCC 643: (2007) 49 AIC 49 (SC): (2007) 1 KLT 249.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 15-12-2006]

Visveswaran v. State, (2003) 6 SCC 73: 2003 SCC (Cri) 1270; State of M.P. v. Mansingh, (2003) 10 SCC 414, relied on

[1444] — S. 157 — Defective investigation — Effect — *Held, by itself cannot be a ground for acquittal* (Para 26). *Budh Singh* v. *State of M.P.*, (2007) 10 SCC 496: (2008) 1 SCC (Cri) 64: (2007) 57 AIC 134 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 18-5-2007]

[1445] — Ss. 157, 162, 160 and 161 — Defective investigation by itself cannot be made a ground for acquittal

The trial court had no reason to hold that the identity of the weapon of offence was doubtful or PW 9 was not the prosecution witness whose statement had been recorded under Section 161 CrPC. The defects in the investigation holding it to be shaky and creating doubts also appears to be the result of the imaginative thought of the trial court. Otherwise also, defective investigation by itself cannot be made a ground for acquitting the accused. *Allarakha K. Mansuri* v. *State of Gujarat*, (2002) 3 SCC 57: 2002 SCC (Cri) 519: AIR 2002 SC 1051: 2002 Cri LJ 1489.

Bench Strength **2**. Coram: **R.P. Sethi** and *K.G. Balakrishnan*, JJ. [Date of decision: 14-2-2002]

[1446] — Ss. 157, 160 to 168 — Defective investigation — Effect of — *Not fatal to prosecution where ocular testimony is found credible and cogent — Court has to be circumspect while evaluating the evidence in a case of such type — Thus, accused cannot be acquitted solely on account of defect in investigation — Evidence Act, 1872 — S. 45 — Penal Code, 1860 — Ss. 302/34*

In the instant case, the High Court found several disturbing features which indicated how the investigating officer had made out a new case to save the accused persons and to implicate the complainant party. Hence, the High Court analysed the evidence of the eyewitnesses with due care and caution. On finding the said evidence to be credible, the High Court upheld the conviction recorded by the trial court.

Before the Supreme Court, the accused- appellants challenged the conviction on the grounds: (*i*) that the police after thorough investigation had concluded that it was the complainant party which caused the death of the deceased, (*ii*) that the pellets, wads and cartridges were not recovered from the spot, (*iii*) that the weapons of assault and the pellets were not sent for ballistic examination, (*iv*) that the bloodstained earth was not sent for chemical examination, (*v*) that many persons who could have thrown light on the incident had not been examined, and (*vi*) that the evidence of PWs 2 and 3 being that of highly interested and inimical persons, should have been discarded.

Dismissing the appeal,

Held :

Even if the investigation is defective, that pales into insignificance when ocular testimony is found credible and cogent. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (Paras 8 and 5)

Both the trial court and the High Court have analysed the evidence of PWs 2 and 3 with due care and caution keeping in view the correct legal principles and have found the accused persons guilty. There is no scope for interference with the said conclusions. (Para 9). *Dhanaj Singh* v. *State of Punjab*, (2004) 3 SCC 654: 2004 SCC (Cri) 851: AIR 2004 SC 1920: 2004 Cri LJ 1807.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-3-2004]

Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; Paras Yadav v. State of Bihar, (1999) 2 SCC 126: 1999 SCC (Cri) 104; Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517: 1998 SCC (Cri) 1085; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, followed

[1447] — Ss. 156 and 173 — Investigation — Impropriety in, if fatal — *Reiterated, conviction not improper if there has not been strict compliance with provisions of PC Act in the matter of investigation by authorised police officer unless accused is shown to have been prejudiced — Function of investigation is merely to collect evidence and any irregularity and illegality in course of collection of evidence can hardly be considered by itself to affect legality of trial by a competent court of the offence so investigated — Prevention of Corruption Act, 1988, S. 13(1)(e) r/w S. 13(2) and Ss. 17 second proviso & 17(c)* (Paras 12 and 11). *State of M.P.* v. *Virender Kumar Tripathi*, (2009) 15 SCC 533.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 27-4-2009]

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196, relied on

[1448] — S. 157 — Defective investigation — When fatal — *FIR lodged at about 10.50 a.m. however, the inquest report showed that the inquest was started at 10.30 a.m. on the same day — No explanation offered for the discrepancies — Moreover, Magistrate received FIR after four days — Delay not explained — Held, it is true that a faulty investigation cannot be a determinative factor and would not be sufficient to throw out a credible prosecution version — But in the instant case, it was required to be explained by the investigating officer by plausible evidence on record, as to how the inquest was undertaken at a point of time when the FIR was not in existence — Further held, the statutory requirement under S. 157 CrPC is that the report has to be sent forthwith: that itself shows the urgency attached to the sending of the report — If the FIR is timely lodged and investigation is undertaken immediately, in a given case, the delayed receipt of the report by the Magistrate would not be fatal to the prosecution — It would depend upon the facts of each case — In a given case it is open to the prosecution to establish by evidence the reasons for the delayed dispatch or delayed receipt — Therefore, the cumulative effect of the factors highlighted above would show that the prosecution miserably failed to establish the accusations — Hence appellants acquitted — Penal Code, 1860 — Ss. 302, 341, 342, 34, 148 and 149* (Paras 9 to 12). *Motilal* v. *State of Rajasthan*, (2009) 7 SCC 454: (2009) 3 SCC (Cri) 444.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 5-5-2009]

[1449] — Ss. 157, 174 and 173(8) — Investigation — Defective/Negligent investigation — Effect on adjudication, trial and appreciation of evidence — Duty of court — *Defective investigation by earlier IOs being ignored by later IO carrying on proper investigation — Defective investigation by earlier IOs, held, not relevant and rightly discarded by subsequent IO — Defect in the investigation by itself cannot be a ground for acquittal — Investigation is not the solitary area for judicial scrutiny in a criminal trial — Legal obligation of court is to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth — If*

(10) Defective investigation *(contd.)*

primacy is given to negligent investigations or to the omissions or lapses by perfunctory investigation, faith and confidence of people in criminal justice administration would be eroded

Defect in the investigation by itself cannot be a ground for acquittal. Investigation is not the solitary area for judicial scrutiny in a criminal trial. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. (Para 55)

Irregularities committed in the investigation by the earlier IOs in the present case have too little relevance on the merits of the case. The evidence collected by the said three IOs was not worth placing reliance on and has rightly been not relied upon by the subsequent investigating officer. Serious issues have been raised that inquest report was defective. Undoubtedly, three investigating officers PWs 116, 121 and 122 had conducted the investigation at the initial stage. The occurrence was so ugly and awful that the IOs had conducted the investigation under great anxiety and tension. The seizure memos were also prepared in the same state of affairs. Therefore, when the investigation had been conducted in such a charged atmosphere, some irregularities were bound to occur. There is ample evidence on record to show that when the students came to know that three girls had been charred and large number of girl students had suffered burn injuries, they became so violent that they damaged the ambulance which had been brought to take bodies of the deceased girls for conducting autopsy. The State authorities, after keeping all these factors in mind and realising that the investigation had not been conducted in a proper manner, had taken a decision to transfer the investigation to CB CID. (Para 54)

The presence of A-2 to A-4 with the other accused at the place of agitation, where the bus was burnt by them stands established. As it was proved that there was no initial investigation, the allegation of non-disclosure of identity of accused persons to PW 116 (IO initially appointed and subsequently changed) does not arise. Further the initial investigation was conducted in a panicked situation, therefore, the Government thought it proper to scrap it out and hand over to a higher officer through CB CID. (Paras 63 and 64). *C. Muniappan* v. *State of T.N.*, (2010) 9 SCC 567: (2010) 5 CTC 794 . Bench Strength **2**. Coram: *G.S. Singhvi* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 30-8-2010]

Chandrakant Luxman v. State of Maharashtra, (1974) 3 SCC 626: 1974 SCC (Cri) 116; Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517: 1998 SCC (Cri) 1085; Paras Yadav v. State of Bihar, (1999) 2 SCC 126: 1999 SCC (Cri) 104; State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715: 2000 SCC (Cri) 61; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641; Allarakha K. Mansuri v. State of Gujarat, (2002) 3 SCC 57: 2002 SCC (Cri) 519; Ram Bali v. State of U.P., (2004) 10 SCC 598: 2004 SCC (Cri) 2045, relied on

[1450] — Ss. 157, 161, 164, 311 and 391 — Defective investigation — Effect of and examination of prosecution evidence in case of — Course to be adopted by court detailed — *Court exhorted to adopt active and analytical role and to have recourse to Ss. 391 and 311 CrPC, 1973 and S. 165 Evidence Act, 1872 if necessary, and to evaluate entire evidence — Accused not to be acquitted solely on account of the defect in investigation — To do so would tantamount to playing into hands of investigating officer if investigation is designedly defective and perpetuating the designed mischief — Evidence Act, 1872 — S. 165*

If the lapse or omission is committed by the investigating agency or because of negligence, the prosecution evidence is required to be examined dehors such omissions, to find out whether the said evidence is reliable or not. The court has to adopt an active and analytical role. The contaminated conduct of officials should not stand in the way of courts getting at the truth by having recourse to Sections 311, 391 CrPC, 1973 and Section 165 of the Evidence Act, 1872 at the appropriate and relevant stages and evaluating the entire evidence. It would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective and the designed mischief would be perpetuated with a premium to the offenders and justice would not only be denied to the complainant party but also made an ultimate casualty. (Paras 61 and 62)

Right from the beginning, the stand of the appellant *Z* was that the investigating agency was trying to help the accused persons and so was the Public Prosecutor. If the investigation was faulty, it was not the fault of the victims or the witnesses. If the same was done in a manner with the object of helping the accused persons as it appears to be apparent from what has transpired so far, it was an additional ground just and reasonable as well for accepting the additional evidence. (Paras 60 and 24)

The High Court has come to a definite conclusion that the investigation carried out by the police was dishonest and faulty. That was and should have been per se sufficient justification to direct a retrial of the case. There was no reason for the High Court to come to the further conclusion of its own about false implication without a concrete basis, and that too merely on conjectures. On the other hand, the possibility of the investigating agency trying to shield the accused persons keeping in view the methodology adopted and turn of events, can equally not be ruled out. When the investigation is dishonest and faulty, it cannot be only with the purpose of false implication. (Paras 70, 71 and 20). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; Paras Yadav v. State of Bihar, (1999) 2 SCC 126: 1999 SCC (Cri) 104; Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517: 1998 SCC (Cri) 1085; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, relied on

Clarified in Satyajit Banerjee v. State of W.B., (2005) 1 SCC 115

[1451] — Ss. 157 to 173 — Investigation — Failure to collect evidence or failure to produce evidence collected during investigation — Consequences — *While the former may entitle the court to hold the investigation to be perfunctory or tainted affecting the entire trial, in case of latter court can draw a presumption in accordance with S. 114 Ill. (g) Evidence Act — Evidence of eyewitnesses coupled with nature of injuries sustained by some of them and the statement in the FIR establishing that one of the miscreants had been assaulted by a vegetable knife — Held, in the circumstances of the case, failure of the Investigating Officer to seize the knife not fatal to the prosecution case — Evidence Act, 1872, S. 114 Ill. (g)* (Para 23). *Chand Khan* v. *State of U.P.*, (1995) 5 SCC 448: 1995 SCC (Cri) 915: AIR 1995 SC 2140: 1995 Cri LJ 3675.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 11-7-1995]

[1452] — S. 157 — Defective investigation — Effect — Court should be circumspect in evaluating evidence but prosecution case cannot be rejected solely on that ground — *Murder by gunshot firing — Failure on the part of investigating officer to send the firearm and the empties recovered from the spot to Forensic Science Laboratory and failure to take into possession wire gauze of the window of the baithak from where the gunshot was fired — Held, not fatal to the prosecution case when the case is fully established from the testimony of the eyewitnesses*

In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect. (Para 15)

It would have been certainly better if the investigating agency had sent the firearms and the empties to the Forensic Science Laboratory for comparison. However, the report of the ballistic expert would in any case be in the nature of an expert opinion and the same is not conclusive. The failure of the investigating officer in sending the firearms and the empties for comparison cannot completely throw out the prosecution case when the same is fully established from the testimony of eyewitnesses whose presence on the spot cannot be doubted as they all received gunshot injuries in the incident. (Para 15)

It is not necessary for the investigating officer to take in his possession the wire gauze of the window from where the accused is alleged to have fired. The wire gauze had absolutely no bearing on the prosecution case and the investigating officer was not supposed to cut and take out the same from the window where it was fixed. (Para 15)

The circumstances relied upon by the High Court in holding that the investigation was tainted are not of any substance on which such an inference could be drawn and in a case like the present one where the prosecution case is fully established by the direct testimony of the eyewitnesses, which is corroborated by the medical evidence, any failure or omission of the investigating officer cannot render the prosecution case doubtful or unworthy of belief. (Para 15). *Amar Singh* v. *Balwinder Singh*, (2003) 2 SCC 518: 2003 SCC (Cri) 641: AIR 2003 SC 1164: 2003 Cri LJ 1282.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 31-1-2003]

Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; Paras Yadav v. State of Bihar, (1999) 2 SCC 126: 1999 SCC (Cri) 104; Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517: 1998 SCC (Cri) 1085, relied on

[1453] — S. 157 — Defective investigation — Effect of — *Any deficiency or irregularity in investigation need not necessarily lead to rejection of the case of prosecution when it is otherwise proved — The only requirement is of extra caution by courts while evaluating evidence in such cases — Acquittal of accused solely on the ground of defective investigation, held, would not be just — Thus, non-holding of Test identification parade, held on facts, not fatal*

(10) Defective investigation *(contd.)*

Further, it is also required to be kept in view that every defective investigation need not necessarily result in the acquittal. In a case of defective investigation, the only requirement is of extra caution by courts while evaluating evidence. It would not be just to acquit the accused solely as a result of defective investigation. Any deficiency or irregularity in investigation need not necessarily lead to the rejection of the case of prosecution when it is otherwise proved. (Para 12)

The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when no one is able to identify the accused. The commission of a crime can also be proved by circumstantial evidence. In the present case, there are clinching circumstances unerringly pointing the accusing finger towards the appellant beyond any reasonable doubt. The non-holding of the test identification parade, having regard to the facts of the case, is not fatal and does not create any reasonable doubt in the case of the prosecution. (Paras 11 and 13). *Visveswaran* v. *State*, (2003) 6 SCC 73: 2003 SCC (Cri) 1270: AIR 2003 SC 2471: 2003 Cri LJ 2548.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *H.K. Sema*, JJ. [Date of decision: 28-4-2003]

[1454] — S. 157 — Deficiency in — Effect of — *Held, in such a case, the court can arrive at a finding of guilt if it is otherwise found to have been proved — In present case, non-seizure of chappal of deceased and bloodstained clothes of sole eyewitness did not affect the prosecution case* (Para 12). *Mahendra Singh* v. *State of M.P.*, (2007) 9 SCC 796: (2007) 3 SCC (Cri) 583.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 5-4-2007]

Rotash v. State of Rajasthan, (2006) 12 SCC 64: (2007) 2 SCC (Cri) 382; Acharaparambath Pradeepan v. State of Kerala, (2006) 13 SCC 643, relied on

[1455] — S. 157 — Faulty investigation, held, could hardly be a ground for rejection of the testimony of eyewitness which had a ring of truth in it (Para 17). *Prithvi* v. *Mam Raj*, 2005 SCC (Cri) 198: AIR 2004 SC 2729.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 19-2-2004]

Allarakha K. Mansuri v. State of Gujarat, (2002) 3 SCC 57: 2002 SCC (Cri) 519, relied on

[1456] — S. 157 — Highly unsatisfactory investigation — Multiple murder case — Occurrence taking place inside a bus — Bus not seized — *Absence of proper scene "mahazar" — Many relevant facts not noted by IO — Delay of six days in sending FIR to Magistrate — No reasonable explanation by IO for delay in questioning the material witnesses (fifteen days after the incident) — Failure to produce all material witnesses — Held, a case of this serious nature which resulted in the death of eight persons should have been conducted with more circumspection and seriousness — Failure of police to produce the best evidence before the court casts serious reflection on the system that is followed in investigation of criminal cases* (Para 6). *Sahdeo* v. *State of U.P.*, (2004) 10 SCC 682: 2004 SCC (Cri) 1873: AIR 2004 SC 3508: 2004 Cri LJ 2876.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 30-4-2004]

[1457] — S. 157 — Defective investigation — Effect — Gun not sent for forensic test — *Held, not proper to acquit an accused solely on account thereof — But, court has to be circumspect while evaluating the evidence in a case involving such investigation*

The investigation was stated to be defective since the gun was not sent for forensic test. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (Para 12). *Ram Bali* v. *State of U.P.*, (2004) 10 SCC 598: 2004 SCC (Cri) 2045: AIR 2004 SC 2329: 2004 Cri LJ 2490.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-4-2004]

Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; Paras Yadav v. State of Bihar, (1999) 2 SCC 126: 1999 SCC (Cri) 104; Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517: 1998 SCC (Cri) 1085; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, relied on

[1458] — S. 157 — Site plan — Lapses or omissions on the part of IO — Investigation conducted in a perfunctory manner — Effect of *— Held, on facts, had not materially affected the substratum of prosecution case which stood established by cogent and reliable evidence — Penal Code, 1860 — Ss. 302, 307 and Ss. 148, 323 and 324 r/w S. 149* (Para 15). *Dashrath Singh* v. *State of U.P.*, (2004) 7 SCC 408: 2004 SCC (Cri) 1932: 2004 All LJ 3256.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 13-8-2004]

[1459] — Ss. 157, 161 and 164 — Mere faulty investigation cannot be a ground for acquittal of the accused — *For the fault of the prosecution the perpetrators of a ghastly crime cannot be allowed to go scot-free — The testimony of eyewitnesses in the present case, completely proved the prosecution case*

Assuming the investigation was faulty, for that reason alone the accused persons cannot be let off or acquitted. For the fault of the prosecution, the perpetrators of such a ghastly crime cannot be allowed to go scot-free. All the accused persons were armed with deadly weapons and they attacked the members of the victims' family who were totally unarmed and were sleeping at night in the open. (Para 8)

The evidence of the eyewitnesses in the present case completely proves the prosecution case. The doubt thrown by the High Court on the presence of the eyewitnesses at the time of occurrence is totally unacceptable. The impugned judgment of the High Court whereby all the accused persons have been acquitted is hereby set aside. (Para 8). *State of U.P.* v. *Jagdeo*, (2003) 1 SCC 456: 2003 SCC (Cri) 351: AIR 2003 SC 660.

Bench Strength 2. Coram: *S. Rajendra Babu* and **Arun Kumar**, JJ. [Date of decision: 10-12-2002]

[1460] — S. 157 — Faulty investigation, held, could hardly be a ground for rejection of the testimony of eyewitness which had a ring of truth in it (Para 17). *Prithvi* v. *Mam Raj*, (2004) 13 SCC 279: 2005 SCC (Cri) 198: AIR 2004 SC 2729.

Bench Strength 2. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 19-2-2004]

Allarakha K. Mansuri v. State of Gujarat, (2002) 3 SCC 57: 2002 SCC (Cri) 519, relied on

[1461] — S. 157 — Investigation — Whether defective — *Investigating officer mentioned S. 302 IPC in some documents although no case thereunder was made out till recovery of dead bodies — But when that was not done designedly, held, investigation cannot be said to be tainted on that ground — One of the cautions which is required to be applied is to see that actual culprit does not end up getting acquitted* (Para 31). *Gagan Kanojia* v. *State of Punjab*, (2006) 13 SCC 516: (2008) 1 SCC (Cri) 109: (2007) 49 AIC 119 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

Kishore Chand v. State of H.P., (1991) 1 SCC 286: 1991 SCC (Cri) 172, distinguished

[1462] — Ss. 157 to 172 and 198 — Investigation into bride burning case — Omission by the IO to send the burnt clothes and other incriminating material for chemical examination — Effect — *Held, mere fact that the IO committed irregularity or illegality during the course of investigation would not cast doubt on the prosecution case — Nor trustworthy and reliable evidence can be cast aside to record acquittal on that account. State of Rajasthan* v. *Kishore*, (1996) 8 SCC 217: 1996 SCC (Cri) 646: AIR 1996 SC 3035.

Bench Strength 3. Coram: **K. Ramaswamy**, *S. Saghir Ahmad* and *G.B. Pattanaik*, JJ. [Date of decision: 27-2-1996]

[1463] — Ss. 157 and 173(2) — Police inaction — Defective investigation — *Petition by parents against callous and biased investigation by police into dowry death of daughter — Detailed explanation from police sought — Held, the investigation done by the police did not inspire confidence — CBI investigating the case directed to expedite — No criminal action against delinquent police officials ordered for lack of sufficient evidence — Penal Code, 1860 — S. 302 — Constitution of India, Art. 32. Bhagwant Singh* v. *Commr. of Police*, (1983) 3 SCC 344: 1983 SCC (Cri) 637: AIR 1983 SC 826: 1983 Cri LJ 1081.

Bench Strength 2. Coram: *P.N. Bhagwati* and **R.S. Pathak**, JJ. [Date of decision: 6-5-1983]

[1464] — S. 157 — Cross-case — Incomplete investigation therein — Plea of self-defence — *Defence contention that accused D, who received injuries at the hands of deceased L, lodged his report against L, but that case was not investigated by the police otherwise the case of self-defence as taken up by the accused appellant would have clearly been made out — Whether case of self-defence in favour of appellants made out or not, held, was to be examined on the basis of evidence produced by the defence in support thereof — More so, accused D did not pursue the matter on the basis of his FIR — Further, investigation in the instant case had taken note of the fact regarding the injuries caused to D by gunshot fired by L which was also the case of D in his FIR — Hence, the said plea raised by the defence not affecting the prosecution case adversely*

To prove its case of private defence the appellants have examined defence witnesses in support of their version. The accused persons including the appellants have also submitted their written statement in defence. They are all placed on record. Therefore, in the present case the merits may have to be examined on the basis of the evidence on record and as to whether facts and circumstances make out a case of self- defence in favour of the appellants or not. Further, *D* also does not seem to have pursued the matter on the basis of his FIR in the manner whatever may have been available under the law to do so. In the case in hand the investigation has taken note of the fact regarding the injuries caused to *D* by gunshot fired by *L* which was also the case of *D* in his FIR. (Paras 22 and 23). *Dharminder* v. *State of H.P.*, (2002) 7 SCC 488: 2003 SCC (Cri) 58: AIR 2002 SC 3097.

Bench Strength 2. Coram: *R.C. Lahoti* and **Brijesh Kumar**, JJ. [Date of decision: 3-9-2002]

Kashiram v. State of M.P., (2002) 1 SCC 71: 2002 SCC (Cri) 68, distinguished

(10) Defective investigation *(contd.)*

[1465] — S. 157 — Defective investigation — Negligence of investigating officer — That should not result in acquittal of accused when prosecution case is otherwise established

In a case of defective investigation it would not be proper to acquit the accused if the case is otherwise established conclusively. A criminal trial is meant for doing justice to the accused, the victim and the society so that law and order is maintained. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform. (Paras 8 and 10). *Ambika Prasad* v. *State (Delhi Admn.)*, (2000) 2 SCC 646: 2000 SCC (Cri) 522: AIR 2000 SC 718: 2000 Cri LJ 810.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **M.B. Shah**, JJ. [Date of decision: 21-1-2000]

Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; Paras Yadav v. State of Bihar, (1999) 2 SCC 126: 1999 SCC (Cri) 104; Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517: 1998 SCC (Cri) 1085, relied on

[1466] — S. 157 — Infirmities/Lapses/Omissions in investigation — Recovery of weapons after a long period and failure to send those weapons for forensic examination — Effect of — *Held, the said fact did not dilute the evidentiary value of the prosecution version in any manner — Conviction and sentence upheld — Penal Code, 1860 — S. 302 — Evidence Act, 1872 — Ss. 27 and 45* (Paras 16 and 17). *Mano* v. *State of T.N.*, (2007) 13 SCC 795: 2007 Cri LJ 2736.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 2-4-2007]

[1467] — S. 157 — Investigation — Failure of IO to seize the firearms or empties for examination by ballistic expert — Effect — *Not fatal in view of categorical testimony of eyewitness implicating the accused — Evidence Act, 1872 — S. 145* (Para 13). *State of Punjab* v. *Hakam Singh*, (2005) 7 SCC 408: 2005 SCC (Cri) 1679: 2005 Cri LJ 4111.

Bench Strength **2**. Coram: *B.N. Agrawal* and **A.K. Mathur**, JJ. [Date of decision: 31-8-2005]

[1468] — S. 157 — Dowry death — Failure of Investigating Agency to bring to trial the real accused deprecated. *Lichhamadevi* v. *State of Rajasthan*, (1988) 4 SCC 456: 1988 SCC (Cri) 978: AIR 1988 SC 1785.

Bench Strength **2**. Coram: *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision: 2-8-1988]

[1469] — S. 157 — Failure of investigating officer to smell the firearms at the time of recovery to confirm if freshly used — *Held, can assume importance when serious doubt regarding the use of the firearms and in fact of recovery of the accused along with firearms present. Nachhattar Singh* v. *State of Punjab*, (1976) 1 SCC 750: 1976 SCC (Cri) 182: AIR 1976 SC 951: 1976 Cri LJ 691.

Bench Strength **3**. Coram: *P.N. Bhagwati, P.K. Goswami* and **N.L. Untwalia**, JJ. [Date of decision: 9-12-1975]

[1470] — S. 157 — Murder case — Footprints — Trail not followed by police — Effect — *Held on facts, not fatal to the prosecution case*

The accused has tried to draw red herrings to confuse and divert the attention of everyone including the investigating agencies from himself. One of such futile attempts was to highlight the footprints. Merely because the trail was not followed by the police, that is really of no consequence. The investigating officer has clarified this aspect and justifiably explained the reasons as to why that was not considered necessary or possible. (Para 19). *State of Rajasthan* v. *Kheraj Ram*, (2003) 8 SCC 224: 2003 SCC (Cri) 1979.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 22-8-2003]

[1471] — S. 157 — Defective investigation — Doubt regarding prosecution version and testimony of eyewitnesses (PWs 1 and 5) — Long-standing litigation between prosecution party and accused persons — *Prosecution story that accused A-1 invited deceased and PWs 1 and 5 for dinner in connection with last rites ceremony of his father and while they were having their meals, accused persons including the appellants attacked them, held on facts, highly improbable — Vital contradiction and improvement in statements of PWs 1 and 5 — IO reaching the spot at about 10 p.m. but neither carrying a torch with him nor trying to procure some other source of light to carry on with the investigation — Copy of FIR not sent to Magistrate — Date and time of receipt of dead body not mentioned in the requisition memo sent by SHO to the hospital and in the post-mortem report — Presence of PWs 1 and 5 at the spot doubtful — No independent witness or corroborative evidence to support the version of PWs 1 and 5 — No specific injury which could cause death in the ordinary course of nature had been attributed to any of the appellants — Main accused with whom the deceased had litigation already acquitted — On facts, conviction and sentence of appellants set aside — Penal Code, 1860 — Ss. 302/149, 120-B and 147* (Paras 10 to 13). *Jandel Singh* v. *State of M.P.*, (2003) 9 SCC 110: 2003 SCC (Cri) 1782: AIR 2003 SC 3991: 2003 Cri LJ 3528.

Bench Strength **3**. Coram: *N. Santosh Hegde*, **Ashok Bhan** and *B.P. Singh*, JJ. [Date of decision: 8-5-2003]

[1472] — S. 157 — Murder trial — Contradictions, inconsistencies, exaggerations or embellishments — Acquittal restored — Allegations of six appellant-accused murdering two deceased, by severely beating them with lathis, lohangis and farsas — *Held, on bare perusal of record and findings recorded by trial court present case is not one justifying interference by High Court — Fact that first report was recorded at about 1 p.m. and suppressed by prosecution, ignored by High Court — High Court also ignored fact that there was no evidence to show as to when special report was dispatched to or received by Magistrate, as provided under S. 157 CrPC — Again, High Court despite noting substantial discrepancies in the statements inter se of witnesses, still chose to rely on them — It also ignored statement of PW 1 (doctor performing post-mortem examinations), that injured deceased would have been rendered unconscious within 10 to 15 minutes after receiving injuries (meaning thereby that story of oral dying declarations allegedly made about two hours after receiving injuries is unbelievable) — Even otherwise, oral dying declaration made to an inimical person, should be accepted with a little hesitation and reservation — Further, High Court accepted statement of PW 5 as eyewitness, ignoring his unnatural behaviour, as he claimed to have rushed to village but did not inform his parents and others present there and chose to disappear for a couple of hours on the specious and unacceptable plea that he feared for his own safety — Hence, appellants be acquitted — Penal Code, 1860 — Ss. 302/34* (Paras 22 to 26). *Gopal Singh* v. *State of M.P.*, (2010) 6 SCC 407.

Bench Strength **2**. Coram : **H.S. Bedi** and *A.K. Patnaik*, JJ. [Date of decision : 12-5-2010]

[1473] — S. 157 — Defective investigation — Long-standing enmity of serious nature existing between the two eyewitnesses (PWs 3 and 4) and the family of the accused persons — Murder of brother of PW 3 — Conviction of appellants under S. 302 based on testimony of chance witnesses PWs 3 and 4 — Propriety — *I and his six sons including the two appellants charged under S. 302 r/w S. 120-B IPC for having hatched a conspiracy to commit murder of P — Trial court disbelieving the part of story related to hatching conspiracy and acquitting all accused persons except the appellants — Testimony regarding the manner in which the gunshots were fired, found inconsistent with medical evidence — Delay in sending FIR to Magistrate not explained — Both the eyewitnesses were chance witnesses — Grave doubt expressed about their presence at the place of the incident — Further, testimony of defence witnesses, held on facts, could not just be thrown overboard — Thus, conviction of appellants set aside — Penal Code, 1860 — S. 302. Baldev Singh* v. *State of M.P.*, (2003) 9 SCC 45: AIR 2003 SC 2098: 2003 Cri LJ 880.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Brijesh Kumar*, JJ. [Date of decision: 6-1-2003]

(11) Illegal/Partisan/Mala fide investigation — Effect and Quashment

See also Sections 155 to 159, '(5) Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court',

'(8) Procedure and Duty and Powers of investigating officer', and

'(10) Defective investigation', above

See also under S. 154, above

See also under CrPC, 1973, S. 482 p. 1260 in Vol. 2

See also CONSTITUTION OF INDIA, Arts. 32, 136 and 226 in Vol. 7, Vol. 8 and Vol. 9, *Complete Digest of Supreme Court Cases*, 2nd Edn. respectively

[1474] — S. 156 — Effect and Quashment of malafide investigation — Fair investigation — Right to — Protected under Arts. 20 and 21 of the Constitution — Investigation must be fair, transparent and judicious — *Tainted and biased investigation and consequent prejudice and harassment to any party cannot be permitted to continue — Hence quashed — Constitution of India — Arts. 21 and 20* (Para 46). *Babubhai* v. *State of Gujarat*, (2010) 12 SCC 254.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 26-8-2010]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; Jamuna Chaudhary v. State of Bihar, (1974) 3 SCC 774: 1974 SCC (Cri) 250; Mahmood v. State of U.P., (1976) 1 SCC 542: 1976 SCC (Cri) 72; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Navinchandra N. Majithia v. State of Meghalaya, (2000) 8 SCC 323: 2000 SCC (Cri) 1510; K. Chandrasekhar v. State of Kerala, (1998) 5 SCC 223: 1998 SCC (Cri) 1291; Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631; Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047; Kishan Lal v. Dharmendra Bafna, (2009) 7 SCC 685: (2009) 3 SCC (Cri) 611; S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; Kashmeri Devi v. Delhi Admn., 1988 Supp SCC 482: 1988 SCC (Cri) 864; Kailash Chandra v. Union of India, AIR 1961 SC 1346; Eicher Tractors Ltd. v. Commr. of Customs, (2001) 1 SCC 315; State of A.P. v. V. Sarma Rao, (2007) 2 SCC 159: (2007) 1 SCC (Cri) 535; Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441: (2009) 1 SCC (Cri) 523; Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1: (2010) 2 SCC (Cri) 1385, relied on

(11) Illegal/Partisan/Mala fide investigation — Effect and Quashment *(contd.)*

[1475] — Ss. 156, 157 and 190 — Illegal investigation — Investigation by incompetent officer — Effect on competence and jurisdiction of Court — *Though non-compliance with mandatory provisions of S. 5-A of Prevention of Corruption Act, 1947 renders investigation illegal, but competence and jurisdiction of court for trial after taking cognizance of offence not affected thereby. State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604: 1992 Cri LJ 527.

Bench Strength 2. Coram. **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 21-11-1990]

[1476] — Ss. 156, 157, 465, 401 and 397 — Investigation by an incompetent police officer — Quashing of investigation and charge by High Court solely on the ground of — Legality — *Held, was not justified — Prevention of Corruption Act, 1947 — Ss. 5-A(1)(d) and 5(1)(d)* (Para 6)

The respondent was working as Upper Division Clerk-cum-Storekeeper in the office of the District Education Officer. He was charged under Section 5(1)(*d*) of the Prevention of Corruption Act, 1947. After the investigation was completed a charge-sheet was submitted on which cognizance was taken and charge was framed against the respondent. Thereafter, the case was fixed for evidence. It is at that stage the respondent moved an application for discharge on the ground that the investigation was not done by a competent police officer as provided under the 1947 Act. The learned Special Judge after considering the application rejected the said application on the ground that no prejudice had been caused to the respondent. It was also noticed that the case was directed to be investigated by the Assistant Inspector General. Aggrieved thereby, the respondent filed a criminal revision petition before the High Court. By the impugned order the High Court quashed the investigation and the charge solely on the ground that the investigation had not been carried on by a competent officer as contemplated under Section 5-A(1)(*d*) of the Act.

Allowing the appeal, the Supreme Court held as above. *State of M.P.* v. *Ramesh C. Sharma*, (2005) 12 SCC 628.

Bench Strength 2. Coram: **H.K. Sema** and *G.P. Mathur*, JJ. [Date of decision: 21-9-2005]

State of M.P. v. Ram Singh, (2000) 5 SCC 88: 2000 SCC (Cri) 886; Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195: 2003 SCC (Cri) 1314, followed

[1477] — Ss. 156, 157 and 161 — Illegal investigation — Investigation by incompetent police officer — Effect of — *Held, proceedings may not be quashed only on the basis of illegal investigation unless miscarriage of justice is shown — In the present case the accused had suffered miscarriage of justice as the investigation conducted was not fair — Prevention of Corruption Act, 1988 — S. 17 — Prevention of Corruption Act, 1947 — S. 5-A* (Para 21). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

[1478] — Ss. 157, 154 and 482 — Quashing of criminal investigation — *Muslim boy marrying Hindu girl — FIR lodged by girl's father — Boy apprehending trouble from his father-in-law seeking police protection — There being a valid marriage, both the spouses being major and living together for about 8 months and the wife being pregnant, held, marriage should be sustained and nothing should be allowed to happen which would affect that position — Ordinarily Supreme Court does not interfere at the investigation stage but in the special facts it would be necessary to quash the pending investigation. Sangita Rani* v. *State of U.P.*, 1992 Supp (1) SCC 715: 1992 SCC (Cri) 391.

Bench Strength 3. Coram: *Ranganath Misra, C.J.* and *M.H. Kania* and *Kuldip Singh*, JJ. [Date of decision: 9-8-1991]

[1479] — Ss. 157 to 161 and 172(2) — Partisan investigation — *Omission of name of the accused in statement of some of the PWs recorded by Investigating Officer, not significant when investigation was partisan and wanted to shield the accused — In such a case statements of witnesses examined during investigation involving the accused would be manipulated* (Para 19). *E.K. Chandrasenan* v. *State of Kerala*, (1995) 2 SCC 99: 1995 SCC (Cri) 329: AIR 1995 SC 1066: 1995 Cri LJ 2060: (1995) 1 Crimes 421.

Bench Strength 2. Coram: *Kuldip Singh* and **B.L. Hansaria**, JJ. [Date of decision: 17-1-1995]

[1480] — Ss. 157, 161 and 164 — Designedly dishonest and faulty investigation — Possible purposes therefor — *Held, the only purpose of such an investigation cannot be false implication, but equally it is possible that the investigating agency was trying to shield the accused — On facts held, High Court's conclusion in this regard not proper*

The High Court has come to a definite conclusion that the investigation carried out by the police was dishonest and faulty. That was and should have been per se sufficient justification to direct a retrial of the case. There was no reason for the High Court to come to the further conclusion of its own about false implication without a concrete basis, and that too merely on conjectures. On the other hand, the possibility of the investigating agency trying to shield the accused persons keeping in view the methodology adopted and turn of events, can equally not be ruled out. When the investigation is dishonest and faulty, it cannot be only with the purpose of false implication. (Paras 70, 71 and 20). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; Paras Yadav v. State of Bihar, (1999) 2 SCC 126: 1999 SCC (Cri) 104; Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517: 1998 SCC (Cri) 1085; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, relied on

Clarified in Satyajit Banerjee v. State of W.B., (2005) 1 SCC 115

[1481] — Ss. 157 and 173 — Investigation — Whether biased — *Police firing in the vicinity of V-C Lodge resulting in death of 20 years' old son of the petitioner — Allegation of manipulation of record by police to cover up its act of commission of unjustified and unprovoked firing — Report of Additional District and Sessions Judge indicating lapses of investigating agency — Earlier Supreme Court directing State Govt. to have the matter enquired by some independent agency/senior officer — But State Govt. appointing Chief Development Officer and Superintendent of Police to enquire into the matter — Hence report submitted by them ignored — Director, CBI directed to hold an enquiry/investigation into the matter through an officer not below the rank of a Senior Superintendent of Police (CBI) — In case the CBI finds that a challan is required to be filed against the culprits it shall do the needful before a competent authority — Petitioner's request for exemplary damages to the family of the deceased shall in that event be decided by the trial court after notice to the parties — Constitution of India, Art. 32* (Paras 11 to 14). *Munir Alam* v. *Union of India*, (1999) 5 SCC 248: 1999 SCC (Cri) 1000: AIR 1999 SC 2267: 1999 Cri LJ 3523.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *M. Jagannadha Rao* and *N. Santosh Hedge* JJ. [Date of decision: 7-5-1999]

[1482] — Ss. 157 and 159 — Investigation — Irregularity or illegality during — Effect if any — Held, does not constitute a ground to reject the prosecution case

It is well settled that any irregularity or even an illegality during investigation ought not to be treated as a ground to reject the prosecution case. (Para 8). *Leela Ram* v. *State of Haryana*, (1999) 9 SCC 525: 2000 SCC (Cri) 222: AIR 1999 SC 3717.

Bench Strength **2**. Coram: *K.T. Thomas* and **U.C. Banerjee**, JJ. [Date of decision: 6-10-1999]

State of Rajasthan v. Kishore, (1996) 8 SCC 217: 1996 SCC (Cri) 646: AIR 1996 SC 3035, relied on

[1483] — S. 157 — Investigation — Illegality in, unless shown to have brought about miscarriage of justice, held, not vitiative of the result of the trial — *Prevention of Corruption Act, 1988 — S. 17* (Para 14). *State of M.P.* v. *Ram Singh*, (2000) 5 SCC 88: 2000 SCC (Cri) 886: AIR 2000 SC 870: 2000 Cri LJ 1401.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 1-2-2000]

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: 1955 Cri LJ 526, followed

[1484] — S. 157 — Irregularities or illegalities in the conduct of investigation in a murder case — *Held, was of no consequence* (Para 14). *Bikau Pandey* v. *State of Bihar*, (2003) 12 SCC 616: AIR 2004 SC 997.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 25-11-2003]

State of Rajasthan v. Kishore, (1996) 8 SCC 217: 1996 SCC (Cri) 646; State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715: 2000 SCC (Cri) 61, relied on

(12) Delay in investigation and Quashment

See also Sections 155 to 159, '(5) Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court',

'(8) Procedure and Duty and Powers of investigating officer', and

'(10) Defective investigation', above

See also under CrPC, 1973, S. 482 p. 1260 in Vol. 2

See also CONSTITUTION OF INDIA, Arts. 32, 136 and 226 in Vol. 7, Vol. 8 and Vol. 9, *Complete Digest of Supreme Court Cases*, 2nd Edn., respectively

[1485] — Ss. 157, 173 and 482 — Delay in completing investigation — No time limit can be fixed for completing investigation

There are offences of grave magnitude such as diabolical crimes of conspiracy or clandestine crimes committed by members of the underworld with their tentacles spread over various parts of the country or even abroad. The very nature of such

(12) Delay in investigation and Quashment *(contd.)*

offences would necessarily involve considerable time for unearthing the crimes and bringing the culprits to book. Therefore, it is not possible to formulate inflexible guidelines or rigid principles of uniform application for speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed. *State of A.P.* v. *P.V. Pavithran*, (1990) 2 SCC 340: AIR 1990 SC 1266: 1990 Cri LJ 1306.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 1-3-1990]

[1486] — S. 157 — Investigation — Delay — Effect of — Triple murder — *Members of complainant party had been hunted out and killed and threats had been held out to other members of complainant family as well — Atmosphere of terror in village — Held, if the entire investigation on the crucial day did not proceed with clockwork precision, no adverse inference can reasonably be drawn from this fact — Penal Code, 1860, S. 302* (Para 49). *Himmat Sukhadeo Wahurwagh* v. *State of Maharashtra*, (2009) 6 SCC 712.

Bench Strength 3. Coram: *S.B. Sinha*, **H.S. Bedi** and *Aftab Alam*, JJ. [Date of decision: 1-5-2009]

[1487] — Ss. 157, 173 and 482 — Delay in completing investigation — When should court quash further proceedings

A lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceeding to live every moment under extreme emotional and mental stress and strain and to remain always under a fear psychosis. Therefore, it is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation. *State of A.P.* v. *P.V. Pavithran*, (1990) 2 SCC 340: AIR 1990 SC 1266: 1990 Cri LJ 1306.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 1-3-1990]

[1488] — Ss. 157, 173 and 482 — Delay in completing investigation — Whether resulted in deprivation of fair trial — *Factors to be considered in determining*

The determination of the question whether the accused has been deprived of a fair trial on account of delayed or protracted investigation would also depend on various factors including whether such delay was unreasonably long or caused deliberately or intentionally to hamper the defence of the accused or whether such delay was inevitable in the nature of things or whether it was due to the dilatory tactics adopted by the accused. The court, in addition, has to consider whether such delay on the part of the investigating agency has caused grave prejudice or disadvantage to the accused. *State of A.P.* v. *P.V. Pavithran*, (1990) 2 SCC 340: AIR 1990 SC 1266: 1990 Cri LJ 1306.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 1-3-1990]

[1489] — Ss. 157 and 173 — Delay in recovery of material objects from place of occurrence — 12 hours' delay in, after the incident, although police station was only 200 ft. away — On facts, held, explained

The evidence of the IO shows that after arranging an escort to guard the dead body of the deceased and the scene of occurrence, he went in search of the accused along with his staff in and around the town for the whole night and next morning at 6.00 a.m., he went to the hospital and till 8.00 a.m., he was there. Thereafter, he came to the place of occurrence and collected the material objects. It is quite natural for the police officer to go in search of the accused person. In addition, he took the precaution of keeping a guard at the place of occurrence. So, the delay of 12 hours has been duly explained. (Para 17). *Sheelam Ramesh* v. *State of A.P.*, (1999) 8 SCC 369: 1999 SCC (Cri) 1437: AIR 2000 SC 118.

Bench Strength 2. Coram: *G.T. Nanavati* and **S.N. Phukan**, JJ. [Date of decision: 12-10-1999]

[1490] — S. 157 — Delay in arresting the accused — Effect — *Accused residing near the houses of solitary eyewitness PW 3 and the deceased — Address of accused known to all — Further, name and address of accused mentioned in FIR — Accused arrested ten days after the incident — On facts, the explanation given by IO that this delay was on account of the fact that the correct address of the accused was not disclosed by the witness, held, not convincing*

If really the name of the assailant was known, there was no reason for his being arrested several days after the occurrence. It is not disputed that the accused lived near the house of PW 3, and his house is also very near to the house of the deceased. His address was known to all and in fact in the FIR itself his name and address had been disclosed. Despite this he was arrested 10 days later, and it appears from the deposition of the investigating officer that this delay was on account of the fact that the correct address of the accused-appellant was not disclosed by the witness. This explanation is hardly convincing. (Para 17). *Joseph* v. *State of Kerala*, (2003) 11 SCC 223: 2004 SCC (Cri) 93: 2003 Cri LJ 2543: (2003) 2 KLT 756.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 22-4-2003]

(13) Result of investigation — When evidence

[1491] — S. 157 — Identification of accused/articles — Utility of sniffer dog — *Identification by sniffer dog, held, is only for purpose of investigation and not for evidence — Evidence Act, 1872 — Ss. 3 and 5*

The services of a sniffer dog may be taken for the purpose of investigation. Its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused. One of the grounds of conviction was that the sniffer dog had gone near the appellant only and nobody else when he had been inside the house. The evidence of PW 6, PW 8, PW 9 and PW 13 who testified about the sniffer dog's staying near the accused was wrongly relied on. (Paras 40, 27 and 38). *Dinesh Borthakur* v. *State of Assam*, (2008) 5 SCC 697: (2008) 3 SCC (Cri) 39: AIR 2008 SC 2205.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 13-3-2008]

Abdul Rajak Murtaja Dafedar v. State of Maharashtra, (1969) 2 SCC 234; Gade Lakshmi Mangaraju v. State of A.P., (2001) 6 SCC 205: 2001 SCC (Cri) 1082, relied on

[1492] — Ss. 157 to 161 and 173 — Evidence — What is — Result of investigation is not evidence — *Evidence of police officers that they perused the case diary, interrogated some of the accused and other persons and found some of the accused innocent, held, not legally admissible — Evidence Act, 1872 — S. 3. Dalip Singh* v. *State of Punjab*, (1997) 11 SCC 573: AIR 1997 SC 2985: 1997 Cri LJ 3647.

Bench Strength 2. Coram: **M.K. Mukherjee** and *K. Venkataswami*, JJ. [Date of decision: 8-7-1997]

Vijender v. State of Delhi, (1997) 6 SCC 171: 1997 SCC (Cri) 857, followed

[1493] — Ss. 157, 161 and 173 — Discrepancy between medical report and inquest report — Effect — Relevant/reliable/preferred report — Exclusive preference of medical report over inquest report in case of discrepancy, prescribed — Police officers are not experts as doctors — Hence, discrepancy between medical report and inquest report, not relevant (Paras 29 and 18 to 21). *State of U.P.* v. *Shobhanath*, (2009) 6 SCC 600.

Bench Strength 2. Coram: *Dr. Arijit Pasayat* and **Dr. M.K. Sharma**, JJ. [Date of decision: 8-5-2009]

[1494] — Ss. 157, 161 and 162 — Inquest report — Statement of witnesses, held, not required to be incorporated

It is not at all necessary in law to incorporate the statements of the witnesses in the inquest report. The inquest report is to be made by the Investigating Officer just to indicate the injuries which he has found on the bodies of the deceased persons. It may be witnessed by one or two persons but it is not at all necessary for the Investigating Officer to record the statements of the witnesses or to get the statements of witnesses signed on the inquest report and incorporate the same in it which introduces an element of chaos and confusion and demanding an explanation from the prosecution regarding the statement made therein.

It is recommended that in future the Investigating Officer should not associate any eyewitness with the recovery memos because that partakes of an attempt to make the witness omnibus. *Nirpal Singh* v. *State of Haryana*, (1977) 2 SCC 131: 1977 SCC (Cri) 262: AIR 1977 SC 1066: (1977) 2 SCR 901: 1977 Cri LJ 642.

Bench Strength 2. Coram: *P.N. Bhagwati* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 1-2-1977]

[1495] — Ss. 157 and 165 — Seizure memo of articles recovered during investigation — *Effect of seizure witnesses turning hostile*

If the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses do not support the prosecution version. *Modan Singh* v. *State of Rajasthan*, (1978) 4 SCC 435: 1979 SCC (Cri) 56: AIR 1978 SC 1511: 1978 Cri LJ 1531.

Bench Strength 2. Coram: *Jaswant Singh* and **P.S. Kailasam**, JJ. [Date of decision: 31-8-1978]

[1496] — S. 157 — Investigation — Sealing of articles recovered from place of occurrence — *Hair recovered kept in different containers and those containers were later on sealed in a packet, though containers themselves were not sealed — Held, hair having been kept in sealed packets, there was no possibility of tampering* (Para 24). *M.A. Antony* v. *State of Kerala*, (2009) 6 SCC 220.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 22-4-2009]

(14) Forwarding and receipt of Section 157 report (Ss. 158-159)

See also Section 154, '(3)(vi)3. Delay in forwarding FIR to Magistrate (i.e. the report as required to be sent to Magistrate under S. 157 r/w S. 158)', above

(14) Forwarding and receipt of Section 157 report (Ss. 158-159) *(contd.)*

[1497] — S. 158 — Absence of seal on copy of report received by the Magistrate, held, in view of endorsement made by the CJM not material. *Sanganabasappa Bheemappa Kaligonnavar* v. *State of Karnataka*, 1994 Supp (1) SCC 583: 1994 SCC (Cri) 727: AIR 1994 SC 848: 1994 Cri LJ 606: (1994) 31 ACC 147: (1994) 1 Crimes 33.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 3-12-1993]

[1498] — Ss. 159 and 158 — Magistrate while receiving copy of FIR, particularly those relating to heinous crimes such as murder, should not only note the date but also time of receipt

In the instant case, the FIR was registered on 25-8-1991 at about 2.30 a.m. and copy thereof referred to in Section 157 was received by the Magistrate on 27-8-1991. Even though there was a mention in the FIR that its copy was sent through special messenger, yet no date or time of sending the said report was mentioned. The Magistrate, receiving the copy of the report, had also not noted the time of its receipt. The Magistrates receiving reports under Section 157 CrPC, particularly when it relates to the commission of heinous crime are required to note not only the date but also the time of the receipt of the copy thereof. (Para 8). *Bijoy Singh* v. *State of Bihar*, (2002) 9 SCC 147: AIR 2002 SC 1949: 2002 Cri LJ 2623.

Bench Strength 2. Coram: **R.P. Sethi** and *D.M. Dharmadhikari*, JJ. [Date of decision: 17-4-2002]

[1499] — S. 159 — 'On receiving such report' — Means on receiving report contemplated in S. 157(2)

The expression "on receiving such a report" refers to the receipt of a report contemplated in S. 157(2), because the question of directing an investigation by the Magistrate cannot arise in pursuance of the report referred to under sub-section (1) of S. 157 intimating that the police officer has proceeded with the investigation either in person or by deputing any one of his subordinate officers. *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604: 1992 Cri LJ 527.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 21-11-1990]

(15) Other

[1500] — Ss. 157 and 159 — Right of private defence — Plea of — Not taken during investigation — *Can be taken during trial. Bahadur Singh* v. *State of Punjab*, (1992) 4 SCC 503: 1993 SCC (Cri) 94: AIR 1993 SC 70.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 19-8-1992]

[1501] — Ss. 157, 160, 161, 170(2) and 171 — Identification of prisoners and method for investigation — Directions for — *High Court issuing certain directions intended to meet challenge of impersonation (set out in para 5) — Submission by State that most of these directions were impracticable and in some cases ran counter to the 1920 Act — Held, said directions are subject to provisions of the Act, the Regulations and CrPC — In case of conflict statute will prevail — In case of complainant as well as witnesses, where prosecution wants to protect the identity, reasons therefor must be recorded and in case of rape victims, photographs should not be taken — Further, Directions 8 and 9 modified — M.P. Police Regulations — Regn. 2 — Identification of Prisoners Act, 1920, Ss. 4, 5, 6 and 54-A* (Paras 5 and 12 to 14). *State of M.P.* v. *Devendra*, (2009) 14 SCC 80: AIR 2009 SC 3009: (2009) 81 AIC 178 (SC): 2009 Cri LJ 4130.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *D.K. Jain* and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

Devendra Rajendra Lashkari v. J.M.F.C., Mhow, (2002) 3 MPLJ 337, modified

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— S. 160 *See* Ss. 154 to 173

See also Ss. 154 to 173 and 482

See also Ss. 157, 156, 154, 159, 160, 161

See also Ss. 157 to 161 and 172(2)

See also Ss. 157 to 161 and 173

See also Ss. 157 to 172 and 198

See also Ss. 157 to 173

See also Ss. 157, 160 and 161

See also Ss. 157, 160 to 168

See also Ss. 157, 160, 167, 170, 190 and 319

See also Ss. 157, 162, 160 and 161

See also Ss. 162 and 160

See also Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311

[1502] — S. 160(1) and proviso thereto — Police officer's power to require attendance of witnesses — Persons applicable to — Accused person not included, though suspects included — Direction by High Court that woman accused/witness should not be summoned or required to attend at any police station under S. 160 but must be enquired only by women police or in the presence of women police, at the places where they reside — Validity of — *Held, (per Dr. Ar. Lakshmanan, J.), insofar as the direction extended to accused women it was not valid as it was contrary to statutory provision in S. 160 which is applicable only to witnesses and not to accused — Such direction would cause hardship to investigating agency where women are involved as accused*

Section 160 CrPC has reference to the persons to be examined as witnesses in the trial or inquiry to be held after the completion of the investigation. As an accused cannot be examined as a witness either for or against himself, he cannot be included in the class of persons referred to in the section. But the police officers are fully authorised to require the personal attendance of the suspects during the investigation. (Para 21)

In the instant case, the High Court has given a direction to the State Government to issue circulars to all the police stations instructing the police officials that the *woman accused/witness* should not be summoned or required to attend at any police station under Section 160 CrPC but they must be enquired only by women police or in the presence of women police, at the places where they reside. The High Court has committed a serious error in giving such a direction contrary to the statutory provisions under Section 160 CrPC which is applicable only to the witnesses and not the accused. In fact, the learned Judge has erred in expanding the scope of Section 160 CrPC to the accused as well, which might lead to hardship to an investigating agency. If the directions of the learned Single Judge are accepted, no purposeful investigation into any serious offence involving women accused could be conducted successfully. (Paras 22 to 24). *State* v. *N.M.T. Joy Immaculate*, (2004) 5 SCC 729: 2004 SCC (Cri) 1722: AIR 2004 SC 2282: 2004 Cri LJ 2515.

Bench Strength **3**. Coram: *S. Rajendra Babu, C.J.*[1] and **Dr. Ar. Lakshmanan**[2] and **G.P. Mathur**[1], JJ. [Date of decision: 5-5-2004]

2002 MLJ (Cri) 661, reversed

[1503] — S. 160(1) proviso — Police officer's power to require attendance of witnesses before himself — *Rape of 13 girls of an Ashram by founder of the Ashram who had dominion/control over the victims — A-1 threatened the victims of dire consequences if they disclosed anything about his misdeeds — Victims removed from the Ashram and examined and interrogated in women police stations so that they may speak the truth without any fear — Held, S. 160 not violated*

All the victim girls were the inmates of the Ashram. They were raped by A-1 in the Ashram, A-1 having dominion/control over the Ashram. The victim girls were being threatened not to disclose to anybody about the misdeeds of A-1 or face dire consequences including threat of death. In such circumstances the Ashram cannot be the place of residence for the purposes of Section 160 CrPC and the victim girls were rightly examined and interrogated in women police stations. They were removed from the Ashram to erase the fear psychosis from them. It was for their safety and to serve the interest of justice that they were removed from the clutches of A-1. Section 160 CrPC must be understood and appreciated in the context of the given situation. (Para 42). *Kamalanantha* v. *State of T.N.*, (2005) 5 SCC 194: 2005 SCC (Cri) 1121: AIR 2005 SC 2132.

Bench Strength **2**. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 5-4-2005]

[1504] — S. 160(1) proviso — Women should not be compelled to appear at police station — *Violation must be visited with condign punishment*

The insisting on a woman to appear at the police station is a flagrant violation of the proviso to S. 160(1), Criminal Procedure Code. Such deviance must be visited with prompt punishment since policemen may not be a law unto themselves expecting others to obey the law. *Nandini Satpathy* v. *P.L. Dani*, (1978) 2 SCC 424: 1978 SCC (Cri) 236: AIR 1978 SC 1025: 1978 Cri LJ 968.

Bench Strength **3**. Coram: **V.R. Krishna Iyer**, *Jaswant Singh* and *V.D. Tulzapurkar*, JJ. [Date of decision: 7-4-1978]

Sections 161 and 162 — Examination of witnesses by police

Synopsis

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—S. 161 *See also* Ss. 161 & 162, Criminal Procedure Code, 1898, pp. 1004 et seq. in Vol. 2

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See also Ss. 163 and 161
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See also Ss. 163, 161 and 157
See also Ss. 167(5) (as amended by S. 4 of W.B. Act 24 of 1988), 436, 437, 204, 205, 206 and 161
See also Ss. 172 and 161
See also Ss. 172, 161, 162 and 167
See also Ss. 172, 162 and 161
See also Ss. 190, 161, 165 and 173
See also Ss. 207, 208, 161 and 438
See also Ss. 231(2) and 246(5), 162(1) proviso, Expln. and Ss. 161 & 172
See also Ss. 319, 482 and 161
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See also Ss. 482 and 161

— S. 161(3) *See* Ss. 154, 161(3) and 162

— S. 162 *See* Ch. XII (Ss. 154 to 176) and Ss. 162 and 174
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See also Ss. 40, 162 and 164
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See also Ss. 157 to 167
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See also Ss. 157, 162, 160 and 161
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See also Ss. 172 and 162
See also Ss. 172, 162 and 161
See also Ss. 174 and 162
See also Ss. 174(1) and 162
See also Ss. 177, 178, 482, 156, 162 and 154
See also Ss. 178(c) and 177, 162
See also Ss. 190, 204, 173(2), 154, 162 and 319
See also Ss. 386, 374, 303, 304 and 162
See also Ss. 452 and 162
See also Ss. 482 and 154, 155, 156, 157, 162, 169, 170, 173

— S. 162(1) *See* Ss. 161 and 162(1) & Expln.
See also Ss. 161, 162(1) and 154

— S. 162(1) proviso *See* Ss. 161 & 162(1) proviso and 319

— S. 162(1) proviso Expln. *See* Ss. 231(2) and 246(5), 162(1) proviso, Expln. and Ss. 161 & 172

— S. 162(2) *See* Ss. 161 and 162(2)
See also Ss. 162(1) and (2)

(1) Nature of statement recorded under Ss. 161/162 — Use to which it may be put

[1505] — S. 161 — Statement recorded under — Use of

Though the prosecution witness in his examination-in-chief had supported the prosecution version in all its material particulars regarding identification of the accused, he in his cross examination stated that due to darkness he could not identify the culprits. The High Court, however, placed reliance on his evidence on ground that he in his statement recorded under S. 161 CrPC as well as in the FIR had narrated all the relevant facts and had not whispered in those statements that he could not identify the appellant due to darkness.

Held :

This reasoning of the High Court is erroneous. The statement recorded under S. 161 of the Code of Criminal Procedure shall not be used for any purpose except to contradict a witness in the manner prescribed in the proviso to S. 162(1). Further the first information report is not a substantial piece of evidence. *Baldev Singh* v. *State of Punjab*, (1990) 4 SCC 692: AIR 1991 SC 31.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 18-9-1990]

[1506] — S. 161 — Person who has knowledge of commission of a crime may not be examined by police in a given case — What remedy is available to such person — *Question is of vital interest in administration of criminal justice — Notice issued to Respondents 1 and 2 and Union of India. Jakia Nasim Ahesan* v. *State of Gujarat*, (2009) 17 SCC 615.

Bench Strength **2**. Coram: *Dr. Arijit Pasayat* and *P. Sathasivam*, JJ. [Date of decision: 3-3-2008]

[1507] — S. 161 — Use of S. 161(3) statements to contradict IO — *Held, High Court seriously erred in discarding evidence of PW 20, IO on basis of case diary — It could not have used statements of PWs 2 to 4 recorded under S. 161(3) for contradicting PW 20 IO without giving him opportunity of explaining the same* (Paras 5, 14, 17 to 24, 26, 27, 30, 31 and 37). *Mohd. Ankoos* v. *High Court of A.P.*, (2010) 1 SCC 94.

Bench Strength 2. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 6-11-2009]

[1508] — Ss. 161 & 162(1) proviso and 319 — Statement made under S. 161 — Evidentiary value and use of — *Held, it is not a substantive piece of evidence — Said statement can be used only for the limited purpose of contradicting the maker thereof — Hence, High Court committed a manifest error of law in relying upon wholly inadmissible evidence i.e. statements made under S. 161 CrPC, in recording a finding that the person summoned under S. 319 CrPC to face the trial could not have been present at the scene of occurrence — Evidence Act, 1872 — Ss. 145 and 157*

The present appeal was preferred against the order of the High Court by which the petition filed by Respondent 2 under Section 482 CrPC was allowed and the order passed by the Sessions Court under Section 319 CrPC summoning him to face trial under Section 302 IPC was set aside.

A first information report was lodged against Respondent 2 and one *D* in relation to murder of one *N* who was informant and witness in a triple murder case lodged against Respondent 2 and certain others. It was alleged that the murder of *N* was committed as Respondent 2 had asked *N* not to give evidence in the triple murder case but *N* did not agree to it.

After investigation in the case, the police submitted a charge-sheet only against *D* and not against Respondent 2. The prosecution then moved an application for summoning Respondent 2 under Section 319 CrPC. The Sessions Judge held that Respondent 2 was named in the FIR and the first informant in his statement had corroborated the version given in the FIR and had assigned the role of exhortation to him. After taking note of the relevant law on the subject, the Sessions Judge allowed the said application and directed that Respondent 2 be summoned to face trial.

Respondent 2 then filed a petition under Section 482 CrPC for quashing the said order. Before the High Court, he placed statements of certain witnesses who had been examined by the investigating officer during the course of investigation. As per the said statements, Respondent 2, who was an officer in Nagar Nigam, was attending a meeting in the Nagar Nigam at the relevant time of the occurrence.

The High Court referred to *Ram Kishan Rohtagi*, (1983) 1 SCC 1 wherein it was observed that power under Section 319 CrPC is really an extraordinary power which should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. On the basis of the aforesaid authority, the High Court posed the question whether compelling ground existed or not and whether there was no option but to summon the accused. Thereafter, the High Court referred to the above statements recorded by the investigating officer and allowed the petition under Section 482 CrPC by quashing the order of the Sessions Judge. Hence, the present appeal.

(1) Nature of statement recorded under Ss. 161/162 — Use to which it may be put *(contd.)*

Allowing the appeal,

Held :

Per Mathur, J. (for himself and Balasubramanyan, J.)

The High Court has basically relied upon the statements of six witnesses which had been recorded by the investigating officer under Section 161 CrPC to record a positive finding that Respondent 2 (who was summoned under Section 319 CrPC to face trial) could not have been present at the scene of commission of the crime. A statement under Section 161 CrPC is not a substantive piece of evidence. In view of the proviso to Section 162(1) CrPC, the said statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso. Therefore, the High Court committed a manifest error of law in relying upon wholly inadmissible evidence in recording a finding that Respondent 2 could not have been present at the scene of commission of the crime. (Paras 7 and 11). *Rajendra Singh* v. *State of U.P.*, (2007) 7 SCC 378: (2007) 3 SCC (Cri) 375: AIR 2007 SC 2786: (2007) 5 All LJ 485: (2007) 3 KLT 892: (2007) 57 AIC 69 (SC).

Bench Strength **2**. Coram: **G.P. Mathur**[1] and **P.K. Balasubramanyan**[2], JJ. [Date of decision: 6-8-2007]

[1509] — S. 161 — Statement recorded under — Value of — Undue importance cannot be given to such statements — *Held, cannot be treated as evidence — But may be used for the limited purpose of impeaching the credibility of a witness — High Court erred in treating such statement as substantive evidence — Evidence Act, 1872 — S. 155* (Paras 23 and 24). *Ram Swaroop* v. *State of Rajasthan*, (2004) 13 SCC 134: 2005 SCC (Cri) 61: AIR 2004 SC 2943: 2004 Cri LJ 5043.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 15-3-2004]

[1510] — S. 161 — Statement under — Admissibility in evidence — *Penal Code, 1860 — S. 307 — Statement given by the injured under S. 161 CrPC against the accused rightly held by High Court to be not admissible in evidence under S. 33 — Evidence Act, 1872 — S. 33* (Para 2). *Sukhar* v. *State of U.P.*, (1999) 9 SCC 507: 2000 SCC (Cri) 419: AIR 1999 SC 3883.

Bench Strength **3**. Coram: **G.B. Pattanaik**, *M. Srinivasan* and *N. Santosh Hegde*, JJ. [Date of decision: 1-10-1999]

[1511] — Ss. 161 and 162 — Statements of witnesses — Duty of police — Scope — *Not mandatory for police to record every statement of every witness i.e. law contemplates situation where there might be witnesses who depose in court but whose previous statements have not been recorded* (Para 156). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram : **P. Sathasivam** and Swatanter Kumar, JJ. [Date of decision : 19-4-2010]

[1512] — S. 161 — Substance of interrogation recorded by investigating officer cannot be termed to be a statement recorded under S. 161 which could be used for the purposes of contradiction of the witness under S. 162 — *Evidence Act, 1872 — S. 145* (Para 41). *Narayan Chetanram Chaudhary* v. *State of Maharashtra*, (2000) 8 SCC 457: 2000 SCC (Cri) 1546: AIR 2000 SC 3352.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 5-9-2000]

[1513] — Ss. 161, 172, 173(6) and 207 — Statement of witness recorded under S. 161 by investigating officer required to be made available to accused but gist of such statement recorded in case diary under S. 172 by investigating officer on the basis of his own observations not required to be made available to accused — *High Court in the present case taking the view that if gist of interrogation of the witness made by the investigating officer could be regarded as statement under S. 161(3), although in summary form, then the same would be required to be supplied to accused but if the gist recorded by him was his own observation then the same would not be required to be disclosed to accused — However, High Court failed to find out whether the gist could be regarded as statement under S. 161(3) or not — Hence order of High Court remitting the matter back to trial court with the direction to determine the question on examination of case diary, cannot be sustained*

In this case the trial court took the view that the gist made by the investigating officer after interrogating the witness was a statement under Section 161 CrPC and the accused was entitled to get a copy of such gist of the statement. This opinion/order of the trial court was questioned by the appellant in revision before High Court on the ground that the gist was not a statement but mere observation of the investigating officer and therefore, the accused-respondent was not entitled to a copy of the same. The High Court observed that if the gist could be regarded as statement under Section 161(3) CrPC, although in summary form, made by the witness then particularly in view of *Shamshul Kanwar* v. *State of U.P.*, (1995) 4 SCC 430, the same would have to be made over to the accused but if the gist pertained to only observations made by the investigating officer, then the same was not required to be disclosed to the accused. The High Court, therefore, remitted the matter back to the trial court for determination of the issue by examining the case diary.

In the present appeal before the Supreme Court it was submitted on behalf of the appellant that *Shamshul Kanwar case* on which the High Court relied dealt with cases having composite case diary which includes the statement recorded under Section 161 CrPC as well as the observation of the investigating officer under Section 172 CrPC. It was submitted that in the State of NCT of Delhi the case diary is being maintained separately and hence there was no question of any portion of case diary being looked into to find out whether statement under Section 161 have been recorded therein or not. On the other hand, on behalf of the accused-respondent it was submitted that the statements prayed for by the respondents were statements recorded under Section 161 CrPC and not statements relatable to Section 172 CrPC as projected by the appellants. With reference to Section 172 CrPC it was submitted that it does not contemplate recording of: (*a*) statement of witnesses; (*b*) gists of statement of witnesses. Therefore, recording of statement of witnesses in case diary would not confer such statement the protection granted under Section 172 CrPC.

Allowing the State's appeal,

Held :

Section 161 CrPC authorises the police officer to reduce into writing any statement made by a witness. In a given case the investigating officer may record circumstances ascertained during investigation in the case diary in terms of Section 172 CrPC. It is only when the investigating officer decides to record the statements of witnesses under Section 161 CrPC that he becomes obliged to make a true record of the statement which obviously will not include the interpretation of the investigating officer of the statements or the gists of statement. Section 173(6) CrPC authorises the police officer to claim a sort of privilege in respect of any statement recorded under Section 161 CrPC after giving reasons as to why such statement may not be provided to the accused. Such privilege can only be claimed in respect of statement recorded under Section 161 CrPC and not in respect of what the officer records in the case diary i.e. the gist of the statement under Section 172 CrPC. In terms of Section 207 CrPC the Magistrate has to provide to the accused, free of cost, copies of statements recorded under Section 161(3) subject to the exceptions in terms of Section 173(6). However, Section 172(3) CrPC provides that neither the accused nor his agents shall be entitled to call for diary of proceedings in investigation nor shall he or they be entitled to see them merely because they are referred to by the court. (Paras 11 and 12)

In different States case diaries are maintained in different ways. Some States have a composite case diary which includes the statements recorded under Section 161 CrPC as well as the observations of the investigating officer under Section 172 CrPC. The Supreme Court, therefore, in *Shamshul Kanwar case* held that the statements under Section 161 need to be separated from observations which are recorded under Section 172 in order to make available the statement under Section 161(3) to the accused. The position is entirely different here as it was submitted on behalf of the appellant that in the State of NCT of Delhi the case diary is being maintained separately. (Para 13)

A categorical statement has also been made on behalf of the appellant that the gist of the statement has not been produced by the prosecution to prove the guilt of the accused and the gists of the statements were not recorded in terms of Section 161 CrPC and the accused has no right to ask for the gists of such statements if recorded under Section 172. (Para 11)

The direction of the High Court as contained in the impugned order is not a definite one. It only refers to *Shamshul Kanwar case* and concludes that if the "gists" can be regarded as statements under Section 161 CrPC although in summary form they would have to be made over to the accused. It does not factually find out that as to whether the gists can be regarded as statements in view of the position of law stated above. It did not take note of the specific stand of the appellant about separate maintenance of case diaries. Therefore, the directions of the High Court are clearly unsustainable and are set aside. (Paras 15 and 16). *State of (NCT of Delhi)* v. *Ravi Kant Sharma*, (2007) 2 SCC 764: (2007) 1 SCC (Cri) 640: AIR 2007 SC 1135: 2007 Cri LJ 1674: (2007) 137 DLT 577: (2007) 53 AIC 98 (SC): (2007) 2 KLT 349.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-2-2007]

Sunita Devi v. State of Bihar, (2005) 1 SCC 608: 2005 SCC (Cri) 435; Sidharth v. State of Bihar, (2005) 12 SCC 545: (2006) 1 SCC (Cri) 175, relied on

Shamshul Kanwar v. State of U.P., (1995) 4 SCC 430: 1995 SCC (Cri) 753, distinguished

(1) Nature of statement recorded under Ss. 161/162 — Use to which it may be put *(contd.)*

[1514] — Ss. 161 and 162 — Evidence of a witness cannot be impeached with reference to the statements of other witnesses recorded under S. 161. *Betal Singh* v. *State of M.P.*, (1996) 8 SCC 205: 1996 SCC (Cri) 571: AIR 1996 SC 2770.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **G.B. Pattanaik**, JJ. [Date of decision: 19-3-1996]

[1515] — Ss. 161 and 162 — Language of statement recorded under — *Held, does not have to be language known to person making statement — Moreover, such person does not have to sign the statement either*

It is not a requirement in law that the statement under Section 161 CrPC has to be recorded in the language known to the person giving the statement. As a matter of fact, the person giving the statement is not required to sign the statement as is mandated in Section 162 CrPC. (Para 71). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

[1516] — Ss. 161 and 162 — Recording statement given in English, in Hindi — *PW 2 making his statement in English which was recorded in Hindi — Held, in absence of any suggestion to contrary it must be presumed that his statement was correctly recorded* (Para 97). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram : **P. Sathasivam** and Swatanter Kumar, JJ. [Date of decision : 19-4-2010]

[1517] — Ss. 161 and 162 — Statement recorded by police officer during investigation — Inadmissible in evidence — Cannot be used for the purpose of cross-examination — *Can be used only for contradicting the prosecution witnesses under S. 145 of Evidence Act — Held, on facts, trial court as well as High Court erred in using such statements as evidence. State (Delhi Admn.)* v. *Laxman Kumar*, (1985) 4 SCC 476: 1986 SCC (Cri) 2: AIR 1986 SC 250.

Bench Strength **2**. Coram: *A.N. Sen* and **Ranganath Misra**, JJ. [Date of decision: 23-9-1985]

[1518] — Ss. 161 and 162 — Statements made under S. 161 — Admissibility in evidence of, in departmental enquiry — Examination of witnesses and recording of evidence — Previous statements of witnesses recorded under S. 161 of CrPC — Admissibility — *Such statements read over to the witnesses who admitting the contents thereof — Copies of the statements having already been given to the delinquent well in advance (several months earlier) and the delinquent granted full opportunity to cross-examine the witnesses — Such procedure, held, not vitiative of the disciplinary proceedings*

It is now well settled that strict rules of evidence are not applicable and are not required to be followed in domestic inquiry. What has to be ensured is that the principles of natural justice are complied with and the delinquent workman has the opportunity of defending himself.

The statements under Section 161 CrPC may not be admissible in the criminal trial, but the said statements can be produced in a disciplinary inquiry like the present. The person who made the statement has been examined before the inquiry officer. It was open to the witness to have stated orally the entire contents of what was recorded in his statement under Section 161 CrPC. Instead of following this time-consuming procedure, the said statement recorded under Section 161 CrPC was read over to the witness who admitted the contents thereof. In this way the earlier statement under Section 161 CrPC became a part of the examination-in-chief of the witness before the Inquiry Officer. It is not in dispute that the said statements had been given to the respondent in advance and full opportunity was granted to the respondent to cross-examine the said witnesses. This being the case, the High Court erred in holding that the using of the statements recorded under Section 161 of the CrPC had vitiated the inquiry proceedings. *State Bank of Bikaner & Jaipur* v. *Srinath Gupta*, (1996) 6 SCC 486: 1996 SCC (L&S) 1464: AIR 1997 SC 243.

Bench Strength **2**. Coram: *J.S. Verma* and **B.N. Kirpal**, JJ. [Date of decision: 25-10-1996]

State of Mysore v. S.S. Makapur, (1963) 2 SCR 943: AIR 1963 SC 375: (1964) 1 LLJ 24; Khatri (IV) v. State of Bihar, (1981) 2 SCC 493: 1981 SCC (Cri) 503, relied on

Kesoram Cotton Mills Ltd. v. Gangadhar, (1964) 2 SCR 809: AIR 1964 SC 708: (1963) 2 LLJ 371: (1963) 7 FLR 213, explained and distinguished

[1519] — Ss. 161, 162(1) and 154 — Report lodged with police by the witness exhibited as FIR after the witness testified about the facts from his own memory — Said report treated as a statement recorded during investigation and not an FIR — *Held, evidence of such witness not inadmissible on ground that he was allowed to refresh his memory from that report — Evidence Act, 1872 — S. 157* (Paras 37 to 40). *Ranbir Yadav* v. *State of Bihar*, (1995) 4 SCC 392: 1995 SCC (Cri) 728: AIR 1995 SC 1219: 1995 Cri LJ 2665.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 21-3-1995]

[1520] — S. 161 — Need for recording of statements under — When arises — *Examination of witness by police — Submission that statements of PWs 9 and 10 were not recorded by IO during the course of investigation and, therefore, their testimony should not be relied upon — Tenability — Held, PWs 9 and 10 were not witnesses to actual occurrence — They were witnesses of recording of dying declaration and the certificate given by the doctor regarding the mental condition of the victim — Moreover, it was not the case of the appellant that dying declaration was not immediately sent to the court of the Magistrate concerned or that its copy was not given to him in accordance with S. 207 CrPC before the commitment of the case — In such circumstances the mere fact that the investigating officer did not record the statement of the aforesaid two witnesses under S. 161 can hardly have any bearing* (Paras 17 and 18). *Dayal Singh* v. *State of Maharashtra*, (2007) 12 SCC 452: (2008) 3 SCC (Cri) 236: 2007 Cri LJ 3265.

Bench Strength **2**. Coram: **G.P. Mathur** and *A.K. Mathur*, JJ. [Date of decision: 3-5-2007]

Tilkeshwar Singh v. State of Bihar, AIR 1956 SC 238: 1956 Cri LJ 441, considered

[1521] — S. 161 — Statement of witness recorded under — Can be used at the trial only for contradiction or omissions when the witness is examined in the court — *Evidence Act, 1872 — S. 145*. *Omkar Namdeo Jadhao* v. *Second Additional Sessions Judge*, (1996) 7 SCC 498: AIR 1997 SC 331.

Bench Strength **2**. Coram: *K. Ramaswamy* and *G.B. Pattanaik*, JJ. [Date of decision: 4-1-1996]

[**Ed.**: See also *State* v. *Laxman*, (1985) 4 SCC 476: 1986 SCC (Cri) 2.]

[1522] — S. 161 — Incriminatory statements of person called to provide information relevant to inquiry under S. 67, NDPS Act, 1985 — Nature of — Held, not the same as statement under S. 161 CrPC — Use of, for basing a conviction — Permissibility — *Held, at the stage of inquiry under S. 67 the person concerned is not an accused although he may be in custody and so the bar under Ss. 24 to 27 of the Evidence Act would not operate nor would the provisions of Art. 20(3) of the Constitution, unless the statement is made under threat or coercion — Evidence Act, 1872 — Ss. 24 to 27 — Constitution of India, Art. 20(3) — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 67 and 42*

The appellant *K* had appeared before the officer concerned and his statement was taken under Section 67 of the NDPS Act. In his statement the appellant confessed that he too was involved in the smuggling of opium along with other co-accused persons. On the basis of his confessional statement *K* was arrested and tried under Sections 8 and 18 read with Section 29 along with *R* and *P* from whom the opium was recovered. The Special Judge framed several issues and ultimately held that the charges had been fully proved against *P*. As charges were not proved against *R* and the appellant, the trial Judge acquitted him.

The High Court allowed the appeal against the acquittal of *R* and *K* upon holding that the statement made by *R* and the appellant under Section 67 of the NDPS Act did not require any corroboration and were sufficient in themselves to convict the said two accused.

Dismissing the appeal,

Held :

The consistent view which has been taken with regard to confessions made under provisions of Section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Evidence Act, but with the caution that the court should satisfy itself that such statements had been made voluntarily and at a time when the person making such statement had not been made an accused in connection with the alleged offence. Even if a person is placed under arrest and thereafter makes a statement which seeks to incriminate him, the bar under Article 20(3) of the Constitution would not operate against him if such statement was given voluntarily and without any threat or compulsion and if supported by corroborating evidence. (Paras 43 and 42)

If a statement under Section 67 of the NDPS Act is made by the accused at a time when he was not under arrest, the bar under Sections 24 to 27 of the Evidence Act would not operate nor would the provisions of Article 20(3) of the Constitution be attracted. It is only after a person is placed in the position of an accused that the bar imposed under the aforesaid provisions will come into play. A parallel may be drawn between the provisions of Section 67 of the NDPS Act and Sections 107 and 108 of the Customs Act and to a large extent Section 32 of the Prevention of Terrorism Act, 2002 and Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. These are all special Acts meant to deal with special situations and circumstances. While the provisions of the Prevention of Terrorism Act, 2002 and the TADA Act, 1987, are much more stringent and excludes from its purview the provisions of Sections 24 to 27 of the Evidence Act with regard to confession made before a police officer, the provisions relating to statements made during inquiry under the Customs Act and under the

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NDPS Act are less stringent and continue to attract the provisions of the Evidence Act. In the case of both the latter enactments, initially an inquiry is contemplated during which a person may be called upon to provide any information relevant to the inquiry as to whether there has been any contravention of the provisions of the Act or any rule or order made thereunder. At that stage the person concerned is not an accused although he may be said to be in custody. But on the basis of the statements made by him he could be made an accused subsequently. What is important is whether the statement made by the person concerned is made during inquiry prior to his arrest or after he had been formally charged with the offence and made an accused in respect thereof. (Para 41)

A statement made under Section 67 of the NDPS Act, 1985 by a person directed to appear before the officer concerned may be relied upon as a confessional statement against such person. A conviction can be maintained solely on the basis of such confession. Also, since an officer vested with "powers of an officer in charge of a police station" under Section 53 of the Act is not a "police officer" within the meaning of Section 25 of the Evidence Act, a statement made under Section 67 of the NDPS Act is not the same as a statement made under Section 161 CrPC, unless made under threat or coercion. It is this vital difference, which allows a statement made under Section 67 of the NDPS Act to be used as a confession against the person making it and excludes it from the operation of Sections 24 to 27 of the Evidence Act. (Paras 44 and 45)

Although, an application was made for retracting the confession made by the appellant, neither was any order passed on the said application nor was the same proved during the trial so as to water down the evidentiary value of the said statement. On the other hand, there is the evidence of the Inspector (Narcotics) upon which the High Court has relied in convicting the appellant. Again no question in cross-examination had been put to the Inspector in this regard and the version of the said witness must be accepted as corroborative of the statement having been voluntarily made by the accused. There is nothing on record to suggest that the appellant was compelled under threat to make the statement after he had been placed under arrest which renders such statement inadmissible and not capable of being relied upon in order to convict him. (Paras 46 and 47). *Kanhaiyalal* v. *Union of India*, (2008) 4 SCC 668: (2008) 2 SCC (Cri) 474: AIR 2008 SC 1044.

Bench Strength **2**. Coram: **Altamas Kabir** and *B. Sudershan Reddy*, JJ. [Date of decision: 9-1-2008]

Pyare Lal Bhargava v. State of Rajasthan, AIR 1963 SC 1094: 1963 Supp (1) SCR 689; Pon Adithan v. Dy. Director, Narcotics Control Bureau, (1999) 6 SCC 1: 1999 SCC (Cri) 1051, followed

Raj Kumar Karwal v. Union of India, (1990) 2 SCC 409: 1990 SCC (Cri) 330, affirmed

A.K. Mehaboob v. Intelligence Officer, Narcotics Control Bureau, (2001) 10 SCC 203: 2002 SCC (Cri) 1035; M. Prabhulal v. Asstt. Director, Directorate of Revenue Intelligence, (2003) 8 SCC 449: 2003 SCC (Cri) 2024; State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808: (1962) 3 SCR 10, relied on

State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600: 2005 SCC (Cri) 1715; Bharat v. State of U.P., (1971) 3 SCC 950: 1972 SCC (Cri) 198; Haroom Haji Abdulla v. State of Maharashtra, AIR 1968 SC 832: (1968) 2 SCR 641; Pyare Lal Bhargava v. State of Rajasthan, AIR 1963 SC 1094: 1963 Supp (1) SCR 689; Haricharan Kurmi v. State of Bihar, AIR 1964 SC 1184: (1964) 6 SCR 623, impliedly distinguished

[**Ed.**: Even if the operation of Sections 24 to 27 of the Evidence Act, 1872 would be excluded in case of confessional statements made under Section 67 NDPS Act, post-arrest confessions which are not voluntary would still attract the bar under Art. 20(3) of the Constitution as brought out in paras 41 to 43 of the judgment. These safeguards are significant for the less stringent special statutes like the Customs Act and the NDPS Act.]

[1523] — S. 161 — Statement made before Customs Officials under S. 108, Customs Act, 1962 is not a statement recorded by a police officer under S. 161, CrPC — *It is a material piece of evidence collected by the customs officials under S. 108 — Where such statement made by a person inculpates not only himself but also another person, held, it can be used as substantive evidence against that another person — Evidence Act, 1872 — S. 30 — Customs Act, 1962 — S. 108. Naresh J. Sukhawani* v. *Union of India*, 1995 Supp (4) SCC 663: 1996 SCC (Cri) 76: AIR 1996 SC 522.

Bench Strength **2**. Coram: *K. Ramaswamy* and *B.N. Kirpal*, JJ. [Date of decision: 6-11-1995]

[1524] — S. 161 — Statement made during investigation of cross-case inadmissible in present case — *CrPC, 1898 — S. 161. Gajendra Singh* v. *State of U.P.*, (1975) 4 SCC 241: 1975 SCC (Cri) 499: AIR 1975 SC 1703: 1975 Cri LJ 1494.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 25-4-1975]

[1525] — Ss. 161, 162, 91, 172 and 207 — Use of previous statement of a witness recorded during the course of investigation of another case — Held, court can summon the case diary of such case under S. 91 CrPC for the purpose of contradicting the prosecution witness — Restrictions imposed under sub-ss. (2) and (3) of S. 172 CrPC would not apply to the use of such case diary — *S. 172 relates to summoning of the case diary of a* *case which is under enquiry or trial only — However, restrictions imposed under S. 162 CrPC and S. 145 of Evidence Act would apply — Evidence Act, 1872 — Ss. 145 and 155*

In the course of trial of a sessions case it was noticed by the defence that on the very day of the incident which was the subject-matter of the sessions case there was another case and in that case during the course of investigation, a statement of the witness who was being examined in the sessions case as a prosecution witness, was recorded under Section 161 which contradicted the statement made by such witness in the course of the sessions trial. Therefore, for the purpose of establishing the contradiction in the evidence of the witness and in order to impeach the said witness, the defence made an application for summoning the case diary of that case invoking Section 172 of the Code with a consequential prayer for recalling of the witness. Both the Sessions Court and the High Court held that there is no bar in law to summon the case diary of a case even other than the one which is being tried, for the purpose of contradicting the evidence of the prosecution witnesses. Hence they placed reliance on Section 172. Dismissing the appeal by special leave by the State and confirming the judgments of the lower courts though for a different reason,

Held :

In view of Section 145 of the Evidence Act it is the right of a party in a trial to use the previous statements of a witness either for the purpose of establishing a contradiction in his evidence or for the purpose of impeaching the credit of the witness. This right given to a party in a trial under Section 145 of the Evidence Act is somewhat controlled in criminal trials by the provisions made in the Criminal Procedure Code. (Para 5)

On a reading of Section 162 of the Code and bearing in mind the object of the said section and Section 145 of the Evidence Act, it is clear that an accused in a criminal trial has the right to make use of the previous statements of a witness including the statements recorded by the investigating agency during the course of an investigation for the purpose of establishing a contradiction in the evidence of a witness or to discredit the witness. The question then arises, how does the accused confront the previous statement made by a witness in the course of an investigation to establish the contradiction in the evidence given by the witness in the trial? So far as the statements made during the course of investigation of the case being tried is concerned, there is no difficulty because an accused is entitled under Section 207 of the Code for the supply of free copies of the documents referred to in the said section which includes the previous statement recorded under sub-section (3) of Section 161 of the Code. The accused does not have such a right as a matter of course in regard to other previous statements; more so, in regard to the statements recorded by the investigating agency under Section 161 in a case other than the one that is being tried by the court. (Para 8)

The words used in sub-section (2) of Section 172, more particularly "police diaries of a case under enquiry or trial in such court", indicate it is only that police diary in which the investigating officer concerned had made entries of his investigation and which pertains to the case being tried by the court alone can be sent for. Sub-section (3) of Section 172 further imposes restrictions in the manner in which such diaries can be used by the court. It also specifically bars the right of an accused or his agent to call for such diaries. Thus, on a plain language of this section, it is clear that this section cannot be used for the purpose of summoning a case diary which does not pertain to the investigation of the case which is being tried by the court. Section 172 is specifically meant for the contingencies when the court finds it necessary to look into the case diary for the purpose of finding an aid in the trial or for the purpose of assisting the police officer to refresh his memory. Therefore, Section 172 does not contemplate summoning of the case diary for the purpose of assisting the accused to have a look at the previous statements of the witness for using it for his benefit, as contemplated in Section 162 of the Code. (Para 9)

There can be no quarrel with regard to the fact that there is no prohibition in the Criminal Procedure Code against any court from looking into the diary of a counter-case or from using the diary of a counter-case in the trial of another case. But this does not mean that the right of the court to summon the case diary of another case is derived from Section 172 of the Code or by the application of the principles of Section 172 because ex facie Section 172 of the Code does not help the accused in making use of a case diary. Section 172 relates to summoning of the case diary of a case which is under enquiry or trial only. (Para 10)

The very object of enactment of Section 161 of the Code and Section 145 of the Evidence Act is to create a right in the accused to make use of the previous statements of the witnesses for the purpose of contradiction and for impeaching the merit of the witness. This right has not been taken away by Section 172 of the Code and there is no prohibition in

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regard to this right of the accused either under the Code or under the Evidence Act. But the question for consideration is, how does the accused exercise this right with reference to a previous statement of a witness made in another case which is recorded by the investigating officer in that case under the provisions of Section 161 of the Code? This right certainly does not flow under Section 172 of the Code nor is the accused entitled to these previous statements under Section 207 of the Code. But this does not mean that the accused is denied of his limited benefit of using the said previous statements recorded during the course of another investigation. The answer to this question lies in Section 91(1) of the Code. (Para 11)

The language of Section 91 is much wider than the language of Section 172 and by no stretch of imagination it could be contended that the case diary maintained under Section 172 of the Code is not a document as contemplated under Section 91(1) of the Code. If that be so and if the court comes to the conclusion that the production of such a document is necessary or desirable then the court is entitled to summon the case diary of another case under Section 91 of the Code dehors the provisions of Section 172 of the Code for the purpose of using the statements made in the said diary for contradicting a witness. When a case diary is summoned under Section 91(1) of the Code then the restrictions imposed under sub-sections (2) and (3) of Section 172 would not apply to the use of such case diary. But while using a previous statement recorded in the said case diary, the court should bear in mind the restrictions imposed under Section 162 of the Code and Section 145 of the Evidence Act because what is sought to be used from the case diary so produced are the previous statements recorded under Section 161 of the Code. (Para 12). *State of Kerala* v. *Babu*, (1999) 4 SCC 621: 1999 SCC (Cri) 611: AIR 1999 SC 2161.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **N. Santosh Hegde**, JJ. [Date of decision: 4-5-1999]

Ahmed Mia v. Emperor, AIR 1944 Cal 243: 46 Cri LJ 28, partly overruled

Khatri (IV) v. State of Bihar, (1981) 2 SCC 493: 1981 SCC (Cri) 503; Tahsildar Singh v. State of U.P., AIR 1959 SC 1012, relied on

[1526] — S. 161 — Statement made to police during investigation, reiterated, is not evidence — *Instant case of brutal murder of college girl inside college campus by running a jeep over her by prime accused-appellant S and co-accused-appellants present in the jeep allegedly exhorting S for the same — Eyewitnesses, all classmates of deceased victim, present with her at the time of incident — They backing out from what was stated during investigation and statement made before police — PW 8 (eyewitness), at the end of her evidence, cried and requested the court not to call her again for evidence since they were disturbed for the entire year — Close reading of evidence showed that PW 8 was under tremendous pressure not to speak the truth — Held, unfortunately, in cases involving influential people, common experience is that witnesses do not come forward because of fear and pressure — Herein, plight of eyewitness girls, who were under pressure, depicts tremendous need for witness protection in the country if criminal justice administration has to be a reality — Penal Code, 1860, Ss. 302 and 34* (Paras 15 to 18). *Javed Alam* v. *State of Chhattisgarh*, (2009) 6 SCC 450.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 8-5-2009]

[1527] — S. 162 — Scope — *Held, does not exclude evidence relating to conduct of an accused person (not amounting to a statement) when confronted or questioned by a police officer during the course of an investigation — Further held, identification by a person in custody of another does not amount to making a statement falling within the embargo of S. 162 — It would be admissible under S. 8, Evidence Act, 1872 — Evidence Act, 1872 — S. 8 — Applicability — Scope of bar under S. 162, CrPC, 1973*

The conduct, in order to be admissible under Section 8 of the Evidence Act, 1872 must be such that it has close nexus with a fact in issue or relevant fact. Explanation 1 to Section 8 makes it clear that the mere statements as distinguished from acts do not constitute "conduct" unless those statements "accompany and explain acts other than statements". Such statements accompanying the acts are considered to be evidence of *res gestae*. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as "conduct" under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27. (Paras 205 and 206)

The *first circumstance* against the accused Afzal is that Afzal knew who the deceased terrorists were. He identified the dead bodies of the deceased terrorists. On this aspect, the evidence remained unshattered. What is excluded by Section 162, CrPC is the statement made to a police officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a police officer during the course of an investigation. Identification by a person in custody of another does not amount to making a statement falling within the embargo of Section 162 CrPC. It would be admissible under Section 8 of the Evidence Act as a piece of evidence relating to the conduct of the accused person in identifying the dead bodies of the terrorists. (Para 190). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Prakash Chand v. State (Delhi Admn.), (1979) 3 SCC 90: 1979 SCC (Cri) 656; H.P. Admn. v. Om Prakash, (1972) 1 SCC 249: 1972 SCC (Cri) 88, relied on

[1528] — S. 162 — Held, fairness in investigation and trial is a human right of an accused — *Prosecution must also be fair to accused — State cannot suppress any vital document from court only because the same would support the case of the accused — On that ground acquittal upheld — Constitution of India — Art. 21* (Para 12). *Samadhan Dhudaka Koli* v. *State of Maharashtra*, (2008) 16 SCC 705: AIR 2009 SC 1059: (2009) 76 AIC 242 (SC): (2009) 2 ECrN 497 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 18-12-2008]

Mehiboobsab Abbasabi Nadaf v. State of Karnataka, (2007) 13 SCC 112: (2009) 1 SCC (Cri) 287, relied on

[1529] — S. 162 — Fard bayan of first informant on the basis of which formal FIR entered could not in the circumstances be said to be a statement recorded during the investigation — *Hence not hit by S. 162. Sk. Ishaque* v. *State of Bihar*, (1995) 3 SCC 392: 1995 SCC (Cri) 534: 1995 Cri LJ 2682.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *K.S. Paripoornan*, JJ. [Date of decision: 10-3-1995]

[1530] — S. 162 — Letter addressed by prosecution witness to police officer during the course of investigation corroborating oral testimony — *Held, not admissible in evidence. Vinod Chaturvedi* v. *State of M.P.*, (1984) 2 SCC 350: 1984 SCC (Cri) 250: AIR 1984 SC 911: 1984 Cri LJ 814.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and **Ranganath Misra**, JJ. [Date of decision: 5-3-1984]

Kali Ram v. State of H.P., (1973) 2 SCC 808: 1973 SCC (Cri) 1048, followed

[1531] — S. 162 — List of stolen articles not given in the FIR — *First informant later on giving a written statement containing such list to the IO — Held, such statement was hit by S. 162 — Trial court not justified in entertaining that statement as an exhibit. Mohd. Aman* v. *State of Rajasthan*, (1997) 10 SCC 44: 1997 SCC (Cri) 777: AIR 1997 SC 2960: 1997 Cri LJ 3567.

Bench Strength 2. Coram: **M.K. Mukherjee** and *K. Venkataswami*, JJ. [Date of decision: 8-5-1997]

[1532] — S. 162 — Site plan — Things noted therein by IO on the basis of statements made by witnesses, held, not admissible in evidence

The High Court has extensively relied upon the site plan prepared by the IO for discarding the prosecution case and for this purpose has referred to the place from where the accused are alleged to have entered the *nohara*, the place from where they are alleged to have fired upon the deceased. Many things mentioned in the site plan have been noted by the IO on the basis of the statements given by the witnesses. Obviously, the place from where the accused entered the *nohara* and the place from where they resorted to firing is based upon the statement of the witnesses. These are clearly hit by Section 162 CrPC. What the IO personally saw and noted alone would be admissible. Therefore, the findings recorded by the High Court on the basis of the site plan prepared by the IO whereby it discarded the prosecution case is clearly illegal being based upon inadmissible evidence and has to be set aside. (Paras 11 and 12). *State of Rajasthan* v. *Bhawani*, (2003) 7 SCC 291: 2003 SCC (Cri) 1628: AIR 2003 SC 4230.

Bench Strength 3. Coram: *S. Rajendra Babu*, *K.G. Balakrishnan* and **G.P. Mathur**, JJ. [Date of decision: 31-7-2003]

Tori Singh v. State of U.P., AIR 1962 SC 399: (1962) 1 Cri LJ 469, relied on

[1533] — S. 162 — Site plan prepared by the IO — Admissibility in evidence — *Time, place and manner of incident indicated by the IO on the basis of statement of witnesses not admissible in evidence being hearsay — His observations based on his personal knowledge can be used as substantive evidence — Statement of witness on the basis of whose statement the site plan was prepared cannot be used to corroborate the maker thereof being hit by S. 162(1) — His statement can be used only to contradict him in accordance with proviso to S. 162(1) — However, site plan prepared by a draftsman would be admissible as corroborative evidence — Evidence Act, 1872 — Ss. 157 and 60*

While preparing a site plan an Investigating Police Officer can certainly record what he sees and observes, for that will be direct and substantive evidence being based on his personal knowledge; but, as he was not obviously present when the incident took place, he has to derive knowledge as to when, where and how it happened from persons who had

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seen the incident. When a witness testifies about what he heard from somebody else it is ordinarily not admissible in evidence being hearsay, but if the person for whom he heard is examined to give direct evidence within the meaning of Section 60 of the Evidence Act, 1872 the former's evidence would be admissible to corroborate the latter in accordance with Section 157 Evidence Act. However such a statement made to a Police Officer, when he is investigating into an offence in accordance with Chapter XII of the Code of Criminal Procedure cannot be used to even corroborate the maker thereof in view of the embargo in Section 162(1) CrPC appearing in that chapter and can be used only to contradict him (the maker) in accordance with the proviso thereof, except in those cases where sub-section (2) of the section applies.

If in a given case the site plan is prepared by a draftsman — and not by the Investigating Officer — entries therein regarding the place from where shots were fired or other details derived from other witnesses would be admissible as corroborative evidence. *Jagdish Narain* v. *State of U.P.*, (1996) 8 SCC 199: 1996 SCC (Cri) 565: AIR 1996 SC 3136.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 12-3-1996]

Tori Singh v. State of U.P., AIR 1962 SC 399: (1962) 1 Cri LJ 469: (1962) 3 SCR 580, followed

[Ed.: See also *Sat Kumar* v. *State of Haryana*, (1974) 3 SCC 643: 1974 SCC (Cri) 173]

[1534] — S. 162 — Sketch/map of the place of occurrence prepared by investigating officer — No evidence adduced with reference to the sketch by the witnesses — *Held, even if it is admissible in evidence and is not hit by S. 162, still it cannot be of much use unless some of the witnesses state as to the state of affairs at the scene* (Para 9). *State of H.P.* v. *Prem Chand*, (2002) 10 SCC 518: 2003 SCC (Cri) 1475: AIR 2003 SC 708: 2003 Cri LJ 872.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 16-12-2002]

Tori Singh v. State of U.P., AIR 1962 SC 399: (1962) 1 Cri LJ 469, relied on

[1535] — S. 162 — Statement made before police officer during investigation — Use of — *Held, it cannot be used for any purpose except when it attracts S. 27 or S. 32(1) of Evidence Act — However, such a statement may be used to contradict the maker thereof in accordance with S. 145 of Evidence Act — Evidence Act, 1872 — Ss. 27, 32(1) and 145. Vijender* v. *State of Delhi*, (1997) 6 SCC 171: 1997 SCC (Cri) 857.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *B.N. Kirpal*, JJ. [Date of decision: 12-2-1997]

[1536] — Ss. 162, 154, 157 and 2(h) — Investigation when commences — Telephonic FIR

The question as to at what stage the investigation commences has to be considered and examined on the facts of each case, especially, when the information of a cognizable offence has been given on telephone. If the information given on telephone is not cryptic and on basis of that information, the officer in charge, is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including about the participants, shall be deemed to be a statement made by a person to the police officer "in the course of investigation", covered by S. 162 of the Code. *Ramsinh Bavaji Jadeja* v. *State of Gujarat*, (1994) 2 SCC 685: 1994 SCC (Cri) 609: 1994 Cri LJ 3067: (1994) 2 Punj LR 671: (1994) 1 MWN (Cri) 130: (1994) 1 GLH 329.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **N.P. Singh**, JJ. [Date of decision: 1-3-1994]

[1537] — S. 162 — Statement made to Investigating Officer is not substantive evidence which can be relied upon. *Modan Singh* v. *State of Rajasthan*, (1978) 4 SCC 435: 1979 SCC (Cri) 56: AIR 1978 SC 1511: 1978 Cri LJ 1531.

Bench Strength **2**. Coram: *Jaswant Singh* and **P.S. Kailasam**, JJ. [Date of decision: 31-8-1978]

[1538] — S. 162 — Statement made to the police during investigation — *Held, cannot be used to discredit him/her unless that statement had been put to the witness while deposing in the court. Delhi Administration* v. *Tribhuvan Nath*, (1996) 8 SCC 250.

Bench Strength **2**. Coram: *B.L. Hansaria* and *K. Venkataswami*, JJ. [Date of decision: 11-4-1996]

[1539] — S. 162 — Statement of a PW recorded during investigation of the case registered on the basis of FIR and sent to investigating officer — *Held, statement hit by S. 162. Kapildeo Singh* v. *State of Bihar*, 1993 Supp (3) SCC 372: 1993 SCC (Cri) 1034.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *N.P. Singh*, JJ. [Date of decision: 7-4-1993]

[1540] — S. 162 — Statements made by witnesses in the course of investigation cannot be used as substantive evidence — *Definition of 'proved' in S. 3 of Evidence Act will not enable the court to take into consideration such statements. Hazari Lal* v. *State (Delhi Admn.)*, (1980) 2 SCC 390: 1980 SCC (Cri) 458: AIR 1980 SC 873: 1980 Cri LJ 564: 1980 MLJ (Cri) 756.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 15-2-1980]

[1541] — Ss. 162, 174 and 175 — Statement of witness recorded during inquest and enclosed with inquest report cannot be used as evidence — Statement made by person summoned under S. 175 is a 'previous statement' within the meaning of S. 162 — It shall not be signed and S. 145 of Evidence Act is attracted

Section 162 was conceived to protect an accused creating an absolute bar against the previous statement made before the police officer being used for any purpose whatsoever. The obvious reason is that the previous statement under the circumstances was not made inspiring confidence. It enables the accused to rely thereon only to contradict the witnesses in the manner provided by S. 145 drawing attention of the witness to that part of the statement intended to be used for contradiction. It cannot be used for corroboration of a prosecution or defence witness or even a court witness, nor can it be used for contradicting a defence or a court witness. The investigating officer is enjoined to forward the inquest report to the Magistrate along with the statement recorded at the inquest, so that the court would see the record, at the earliest of the circumstances leading to the cause of the death of the deceased and the witness examined during the inquest. Therefore, the statement of PW recorded during inquest is not evidence. It is a previous statement reduced to writing under S. 162 of the Code and enclosed with the inquest report and cannot be used by the prosecution for any purpose including to show the names of the accused except to contradict the maker thereof, or to explain the same by prosecution. (Para 12). *Malkiat Singh* v. *State of Punjab*, (1991) 4 SCC 341: 1991 SCC (Cri) 976.

Bench Strength 3. Coram: *A.M. Ahmadi*, *V. Ramaswami* and **K. Ramaswamy**, JJ. [Date of decision: 10-4-1991]

[1542] — Ss. 162 and 154 — Report of the same incident intended as FIR received by police after commencement of investigation, held, not admissible in evidence — *Failure of prosecution to bring this report on record, therefore, not fatal. B. Subba Rao* v. *Public Prosecutor, High Court of A.P.*, (1997) 11 SCC 478: AIR 1997 SC 3427: 1997 Cri LJ 4072.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S. Saghir Ahmad*, JJ. [Date of decision: 7-8-1997]

[1543] — Ss. 162 and 154 — Statements made to S.H.O. at the police station though leads to investigation is not statement made to an Investigating Officer — *Officer recording the statement does not possess the capacity of Investigating Officer at that time. Munnu Raja* v. *State of M.P.*, (1976) 3 SCC 104: 1976 SCC (Cri) 376: AIR 1976 SC 2199: (1976) 2 SCR 764: 1976 Cri LJ 1718.

Bench Strength 2. Coram: **Y.V. Chandrachud** and *A.C. Gupta*, JJ. [Date of decision: 20-11-1975]

[1544] — Ss. 162 and 154 — Supplementary statement of the first informant recorded by the IO — Use of — *Such statement cannot be used for comparing it with FIR — Merely because the IO elicited more details during subsequent interrogation informants' evidence does not become suspect*

The reason advanced by the trial court against the evidence of the first informant was that when he was interrogated by the Investigating Officer subsequently, he gave more details regarding the occurrence. Firstly, the said supplementary statement recorded by the Investigating Officer could only have been used to contradict the witness in view of the interdict contained in Section 162 of the Code of Criminal Procedure. Secondly, that statement cannot be used for comparing it with the FIR. That apart, if the Investigating Officer elicited more details from the same person during any subsequent interrogation his evidence does not become suspect. It is not advisable to throw the evidence of the informant overboard merely because the Investigating Officer succeeded in eliciting further details or even fuller details during subsequent interrogation. *Harpal Singh* v. *Devinder Singh*, (1997) 6 SCC 660: 1997 SCC (Cri) 981: AIR 1997 SC 2914: 1997 Cri LJ 3561.

Bench Strength 2. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 9-7-1997]

[1545] — Ss. 162 and 161 — Applicability — *Govt. official assisting investigating officer, submitting his report to Anti-Corruption Bureau, the investigating agency, during course of investigation in a case of alleged commission of fraud and forgery by govt. engineers — Official examined by investigating officer after submission of his report and the report forming part of his statement recorded by the Bureau under S. 161 — Official not qualified as an expert within the meaning of S. 45 of Evidence Act — Held, his report would attract S. 162 and would be inadmissible in evidence to fasten criminal liability of the accused. C. Chenga Reddy* v. *State of A.P.*, (1996) 10 SCC 193: 1996 SCC (Cri) 1205: AIR 1996 SC 3390.

Bench Strength 2. Coram: *G.N. Ray* and **Dr. A.S. Anand**, JJ. [Date of decision: 12-7-1996]

[1546] — Ss. 162 and 161 — Bar under S. 162 — Scope — *Statement made/given by witness under S. 161 and signed by him, held, hit by bar under S. 162 — However, evidence deposed in court by said witness admissible* (Para 111). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength 2. Coram : **P. Sathasivam** and Swatanter Kumar, JJ. [Date of decision : 19-4-2010]

(1) Nature of statement recorded under Ss. 161/162 — Use to which it may be put *(contd.)*

Mehr Vajsi Deva v. State of Gujarat, AIR 1965 Guj 143; Zahiruddin v. Emperor, AIR 1947 PC 75; Supdt. and Remembrancer of Legal Affairs v. Ram Ajudhya Singh, AIR 1965 Cal 348, referred to

Ranbir Yadav v. State of Bihar, (1995) 4 SCC 392: 1995 SCC (Cri) 728, considered

[1547] — Ss. 162 and 161 — Bar of S. 162 — Applicability where statement sought to be used in a different case — *Statement of a person recorded under S. 161 during investigation of a case relating to abduction of a boy implicating appellant — Subsequently that person murdered — Held, statement made by that person under S. 161 earlier could be used in the subsequent investigation relating to his murder*

Bar of Section 162 CrPC is in regard to the admissibility of the statement recorded of a person by the police officer under Section 161 CrPC and by virtue of Section 162 CrPC would be applicable only where such statement is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. If the statement made before a police officer in the course of an investigation under Chapter XII is sought to be used in any proceeding, inquiry or trial in respect of an offence other than which was under investigation at the time when such statement was made, the bar of Section 162 will not be attracted. When the statement of *K* was recorded by the police officers under Section 161 CrPC during the investigation of abduction case of a boy, *K* was alive and thus that statement could be used in the subsequent investigation that was being made with respect to the alleged murder of *K*. (Paras 14 to 16). *Vinay D. Nagar* v. *State of Rajasthan*, (2008) 5 SCC 597: (2008) 2 SCC (Cri) 666: AIR 2008 SC 1558: 2008 Cri LJ 1907.

Bench Strength 2. Coram: **P.P. Naolekar** and *L.S. Panta*, JJ [Date of decision: 3-3-2008]

Khatri (IV) v. State of Bihar, (1981) 2 SCC 493: 1981 SCC (Cri) 503, relied on

[1548] — Ss. 162 and 161 — Statement made to the police during investigation — Use of — No question put to the witness with reference to his statement recorded under S. 161 — *Court cannot use such statement later even for drawing any adverse impression regarding the evidence of that witness — Evidence Act, 1872 — S. 155* (Para 20). *Dandu Lakshmi Reddy* v. *State of A.P.*, (1999) 7 SCC 69: 1999 SCC (Cri) 1176: AIR 1999 SC 3255.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 17-8-1999]

[1549] — Ss. 162 and 172 — Applicability — *Bar under, against production or use in evidence of statement made before a police officer in the course of investigation or case diary prepared by the police officer, held, would not apply where court calls for such statement or diary in a civil proceeding or in a proceeding under Art. 32 or 226 provided the statement or diary is otherwise relevant under the Evidence Act, 1872*

Section 162 has been enacted for the benefit of the accused. The bar created by this section is a limited one and has no application if the statement made before a police officer in the course of an investigation under Chap. XII is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made. Thus the section does not apply to a civil proceeding or a proceeding under Art. 32 or 226 and as such a statement made before a police officer during investigation can be produced and used in evidence in a writ petition under Art. 32 or 226 provided it is relevant under the Evidence Act.

The bar against production and use of case diary enacted in S. 172 is intended to operate only in an inquiry or trial for an offence and even this bar is a limited bar, because in an inquiry or trial, the bar does not operate if the case diary is used by the police officer for refreshing his memory or the criminal court uses it for the purpose of contradicting such police officer. This bar also can have no application where a case diary is sought to be produced and used in evidence in a civil proceeding or in a proceeding under Art. 32 or 226 of the Constitution and particularly when the party calling for the case diary is neither an accused nor his agent in respect of the offence to which the case diary relates.

The present writ petition under Art. 32 to enforce the fundamental right guaranteed under Art. 21 is neither an 'inquiry' nor a 'trial' for an offence nor is the Court hearing the writ petition a criminal court nor are the petitioners, accused or their agents so far as the offences arising out of their blinding are concerned. Therefore, even if the reports submitted by the police officer as a result of his investigation could be said to form part of 'case diary' their production and use in evidence in the present petition could not be said to be barred under S. 172. *Khatri (IV)* v. *State of Bihar*, (1981) 2 SCC 493: 1981 SCC (Cri) 503: AIR 1981 SC 1068: 1981 Cri LJ 597: 1981 MLJ (Cri) 456: (1981) 29 BLJR 425.

Bench Strength 2. Coram: *P.N. Bhagwati* and *Baharul Islam*, JJ. [Date of decision: 10-3-1981]

[1550] — Ss. 162 and 174 — Statement made by a witness during inquest proceedings — *Held, cannot be used as substantive evidence in view of embargo of S. 162. Harkirat Singh* v. *State of Punjab*, (1997) 11 SCC 215: 1997 SCC (Cri) 1068: AIR 1997 SC 3231.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S. Saghir Ahmad*, JJ. [Date of decision: 24-7-1997]

[1551] — Ss. 162 and 174 — Statement of the witness recorded in inquest report — *Held, hit by S. 162 — It cannot be used for any purpose except to contradict its author. Periasami* v. *State of T.N.*, (1996) 6 SCC 457: 1997 SCC (Cri) 121.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 25-9-1996]

[1552] — S. 162 proviso — Statement made to police during investigation can be used only for the purpose of contradicting the prosecution witnesses under S. 145, Evidence Act — Held, cannot be used for purposes of corroboration. *Sat Paul* v. *Delhi Admn.*, (1976) 1 SCC 727: 1976 SCC (Cri) 160: AIR 1976 SC 294: 1976 Cri LJ 295.

Bench Strength 2. Coram: *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 30-9-1975]

[1553] — S. 162 — Former statement by witness made during police investigation may be used to contradict him — *Evidence Act, 1872 — Ss. 145 & 155. Prakash Chand* v. *State (Delhi Admn.)*, (1979) 3 SCC 90: 1979 SCC (Cri) 656: AIR 1979 SC 400: 1979 Cri LJ 329: 1979 MLJ (Cri) 419.

Bench Strength 2. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 20-11-1978]

[1554] — S. 162 — Only prosecution witnesses can be contradicted by reference to their statements made to police and not court witnesses or defence witnesses — *CrPC, 1898 — S. 162. Shakila Khader* v. *Nausheer Cama*, (1975) 4 SCC 122: 1975 SCC (Cri) 379: AIR 1975 SC 1324: 1975 Cri LJ 1105.

Bench Strength 2. Coram: **A. Alagiriswami** and *N.L. Untwalia*, JJ. [Date of decision: 10-3-1975]

[1555] — S. 162 — Statements recorded during preliminary enquiry — If can be used as an evidence against the charged employee — *Respondent, a police officer, alleged to have kept two women at police station at night in violation of S. 160(1) proviso of CrPC and of departmental instructions, and also indulged in an outrageous behaviour — During pendency of disciplinary enquiry, respondent convicted by trial court but acquitted by appellate court on the ground that the two women did not support the prosecution case — Respondent's dismissal from service set aside by the Tribunal on two grounds: (i) the respondent had been acquitted on similar facts, (ii) findings of disciplinary enquiry were based on the statement recorded during preliminary enquiry which the two women had contradicted at regular enquiry — On facts, however, found that presence of two women at police station at night was proved during trial — Held, it was permissible to appreciate evidence given by the women before Enquiry Officer in the light of their earlier statements made during preliminary enquiry — The Administrative Tribunal's conclusion that it was a case of no evidence, therefore held, not sustainable — The Administrative Tribunal's view that if the witnesses had contradicted themselves during regular enquiry, their previous statements could be used only for discrediting them but not for the purpose of appreciation of evidence against respondent, also, held, not sustainable — Penal Code, 1860 — Ss. 166, 354, 365 and 366. State of T.N.* v. *M.A. Waheed Khan*, (1998) 8 SCC 723.

Bench Strength 2. Coram: *Kuldip Singh* and *K.T. Thomas*, JJ. [Date of decision: 1-8-1996]

[1556] — Ss. 162 and 2(n) — Statement contemplated in S. 162 — Admissibility of, in departmental enquiry — Confession made in police custody — Evidentiary value of — *Bar against admissibility of such confession contained in Ss. 25 and 26, Evidence Act and S. 162 CrPC, held, not applicable to departmental enquiry — Evidence Act, 1872 — Ss. 25 and 26*

The respondent was a Constable in the Delhi Police. Pursuant to an FIR lodged against him under Sections 308/34 of the Penal Code, he was arrested. Subsequently, certain firearms from the armoury were found with certain persons accused therefor. The said persons made confessions stating that the respondent had committed theft of the said arms. The respondent was arrested on the basis of that confessional statement. While in police custody he also made a confession as regards his involvement in the said offence. He also led the investigating team to the room of the armoury and pointed out the place wherefrom, he while working as a sentry on the date specified, had stolen the said firearms. Since apart from that confession there was no material on record, the respondent was discharged from the criminal case. Thereafter, a departmental enquiry was initiated against the respondent on the basis of the said confessional statement made by him. The departmental enquiry culminated in his dismissal from service. Setting aside the dismissal order CAT held, inter alia, that there was no

(1) Nature of statement recorded under Ss. 161/162 — Use to which it may be put *(contd.)*

embargo against applying the provisions of Section 25, Evidence Act and Section 162 CrPC to departmental proceedings. After unsuccessfully approaching the High Court, the department filed the present appeal.

Before the Supreme Court, the appellant department contended, inter alia, that the embargo contained in Section 25, Evidence Act and Section 162 CrPC were not applicable to departmental proceedings.

On the other hand, the respondent contended that even in a disciplinary proceeding the provisions contained in Section 26 of the Evidence Act, or at least principles analogous thereto, were attracted as such confessions in police custody were ordinarily extracted by force. The respondent added that since he was discharged from the criminal case, having regard to the provisions contained in Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as "the 1980 Rules"), the order of punishment was not sustainable.

Allowing the appeal,

Held :

The embargo contained in Section 25, Evidence Act and Section 162 CrPC regarding admissibility of a confession in a criminal trial has per se no application in departmental proceedings. CAT as also the High Court were not correct in holding that the said confession was not admissible even in a departmental proceeding. (Paras 21 and 23). *Commr. of Police* v. *Narender Singh*, (2006) 4 SCC 265: 2006 SCC (L&S) 686: AIR 2006 SC 1800: (2006) 128 DLT 801: (2006) 3 SLR 31: (2006) 3 LLN 104.

Bench Strength 2. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

Kuldip Singh v. State of Punjab, (1996) 10 SCC 659: 1997 SCC (L&S) 346; Depot Manager, A.P. SRTC v. Mohd. Yousuf Miya, (1997) 2 SCC 699: 1997 SCC (L&S) 548; Lalit Popli v. Canara Bank, (2003) 3 SCC 583: 2003 SCC (L&S) 353; N. Rajarathinam v. State of T.N., (1996) 10 SCC 371: 1997 SCC (L&S) 90; State of A.P. v. Chitra Venkata Rao, (1975) 2 SCC 557: 1975 SCC (L&S) 349; State of Haryana v. Rattan Singh, (1977) 2 SCC 491: 1977 SCC (L&S) 298, relied on

[1557] — S. 162 — An officer of RPF making enquiry under, held, is not affected — *Railway Property (Unlawful Possession) Act, 1966 — S. 8(1). State of U.P.* v. *Vyas Tewari*, 1980 Supp SCC 433: 1981 SCC (Cri) 361: AIR 1981 SC 635: 1981 Cri LJ 38.

Bench Strength 2. Coram: *R.S. Sarkaria* and *O. Chinnappa Reddy*, JJ. [Date of decision: 17-9-1980]

[1558] — S. 162 — Enquiry officer obtaining signature on statements made by persons called for enquiry under S. 8(1) Railway Property Act, 1966 — *Not hit by S. 162, CrPC— Railway Property (Unlawful Possession) Act, 1966 — S. 8(1)*

Statements made during the enquiry under S. 8(1) of the Act are not on a par with statements made during the course of an investigation. S. 162 of the Code does not apply with full force to the enquiry proceedings and in taking signatures of witnesses on the statements made by them the enquiry officer had not committed a flagrant violation of S. 162 of the Code. *State of U.P.* v. *Durga Prasad*, (1975) 3 SCC 210: 1974 SCC (Cri) 828: AIR 1974 SC 2136: (1975) 1 SCR 881: 1974 Cri LJ 1465.

Bench Strength 2. Coram: *H.R. Khanna* and **Y.V. Chandrachud**, JJ. [Date of decision: 23-8-1974]

[1559] — Ss. 162 and 160 — Statements recorded under, compared to that under S. 108, Customs Act, 1962 — Scope and status of person summoned under, compared with provisions of CrPC — *Held, a person called upon to make a statement before the Customs Authorities cannot be said to be an accused of an offence — S. 108 of Customs Act does not contemplate magisterial intervention — Customs Act, 1962 — S. 108*

Section 108 of the Customs Act does not contemplate magisterial intervention. The statements recorded under Section 108 of the Act are distinct and different from the statements recorded by the police officers during the course of investigation under CrPC. A person called upon to make a statement before the Customs Authorities cannot be said to be an *accused* of an offence. It is, therefore, clear that if a person is called upon to make a statement under Section 108 of the Act and summons is issued for the said purpose, he is bound to comply with such direction. (Paras 39, 41 and 40). *Union of India* v. *Padam Narain Aggarwal*, (2008) 13 SCC 305: (2008) 231 ELT 397.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 3-10-2008]

Ramesh Chandra Mehta v. State of W.B., AIR 1970 SC 940: (1969) 2 SCR 461; CCE v. Duncan Agro Industries Ltd., (2000) 7 SCC 53: 2000 SCC (Cri) 1275, relied on

(2) Use of statement under Ss. 161/162 as basis for detention

[1560] — S. 161 — Statement of detenu recorded under S. 161 CrPC accepting allegations against himself — *Can be relied upon for the purposes of preventive detention*

The detenu's statement recorded under S. 161 CrPC accepting allegations against himself may not be a legally recorded confession which can be used as substantive evidence against the accused in the criminal case, but it cannot be completely brushed aside on that ground for the purpose of his preventive detention. *K. Aruna Kumari* v. *Govt. of A.P.*, (1988) 1 SCC 296: 1988 SCC (Cri) 116: AIR 1988 SC 227: 1988 Cri LJ 411.

Bench Strength **2**. Coram: *A.P. Sen* and **L.M. Sharma**, JJ. [Date of decision: 11-11-1987]

[1561] — Ss. 161 and 162(1) — Primary reliance on accused's statement made to an investigating officer — Validity of — Held, not sufficient to form subjective satisfaction of the detaining authority — *Statements under S. 161 CrPC cannot be taken as sufficient grounds in absence of any supportive or corroborating grounds*

Insofar as the documents on which reliance is placed, none of these documents provide any reasonable basis for passing the detention order. The primary reliance has been on the accused's own statement made to an investigating officer. This cannot be said to be sufficient to form the subjective satisfaction of the detaining authority. Statements under Section 161, Code of Criminal Procedure, 1973 cannot be taken as sufficient grounds in the absence of any supportive or corroborating grounds. Section 161 statements are not considered substantive evidence, but can only be used to contradict the witness in the course of a trial. The same is clear from the wording of Section 162(1) CrPC. (Para 30). *Pebam Ningol Mikoi Devi* v. *State of Manipur*, (2010) 9 SCC 618.

Bench Strength **2**. Coram: *D.K. Jain* and **H.L. Dattu**, JJ. [Date of decision: 27-9-2010]

Mohd. Yousuf Rather v. State of J&K, (1979) 4 SCC 370: 1979 SCC (Cri) 999; Rajendra Singh v. State of U.P., (2007) 7 SCC 378: (2007) 3 SCC (Cri) 375, relied on

[1562] — S. 162 — Accused alleged to have killed his wife by administering cyanide in bottle of Limca — *PW 6 owner of store from where bottle was allegedly purchased, and stating about alleged purchase — Held, it was little unusual for a busy shopkeeper to recall someone who was not a regular customer — Besides, PW 6 was familiar with police and appellant was presented before him after his confession "for a simple confirmation" — Thus, testimony of PW 6 unreliable* (Paras 33 to 35). *M. Nageshwar Rao* v. *State of A.P.*, (2011) 2 SCC 188.

Bench Strength **2**. Coram: **Aftab Alam** and *R.M. Lodha*, JJ. [Date of decision: 5-1-2011]

(3) Right against self-incrimination — S. 161(2)/Confessions made in police custody

See also under CRIMINAL TRIAL in Vol. 3

See also Ss. 24 to 31, EVIDENCE ACT, 1872

[1563] — S. 161(2) — Right against self-incrimination — Nature and scope of — Comparison and relationship between the constitutional and the legal right — *A person likely to be accused, a suspect accused also entitled to the protection — Bar against self-incrimination extends also to other pending or potential accusations other than that under investigation — The constitutional protection also available at the stage of police investigation — Nature and meaning of compulsion in Art. 20(3) — When is an answer said to incriminate — Relevancy of the fact situation — Relevance of Miranda Rule of United States to India — Guidelines to police and State to prevent coercion and duress on accused — Constitution of India — Art. 20(3)*

Under S. 161, 'any person' includes the accused. Section 161, Criminal Procedure Code, enables the police to examine the accused during investigation but, the prohibitive sweep of Art. 20(3) goes to the stage of police investigation not commencing in court only. In fact, the provisions of Art. 20(3) and S. 161(2) substantially cover the same area so far as police investigations are concerned. The ban on self- accusation and the right to silence, while an investigation or a trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter.

'Compelled testimony' is evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like. A police officer is clearly a person in authority and insistence on answering is a form of pressure especially in the atmosphere of the police station unless certain safeguards erasing duress are adhered to.

Legal penalty for refusing to answer or answer truthfully may by itself not amount to duress. It cannot be regarded as compulsion under Art. 20(3). But frequent threats of prosecution if there is failure to answer may take on the complexion of undue pressure violating Art. 20(3). The manner of mentioning it to the victim of interrogation may introduce an element of tension and tone of command perilously hovering near compulsion.

(3) Right against self-incrimination — S. 161(2)/ Confessions made in police custody *(contd.)*

All matters 'relevant' are not self-incriminatory nor do they have a tendency to expose the person answering, to a criminal charge. But to be self-incriminating, they need not be confessional. When relevant questions are loaded with guilty inference, in the event of an answer being supplied, the tendency to incriminate springs into existence. The accused cannot be forced to answer questions merely because the answers thereto are not implicative when viewed in isolation and confined to the particular case under investigation. He is entitled to keep his month shut if the answer sought has a reasonable prospect of exposing him to guilt in some other accusation actual or imminent. In determining the incriminatory character of an answer the accused is entitled to consider — and the Court, while judging will take note of — the setting, totality of circumstances, the equation, personal and social, which have a bearing on making an answer substantially innocent but in effect guilty of import. However, fanciful claims, unreasonable apprehensions and vague possibilities cannot be the hiding ground for an accused person. *Nandini Satpathy* v. *P.L. Dani*, (1978) 2 SCC 424: 1978 SCC (Cri) 236: AIR 1978 SC 1025: 1978 Cri LJ 968.

Bench Strength 3. Coram: **V.R. Krishna Iyer**, *Jaswant Singh* and *V.D. Tulzapurkar*, JJ. [Date of decision: 7-4-1978]

[1564] — Ss. 161(2), 161(1), 313(3) and 315(1) proviso (b) — Right against self-incrimination — Comparison of right under Art. 20(3) of Constitution and under Ss. 161(2), 313(3) and 315(1) proviso, CrPC — *Protection under S. 161(2), held, is wider than that under Art. 20(3) — Formal accusation is necessary to attract Art. 20(3) whereas S. 161(2) r/w S. 161(1) CrPC protects suspects and witnesses also, subject to obligation of witness under S. 132, Evidence Act to answer questions in suit or proceedings — Further held, protection afforded to witness is narrower compared to protection afforded to accused during trial under Ss. 313(3) and 315(1) proviso (b) CrPC — Constitution of India — Art. 20(3) — Evidence Act, 1872, S. 132 proviso*

While there is a requirement of formal accusation for a person to invoke Article 20(3), protection contemplated by Section 161(2) CrPC is wider. Section 161(2) read with Section 161(1) protects any person supposed to be acquainted with the facts and circumstances of a case in the course of examination by police. Right against self-incrimination protects persons who have been formally accused as well as those who are examined as suspects in criminal cases. It also extends to cover witnesses who apprehend that their answers could expose them to criminal charges in ongoing investigation or even in cases other than the one being investigated. (Paras 121 and 122)

Even though Section 161(2) CrPC casts a wide protective net to protect the formally accused persons as well as suspects and witnesses during the investigative stage, Section 132 of the Evidence Act limits the applicability of this protection to witnesses during the trial stage. The latter provision provides that witnesses cannot refuse to answer questions during a trial on the ground that answers could incriminate them. However, proviso to this section stipulates that content of such answers cannot expose the witness to arrest or prosecution, except for a prosecution for giving false evidence. Therefore, the protection accorded to witnesses at the stage of trial is not as wide as the one accorded to accused, suspects and witnesses during investigation [under Section 161(2) CrPC]. It is narrower than the protection given to accused during trial stage [under Section 313(3) and proviso (*b*) to Section 315(1) CrPC]. The legislative intent is to preserve the fact-finding function of a criminal trial. (Para 123). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength 3. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision : 5-5-2010]

M.P. Sharma v. Satish Chandra, AIR 1954 SC 300: 1954 Cri LJ 865: 1954 SCR 1077; State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808: (1961) 2 Cri LJ 856: (1962) 3 SCR 10; Miranda v. Arizona, 16 L Ed 2d 694: 384 US 436 (1965); Raja Narayanlal Bansilal v. Maneck Phiroz Mistry, AIR 1961 SC 29: (1961) 1 SCR 417; Ramesh Chandra Mehta v. State of W.B., AIR 1970 SC 940: 1970 Cri LJ 863: (1969) 2 SCR 461; Balkishan A. Devidayal v. State of Maharashtra, (1980) 4 SCC 600: 1981 SCC (Cri) 62, relied on

Escobedo v. Illinois, 12 L Ed 2d 977: 378 US 478 (1963), referred to

79 Harvard Law Review 21, 37 (1965), referred to

[1565] — Ss. 161(2), 313(3), 315 proviso (b) — Statements made by a person in custody — Unreliability of statement — Reasons for unreliability indicated — Doctrine of "excluding the fruit of a poisonous tree", held, is incorporated in Ss. 24 to 26, Evidence Act — *Evidence Act, 1872, Ss. 24, 25 and 26*

Statements made in custody are considered to be unreliable unless they have been subjected to cross-examination or judicial scrutiny. Scheme created by the Code of Criminal Procedure and the Evidence Act also mandates that confessions made before police officers are ordinarily not admissible as evidence and it is only statements made in the presence of a Judicial Magistrate which can be given weightage. The doctrine of "excluding the fruit of a poisonous tree" has been incorporated in Sections 24, 25 and 26 of the Evidence Act, 1872. (Para 132). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength 3. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision : 5-5-2010]

[1566] — S. 161(2) — Right to remain silent — Scope of protection under S. 161(2) — Whether protection available in non-criminal proceedings also — *Held, protection flows from provisions of CrPC and is therefore available in proceedings under CrPC — Non-criminal proceedings, even though resulting in some punitive action are not covered*

Since extension of the right against self-incrimination to suspects and witnesses has its basis in Section 161(2) CrPC, it is not readily available to persons who are examined during proceedings that are not governed by CrPC. There is a distinction between proceedings of a purely criminal nature and those proceedings which can culminate in punitive remedies and yet cannot be characterised as criminal proceedings. Ordinarily Article 20(3) cannot be invoked by witnesses during proceedings that cannot be characterised as criminal proceedings. In administrative and quasi-criminal proceedings, the protection of Article 20(3) becomes available only after a person has been formally accused of committing an offence. (Para 125). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength 3. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision : 5-5-2010]

Raja Narayanlal Bansilal v. Maneck Phiroz Mistry, AIR 1961 SC 29: (1961) 1 SCR 417; Ramesh Chandra Mehta v. State of W.B., AIR 1970 SC 940: 1970 Cri LJ 863: (1969) 2 SCR 461; Balkishan A. Devidayal v. State of Maharashtra, (1980) 4 SCC 600: 1981 SCC (Cri) 62, relied on

[1567] — S. 161(2) — Personal liberty — Wider dimensions of — Non-penal consequences like custodial violence, increased police surveillance and harassment — *Held, such vices though not covered by protective shield of Art. 20(3) and S. 161(2) CrPC, yet are prohibited by Art. 21 — One of the reasons for declaring narcoanalysis, polygraph and BEAP tests as invalid is that a test subject who refuses to undergo these tests may be exposed to such non-penal consequences — Constitution of India — Arts. 21 and 20(3)*

A person who refuses to undergo the impugned tests during investigative stage could face non-penal consequences which lie outside the protective scope of Article 20(3). A person who refuses to undergo these tests could face risk of custodial violence, increased police surveillance or harassment thereafter. Even a person who is compelled to undergo these tests could face such adverse consequences on account of the contents of test results if they heighten the investigators' suspicions. Each of these consequences, though condemnable, fall short of requisite standard of "exposure to criminal charges and penalties" that has been enumerated in Section 161(2) CrPC. Even though Article 20(3) will not be applicable in such circumstances, reliance can be placed on Article 21 if such non-penal consequences amount to a violation of personal liberty as contemplated under the Constitution. The Court has recognised rights of prisoners (under-trials as well as convicts) as well as individuals in other custodial environments to receive fair, just and equitable treatment. In circumstances where persons who refuse to answer questions during the investigative stage are exposed to adverse consequences of a non-penal nature, the inquiry should account for expansive scope of Article 21 rather than the right contemplated by Article 20(3). (Paras 143 and 144). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength 3. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision : 5-5-2010]

Sunil Batra v. Delhi Admn., (1978) 4 SCC 494: 1979 SCC (Cri) 155, relied on

[1568] — S. 161(2) — Taking of specimen signature of accused during investigation does not amount to giving a statement under S. 161 CrPC nor Art. 20(3) of the Constitution — *Constitution of India — Art. 20(3)*. *State of U.P.* v. *Boota Singh*, (1979) 1 SCC 31: 1979 SCC (Cri) 115: AIR 1978 SC 1770: 1979 MLJ (Cri) 290: (1979) 1 SCR 298: 1978 ALJ 1156.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 22-8-1978]

[1569] — S. 162 — Right against self-incrimination — Incriminatory statement — How to ascertain whether statement is incriminatory — *Depends upon the use to which it is put — Direct use, derivative use and transactional use of statement also explained — Evidence Act, 1872, Ss. 24 to 27 — Constitution of India — Article 20(3)*

Where a person in custody is compelled to reveal information which aids investigation efforts, the information so revealed can prove to be incriminatory in the following ways: (1) statements made in custody could be directly relied upon by prosecution to strengthen their case. However, if it is shown that such statements were made under circum-

(3) Right against self-incrimination — S. 161(2)/ Confessions made in police custody *(contd.)*

stances of compulsion, they will be excluded from evidence. (2) Another possibility is that of "derivative use" i.e. when information revealed during questioning leads to discovery of independent materials, thereby furnishing a link in the chain of evidence gathered by investigators. (3) Yet another possibility is that of "transactional use" i.e. when information revealed can prove to be helpful for investigation and prosecution in cases other than the one being investigated. (4) A common practice is that of extracting materials or information, which are then compared with materials that are already in the possession of investigators. For instance, handwriting samples and specimen signatures are routinely obtained for the purpose of identification or corroboration. (Para 128). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength **3**. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision : 5-5-2010]

Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424: 1978 SCC (Cri) 236; Hoffman v. United States, 95 L Ed 1118: 341 US 479 (1950); State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808: (1961) 2 Cri LJ 856: (1962) 3 SCR 10, relied on

[1570] — Ss. 162, 163 and 164 — Right against self-incrimination under Art. 20(3) vis-à-vis theory of confirmation by subsequent facts, as incorporated in S. 27, Evidence Act, 1872 — *Held, right against self-incrimination arises when incriminating statement is made out of compulsion — In the absence of compulsion, information received from accused in custody can be proved under S. 27, Evidence Act — Further held, there is no automatic presumption in India that custodial statement has been extracted through compulsion — There is therefore no requirement of additional diligence similar to* ***Miranda*** *warnings in USA — Evidence Act, 1872, Ss. 24 to 27 — Miranda Warnings (USA) — Constitution of India — Art. 20(3)*

Sections 162, 163 and 164 CrPC lay down procedural safeguards in respect of statements made by persons during the course of investigation. However, Section 27 of the Evidence Act incorporates the "theory of confirmation by subsequent facts" i.e. statements made in custody are admissible to the extent that they can be proved by the subsequent discovery of facts. It is quite possible that the content of custodial statements could directly lead to subsequent discovery of relevant facts rather than their discovery through independent means. Hence such statements could also be described as those which "furnish a link in the chain of evidence" needed for a successful prosecution. Section 27 permits derivative use of custodial statements in the ordinary course of events. In Indian law, there is no automatic presumption that the custodial statements have been extracted through compulsion. There is no requirement of additional diligence akin to administration of *Miranda* warnings. However, in circumstances where it is shown that a person was indeed compelled to make statements while in custody, relying on such testimony as well as its derivative use will offend Article 20(3). (Paras 133 and 134). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength **3**. Coram : **K.G. Balakrishnan, C.J.** and R.V. Raveendran and J.M. Panchal, JJ. [Date of decision : 5-5-2010]

State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808: (1961) 2 Cri LJ 856: (1962) 3 SCR 10, followed

Miranda v. Arizona, 16 L Ed 2d 694: 384 US 436 (1965), limited

[1571] — S. 162 — Complaint made by accused before police during the course of investigation, held, hit by this section — *CrPC, 1898 — S. 162. Soma Bhai* v. *State of Gujarat*, (1975) 4 SCC 257: 1975 SCC (Cri) 515: AIR 1975 SC 1453: 1975 Cri LJ 1201.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 30-4-1975]

[1572] — S. 162 — Confessions made in police custody — Inadmissibility of — *Constitution of India — Art. 20(3) — Evidence Act, 1872 — Ss. 25 and 26*

Under the general law of the land as reflected in the Evidence Act, no confession made to a police officer can be proved against an accused. Confessions leading to discovery of a fact which is dealt with under Section 27 is an exception to the rule of exclusion of confession made by an accused in the custody of a police officer. (Para 27). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

(4) Confession made in police custody under special statute

[1573] — S. 162 — Confessions made in police custody — When admissible — Special statutes — Confessions made in police custody under — Admissibility of — Need for testing of voluntariness and reliability of confession by court — Safeguards built into S. 32, especially Ss. 32(4) & (5), POTA, 2002 — Need for strict compliance — *Held, words "admissible only" used in S. 32(1) without being followed by words "in evidence" do* *not deprive the confession recorded under S. 32(1) of its evidentiary value — Further held, breach of any of the safeguards in Ss. 32(2) to (5) would have a vital bearing on the admissibility and evidentiary value of confession recorded under S. 32(1) — However, reservations against and undesirability of provisions like S. 32, discussed in extenso — Ground realities of police investigation and violation of human rights obtaining in India compared with that in UK and USA — Evidence Act, 1872 — Ss. 25 and 26 — Prevention of Terrorism Act, 2002 — S. 32*

The confession recorded by the police officer under Section 32(1) of POTA is admissible in evidence. The voluntariness and reliability of confession can of course be tested by the court. The admission of such confession would also be subject to the observance of the other provisions of Section 32 of POTA which are in the nature of procedural safeguards aimed at ensuring that the confessions are made by the accused in an atmosphere free from threat and inducement. The most important safeguards in Section 32 are provided in sub-sections (4) and (5). (Paras 64, 42, 43 and 156)

If the confessional statement is properly recorded, satisfying the mandatory provisions of Section 32 of POTA and if the same is found by the court as having been made voluntarily and truthfully then the said confession is sufficient to base a conviction on the maker of the confession. The mere fact that the expression "admissible only" is used without being followed by the words "in evidence", does not, by any canon of construction, deprive the confession recorded under Section 32 of POTA its evidentiary value; otherwise Section 32(1), more especially the expression "admissible" contained therein will become ineffectual and senseless. (Paras 45 and 65)

The various safeguards enshrined in Section 32 are meant to be strictly observed as they relate to personal liberty of an individual. The requirements and safeguards laid down in Sections 32(2) to (5) are an integral part of the scheme providing for admissibility of confession made to the police officer. The breach of any one of these requirements would have a vital bearing on the admissibility and evidentiary value of the confession recorded under Section 32(1) and may even inflict a fatal blow on such confession. However, the strict enforcement of the provision as to judicial remand under Section 32(5) and the invalidation of the confession merely on the ground of its non-compliance may present some practical difficulties at times. Situations may arise that even after the confession is made by a person in custody, police custody may still be required for the purpose of further investigation. Sending a person to judicial custody at that stage may retard the investigation. Sometimes, the further steps to be taken by the investigator with the help of the accused may brook no delay. An attempt shall however be made to harmonise this provision in Section 32(5) with the powers of investigation available to the police. At the same time, it needs to be emphasised that the obligation to send the confession maker to judicial custody cannot be lightly disregarded. Police custody cannot be given on the mere asking by the police. It shall be remembered that sending a person who has made the confession to judicial custody after he is produced before the CJM is the normal rule and this procedural safeguard should be given its due primacy. The CJM should be satisfied that it is absolutely necessary that the confession maker shall be restored to police custody for any special reason. Such a course of sending him back to police custody could only be done in exceptional cases after due application of mind. Most often, sending such person to judicial custody in compliance with Section 32(5) soon after the proceedings are recorded by the CJM subject to the consideration of the application by the police after a few days may not make material difference to the further investigation. The CJM has a duty to consider whether the application is only a ruse to get back the person concerned to police custody in case he disputes the confession or it is an application made bona fide in view of the need and urgency involved. Therefore non-compliance with the judicial custody requirement does not *per se* vitiate the confession, though its non-compliance should be one of the important factors that must be borne in mind in testing the confession. (Paras 157 and 158)

The lofty purpose behind the mandate of Section 32(5) that the maker of the confession shall be sent to judicial custody by the CJM before whom he is produced, is to provide an atmosphere in which he would feel free to make a complaint against the police, if he so wishes. The feeling that he will be free from the shackles of police custody after production in court will minimise, if not remove, the fear psychosis by which he may be gripped. The same objective seems to be at the back of Section 164(3) CrPC, though the situation contemplated therein is somewhat different. The question of sending to judicial custody under Section 32(5) cannot arise only if there was any complaint of torture and a medical examination prima facie supporting such allegation. The clear words of the provision do not admit of an interpretation that the

(4) Confession made in police custody under special statute *(contd.)*

judicial custody should be ordered by the Chief Judicial Magistrate only when there is a complaint from the "confession maker" and there appears to be unfair treatment of such person in custody. The obligation to send the person whose alleged confession was recorded to judicial custody is a rule and the deviation could at best be in exceptional circumstances. (Paras 157, 178, 179 and 182)

A formidable doubt lingers which pertains to the rationale and reason behind the drastic provision in Section 32(1) making the confession to a police officer admissible in evidence in a trial for POTA offences. If a person volunteers to make a confession, why should he be not produced before the Judicial Magistrate at the earliest and have the confession recorded by a Magistrate? The Magistrate could be reached within the same time within which the empowered police officer could be approached. The doubt becomes more puzzling when it is noticed that in practical terms, a greater degree of credibility is attached to a confession made before the judicial officer. Then, why should not the investigating officer adopt the straightforward course of having resort to the ordinary and age-old law? If there is any specific advantage of conferring power on a police officer to record the confession receivable in evidence, if the intendment and desideratum of the provision indisputably remains to be to ensure an atmosphere free from threats and psychological pressures? Why the circuitous provision of having confession recorded by the police officer of the rank of SP (even if he be the immediate superior of the IO who oversees the investigation) and then requiring the production of the accused before the Chief Metropolitan or Judicial Magistrate within 48 hours? It makes some sense if the accused is in a remote area with no easy means of communication and the Magistrate is not easily accessible. Otherwise, is there real expediency or good reason for allowing an option to the IO to have the confession recorded either by the superior police officer or a Judicial Magistrate? The comparative ease with which the confession could be extracted from the accused cannot be pleaded as justification. If it is so, should the end justify the means? Should the police officer be better trusted than a Magistrate? Does the magnitude and severity of the offence justify the entrustment of the job of recording confession to a police officer? Does it imply that it is easier to make an accused confess the guilt before a police officer so that it could pave the way for conviction in a serious offence no direct answer to these questions can be found either in *Kartar Singh case*, (1994) 3 SCC 569, or the latest case of *People's Union for Civil Liberties*, (2004) 9 SCC 580. The quality of a nation's civilisation can be largely measured by the methods it uses in the enforcement of its criminal law. (Discussed in Paras 54 and 55)

In regard to the admissibility of confessions made to the police it is not apt to compare the position obtaining in the UK and the USA to that in India. The ground realities cannot be ignored. It is an undeniable fact that the police in our country still resort to crude methods of investigation, especially in mofussil and rural areas and they suffer many handicaps, such as lack of adequate personnel, training, equipment and professional independence. These features, by and large, are not so rampant in those advanced countries. Considered from the standpoint of scientific investigation, intensity of training and measure of objectivity, the standards and approaches of police personnel are much different in those countries. The evils which the framers of the Evidence Act had in mind to exclude confessions to the police, are still prevalent though not in the same degree. (Para 58)

After independence, no doubt, some positive steps have been taken to improve the working pattern, utility and image of the police force, but, much desires to be achieved in this direction. Complaints of violation of human rights by resorting to dubious methods of investigation, politicisation of the police establishment and victimisation of the straightforward and honest officers are some of the criticisms that are being heard day in and day out. Even many amongst the public tacitly endorse the use of violence by the police against criminals. In this scenario it is seriously doubtful whether it would be safe to concede the power of recording confessions to the police officers to be used in evidence against the accused making the confession and the co-accused. (Paras 58 and 59)

The violation of procedural safeguards under Section 52 does not stand on the same footing as the violation of the requirements of Sections 32(2) to (5). Sections 32(2) to (5) have an integral and inseparable connection with the confession recorded under Section 32(1). They are designed to be checks against involuntary confessions and to provide an immediate remedy to the person making the confession to air his grievance before a judicial authority. These safeguards are, so to say, woven into the fabric of Section 32 itself and their observance is so vital that the breach thereof will normally result in eschewing the confession from consideration, subject to what has been said about the judicial custody. The prescriptions under Section 52, especially those affording an opportunity to have the presence of the legal practitioner, are no doubt supplemental safeguards as they will promote the guarantee against self-incrimination even at the stage of interrogation; but these requirements laid down in Section 52 cannot be projected into Section 32 so as to read all of them as constituting a code of safeguards of the same magnitude. To hold that the violation of each one of the safeguards envisaged by Section 52 would lead to automatic invalidation of the confession would not be in consonance with the inherent nature and scheme of the respective provisions. However, the denial of the safeguards under Sections 52(2) to (4) will be one of the relevant factors that would weigh with the court to act upon or discard the confession. To this extent they play a role vis-à-vis the confessions recorded under Section 32, but they are not as clinching as the provisions contained in Sections 32(2) to (5). (Para 164)

Afzal's confession made to DCP — Admissibility

The steps required to be taken under Sections 32(4) and (5) were taken. However, the accused Afzal was not sent to judicial custody thereafter, but, on the request of the IO, PW 80, the ACMM sent back Afzal to police custody. Such remand was ordered by the ACMM pursuant to an application made by PW 80 that the presence of Afzal in police custody was required for the purpose of further investigation. Thus, the last and latter part of Section 32(5) was undoubtedly breached. In the present case, it does not appear that the ACMM (PW 63) had in mind the requirement of Section 32(5) as to judicial custody. At any rate, the order passed by him on 22-12-2001 on the application filed by PW 80 does not reflect his awareness of such requirement or application of mind to the propriety of police remand in the face of Section 32(5) of POTA. Compelling circumstances to bypass the requirement of judicial custody are not apparent from the record. (Paras 177 and 179)

There is no hard-and-fast rule regarding grant of time for reflection before recording a confession and the rules and guidelines applicable to a confession under Section 164 CrPC do not govern, but in the present case, the time of 5 or 10 minutes is, by all standards, utterly inadequate. Granting reasonable time for reflection before recording a confession is one way of ensuring that the person concerned gets the opportunity to deliberate and introspect once again when he is brought before the prescribed authority for recording the confession. That it is one of the relevant considerations in assessing the voluntariness of the confession. (Para 184)

Sufficient time was not given for reflection after the accused (Afzal/Shaukat) were produced before PW 60 recording the confession. PW 60 stated in the evidence that he gave only 5 to 10 minutes time to the accused for thinking/reflection. (Para 184)

Furthermore, it cannot be held that there was abnormal delay in disowning the confession, the effect of which would be to impart credibility to the confessional statement. The fact that there is an alleged inconsistency in the grounds on which the confessional statement was refuted by Afzal will not give rise to an inference that the confessional statement was true and voluntary. It is the substance of what the accused said while refuting the statement that has to be seen rather than building up a case on the basis of some inconsistencies in the defence plea. (Paras 187 and 188)

All these lapses and violations of procedural safeguards guaranteed in the statute itself impel the conclusion that it is not safe to act on the alleged confessional statement of Afzal and place reliance on this item of evidence on which the prosecution places heavy reliance. (Para 185)

Shaukat's confession made to DCP — Admissibility

The difference between the case of Afzal and Shaukat in regard to the confessional statement is that the retraction was done by Shaukat much earlier *i.e.* within a month after it was recorded by the DCP. The other point of difference is that Shaukat was sent to judicial custody unlike Afzal who was sent to police custody after they were produced before the ACMM. The same reasons given for excluding the confessional statement of Afzal, hold good in the case of Shaukat as well except with respect to the breach of requirement as to judicial custody. The procedural safeguards incorporated in Sections 50(2), 50(3) and 50(4) are violated in this case also. True, Shaukat was sent to judicial custody after his statement was recorded by the Magistrate. But in the absence of legal advice and the opportunity to interact with a lawyer, there is reason to think that he would not have been aware of the statutory mandate under Section 32(5) and therefore the lurking fear of going back to police custody could have been present in his mind. Moreover the learned ACMM did not apprise him of the fact that he would no longer be in police custody. There is also nothing to show that the confessional statement was read over to him or at least a gist of it has been made known to him. (Paras 302 and 303)

There is one additional point which deserves serious notice. According to Shaukat's version in the confession statement, his wife Afsan Guru

(4) Confession made in police custody under special statute *(contd.)*

(A-4) was also having knowledge of their plans. It is not really believable that he would go to the extent of implicating his pregnant wife in the crime. It casts a serious doubt whether some embellishments were made in the confessional statement. No final opinion is expressed on this point as the confession is being excluded from consideration on the ground of violation of procedural safeguards and the utterly inadequate time given by PW 60 for reflection. (Para 304). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Jameel Ahmed v. State of Rajasthan, (2003) 9 SCC 673: 2003 SCC (Cri) 1853, explained and followed

State v. Nalini, (1999) 5 SCC 253: 1999 SCC (Cri) 691; Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; People's Union for Civil Liberties v. Union of India, (2004) 9 SCC 580, discussed

Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424: 1978 SCC (Cri) 236; Firozuddin Basheeruddin v. State of Kerala, (2001) 7 SCC 596: 2001 SCC (Cri) 1341, relied on

[1574] — Ss. 161 and 162 — Admissibility of confession recorded under S. 15 TADA in case of offences under RPC or IPC — Reiterated, the same is admissible, if the confession stands acid test of credibility, voluntariness and truthfulness — *In instant case, confession was recorded in language of accused, original document pertaining thereto was brought on record and procedural safeguards duly observed while recording it — Moreover, merely because the guidelines in* Kartar Singh, *(1994) 3 SCC 569, were not fully followed, that by itself does not wipe out the confession recorded — Hence, conviction of appellant under S. 302 RPC on basis of confession recorded under S. 15 TADA, sustainable — In any case, facts relating to S. 3(3) of TADA and facts relating to S. 302 RPC were completely intermixed in this matter — They were part of same transaction — Penal Code, 1860 — S. 302 — Ranbir Penal Code, 1989 Smvt., S. 302 — TADA (Prevention) Act, 1987, Ss. 15 & 3(3) and S. 302, RPC, 1989 Smvt.*

Due to the popularity of the assassinated victim, Mirwaiz Moulvi Farooq (the deceased), two terrorists outfits, namely, Jamat-e-Islami and Hizbul Mujahideen were apprehensive that deceased would eventually assume leadership of Kashmir. They also viewed the deceased as an agent of GoI working against interests of militants. Hence, conspiracy to eliminate him was hatched between *K*, *J*, *M*, *A* and *Z*. Pursuant thereto appellant-accused *M*, accused *A* and *Z* armed with loaded pistols visited deceased. They were met at the gate by PW 16 (gatekeeper) who instructed the gardener to take them to PW 17 (personal assistant of deceased). Fake name given by the accused was written on a slip of paper by PW 17 and the slip was sent inside the room of the deceased. When the accused were called in, as per the determined plan, accused *Z* fired at the deceased while the appellant and accused *A* provided cover to him. They all managed to escape though there was scuffle between them and the gardener in which accused *Z* sustained injury below his right eye.

Thus, originally five accused were tried for murder. Accused *A* and *K* expired during pendency of trial, while accused *J* and *Z* were untraceable. Instant appeal, hence, was limited only to appellant *M*. The appellant was charged under Section 302 RPC and Section 3(3) of TADA, 1987. The trial court convicted him under aforesaid provisions and sentenced him to imprisonment for life (subject to confirmation by the appellate court as per Section 374, J&K CrPC, 1989), and fine of Rs 6000 with default stipulation for offence under Section 302 RPC and imprisonment of five years and fine of Rs 5000 under Section 3(3) of TADA.

Dismissing the appeal, the Supreme Court held as above.

Held:

The conviction of accused on sole basis of his confession is sustainable and the only test which the court has to apply is whether the confession was voluntary and free of coercion, threat or inducement and whether sufficient caution was taken by the police officer who recorded the confession. Once the confession passes that test, it can become the basis of the conviction. The confession in this case was free from all the aforementioned defects and was voluntary. (Paras 64 and 65)

If the confession statement stands to the acid test on credibility, voluntariness and truthfulness, then that would be sufficient to pin the guilt of the accused. The confession was voluntarily made by appellant on his own free will and was recorded after complying with all procedural safeguards as evidenced from testimony of PW 2. The criticism against the confession that it was not recorded in the language of the accused is not justified. It was also established that the original confession was very much available on the record and not the carbon copy as asserted by the defence. The accused was given sufficient time for reflection and at no point of time accused complained of any coercion. Moreover, merely because the guidelines in *Kartar*

Singh, (1994) 3 SCC 569, were not fully followed, that by itself does not wipe out the confession recorded. (Paras 38, 47 to 52 and 59)

Moreover, if the confession made by accused is voluntary and truthful and relates to the accused himself, then no further corroboration is necessary and conviction of the accused can be solely based on it. Such confessional statement is admissible as a substantive piece of evidence and need not be tested for the contradictions to be found in the confession of the co-accused. It is for that reason that even if the other oral evidence goes counter to the statements made in the confession, one's confession can be found to be voluntary and reliable and it can become the basis of the conviction. (Para 60)

In this case, there is ample corroboration to the confession in the oral evidence as well as the documentary evidence in shape of a chit, which is referred to in the said confession. There is a clear reference that PW 17 had sent a slip inside. Ultimately, that slip was found by the police, which corroborates the contents in the confession. Thus, there is sufficient corroboration to the confession. (Para 61)

The denial by the appellant of having made the confession is also without any basis since the appellant had relied on part thereof praying that at best he could be convicted for abetting murder and not for committing murder. (Paras 72 to 74)

The issue whether confession under Section 15 of TADA, can be used for non-TADA offence like Section 302 RPC is no more res integra and is decided against defence. (Paras 66 and 67 and 37 to 41). *Mohd. Ayub Dar* v. *State of J&K*, (2010) 9 SCC 312: AIR 2010 SC 2864: (2010) 93 AIC 88 (SC).

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Dr. M.K. Sharma*, JJ. [Date of decision: 21-7-2010]

Abdulvahab Abdul Majid Shaikh v. State of Gujarat, (2007) 9 SCC 293: (2007) 3 SCC (Cri) 126, considered

S.N. Dube v. N.B. Bhoir, (2000) 2 SCC 254: 2000 SCC (Cri) 343, relied on

State v. Nalini, (1999) 5 SCC 253: 1999 SCC (Cri) 691; Lokeman Shah v. State of W.B., (2001) 5 SCC 235: 2001 SCC (Cri) 829, referred to

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; Abdulvahab Abdul Majid Shaikh v. State of Gujarat, (2007) 9 SCC 293: (2007) 3 SCC (Cri) 126; State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600: 2005 SCC (Cri) 1715; Mohd. Ayub Dhar v. State (NCT of Delhi), (2000) 10 SCC 296: 2000 SCC (Cri) 1368; Prakash Kumar v. State of Gujarat, (2007) 4 SCC 266: (2007) 2 SCC (Cri) 285, distinguished

Ravinder Singh v. State of Maharashtra, (2002) 9 SCC 55: 2003 SCC (Cri) 1062; State v. Nalini, (1999) 5 SCC 253: 1999 SCC (Cri) 691, followed

[**Ed.**: See also *Prakash Kumar* v. *State of Gujarat*, (2005) 2 SCC 409, wherein a five-Judge Bench has affirmed *Nalini case*.]

[1575] — S. 162 — Conviction of accused on basis of confessional statement recorded under S. 15, TADA Act — Admissibility of such confessional statement in evidence against accused in prosecution for offences under any other law, which were tried along with TADA offences under S. 12 — *Held, confessional statement duly recorded under TADA Act and Rules would continue to remain admissible for offences under any other law which were tried along with TADA offences under S. 12 r/w S. 15, notwithstanding that accused was acquitted of offences under TADA Act in the same trial — However, herein, allegation was mainly for offences under IPC and some offences under TADA Act were also incorporated initially but later on same were dropped — Consequently, charges were framed only for offences under IPC and not under TADA Act and trial was also only for offences under IPC and not under TADA Act — Therefore, such confessional statement made under TADA Act, in a different case, cannot be used or utilised by prosecution in present case, as charges were framed only for offences under IPC — Evidence Act, 1872, S. 25 — Terrorist and Disruptive Activities (Prevention) Act, 1987*, Ss. 15 and 12 (Paras 19 and 20). *Sunderlal Kanaiyalal Bhatija* v. *State of Maharashtra*, (2010) 4 SCC 414.

Bench Strength 2. Coram : **Dr. M.K. Sharma** and *H.L. Dattu*, JJ. [Date of decision : 31-3-2010]

Prakash Kumar v. State of Gujarat, (2005) 2 SCC 409: 2005 SCC (Cri) 518; State of Gujarat v. Mohd. Atik, (1998) 4 SCC 351: 1998 SCC (Cri) 936, relied on

State v. Nalini, (1999) 5 SCC 253: 1999 SCC (Cri) 691, cited

[1576] — S. 162 — Nature of — *Held, S. 15, TADA Act is an exception to general rule contained in S. 25, Evidence Act or S. 162 CrPC — Evidence Act, 1872, S. 25 — Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 15* (Para 14). *Sunderlal Kanaiyalal Bhatija* v. *State of Maharashtra*, (2010) 4 SCC 414.

Bench Strength 2. Coram : **Dr. M.K. Sharma** and *H.L. Dattu*, JJ. [Date of decision : 31-3-2010]

[1577] — Ss. 162, 163 and 313 — Admissibility of confession made to police under special statute — Need for confession to have been made in full knowledge and nature of consequence of confession — Need for giving of time for reflection — *Almost 45 days of police custody but only 15 to 30 minutes of reflection time given to each accused before recording of confession — Held, sufficient cooling-off time had not been given to the accused — Evidence Act, 1872 — S. 24 — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 15*

(4) Confession made in police custody under special statute *(contd.)*

TADA is a harsh penal statute. Its provisions must, therefore, be construed in that perspective. Section 15 is a clear departure from the general law that a statement made to a police officer is not permissible in evidence. In *Kartar Singh*, (1994) 3 SCC 569 the Supreme Court while upholding the constitutional validity of the Act served a note of caution and laid down certain guidelines in applying the statute to individual cases. The provisions of the Act and the Rules must be scrupulously observed with particular reference to the provisions relating to the recording of confessions. It had, therefore, to be seen at the very initial stage as to whether the case would fall within the mischief of Sections 3(3) and 4(1) of the Act. It would naturally be difficult to lay down any hard-and-fast rule as to the time which should be allowed to an accused person in any given case. The accused had been in police custody for almost 45 days in each case. The record of confessions of the accused shows that 15 to 30 minutes time was given for reflection before the actual confessions were recorded. Therefore, sufficient cooling-off time had not been given to the accused, in the background that they had been in police custody over a long period of time. (Paras 5, 10, 12 and 13). *State of Rajasthan* v. *Ajit Singh*, (2008) 1 SCC 601: (2008) 1 SCC (Cri) 287: 2008 Cri LJ 364.

Bench Strength **2**. Coram: *S.B. Sinha* and **H.S. Bedi**, JJ. [Date of decision: 12-10-2007]

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899, relied on

[1578] — S. 162 — Confession made to police during investigation — Requirements for admissibility of, under S. 15(1), TADA, 1987 — *Confessional statement of accused recorded in accordance with the requirements of S. 15 during investigation of a crime, if covers another crime involving the accused, held, it would be admissible and can be used in the case in which the other crime is under trial — Evidence Act, 1872 — Ss. 25 and 24 — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 15*

Under Section 15 of TADA a confessional statement recorded in accordance with the requirements contained in the section becomes admissible in spite of the ban contained in Section 25 of the Evidence Act or Section 162 of the Code of Criminal Procedure. The requirements stipulated in Section 15(1) of the TADA for admissibility of a confession made to a police officer are (*1*) the confession should have been made to a police officer not lower in rank than a Superintendent of Police (2) it should have been recorded by the said police officer (*3*) the trial should be against the maker of the confession (*4*) such trial must be for an offence under TADA or the Rules thereunder. If the above requirements are satisfied the confession becomes admissible in evidence and it is immaterial whether the confession was recorded in one particular case or in a different case.

When there is no statutory inhibition for using such confession on the premise that it was not recorded during the investigation of the particular offence which is under trial there is no need or reason for the Court to introduce a further fetter against the admissibility of the confessional statement. It often happens that a confessor would disclose very many acts and events including different facets of his involvement in the preparation, attempt and commission of crimes including the acts of his co-participators therein. But to expel every other incriminating disclosure than that under investigation of a particular crime from the ambit of admissibility is not mandated by any provision of law.

It must, therefore, be held that a confession, if usable under Section 15 of the TADA, would not become unusable merely because the case is different or the crime is different. If the confession covers that different crime it would be a relevant item of evidence in the case in which that crime is under trial and it would then become admissible in the case. *State of Gujarat* v. *Mohd. Atik*, (1998) 4 SCC 351: 1998 SCC (Cri) 936: AIR 1998 SC 1686: 1998 Cri LJ 2251.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 3-4-1998]

State of Rajasthan v. Bhup Singh, (1997) 10 SCC 675: 1997 SCC (Cri) 1032, applied

[1579] — Ss. 162 and 161 — Confessional statement — Whether voluntary — Determination of — *Contention that statement recorded without granting proper time for reflection — Held, though desirable that sufficient time gap should be given to the declarant, in addition to telling him that the statement could be used in law against him, there is no rigid formula as to what would be an adequate time — It would depend upon circumstances of each case — On facts, time given was neither very long nor too short — No challenge to statement at any point of time — Also, not shown that accused was prejudiced by non-granting of longer time — Accused inculpated himself giving details which were within his personal and special knowledge — Held, no reason to discard the confessional statement and evidence of PW 4 who recorded it — Terrorist and Disruptive Activities (Prevention) Rules, 1987, R. 15 — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 15*

Though it is desirable that sufficient time gap should be given to the declarant, in addition to telling him that the statement could be used in law against him, there is no rigid formula as to what would be an adequate time. It would depend upon the circumstances of each case. On the facts of the present case, the time though was not very long, yet cannot be said to be too short to cast doubt on the voluntariness of the statement. At no point of time there was any challenge made that the statement which was produced in the court in presence of the accused was not voluntary and/or was the result of coercion or undue influence or threat. In fact there was no denial of the fact that the statement was recorded. It has not been shown as to in what manner the accused has been prejudiced by non-granting of longer time. The statement recorded is very elaborate and the accused has inculpated himself with the details like the source of purchase of the articles which were within his personal and special knowledge. There is no reason to discard the evidence of PW 4, and the confessional statement. (Para 30). *Durga Prasad Gupta* v. *State of Rajasthan*, (2003) 12 SCC 257: (2004) 97 Cut LT 489.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 25-9-2003]

S.N. Dube v. N.B. Bhoir, (2000) 2 SCC 254: 2000 SCC (Cri) 343, followed

[1580] — Ss. 162 and 164 — Recording of confession under S. 15, TADA — Guidelines laid down by Bombay High Court for recording confession under S. 164 CrPC and/or principles of fairness laid down by Supreme Court in Kartar Singh case (1994) 3 SCC 569 — Failure to follow, while recording confession under S. 15, held, not fatal to such confession — *Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 15(2)*

It was submitted that though Section 164 CrPC does not strictly apply to confessions recorded under Section 15 of the TADA Act, the provisions contained in Section 15(2) of the TADA Act and Sections 162(2) and 164(4) CrPC are similar and that would imply that the requirements of law regarding the procedure for recording a confession are the same. Both the provisions require that before recording the confession the accused must be told that he is not bound to make a confession and that if he makes it then it can be used as evidence against him. Both these provisions require that before recording the confession the recording officer has to question the accused in order to satisfy himself that he is making the confession voluntarily and after recording it to issue a certificate and memorandum to the effect that the accused was explained about his right to be informed that he was not bound to make the confession and that it could be used against him, that he believed that the confession was made voluntarily, that it was taken down in his presence and was read over to him, that it was admitted as correct by him and that it contains a full and true account of the statement made by him. It was, therefore, submitted that the guidelines issued by the High Court for recording a confession under Section 164 CrPC are also required to be followed by the police officer recording a confession under the TADA Act. Otherwise a situation may arise where in the same trial there may be a confession of an accused recorded by a Magistrate without following the guidelines contained in the High Court Manual and a confession made by another accused and recorded by a police officer under the TADA Act who has not followed those guidelines while the one recorded by the Magistrate may not be recorded as evidence, the other one will be treated as evidence and can be used against him. In the alternative, it was submitted that even if it is held that the guidelines issued under Section 164 CrPC by the High Court are not required to be followed while recording a confession under Section 15 of the TADA Act at least the well-recognised principles pointed out by the Supreme Court in Kartar Singh case are required to be followed. The said guidelines have been suggested by the Supreme Court as well-recognised principles of fairness to be followed to ensure that the confession obtained in the pre-indictment interrogation by a police officer not lower in rank than a Superintendent of Police is not tainted with any vice.

Held :

While recommending those guidelines it was made clear by the Supreme Court that it is really for the court trying the offence to decide the question of admissibility or reliability of a confession by using its judicial wisdom. From what has been observed in the said decision it does not follow that if the suggested guidelines are not followed then the confession must be discarded as inadmissible or bad on that score or on the ground that it is not in conformity with Section 15(2) of the TADA Act and Rule 15 of the TADA Rules. The police officer recording a confession under Section 15 is really not bound to follow any other procedure. The rules or the guidelines framed by the Bombay High Court for recording a confession by a Magistrate under Section 164 CrPC do not by themselves apply to recording of a confession under Section 15 of the TADA Act. Therefore, merely because some of those guidelines were not followed while recording the confessions it cannot for that reason be held that the said confessions have lost their evidentiary

(4) Confession made in police custody under special statute *(contd.)*

value. If while recording the confessions the police officer had followed all those guidelines also then that would have been a circumstance helpful in inferring that the confessions were made after full understanding and voluntarily. In this case there is nothing on record to show, except that the confessions were recorded by the officer in the police station, that they were not recorded in a free atmosphere. No other person was allowed to remain present at that time and all the accused were given time to reconsider their willingness. After they were produced again the officer had ascertained whether they were still willing to make confessions. All the accused were previously told that they were not bound to make a confession. Each one of them was warned that if he made a confession then it could be used against him. Merely because the police officer while recording the confessions had told the accused persons that he was the Superintendent of Police, it cannot be said that he had stated so to impress the accused. He had done nothing wrong in disclosing his identity as he was really required to do so before recording the confessions. He had tried to ascertain if any threat or inducement was given to them or whether they were ill-treated or pressurised. All the accused had categorically stated that no such thing had happened. From the answers given by the accused it can be said that the officer had good reason to believe that the accused were making confessional statements voluntarily. In his evidence also he has stated so and nothing has been brought out in his cross-examination from which it can be said that he was not so satisfied or that he did not really believe that the confessions were made by the accused voluntarily. It was not even the case of the accused that they were not taken to the officer for recording their confessions. The only suggestion that was made in his cross-examination was that he had obtained those confessions after exerting influence, coercion and physical and mental torture. In the absence of any specific act suggested by the defence it is not possible to accept the belated allegation made by those accused that their confessions were obtained in that manner. (Paras 32, 26 and 33). *S.N. Dube* v. *N.B. Bhoir,* (2000) 2 SCC 254: 2000 SCC (Cri) 343: AIR 2000 SC 776: 2000 Cri LJ 830.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 12-1-2000]

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899, explained

[1581] — Ss. 162 and 164 — Recording of confession by police officer under special statute — Procedure — *Police Officer recording the confession neither giving any certificate in accordance with R. 15(3) TADA Rules, of his satisfaction or belief about the voluntariness of confessions after the same were recorded nor did he certify about his such satisfaction or belief while being examined as a witness — Held, such confessions cannot be used against the accused persons — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 15(2) read with R. 15(3)(b) of TADA Rules. Sharafat Hussain Abdul Rahaman Shaikh* v. *State of Gujarat*, (1996) 11 SCC 62: 1997 SCC (Cri) 48.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 22-11-1996]

Chandran v. State of T.N., (1978) 4 SCC 90: 1978 SCC (Cri) 528, followed

[1582] — Ss. 162 and 164 — Recording of confession by a police officer — Typewritten confession — Words "recorded in writing" in S. 15, TADA — Interpretation of — *Held, wider meaning should be given so as to include typewriting — Confessional statement need not be recorded by the Superintendent of Police in his own handwriting — He can take the help of another person or an instrument like a typewriter — But he cannot leave the work of recording the confession to his subordinates — Confession must be recorded in his presence and hearing and under his direct control — Terrorist and Disruptive Activities (Prevention) Rules, 1987, R. 15 — Words and phrases — 'Record in writing', 'typewriting' — Evidence Act, 1872 — Ss. 3, 58, 65, 73, 91 to 93, 99 and 144 — Terrorist and Disruptive Activities (Prevention) Rules, 1987 — S. 15*

The expression "record in writing" in Section 15 has a wider meaning. It would include writing down by one's own hand and also writing by other means. Unless the context so requires it would not be proper to give that expression a narrow meaning. In Section 15 the words "recorded in writing" are used to indicate a mode or form of recording the confession. Though the nature of the provision would justify strict compliance with each of the conditions mentioned therein there is no compelling reason to give a narrow interpretation to those words. Though Superintendent of Police must himself explain to the person making the confession that he is not bound to make a confession and that it may be used as evidence against him if he makes it and though he has himself to question the person making it to form a reasonable belief that he is making it voluntarily, it was not intended by the legislature that the Superintendent of Police should himself write down the confession without taking any help of another person or an instrument like a typewriter. What appears to have been intended by the legislature is that the Superintendent of Police should not leave the work of recording the confession to any of his subordinates and that everything in connection with the confession should be done in his presence and hearing and under his direct supervision and control. Therefore, there is no justification for interpreting the words "recorded by such police officer in writing" to mean recorded by such police officer in his own handwriting. There is no reason why a Superintendent of Police who, for some reason, is unable to write down the confession, cannot take help of another person for writing the same. Why cannot a Superintendent of Police, whose handwriting is not good, record the confession by using a typewriter? Typewriting is also writing. A typewritten thing is also a writing prepared with the help of a typewriter. In the instant case the Sessions Judge erred in treating the confessions as inadmissible on the ground that they were not recorded in accordance with the requirement of Section 15. *State of T.N.* v. *Sivarasan*, (1997) 1 SCC 682: 1997 SCC (Cri) 362.

Bench Strength **2**. Coram: *G.N. Ray* and **G.T. Nanavati**, JJ. [Date of decision: 31-10-1996]

State v. S.J. Choudhary, (1996) 2 SCC 428: 1996 SCC (Cri) 336, relied on

[1583] — Ss. 162 and 164 — Confession of accused — Voluntary nature of — Determination of — Retraction at later stage — Effect of *— Held, merely because the confession was retracted later, that does not mean that the confession was not voluntary in nature — Whether the accused was willing to give confession voluntarily or not is to be determined from his mental state at the time when he gave the confession — In the present case, confession of accused recorded by Dy. Commissioner of Police (DCP) under TADA Act — Accused had expressed his willingness to make the confession — DCP took all precautions to ascertain that the confession was voluntary — Confession recorded after complying with all procedural formalities and these facts incorporated in confessional statement — Before the Magistrate, accused had no case that he was put under pressure or third-degree methods had been used against him to extract confession — In view of the said facts, held, the above confession was voluntary, truthful and admissible in evidence — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 15 — Evidence Act, 1872 — S. 24*

Merely because the confession was retracted later, that does not mean that the confession was not voluntary in nature. All confessions are invariably retracted at a later stage, therefore, the retraction by itself is not a ground to discard the confession by holding that it was not voluntarily made. Whether the accused was willing to give a confession voluntarily or not is to be determined from his mental state at the time when he gave the confession. (Paras 13 and 8)

In the present case, the accused was arrested by the police and as he expressed his willingness to make a confession, he was produced before the DCP and told that he was not legally bound to give a voluntary statement and that in case any statement is found to be false, it would be used against him. The DCP had taken all precautions to ascertain that the confession was voluntary. All formalities had been complied with and these facts are incorporated in the confessional statement. There is nothing on record to show that the accused was under pressure to give any confession. When he was produced before the Magistrate, he had no case that he was put under pressure or third-degree methods had been used against him to extract the confession. When he was questioned under Section 313 CrPC, he had only stated that he had not given any confession as recorded by DCP. The facts indicate that the confession was voluntary and was recorded by DCP after apprising him that he was not bound to give a confession and in case he gave the confession, it would be used against him. Therefore, there is no force in the contention of the accused-appellants regarding the inadmissibility of the confession. There is ample evidence to show that the confession was truthful and gained support from other items of evidence. (Paras 8 and 13). *Abdulvahab Abdulmajid Shaikh* v. *State of Gujarat*, (2007) 4 SCC 257: (2007) 2 SCC (Cri) 276: (2007) 55 AIC 204 (SC): (2007) 3 Guj LR 1841.

Bench Strength **2**. Coram: **K.G. Balakrishnan, C.J.** and *G.P. Mathur*, JJ. [Date of decision: 24-4-2007]

[1584] — Ss. 162 and 164 — Terrorist and Disruptive Activities (Prevention) Rules, 1987 — R. 15 — Recording of confession — Infirmity in *— Confession not shown to be voluntary in nature — Nor the police officer who recorded the confession certifying that he believed the confession to have been voluntarily recorded — Held, confession so recorded not admissible in evidence — Evidence Act, 1872 — S. 25 — Constitution of India — Art. 20(3) — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 15*

(5) Effect of taking signatures of witnesses

In the instant case the confession made by the accused-appellants does not indicate that the same was voluntary in nature and the police officer who recorded the same has not certified that he believed that the confession was voluntarily made. If there is no certificate by the police officer who is recording confession, in accordance with sub-rule (3)(*b*) of Rule 15 of the TADA Rules, 1987, the same is not admissible in evidence. (Para 15)

Section 15 of the TADA Act altered the fundamental rules of evidence given in the Evidence Act, which stood the test of time for over a century. Under Section 25 of the Evidence Act, a confession made to a police officer by a person accused of an offence shall not be proved against him. The power to record judicial confession is given to the Magistrate and strict and rigorous guidelines have been laid down in Section 164 CrPC. That apart, many High Courts also have framed rules giving detailed procedure for recording confession. Confession is an admission of guilt. Normally, nobody would like to admit his guilt as he is fully aware that the same would be used against him. That apart, there is constitutional right for the accused that he shall not be subjected to any "testimonial compulsion". Under Article 20(3) of the Constitution, the accused person has a protection from being compelled to be a witness against himself. As the confession made under Section 15 of the TADA Act is made admissible in evidence, the strict procedure laid down therein for recording confession is to be followed. Any confession made in defiance of these safeguards cannot be accepted by the court as reliable evidence. The confession should appear to have been made voluntarily and the police officer who records the confession should satisfy himself that the same had been made voluntarily by the maker of that statement. The recorded confession must indicate that these safeguards have been fully complied with. In this case, the recorded confession statements do not show that the officer who recorded the statement had followed those guidelines. Therefore, it is inadmissible in evidence. (Para 18). *Ayyub* v. *State of U.P.*, (2002) 3 SCC 510: 2002 SCC (Cri) 673: AIR 2002 SC 1192.

Bench Strength **2**. Coram: *R.P. Sethi* and **K.G. Balakrishnan**, JJ. [Date of decision: 28-2-2002]

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; Sharafat Hussain Abdul Rahaman Shaikh v. State of Gujarat, (1996) 11 SCC 62: 1997 SCC (Cri) 48, relied on

(5) Effect of taking signatures of witnesses

[1585] — S. 162 — Taking of signatures of witnesses on their statements by police despite ban under S. 162 held does not invariably lead to inference that the witnesses were not considered reliable by the police — *It is a question of fact to be determined in the light of circumstances of each case — Where three witnesses were the mother, sister and son of the deceased who were otherwise considered to be reliable, held, there was no question of the police taking their signatures in order to make them stick to their statements. Gurnam Kaur* v. *Bakshish Singh*, 1980 Supp SCC 567: 1981 SCC (Cri) 496: AIR 1981 SC 631: 1981 Cri LJ 34.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 3-10-1980]

[1586] — S. 162 — Police Inspector during investigation getting statement signed by the maker contrary to S. 162, CrPC — *Held, not substantive evidence — Can be used to corroborate or contradict the maker at the trial — Cannot be used for corroborating testimony of other witnesses — Evidence Act, 1872 — S. 157. Razik Ram* v. *Jaswant Singh Chouhan*, (1975) 4 SCC 769: AIR 1975 SC 667.

Bench Strength **2**. Coram: *A. Alagiriswami* and **R.S. Sarkaria**, JJ. [Date of decision: 11-2-1975]

[1587] — S. 162 — Bar on signature of disclosure by accused under — Effect of contravention of — *Information in disclosure statement signed by accused in contravention of S. 162, CrPC — Effect on admissibility of such information, otherwise admissible under S. 27 — Held, fact of signature does not detract from admissibility of disclosure statement to the extent it is relevant under S. 27 — Evidence Act, 1872 — S. 27*

By virtue of the embargo in Section 162(1) CrPC, the disclosure statement is not required to be signed. However the fact that the signature of the accused Afzal was obtained on the disclosure statement does not, however, detract from its admissibility to the extent it is relevant under Section 27. (Para 207). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

[1588] — S. 162 — Obtaining signature on the statement recorded by police would not render the evidence inadmissible — *But court must evaluate the evidence more carefully in such case*

Section 162, CrPC does not provide that evidence of a witness given in the court becomes inadmissible if it is found that the statement of the witness recorded in course of the investigation was signed by the witness at the instance of the investigating officer. It merely puts the court on caution and may necessitate in-depth scrutiny of the evidence. *State of U.P.* v. *M.K. Anthony*, (1985) 1 SCC 505: 1985 SCC (Cri) 105: AIR 1985 SC 48: 1985 Cri LJ 493.

Bench Strength 2. Coram: **D.A. Desai** and *Ranganath Misra*, JJ. [Date of decision: 6-11-1984]

[1589] — S. 162 — Signed statements of alleged eyewitnesses annexed to the inquest report — *Held, can be a device to get around the bar of S. 162. Datar Singh* v. *State of Punjab*, (1975) 4 SCC 272: 1975 SCC (Cri) 530: AIR 1974 SC 1193: 1974 Cri LJ 908: (1974) 11 ACC 262.

Bench Strength 2. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 19-12-1973]

[1590] — Ss. 162(1) and (2) — Prohibition of taking of signature of person whose statement reduced to writing — Contravention of — Effect — *Held, merely because a statement is recorded by a police personnel and the thumb impression of the deceased was affixed it cannot straightaway be rejected* (Para 11). *State of Rajasthan* v. *Wakteng*, (2007) 14 SCC 550: AIR 2007 SC 2020.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 7-6-2007]

State of Rajasthan v. Teja Ram, (1999) 3 SCC 507: 1999 SCC (Cri) 436; Razik Ram v. Jaswant Singh Chouhan, (1975) 4 SCC 769; Tahsildar Singh v. State of U.P., AIR 1959 SC 1012, relied on

[1591] — Ss. 162(1) and (2) — Prohibition of taking of signature of person whose statement reduced to writing — Contravention of — Effect — *Recovery of axe pursuant to statement made by the accused under S. 27, Evidence Act — Obtaining signature of accused on seizure memo — Held, does not vitiate the seizure or testimony of such witness in court — That apart, S. 162(1) does not as per S. 162(2) apply to proceedings made as per S. 27 of Evidence Act — Evidence Act, 1872 — S. 27 — Non-application of S. 162, CrPC*

Section 162(1) prohibits collecting of signature of the person whose statement was reduced to writing during interrogation. No doubt the aforesaid prohibition is in peremptory terms. It is more a direction to the investigating officer than to the court because the policy underlying the rule is to keep witnesses free to testify in court unhampered by anything which the police claim to have elicited from them. But if any investigating officer, ignorant of the said provision, secures the signature of the person concerned in the statement, it does not mean that the witness's testimony in the court would thereby become contaminated or vitiated. The court will only reassure the witness that he is not bound by such statement albeit his signature finding a place thereon.

That apart, the prohibition contained in sub-section (1) of Section 162 is not applicable to any proceedings made as per Section 27 of the Evidence Act, 1872. It is clearly so provided in sub-section (2) of Section 162.

The resultant position is that the investigating officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure-memo for the recovery of any article covered by Section 27 of the Evidence Act. But if any signature has been obtained by an investigating officer, there is nothing wrong or illegal about it. *State of Rajasthan* v. *Teja Ram*, (1999) 3 SCC 507: 1999 SCC (Cri) 436: AIR 1999 SC 1777.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 19-3-1999]

Tahsildar Singh v. State of U.P., AIR 1959 SC 1012: 1959 Cri LJ 1231; Razik Ram v. Jaswant Singh Chouhan, (1975) 4 SCC 769: AIR 1975 SC 667, relied on

(6) Omissions/Exaggerations/Embellishments/Contradictions/Inconsistencies of S. 161 statement vis-à-vis evidence/FIR

[1592] — Ss. 161 and 162(1) & Expln. — Omission in statement under S. 161 whether amounted to contradiction — Determination of — *Context under which the statement was made, held, material — Hence, in a case under Ss. 302/34, IPC when the statement related only to the incident of the actual attack by the assailants of the deceased and not to the eyewitnesses thereto, omission in the statement of one of the two eyewitnesses to mention the name of the other as an eyewitness, held, did not amount to contradiction — Even otherwise, such omission could not justify an inference of absence of the other accused — In view of the evidence of eyewitnesses, corroborating each other and also corroborated by promptly lodged FIR and medical evidence, acquittal set aside and the accused convicted under Ss. 302/34, IPC — Penal Code, 1860 — Ss. 302/34. S. Kaur* v. *Baldev Singh*, (1997) 11 SCC 292: 1998 SCC (Cri) 161: AIR 1999 SC 1581.

Bench Strength 2. Coram: *M.K. Mukherjee* and *B.N. Kirpal*, JJ. [Date of decision: 28-1-1997]

(6) Omissions/Exaggerations/Embellishments/Contradictions/Inconsistencies of S. 161 statement vis-à-vis evidence/FIR *(contd.)*

[1593] — Ss. 161 and 162 Expln. — Failure of PWs to mention in statement under S. 161 about involvement of accused — *Held, their versions not reliable insofar as they relate to the involvement of that accused* (Para 16). *Rudrappa Ramappa Jainpur* v. *State of Karnataka*, (2004) 7 SCC 422: 2004 SCC (Cri) 1954: AIR 2004 SC 4148.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 2-8-2004]

[1594] — S. 161 — Contradictions and improvements — *Witness stating that he had gone to the spot on hearing the sound of a gunshot and tried to snatch away the gun from the accused — But in his police statement he not stating anything regarding snatching of the gun — Held, this omission amounts to contradiction creating a serious doubt about the truthfulness of the witness — Another witness also making material improvement before the court in order to make his evidence acceptable — Medical evidence also belying the version given by the eyewitnesses regarding injuries caused to the deceased by gunshots — Acquittal upheld. State of Rajasthan* v. *Rajendra Singh*, 1998 SCC (Cri) 1605: AIR 1998 SC 2554.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 22-7-1998]

[1595] — S. 161 — Minor contradictions between evidence before court and statement recorded under S. 161, CrPC — *Not sufficient to discard the evidence — Eyewitness stating that deceased fell on a gunny bag after being attacked — The fact that blood stains were found also on the ground, not a reason to discredit the witness — Considering the weapons used and the number and nature of injuries inflicted it could legitimately inferred that blood spurted out to an area beyond the gunny bag on which the deceased fell. Pandappa Hanumappa Hanamar* v. *State of Karnataka*, (1997) 10 SCC 197: 1997 SCC (Cri) 811: AIR 1997 SC 3663: 1997 Cri LJ 2493.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 28-2-1997]

[1596] — S. 161 — High Court rejecting evidence of PWs 9, 10 and 11 on the ground of contradictions — But contradictions pointed out insignificant and minor — Further the said witnesses not shown their case diary statements recorded under S. 161, CrPC from which they were sought to be contradicted — *Nor the said contradictions exhibited and placed on record — Held, the High Court erred in rejecting their evidence and setting aside the conviction for murder imposed by the trial court on A-1 and A-2 — Accordingly order of trial court convicting A-1 and A-2 under S. 302 IPC restored — However, death sentence imposed on A-1 commuted to life imprisonment and the sentence of life imprisonment imposed on A-2 confirmed — As regards A-3 his acquittal by the High Court was well founded, in the absence of any cogent evidence against him — Penal Code, 1860 — S. 302. Mahendra Rai* v. *Mithilesh Rai*, (1997) 10 SCC 605: 1997 SCC (Cri) 899.

Bench Strength **2**. Coram: *M.M. Punchhi* and **Faizan Uddin**, JJ. [Date of decision: 13-12-1996]

[1597] — Ss. 161 and 162 Expln. — Omission to state a fact or circumstance — An omission in order to be significant must depend upon whether the specific question, the answer to which was omitted, was put to the witness — *Where investigating officer was not asked as to whether he had put questions to the eyewitness regarding details of the injuries inflicted or of persons who had caused the injuries, held, omission of such details in the testimony of the eyewitness would not render his/her testimony unreliable particularly when the courts below believed the testimony of that witness and that the omissions were not contradictions in the peculiar context* (Paras 47 to 51). *Jaswant Singh* v. *State of Haryana*, (2000) 4 SCC 484: 2000 SCC (Cri) 991: AIR 2000 SC 1833: 2000 Cri LJ 2212.

Bench Strength **2**. Coram: *D.P. Wadhwa* and **Ruma Pal**, JJ. [Date of decision: 4-4-2000]

[1598] — Ss. 161 and 164 — Successive statements made under — Improvements made in statements under Ss. 161 and 164 subsequent to the initial statement under S. 161 (made after 25 days of the incident) — *Held on facts, subsequent statements unreliable — Such statements may raise inference that maker of the statements was himself a party to conspiracy — Penal Code, 1860 — S. 120-A*

Per Oza, J.

Delays in making statement under S. 161 is said to be dangerous and if a person who is an important witness does not open his mouth for a long time his evidence is always looked upon with suspicion. Where a witness who after 25 days gave his first statement and said nothing against the present accused and even waited for one more month and then he suddenly chose to come out with the allegations against this accused, he cannot be relied upon. There was no explanation why he should keep on giving statement after statement, that too after 25 days of the incident. It clearly shows that he was a convenient witness available to State. That he appears to have become wiser day by day and remembered bit by bit, is certainly interesting to note. The only other inference is that this witness was himself a party to that conspiracy.

But delay in recording statement of a witness can be justified in case of death of his or her near and dear one as a result of the incident. In this case the incident of assassination in which one of the accused (Beant Singh) had also died took place on October 31, 1984 and the statement of the widow of the deceased-assassin was recorded on January 16 and 19, 1985. But as she was placed in a situation where it would have been very difficult for her to compose herself in a manner in which she could give her statement immediately, the delay in her case was justified.

Per Shetty, J. (concurring)

As regards the first witness, the discrepancies between his first version and the evidence in court are substantial and on material points. As regards the second witness viz. widow of the deceased Beant Singh, though police had not recorded her statement immediately, but as she had lost her husband and was in immeasurable grief, she had been allowed time to compose herself. *Kehar Singh* v. *State (Delhi Admn.)*, (1988) 3 SCC 609: 1988 SCC (Cri) 711: AIR 1988 SC 1883.

Bench Strength **3**. Coram: **G.L. Oza**[1], **B.C. Ray**[2] and **K. Jagannatha Shetty**[3], JJ. [Date of decision: 3-8-1988]

[**Ed.**: Ray, J. concurred with the above views of Oza, J. and Shetty, J.]

[1599] — Ss. 161, 154 and 164 — Corroboration of prosecutrix's evidence — Sufficiency of — *Conviction confirmed — Medical corroboration, when not mandatory — Lacunae in prosecution case when not material — Rape of minor aged 12 years — Lacunae in prosecution that: (1) prosecutrix initially turning hostile, (2) doctor examining prosecutrix was not examined (meaning prosecution story not being corroborated by medical examination), and (3) examination report of doctor reporting that hymen of prosecutrix was intact — On the other hand prosecutrix though initially turning hostile giving credible and consistent statement in FIR, in S. 161 CrPC statement, before medical officer and in S. 164 CrPC statement — PW 3, IO catching the accused red-handed during rape and also recovering autorickshaw in which prosecutrix was kidnapped the same day, thereby fully corroborating statement of PW 1 (prosecutrix) — PW 3 having no past enmity with accused — Prosecutrix categorically deposing that appellant-accused removed her underwear, laid on her, put his male organ into her private part and was moving up and down — According to prosecutrix, accused committed "bad act" with her — Effect — On facts, held, offence of rape has been proved from all angles, despite the hymen being found intact. Wahid Khan* v. *State of M.P.*, (2010) 2 SCC 9.

Bench Strength **2**. Coram: *J.M. Panchal* and **Deepak Verma**, JJ. [Date of decision: 1-12-2009]

[1600] — Ss. 161, 162, 374 and 386(b) — Improvements in Court deposition vis-à-vis statement recorded under S. 161 — Effect — *Trial court, by placing reliance on the evidence of PW 1 (mother of the deceased), convicting respondent-accused under S. 302 for allegedly committing murder of his wife — High Court recording acquittal of respondent-accused — Sustainability — Held, there were many improvements in evidence of PW 1 i.e. what she had made during investigation when compared with that recorded in court — Moreover, there was no effort made to match blood group of deceased with blood found on MO 1 (murder weapon) — Hence, acquittal justified* (Paras 12 and 13). *State of A.P.* v. *V.V. Panduranga Rao*, (2009) 15 SCC 211: 2009 Cri LJ 2972: (2009) 2 APLJ 171 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 4-5-2009]

Ramsinh Bavaji Jadeja v. State of Gujarat, (1994) 2 SCC 685, relied on

[1601] — Ss. 161 and 313 — Conviction justified — Improvements — *Although several improvements made by three primary witnesses (PWs 5 to 7), but they had absolutely no reason to involve appellant in a false case, as admittedly he was a stranger to the locality and they bore him no ill will — No explanation by appellant in S. 313 CrPC statement what he was doing in the locality where he committed rape and murder — On the contrary, he admitted his presence by stating that he was caught by neighbours on suspicion of murder and beaten up, and had suffered several injuries in the process* (Paras 11 to 19). *Sebastian* v. *State of Kerala*, (2010) 1 SCC 58.

Bench Strength **2**. Coram: **H.S. Bedi** and *J.M. Panchal*, JJ. [Date of decision: 9-10-2009]

(6) Omissions/Exaggerations/Embellishments/Contradictions/Inconsistencies of S. 161 statement vis-à-vis evidence/FIR *(contd.)*

[1602] — Ss. 162 & 161 and 154 — Irrelevancy of statements made before police but not proved in court — *PWs 1 and 3 not examined in court — PW 7 IO filing FIR — FIR not mentioning about the statements of PWs 1 and 3 — Effect — Held, FIR is hit by S. 162 CrPC — Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 3(2)(i)*

It is clear from the statement of PW 7 that investigation in the case had already commenced and once investigation commences, the FIR is hit by Section 162 CrPC and no value can be attached to the same. PW 7, who was initially investigating the case, recorded the statements of PWs 1 and 3. But they were not examined in court. PW 7 in his cross-examination deposed that in the FIR filed by him, he did not specifically mention the involvement of the appellant nor did he mention anything about the statement of PW 3. (Paras 17 and 16). *Ganesh Gogoi* v. *State of Assam*, (2009) 7 SCC 404: (2009) 3 SCC (Cri) 421: (2009) 80 AIC 267 (SC).

Bench Strength 2. Coram: *Dalveer Bhandari* and **A.K. Ganguly**, JJ. [Date of decision: 7-7-2009]

[1603] — S. 161 — Statement of PW recorded in police station under S. 161 and deposition made by him before trial court — Some variation between — *Held, that would not result in rejection of the entire evidence — Portion of evidence in favour of prosecution or accused can be accepted after a close scrutiny*

In this case, there was some variation in the statements of the PW recorded under Section 161 CrPC in the police station and that made by him in the witness box. It was submitted that the statement recorded under Section 161 should be preferred to the other evidence available from the PW.

Held :

It is now well settled that in the event of a portion of evidence not being consistent with the statements given under Section 161 and the witness stands declared hostile, that does not, however, mean and imply total rejection of the evidence. The portion which stands in favour of the prosecution or the accused may be accepted but the same shall be subjected to close scrutiny. (Para 19). *Gurpreet Singh* v. *State of Haryana*, (2002) 8 SCC 18: AIR 2002 SC 3217.

Bench Strength 2. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 12-9-2002]

State of U.P. v. Ramesh Prasad Misra, (1996) 10 SCC 360: 1996 SCC (Cri) 1278, relied on

[1604] — S. 161 — Statement of witness recorded by police — Improvement in statement while testifying before court — When unreliable — Rules relating to — Restated — Nature of contradiction — Material or minor — *Held, court has to judge whether contradiction/omission is of such a magnitude that it materially affects trial — Minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect core of prosecution case, cannot be a ground to reject evidence entirely — Marginal variation between statement made to police and evidence given in court, held, need not necessarily be improvement in real sense — Such variation may in fact be elaboration of statement made earlier by witness — The omission which in effect amounts to contradiction in material particulars and goes to root of the case, renders the evidence unreliable — On facts held, testimony of a doctor who improved his statement while giving evidence in court involved material contradictions and inconsistencies and hence was not reliable*

While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Para 30)

Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also makes material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (Para 31)

The discrepancies in the evidence of eyewitnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution proved its case beyond reasonable doubt. (Para 32)

In case the complainant in the FIR or the witness in his statement under Section 161 CrPC, has not disclosed certain facts but meets the prosecution case first time before the court, such version lacks credence and is liable to be discarded. (Para 33)

The courts have to label the category to which a discrepancy belongs. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. (Paras 6 and 7)

While deciding such a case, the court has to apply the aforesaid tests. Mere marginal variations in the statements cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited. (Para 37)

There had been a lot of improvements and contradictions in the third doctor, PW 10's statements. The witness deposed for the first time in the court during the trial, that when he went to examine the deceased, she was found in an unkept room/storeroom and that he was introduced to the deceased as a Psychiatrist and that the deceased had asked him whether he treated his wife in the same way as she had been treated by her husband. None of this was mentioned in his statement recorded by the police. Nor had it been recorded therein that the deceased had told him that she was harassed by the appellants and her ornaments were taken away/worn by her mother-in-law (A-3). More so, he had not stated in his police statement that the deceased was merely mentally disturbed and not suffering from a gross psychological problem. Nor had he stated therein that the deceased had told him that she was not having any faith in any of her family members and she was deprived of their love, affection and sympathy. Such contradictions in his statements cannot be held to be mere explanations or elaborations of his version, but are tantamount to material contradictions or vital omissions. (Para 44)

The rules of appreciation of evidence require that the court should not draw conclusions by picking up an isolated sentence of a witness without adverting to the statement as a whole. In such a fact situation, it is not safe to rely on his testimony for the simple reason that he had made a lot of improvements/embellishments while deposing in court and vital contradictions exist with his earlier recorded statement. Thus, no reliance can be placed on his depositions to hold that the appellants had ill-treated the deceased or that Appellant 3 had taken away/worn her ornaments or that she had been deprived of their love and affection or that she was not suffering from epilepsy, etc. (Para 45). *Sunil Kumar Sambhudayal Gupta (Dr.)* v. *State of Maharashtra*, (2010) 13 SCC 657.

Bench Strength 2. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 11-11-2010]

State v. Saravanan, (2008) 17 SCC 587: (2010) 4 SCC (Cri) 580; State of Rajasthan v. Rajendra Singh, (2009) 11 SCC 106: 1998 SCC (Cri) 1605; Mahendra Pratap Singh v. State of U.P., (2009) 11 SCC 334: (2009) 3 SCC (Cri) 1352; State v. Sait, (2008) 15 SCC 440: (2009) 3 SCC (Cri) 1037; State of Rajasthan v. Kalki, (1981) 2 SCC 752: 1981 SCC (Cri) 593; Syed Ibrahim v. State of A.P., (2006) 10 SCC 601: (2007) 1 SCC (Cri) 34; Arumugam v. State, (2008) 15 SCC 590: (2009) 3 SCC (Cri) 1130; Bihari Nath Goswami v. Shiv Kumar Singh, (2004) 9 SCC 186: 2004 SCC (Cri) 1435, relied on

[1605] — S. 161 — Variations in testimony from statement under — Effect — Improvement in the version of PW — *Marginal variations on certain aspects as between his statement recorded under S. 161 CrPC and the testimony given in court, cannot be said to be improvements made with any sinister motive*

The marginal variations between the statement of the prosecution witness recorded under Section 161 CrPC and the testimony given in court, cannot be dubbed as improvements made with any sinister motive. They are elaborations elicited by the Public Prosecutor during the examination-in-chief. It is the prerogative of the Public Prosecutor to elicit such points from a witness as he deems necessary for the case. No Public Prosecutor can be nailed to the statement recorded under Section 161 of the Code. (Para 6). *Chandrasekhar Sureshchandra Bhatt* v. *State of Maharashtra*, (2000) 10 SCC 582: 2001 SCC (Cri) 1504.

Bench Strength 2. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 29-3-2000]

[1606] — S. 161 — Witness not stating a particular fact to the police in the course of investigation — Prosecution seeking to prove the said fact through that witness — *Evidence of that witness regarding the said fact held to be of no significance* (Para 16). *Vimal Suresh Kamble* v. *Chaluverapinake Apal S.P.*, (2003) 3 SCC 175: 2003 SCC (Cri) 596: AIR 2003 SC 818: 2003 Cri LJ 910.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 8-1-2003]

[1607] — S. 161 — Enquiry — Non-examination of informant — Effect — *Appellants, accused of selling drugs, nabbed while talking to informant — No contraband found in their possession — Prosecution accepting that no deal had taken place — Informant not questioned — Officer had also not heard any conversation — Held, accused persons and informant were only talking amongst themselves — Hence conversation unsustainable — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 67* (Para 17). *Raju Premji* v. *Customs, NER, Shillong Unit*, (2009) 16 SCC 496.

Bench Strength 2. Coram: **S.B. Sinha** and *R.M. Lodha*, JJ. [Date of decision: 6-5-2009]

Kanhaiyalal v. Union of India, (2008) 4 SCC 668: (2008) 2 SCC (Cri) 474, followed

(6) **Omissions/Exaggerations/Embellishments/Contradictions/Inconsistencies of S. 161 statement vis-à-vis evidence/FIR** *(contd.)*

[1608] — Ss. 161 and 207 — Copy of statement of witness made under S. 161 furnished to the accused in compliance with S. 207 — Omissions in it with regard to role played by some of the accused — *No such omissions found in original statement recorded by the IO under S. 161 and brought to the notice of the Court by him in his evidence — Held, if the statement of the IO is believed then the accused cannot take advantage of the omissions in copy of the statement furnished to him — But if the copy of report as furnished to the accused is correct one then the defence was legitimately entitled to bring those material omissions on record and rely upon the same. Golla Jalla Reddy* v. *State of A.P.*, (1996) 8 SCC 565: 1996 SCC (Cri) 713: AIR 1996 SC 3244.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 25-4-1996]

[1609] — S. 161 — Practice of allowing public prosecutor to explain omissions or contradictions in disposition of witness with reference to his statement under S. 161 — *Held, such concession for proof of contradictions or omission lacks support of law. Muthu Naicker* v. *State of T.N.*, (1978) 4 SCC 385: 1979 SCC (Cri) 14: AIR 1978 SC 1647: 1978 Cri LJ 1713: (1979) 1 MLJ 10 (SC).

Bench Strength 2. Coram: *P.N. Shinghal* and **D.A. Desai**, JJ. [Date of decision: 10-8-1978]

[1610] — S. 161 — Discrepancy or variance — Effect — Discrepancy and contradiction — Distinguished — Whether a particular discrepancy is a minor one or one amounting to contradiction — Test to determine, stated — Minor discrepancy or variance in evidence, held, does not make the prosecution's case doubtful — It may rather lend credential to the deposition — *Where the prosecutrix, subjected to rape, stated the place of occurrence to be 20 feet away from the road but the FIR lodged by an advocate, after hearing the narration of the prosecutrix (whom he had found then to be scared, nervous and hesitant) mentioned the road as the place of occurrence, held, there was no major discrepancy amounting to contradiction under the circumstances of the case — More so when in her statement under S. 161 CrPC the prosecutrix had stated that the accused persons had taken her to a place 20 feet away from the road — Penal Code, 1860 — S. 376*

The prosecutrix, a 55-year-old widow who was the mother of two grown-up children, was while coming back to her house after attending the marriage of a relation, criminally assaulted and subjected to forcible intercourse by the respondents. The first information report was submitted by her on the next day against the respondents. She was medically examined and her torn salwar was sent for chemical analysis. On medical examination various injuries were found on her person. The doctor was of the opinion that they reflected the signs of a struggle. The trial court convicted the accused persons under Sections 376(2)(*g*) and 323 IPC and sentenced them to undergo rigorous imprisonment for five years and to pay a fine of Rs 5000 each under Section 376 IPC and six months' rigorous imprisonment under Section 323 with a fine of Rs 500 each. The High Court reversed that decision. It acquitted Respondent 2 on the ground that his identity could not be established by the prosecution at the trial. It further held that the case against Respondent 1 was not proved beyond doubt as the medical evidence and the finding showed that no dead or alive spermatozoa was seen. Another circumstance which weighed with the High Court was that the sealing of the salwar was not properly established. Moreover, before the Supreme Court the respondent attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. One of such discrepancies was that the prosecutrix had stated the place of occurrence to be 20 feet away from the road while in the FIR the place of occurrence was mentioned as the road. Upholding the acquittal of Respondent 2 but setting aside the acquittal of Respondent 1 and restoring his conviction by the trial court,

Held :

Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. (Para 7)

The prosecutrix has categorically stated that she was dragged from the road down the path which was about 20 feet away from the road and raped there. The discrepancy or contradiction pointed out is that in the FIR which was submitted in writing and was in the English language, the place of occurrence was mentioned as road. Such mention was based upon recording of the complaint by an advocate after hearing the narration of the prosecutrix whom he found at that time to be scared, nervous and hesitant. Such a discrepancy cannot be held to be a major discrepancy amounting to contradiction under the circumstances of this case. It is not disputed that the statement of the prosecutrix under Section 161 CrPC was recorded immediately and in that statement she had not alleged to have stated that the occurrence had taken place on the road and not away from the road. (Para 9). *State of H.P.* v. *Lekh Raj*, (2000) 1 SCC 247: 2000 SCC (Cri) 147: AIR 1999 SC 3916: 2000 Cri LJ 44.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **R.P. Sethi**, JJ. [Date of decision: 2-11-1999]

Ousu Varghese v. State of Kerala, (1974) 3 SCC 767: 1974 SCC (Cri) 243; Jagdish v. State of M.P., 1981 Supp SCC 40: 1981 SCC (Cri) 676; State of Rajasthan v. Kalki, (1981) 2 SCC 752: 1981 SCC (Cri) 593; Leela Ram v. State of Haryana, (1999) 9 SCC 525, relied on

[1611] — **S. 161 — Contradictions and improvements — When material — Acquittal upheld** — *Witness stating that he had gone to the spot on hearing the sound of a gunshot and tried to snatch away the gun from the accused — But in his police statement he not stating anything regarding snatching of the gun — Held, this omission amounts to contradiction creating a serious doubt about the truthfulness of the witness — Another witness also making material improvement before the court in order to make his evidence acceptable — Medical evidence also belying the version given by the eyewitnesses regarding injuries caused to the deceased by gunshots — Acquittal upheld* (Para 7). *State of Rajasthan* v. *Rajendra Singh*, (2009) 11 SCC 106.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 22-7-1998]

Distinguished on facts in Hari v. State of Maharashtra, (2009) 11 SCC 96 at p. 105

[1612] — **Ss. 161 and 162 — Material contradictions — PWs 2 and 10, father and brother of deceased, claimed that oral dying declarations made to them by deceased** — *This significant fact had been omitted in their statements under S. 161 CrPC — No explanation for omission — Held, if a significant omission is made in statement of a witness recorded under S. 161 CrPC, same may amount to a contradiction — Whether it so amounts is a question of fact in each case — Statements of PWs 2 and 10, inspire no confidence — Possibility that deceased had been burnt in an accident cannot be ruled out — Conviction of appellant set aside* (Paras 15 to 17). *Subhash* v. *State of Haryana*, (2011) 2 SCC 715.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 16-12-2010]

[1613] — **S. 161 — Belated disclosure of name of another witness at the stage of statement under** — *Held on facts, does not amount to such an infirmity or improvement as would make the testimony of the eyewitness wholly or even partly untrue. Public Prosecutor, Govt. of A.P.* v. *Boya Jaggapuram Venkateswarlu*, 1980 Supp SCC 480: 1981 SCC (Cri) 444: AIR 1980 SC 1876: 1980 Cri LJ 1301.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 6-10-1980]

[1614] — **S. 161 — A relevant fact not mentioned in statement under S. 161 but stated before court by PW** — *Held, that would not be a ground for rejecting the evidence of PW on that aspect if his evidence is otherwise creditworthy and acceptable — Omission on the part of police official would not take away nature and character of the evidence* (Para 12). *Alamgir* v. *State (NCT of Delhi)*, (2003) 1 SCC 21: AIR 2003 SC 282.

Bench Strength **2**. Coram: **U.C. Banerjee** and *B.N. Agrawal*, JJ. [Date of decision: 12-11-2002]

[1615] — **Ss. 161 and 174 — Fact stated in statement under omitted in inquest — Effect** — *Appellant and co-accused M seen by PW 3 fleeing from near the place where dead body of deceased was found and hurriedly entering house of appellant's sister DW 1 — No major contradiction and/or omission, or any false claim/exaggeration found in PW 3's deposition to impeach his credibility — Fact that PW 3 maintained silence as to factum of seeing accused flee, at time of inquest inconsequential, because appropriate time therefor was during his examination under S. 161 CrPC by IO* (Paras 19 to 30, 32 to 38, 45, 46, 48 to 51, 56 and 57). *Aftab Ahmad Anasari* v. *State of Uttaranchal*, (2010) 2 SCC 583.

Bench Strength **2**. Coram: **J.M. Panchal** and *T.S. Thakur*, JJ. [Date of decision: 12-1-2010]

[1616] — **S. 161 — PW stating that appellant came to his house and he agreed to place his demand for additional dowry before the parents of the wife and that he did go to the parents — Omission of these facts in statement under S. 161, CrPC — Effect** — *Held, even if the omission amounted to material contradiction, still it did not impair his unrebutted evidence that the appellant came to his house with the demand for additional dowry. Rajayyan* v. *State of Kerala*, (1998) 4 SCC 85: 1998 SCC (Cri) 811: AIR 1998 SC 1211: 1998 Cri LJ 1633.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 3-3-1998]

(6) **Omissions/Exaggerations/Embellishments/Contradictions/Inconsistencies of S. 161 statement vis-à-vis evidence/FIR** *(contd.)*

[1617] — S. 161 — Entitlement of defence to point out improvements in subsequent statements under S. 161 CrPC vis-à-vis FIR — *Although statements under S. 161 CrPC were not part of FIR, held, defence is entitled to show improvements vis-à-vis the allegations in the FIR — Penal Code, 1860, S. 377*

The subsequent statement may not be a part of the first information report being a statement under Section 161 of the Code; but the defence is entitled to show that improvements have been made therein vis-à-vis the allegations made in the first information report. That there exists some improvement is not in dispute. Immediately, a purported statement was taken after the first information report was lodged. A further statement was recorded that PW 1, the victim complainant had himself written the first information report. But the contents of the first information report clearly demonstrate that the same has been drafted by a person who is well versed in legal language. A bare perusal of the first information report itself shows that it cannot be in the handwriting of a student studying in Class IX i.e. the victim. It was in very good handwriting. It was written systematically. There was no mistake. There was no hesitation in writing. It was absolutely neat and clean. (Para 23). *Gowrishankara Swamigalu* v. *State of Karnataka*, (2008) 14 SCC 411.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

[1618] — S. 161 — Prosecution story regarding use of lathis and danda omitted in S. 161 statement of prosecution witnesses — Effect

The High Court also came to the conclusion that PWs 3 and 4 (*SD* and *NY*) cannot be said to be totally independent witnesses as the defence had filed documentary evidence to show that *L*, the father of the accused persons had lodged an FIR against these witnesses for an offence under Section 308 IPC. These witnesses were, therefore, also somewhat inimical to the accused persons and their evidence cannot be given due weight especially with regard to the use of lathi and danda by the prosecution witnesses, particularly when such an important fact had not been stated by them in their statements recorded under Section 161 CrPC and the statements being contradictory to each other with regard to the use of danda. (Paras 22 and 23). *State of U.P.* v. *Banne*, (2009) 4 SCC 271.

Bench Strength 2. Coram: *Dalveer Bhandari* and *H.S. Bedi*, JJ. [Date of decision: 10-2-2009]

[1619] — S. 161 — Witness stating that his statement was recorded by IO a day after the inquest proceedings were conducted — Whereas IO stating that he recorded the same during inquest proceedings — *Held, it was a material contradiction as to time and date of incident — Prosecution failed to clarify the same — Hence, it was fatal to the prosecution case* (Para 5). *State of T.N.* v. *Sundar*, (2003) 12 SCC 695: AIR 2004 SC 1216: 2004 Cri LJ 913.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-12-2003]

[1620] — S. 161 — Circumstantial evidence — Minor omissions in the statement of witnesses — Ignoring of, by courts below — Propriety — *A lady and her daughter residing in the adjoining quarter deposing that on hearing the shrieks of the victim from the victim's quarter at the specified time they went towards the victim's quarter but noticing nothing unusual there, returned — A third witness, who was playing cricket nearby, stating that he heard the shrieks at the relevant time but on coming near the victim's quarter found nobody around the quarter and therefore returned — In cross-examination nothing found to discredit any one of them — In such circumstances the omission on the part of the former two witnesses to state before the police that after hearing the shrieks they had come out of their quarter, held, rightly ignored by the courts below — Penal Code, 1860 — Ss. 302/34, 376(2)(g) and 201* (Para 10). *Molai* v. *State of M.P.*, (1999) 9 SCC 581: AIR 2000 SC 177.

Bench Strength 3. Coram: **S.P. Kurdukar**, *K.T. Thomas* and *N. Santosh Hegde*, JJ. [Date of decision: 26-10-1999]

State of M.P. v. Molai, 1999 Cri LJ 2698 (MP), affirmed

[1621] — S. 161 — Bride burning — Credibility of oral dying declaration evidenced by PW 1 (father of deceased) and PW 2 — Discarding of evidence of witness deliberately favouring the defence — *PW 1 correcting himself in a calculated manner so as to oblige the accused for some unknown reason — Recording of S. 161 statements of near relatives of the deceased being normal, the allegation of PW 1 that police did not record his statement was untrustworthy — High Court after examination of documentary evidence and depositions concluding that PW 1 and PW 2 had given false statements regarding oral dying declaration — On facts, held, High Court was right in discarding the evidence PW 1 and PW 2 who were favouring the defence and deliberately did not support the case of the prosecution*

On the fateful day i.e. on 16-5-2001, at about 11.00 a.m., A-1 started quarrelling with his wife (deceased). A-3 and A-4, parents of A-1 also participated in the quarrel. All of them, according to the prosecution, poured kerosene on the deceased. A-1 ignited matchstick and set the deceased on fire. All the accused then closed the door from outside and ran away. The deceased cried for help. On hearing the shouts, neighbours reached the place, opened the door, poured water on her, extinguished the fire and took her to the hospital. In order to establish offence against the accused, prosecution examined seven witnesses. The father of the victim (PW 1) and the panch witness (PW 2) did not support the case of the prosecution and were declared "hostile". The prosecution, in the circumstances, mainly relied upon two witnesses, the Special Judicial Magistrate (PW 5) who recorded the dying declaration of the deceased between 11.30 and 11.52 a.m. on 17-5-2001 i.e. the next day of the incident and PSI (PW 7) who also recorded dying declaration between 1230 to 1300 hrs on 18-5-2001. So far as A-2 (brother of A-1) was concerned, the trial court acquitted him presumably on the ground that he was not present at the time of incident and was also not staying in the same village and lived elsewhere. A-1, A-2 and A-4 were convicted for offences punishable under Sections 498-A, 302 and 342 read with Section 34 IPC. The High Court came to the conclusion that from two dying declarations, it was clearly established that the accused had committed offences punishable under Sections 302 and 342 read with Section 34 IPC. Accordingly, the order of conviction and sentence recorded by the trial court was held proper and the said order was confirmed by the High Court. As to the offence punishable under Section 498-A read with Section 34 IPC, however, the High Court held that since it was not the case of the prosecution that the deceased was driven to death by committing suicide due to demand of dowry, it could not be said that the offence was established. All the accused persons were, therefore, acquitted of offence punishable under Section 498-A read with Section 34 IPC.

Dismissing the appeal,

Held:

It is no doubt true that PW 1 (father of deceased) did not support the prosecution. But it is equally true that the High Court considered the evidence of the said witness in detail and came to the conclusion that for some unknown reasons, he wanted to oblige the accused. PW 1 had the audacity to depose before the Court on oath that his statement was never recorded by the police. The High Court was right in observing that in such cases, police would normally record statements of all persons who are near relatives of the deceased. PW 1 was one such person and police would not fail to record his statement. Again, PW 1 had stated on oath that it was A-1 who brought injured deceased to the hospital. That was clearly false and it was proved from documentary evidence of the hospital. Ext. 41, which is an intimation received by Topkhana Police Station on telephone from Civil Hospital, Ahmednagar, dated 1-6-2001 revealed that the deceased was injured due to burns, and was admitted by one *B* on 16-5-2001 at 1500 hrs for treatment. The High Court also dealt with the evidence of panch witness (PW 2) and observed that for some reason, he wanted to oblige the accused. He stated that the accused brought the deceased to the hospital, which was obviously incorrect since as per the hospital record, she was taken to the hospital by *B*. The deposition of PW 1 repeated the exonerating dying declaration by saying that A-1 told him that he poured water from the mud pot to extinguish the fire of the deceased. Thereafter, he switched over to correct himself that this was told by the deceased and not by A-1. It clearly indicated that PW 1 was making exonerating statements in a calculated manner. So far as oral dying declarations were concerned, the High Court was right in discarding them observing that PW 1 and PW 2 were favouring the defence and deliberately did not support the case of the prosecution in the Court. The question thus was confined to evidentiary value of dying declarations of the deceased given to Special Judicial Magistrate (PW 5) and PSI (PW 7). (Paras 17 to 22 and 27)

The High Court was right in relying upon evidence of Special Judicial Magistrate (PW 5) and the dying declaration of deceased. PW 5 was a retired gazetted officer of armed forces aged about 76 years. Where a dying declaration is recorded by a competent Magistrate, it would stand on a "much higher footing". A competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and in absence of circumstances showing anything to the contrary, he should not be disbelieved by the court. In the present case both the dying declarations i.e. dying declaration recorded by PW 5 and dying declaration recorded by PW 7 the deceased clearly and unequivocally attributed burn injuries caused to her to the appellants (A-1, A-2, and A-3). Therefore there is no ground to interfere with the order of conviction and sentence recorded by the trial court and confirmed by the High Court. (Paras 23, 24, 46, 48, 27 and 53). *Vikas* v. *State of Maharashtra*, (2008) 2 SCC 516: (2008) 1 SCC (Cri) 486.

Bench Strength 2. Coram: **C.K. Thakker** and *Markandey Katju*, JJ. [Date of decision: 21-1-2008]

Khushal Rao v. State of Bombay, AIR 1958 SC 22: 1958 SCR 552; Ravi Chander v. State of Punjab, (1998) 9 SCC 303: 1998 SCC (Cri) 1004; Harjit Kaur v. State of Punjab, (1999) 6 SCC 545: 1999 SCC (Cri) 1130, applied

(6) Omissions/Exaggerations/Embellishments/Contradictions/Inconsistencies of S. 161 statement vis-à-vis evidence/FIR *(contd.)*

[1622] — S. 161 — Name mentioned in FIR but statement recorded about 16 days later — *IO clarifying that the witness was not available when he tried to be contacted — In such circumstances, merely because the said witness had deposed that during all those days he was in the village and had not gone out, held, it could not be inferred that the IO was not telling the truth and that the witness concerned was a got-up witness. Hari Singh* v. *State of Rajasthan*, (1996) 11 SCC 551: AIR 1997 SC 1505.

Bench Strength **2**. Coram: *G.N. Ray* and *G.T. Nanavati*, JJ. [Date of decision: 1-10-1996]

[1623] — S. 161 — Credibility of witnesses — Murder of three persons — Appellant convicted by courts below under Ss. 302/34 and sentenced to death while co-accused absconded and declared proclaimed offender — *Sole eyewitness was a girl aged 7 years injured in the same incident who deposed before the trial court 5 years after the incident — Her evidence regarding involvement of appellant was doubtful in absence of anything to show that she had ever seen or known him prior to the occurrence and in view of unexplained delay of 3 days in examining her under S. 161 CrPC and in view of non-mention by her as to how the third deceased was killed when appellant had no motive to kill him — As regards evidence of father of the child witness, not only most of his statements made in examination-in-chief were not stated when he was examined under S. 161 CrPC, assertions made by him in the course of his deposition were also false, hence his evidence must be discarded — Another PW was declared hostile and though he had lodged FIR but nothing much turned on his evidence as he was not an eyewitness — Though a motorcycle and a wristwatch were seized from the place of occurrence, but no evidence produced to connect appellant with those items — Held, it would be unsafe to convict the appellant on the sole testimony of the child witness — Though the girl might have witnessed the occurrence, she did not know the appellant — Evidence Act, 1872 — S. 118 — Penal Code, 1860 — Ss. 302/34* (Paras 24 to 29). *Jagjit Singh* v. *State of Punjab*, (2005) 3 SCC 689: 2005 SCC (Cri) 893: AIR 2005 SC 913: 2005 Cri LJ 955.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **B.P. Singh**, JJ. [Date of decision: 18-1-2005]

[1624] — S. 161 — Discrepancies between S. 161 statement and statement in court — Effect — *Burn injuries cause of death — Prosecution case that appellants had set deceased on fire by pouring kerosene on his body — Deceased's father claiming to have given a written report in police station disclosing the entire incident after getting the deceased admitted in hospital — Though the sequence of events narrated by deceased's father indicated that the written report would be the first contemporaneous document putting on record the true facts of the incident, but that document was not produced by prosecution despite trial court's order for production thereof — Evidence of deceased's father as an eyewitness also not credible in view of inconsistencies between his statement to the police under S. 161 CrPC and his statement before court — Who took deceased to hospital also shrouded in mystery — Doubts arising from the eyewitness accounts leaving too many question marks and too many unexplained circumstances, which contraindicated their acceptance without corroboration — Dying declaration recorded by Executive Magistrate itself indicating that the deceased had started to make a statement which was suggestive of his having poured kerosene on himself and set himself on fire but according to the Magistrate he later changed his statement — Medical case papers placed on record also raising some further doubts inasmuch as at one place there was history of "accidental burns" and another place there was history of "self-inflicted burns" — Held, evidence of deceased's father and the dying declaration not credible so as to bring home charge of murder against the appellants beyond reasonable doubt — Reasonable doubt arose on evidence led by prosecution and its conduct in suppressing the vital document (viz. the written report given by deceased's father to police) and witnesses — Therefore, appellants entitled to benefit of doubt — Evidence Act, 1872 — S. 32* (Paras 7 to 10, 13, 14, 16, 17 and 18). *Sk. Meheboob* v. *State of Maharashtra*, (2005) 10 SCC 387: 2005 SCC (Cri) 1544: AIR 2005 SC 1805: 2005 Cri LJ 2136.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 10-3-2005]

[1625] — S. 161 — Case diary — Interpolation — *Statements of PW 6 and other witnesses were available on record when bail application of accused was considered by the trial Judge — Same vanishing from police records for which no explanation given — PW 6 had also informed the authorities that he was being threatened by the relatives of the appellants not to disclose their names*

— Despite this the same not forming part of case diary — Grave doubts expressed as to whether information given by PW 2 to officer in charge of police station over phone was recorded and possibility expressed that it may not have been done only to benefit the accused — Strongly deprecating such practice, held, in case of defective investigation normally the benefit must be given to accused, but in the instant case, statements made before police at the earliest possible opportunity were available on record to fasten guilt on accused under Ss. 302/149 IPC — Penal Code, 1860 — Ss. 302/149 (Paras 29 to 33). *Vikram* v. *State of Maharashtra*, (2007) 12 SCC 332: (2008) 1 SCC (Cri) 362: AIR 2007 SC 1893: 2007 Cri LJ 3193.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 9-5-2007]

[1626] — S. 161 — Material fact deposed to by PW 7 in cross-examination, but not narrated in statement under S. 161 — Effect — *PW 7 was examined only to prove recovery — In his cross-examination, he stating that he was present at the scene of occurrence and, thus, giving evidence in favour of accused that the deceased had told that she had committed suicide — Held, if at all there was any truth in his statement, it was obligation of PW 7 to have disclosed this to police — PW 7 must have been won over by accused — Such testimony of PW 7, held could not be relied on*

There is no hesitation in rejecting that part of the testimony of PW 7 which appears to have found its way on the record so convenient for the accused. If at all there was any truth in his statement that he was present at the time of occurrence and that the deceased had made any statement before him, it was the obligation of PW 7 to have disclosed this to the police. Had he done so, he would have been treated as a material witness and examined by the police with regard to the so-called statement made before him. The fact that no such disclosure was ever made by him to the police, and his attempt to come out with crucial material facts pertaining to the occurrence, although he was being examined only as a witness to the panchnama, do not lend credence to his testimony. It appears that PW 7 must have been won over by the accused and made bold to give convenient evidence under cross-examination. (Para 23). *Sohan Lal* v. *State of Punjab*, (2003) 11 SCC 534: 2004 SCC (Cri) 226: AIR 2003 SC 4466.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 14-10-2003]

[1627] — S. 161 — Omission on the part of prosecution witness to state a particular fact in the statement under — If on facts, fatal to the prosecution — Source of light — *Accused, members of Peoples' War Group (for short "PWG") armed with firearms, at about 7.00 p.m. in the month of January, firing at, and injuring, one of the three ex-members of PWG, who were sitting in front of a hair-cutting saloon — The injured dying at hospital — Due to membership of PWG, the assaulting persons were already known to the ex-members — One of the ex-members deposing that he could identify the accused due to the street light and light coming from neighbouring shops and the other one (PW 2 herein) deposing that he could identify the accused in the lights of the area — Similar deposition by two partners of the hair-cutting saloon who identified the accused persons also in the Court — The fact of so identifying the accused although not mentioned in PW 2's statement under S. 161 CrPC, held, could not be rejected as there was clear evidence of his colleague — Hence, the defence contention that there was no sufficient light for the identification of the accused, rejected — Penal Code, 1860 — Ss. 302 and 34 — Terrorist and Disruptive Activities (Prevention) Act, 1987 — Ss. 3(2)(i) & (ii) and 5 — Arms Act, 1959 — S. 27* (Para 12). *Sheelam Ramesh* v. *State of A.P.*, (1999) 8 SCC 369: 1999 SCC (Cri) 1437: AIR 2000 SC 118.

Bench Strength **2**. Coram: *G.T. Nanavati* and **S.N. Phukan**, JJ. [Date of decision: 12-10-1999]

[1628] — S. 161 — Statement made to police — Making improvement upon — Effect — Material facts not stated to police — Improvements made in evidence by sole eyewitness PW 4, the mother of the deceased *R* — *Presence of PW 4 at the scene doubted — Conviction of appellant for causing the death of his wife his wife R by setting her on fire her — No incriminating evidence against appellant — Allegations that appellant was a person of bad character and that he did not have cordial relationship with R — Courts below brushed aside the improvements made by PW 4 in her evidence by holding that while making statement to police she was not required to give elaborate description of the incident — No possibility that appellant would have permitted PW 4 to stay with him — Held, the mere fact that the appellant was not proved to be a good husband or father would not ipso facto lead to the conclusion that he would commit the murder of his wife — Further, in absence of any material to corroborate the evidence of PW 4, which contained material improvements, held, it would be unsafe to base the appellant's conviction upon it — Penal Code, 1860 — S. 302 — Evidence Act, 1872 — S. 155(3)*

(6) **Omissions/Exaggerations/Embellishments/Contradictions/Inconsistencies of S. 161 statement vis-à-vis evidence/FIR** *(contd.)*

The improvements found in the evidence of PW 4 being material, the courts below erred in relying upon the same to convict the appellant. (Para 11)

It is true that there is material to show that the relationship between the appellant and his deceased wife was not cordial and their marital life was marred by frequent quarrels. But, the mere fact that the appellant is proved not to be a good husband or father would not ipso facto lead to the conclusion that he would commit the murder of his wife. (Paras 8 and 10)

PW 4 has made material improvements in her evidence to prove her presence in the house where the incident in question took place. She had stated in her evidence that at the time of the incident, she was residing with her daughter in the house, where the appellant was also residing, for about one month prior to the date of the incident. It has come in evidence that the son of PW 4, who was once residing with the appellant in his house, was thrown out of the house by the appellant for his interference in the dispute between the appellant and his wife. Therefore, it is highly improbable that the appellant would have permitted PW 4 to reside in his house while he was not willing to keep PW 4's son in his house. It is also highly improbable that PW 4 would have stayed along with the appellant and the deceased for about one month when her son, who was working independently, was also residing at a nearby place in Panchkula itself. (Paras 8 and 10)

The delay of three hours after the incident in recording of the statement of PW 4 by the police, subsequent to the information given by the son of PW 4, also contributes to the doubt as to the presence of PW 4 at the time of incident. (Para 8)

The incident in question took place in a house where a tenant was living in one portion of the house and there were other houses nearby which were all occupied. Still the prosecution has not been able to cite any one of these persons to support its case or at least to show that the incident in question took place at a time when PW 4 was present at the scene of occurrence. (Para 9)

The fact that PW 4 suffered no injury in the process of protecting her daughter from burning to death, further enhances the suspicion as to her presence at the time of the incident. (Para 9)

No person other than PW 4 claims to have seen the appellant at the scene of occurrence. No incriminating evidence e.g. any material like burns or even soot from the burning of the body to which the appellant must have suffered standing close, was noticed on the person or the clothes of the appellant. In the absence of any such material which would corroborate the evidence of PW 4, which contains material improvements, it would be highly unsafe to rely on the sole testimony of PW 4 to convict the appellant. (Para 10). *Hasan Murtza* v. *State of Haryana*, (2002) 3 SCC 1: 2002 SCC (Cri) 498: AIR 2002 SC 762: 2002 Cri LJ 1022.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *Doraiswamy Raju*, JJ. [Date of decision: 29-1-2002]

Hassan Murtaza v. State of Haryana, 1999 Cri LJ 3446 (P&H), reversed

[1629] — S. 161 — Statement recorded by the police under — Failure to give manner of user of weapon (axe) — *Held, does not amount to material omission amounting to contradiction* (Para 9). *Sat Pal* v. *State of Punjab*, 1995 Supp (4) SCC 1: 1996 SCC (Cri) 11.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *K.S. Paripoornan*, JJ. [Date of decision: 20-10-1995]

[1630] — S. 161 — Statement recorded by the police under — Minor omissions not amounting to contradictions — *Trial court erred in permitting the defence to bring them on record. State of Karnataka* v. *Moin Patel*, (1996) 8 SCC 167: 1996 SCC (Cri) 632: AIR 1996 SC 3041.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *B.N. Kirpal*, JJ. [Date of decision: 22-2-1996]

[1631] — S. 161 — Unwarranted delay in recording statement of witness and non-mentioning of names of accused allegedly seen by him in said statement — Effect — *PW 3 (injured witness) not mentioning the names of appellants in his statement to police — Further, his statement recorded on the next day of the incident — Considering the said omission and the unwarranted delay in recording the statement, held, testimony of PW 3 not liable to be relied on* (Para 7). *Maruti Rama Naik* v. *State of Maharashtra*, (2003) 10 SCC 670: AIR 2003 SC 3884: 2003 Cri LJ 4326.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 9-9-2003]

[1632] — Ss. 161, 162 and 154 — Statement allegedly made by important eyewitness to A.S.I. during investigation in variance with the FIR lodged by her and at the inquest — *Witness denying having made such statement — Prosecution also alleging such statement to be false and mischievous — Inquest report also suppressed — Held, such supplementary was false and statement in FIR true. Bhajan Singh* v. *State of Punjab*, (1978) 4 SCC 77: 1978 SCC (Cri) 515: AIR 1978 SC 1759: 1979 Cri LJ 7.

Bench Strength **2**. Coram: *Jaswant Singh* and **P.S. Kailasam**, JJ. [Date of decision: 31-8-1978]

[1633] — Ss. 161 and 162 — Omission to mention any important circumstance while making a statement under S. 161 CrPC — Effect — *Prosecution witness, the deceased's brother, in his examination-in-chief stating that while pressurising him and his brother to transfer the property in question to them the accused persons threatened that without signing the transfer deed they (the said witness and his brother) would not reach downstairs alive — In cross-examination, he reiterating the said statement — However, such allegation not finding place in his statement under S. 161 and when confronted therewith, the prosecution witness remaining unable to explain the reason therefor — Investigating officer in his cross-examination stating that no such allegation had been made before him — Such an omission in the statement of the prosecution witness under S. 161, held, amounted to contradiction — Hence, the allegation made by the prosecution witness, held, not sufficient to hold the accused persons guilty of murder — Evidence Act, 1872 — S. 145 — Penal Code, 1860 — Ss. 302, 307, 120-B, 23 & 114* (Paras 50 to 52). *State of Maharashtra* v. *Bharat Chaganlal Raghani*, (2001) 9 SCC 1: AIR 2002 SC 409.

Bench Strength 2. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 11-7-2001]

Tahsildar Singh v. State of U.P., AIR 1959 SC 1012: 1959 Cri LJ 1231, relied on

[1634] — S. 161 — In view of inconsistencies in testimony of witnesses as also inconsistency between such testimony and statements made under S. 161(3), CrPC accused-appellant entitled to benefit of doubt — *Hence his conviction under Ss. 302/34 and 436/34 set aside. Sukhram* v. *State of M.P.*, 1989 Supp (1) SCC 214: 1989 SCC (Cri) 357: AIR 1989 SC 772: 1989 Cri LJ 838.

Bench Strength 2. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 13-1-1989]

[1635] — Ss. 162, 161 and 164 — Two of five witnesses retracting from their statements during investigation — Effect — Consideration of other evidence on record — *Discovery of material objects (MOs 1 and 2) based on disclosures made in the statements of A-1 and A-2 — PW 1's dying declaration recorded — In TI parade, PW 1 to 3 identified A-1 to A-3 — PWs 1 to 5 were eyewitnesses though PWs 4 and 5 retracted from their statements — No discrepancy or deficiency being found in the evidence of PWs 1 to 3, rejection of their evidence, held, not warranted — Trial court and High Court rightly relied on their testimony — Evidence Act, 1872 — Ss. 32(1), 27, 21 and 145*

So far as the evidence of PWs 1, 2 and 3 are concerned, counsel for the appellant was not able to point out any discrepancy or deficiency in their evidence to warrant rejection of their evidence. The trial court and the High Court have rightly relied upon their testimony. 17 witnesses were examined to further the prosecution version. PW 1 was the injured complainant. PW 2 was also an eyewitness who removed *K* to the hospital along with others. It was also stated that PW 3 is an eyewitness. PWs 3, 4 and 5 were eyewitnesses to the occurrence. The trial court placed reliance on the evidence of PWs 1, 2 and 3 because PWs 4 and 5 resiled from their statement during investigation. PW 7 took up investigation and effected arrest of A-1 and A-2 and recovered MOs 1 and 2 in pursuance of their disclosure statements. Exts. P-8 and P-9 are the admissible portions in their confessional statements. In the test identification parade PWs 1 to 3 identified A-1 to A-3 as the assailants of the deceased. The trial court found the evidence of PWs 1 to 3 to be credible and cogent and, therefore, recorded conviction and sentence. (Paras 11, 8 and 7). *Kotikalapudi Subba Rao* v. *State of A.P.*, (2008) 5 SCC 390: (2008) 2 SCC (Cri) 621.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 6-5-2008]

[1636] — S. 162 — Minor variations in prosecution evidence — Probative value of such evidence and acceptability thereof — *Held, once the trustworthiness of evidence stated in a case stands satisfied, the court should not hesitate in accepting the same — If the evidence in its entirety appears to be trustworthy, it cannot be discarded merely on the ground of presence of minor variations in evidence — Despite minor discrepancies in prosecution evidence, conviction and sentence awarded to appellants under S. 302 IPC not interfered with by the Supreme Court — Penal Code, 1860 — S. 302 — Evidence Act, 1872 — Ss. 3 and 155*

The accused-appellants, who were convicted and sentenced under Section 302 IPC by the Sessions Court as well as the High Court, challenged their conviction in instant appeal by contending that there has been a serious divergence of evidence as regards the place of occurrence which in turn completely displaces the prosecution case and the High Court erred in not taking note of such a divergent view pertaining to the place of occurrence. Further, the appellants pointed out the suppression of earliest version of occurrence by submitting that the chowkidar, who visited the place of occurrence and thereafter informed the investigating officer about the incident, was deliberately withheld, thereby making the prosecution case doubtful. The presence of the shoes of the deceased by the side of his head along with a bag was another ground taken by the appellants for creating the doubt about the place of occurrence.

(6) Omissions/Exaggerations/Embellishments/Contradictions/Inconsistencies of S. 161 statement vis-à-vis evidence/FIR *(contd.)*

Dismissing the appeal,

Held :

It is now well settled that the court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. The evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence. (Para 1)

There would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment. Sometimes there is a deliberate attempt to offer the exaggerated evidence and sometimes the witnesses in their overanxiety to do better from the witness box detail out an exaggerated account. (Para 3)

The evidence on record does not, however, lend any credence to the submissions made by the appellants. There may be some variations but there exists no major contradiction on record. The fact that the deceased was surrounded by the appellants and the firing was done at the instance of Appellant 1 stands uncontradicted. If on a perusal of the evidence in its entirety, it appears to be otherwise trustworthy, question of the evidence being non-trustworthy would not arise. The court can sift the chaff from the grain and find out the truth from the evidence itself. The evidence tendered lends credence to the prosecution case as regards the involvement of the appellant herein in the murder. (Para 12)

It is on record that the chowkidar happened to visit the place of occurrence before he came again with the investigating officer, but the positive evidence of the investigating officer is to the effect that the latter reached the village on hearing a rumour about the murder of the deceased. It so happened as there was no cross-examination on this score and in the absence of which the statement of the investigating officer cannot but be accepted. The chowkidar may or may not be there or it may be a sheer coincidence that both the investigating officer and the chowkidar came together but that by itself does not affect the veracity of the prosecution case. (Para 13)

In absence of any question having been put to either the investigating officer or any other witness in regard to the shoes found kept by the side of the head of the deceased, the factum of placement of shoes at a particular place would not vitiate the entire trial. (Para 17)

Although there are lapses in the case, but the issue has to be considered from the point of view of the prejudice to the accused. If in any case, like the one present herein before the Supreme Court, no prejudice can be said to have been caused to the accused, the question of the trial being vitiated on the ground of lapses would not arise at all. The eyewitnesses' account as available on record cannot but be termed to be trustworthy and by reason therefor, the lapses stand overshadowed by the testimony of the eyewitnesses. The instant appeal is devoid of merit and there is no reason to interfere with the impugned judgment of the High Court. (Para 15).
Sukhdev Yadav v. *State of Bihar,* (2001) 8 SCC 86: 2001 SCC (Cri) 1416: AIR 2001 SC 3678.

Bench Strength 2. Coram: **U.C. Banerjee** and *N. Santosh Hegde*, JJ. [Date of decision: 13-9-2001]

Baleshwar Mandal v. State of Bihar, (1997) 7 SCC 219: 1997 SCC (Cri) 1042: AIR 1997 SC 3471, relied on

Leela Ram v. State of Haryana, (1999) 9 SCC 525: 2000 SCC (Cri) 222; Rammi v. State of M.P., (1999) 8 SCC 649: 2000 SCC (Cri) 26; Appabhai v. State of Gujarat, 1988 Supp SCC 241: 1988 SCC (Cri) 559, considered

[1637] — S. 162 — Impeaching credit of witness — Inconsistent statement — When amounts to contradiction — *Minor variation with former statement not enough — Former statement if to be used to discredit the particular version of the witness must be done in compliance with S. 145 — Evidence Act, 1872 — Ss. 155 and 145*

When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny. (Para 24)

It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. (Para 25)

A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to "contradict" the witness. (Para 26)

To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness. (Para 27)

In the present case the evidence of the conductor and the driver of the bus evinces credibility. They are the most natural witnesses for the murder which took place inside the bus. The minor variations which the defence counsel discovered from their former statements did not amount to discredit the core of their evidence. The strained reasoning of the Sessions Judge for side-stepping their evidence is too fragile for judicial countenance. The Division Bench of the High Court has rightly reversed the finding regarding the credibility of their evidence. (Para 28). *Rammi* v. *State of M.P.*, (1999) 8 SCC 649: AIR 1999 SC 3544.

Bench Strength 2. Coram: **K.T. Thomas** and *A.P. Misra*, JJ. [Date of decision: 21-9-1999]

Tahsildar Singh v. State of U.P., AIR 1959 SC 1012: 1959 Cri LJ 1231, relied on

[1638] — Ss. 162 and 161 — Insignificant omissions in their statements to the police, held, no ground for disbelieving them. *Matadin* v. *State of U.P.*, 1980 Supp SCC 157: 1979 SCC (Cri) 627: AIR 1979 SC 1234: 1979 Cri LJ 1027: 1980 MLJ (Cri) 60.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 6-3-1979]

[1639] — S. 162 and Expln. — Contradictions — Meaning — What constitutes — *Minor discrepancies do not amount to contradiction*

The word "contradiction" is of a wide connotation which takes within its ambit all material omissions and under the circumstances of a case, a court can decide whether there is one such omission as to amount to contradiction. The Explanation to Section 162 CrPC is relevant. "Contradiction" means the setting of one statement against another and not the setting up of a statement against nothing at all. All omissions are not contradictions. The Explanation to Section 162 CrPC itself makes it clear that whether any omission amounts to contradiction in the particular context is a question of fact. Minor discrepancies cannot be termed as contradictions unless it affects the credibility of the evidence tendered by a witness. In the instant case the discrepancies highlighted on behalf of the accused-appellant were merely trivial in nature. (Paras 12 and 11). *Shashidhar Purandhar Hegde* v. *State of Karnataka*, (2004) 12 SCC 492: AIR 2004 SC 5075.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 15-10-2004]

State of Maharashtra v. Bharat Chaganlal Raghani, (2001) 9 SCC 1: 2002 SCC (Cri) 377; Tahsildar Singh v. State of U.P., AIR 1959 SC 1012: 1959 Cri LJ 1231, relied on

[1640] — S. 162 Expln. — Discrepancy — Elaboration of case — Making of statements for the first time in court and not during investigation — *When not fatal*

Though it is true that some statements were made for the first time in court and not during investigation, it has to be seen as to what extent they diluted the testimony of PWs 16 and 32 used to bring home the accusations. A mere elaboration cannot be termed as discrepancy. When the basic features are stated, unless the elaboration is of such nature that it creates a different contour or colour of the evidence, the same cannot be said to have totally changed the complexion of the case. (Para 23). *Esher Singh* v. *State of A.P.*, (2004) 11 SCC 585: AIR 2004 SC 3030.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 15-3-2004]

[1641] — S. 162 — Statement of the deceased that the witness was one of the persons who had taken him to the hospital corroborating his presence at the scene of the occurrence — *Witness having no enmity with the accused persons — Accused persons being brother and close relatives of the deceased conduct of the witness in not going to the police station to lodge the complaint not unnatural — Delay of 7 days in recording his statement by police properly explained — Held, in the circumstances of the case, High Court not justified in rejecting his evidence. G.S. Walia* v. *State of Punjab*, (1998) 5 SCC 150: 1998 SCC (Cri) 1283: AIR 1998 SC 2857.

Bench Strength 2. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 19-3-1998]

(6) **Omissions/Exaggerations/Embellishments/Contradictions/Inconsistencies of S. 161 statement vis-à-vis evidence/FIR** *(contd.)*

[1642] — S. 162 — Omission to send bloodstained earth collected from the place of occurrence to the Chemical Examiner — Held, does not vitiate the investigation. *State of U.P.* v. *Harban Sahai*, (1998) 6 SCC 50: 1998 SCC (Cri) 1412.

Bench Strength **3**. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas** and *S. Rajendra Babu*, JJ. [Date of decision: 20-4-1998]

[1643] — S. 162 Expln. — Allegation made for the first time during trial — Effect — *Father of the deceased alleging in court about torture of his daughter by accused mother-in- law — Statement of father recorded by police one year after the occurrence — No mention about such treatment therein — Held, such allegation made for the first time in the course of trial was not acceptable* (Para 15). *Meera* v. *State of Rajasthan*, (2004) 11 SCC 231: AIR 2004 SC 1879.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 15-3-2004]

[1644] — S. 162 Expln. — PWs did not specifically name any accused person during investigation, and only said that followers of A-7 were the assailants — *But definite names stated by them in court — Held, that was not an elaboration of a statement already made — On the contrary, it was a vital omission* (Para 13). *Gorle S. Naidu* v. *State of A.P.*, (2003) 12 SCC 449: AIR 2004 SC 1169: 2004 Cri LJ 924.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 15-12-2003]

See also (2003) 11 SCC 271: 2004 SCC (Cri) 135

[1645] — S. 162 Expln. — Omission by PWs to state before the police about exhortations by all the accused — In the facts and circumstances of the case, such omission would amount to contradiction (Para 19). *Shri Gopal* v. *Subhash*, (2004) 13 SCC 174: 2005 SCC (Cri) 98: AIR 2004 SC 4900: 2004 Cri LJ 3349.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **S.B. Sinha**, JJ. [Date of decision: 23-1-2004]

(7) Delay in questioning/examining witness/ recording of statement under

[1646] — S. 161 — Delayed examination of witnesses — *Held, there could be no rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect — If the explanation offered for such delay is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion — Further, the IO has to be specifically asked as to the reasons for the delayed examination where the accused raised a plea that there was unusual delay in the examination of the witnesses*

It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion. In this case, it was explained as to why there was delay. Important witnesses were examined immediately. Further statements were recorded subsequently. Reasons necessitating such examination were indicated. It has been recorded that there was a valid reason for the subsequent and/or delayed examination. Such conclusion has been arrived at after analysing the explanation offered. Further, the IO has to be specifically asked as to the reasons for the delayed examination where the accused raised a plea that there was unusual delay in the examination of the witnesses. However, the said situation does not arise in this case. (Paras 33 and 34). *Bodhraj* v. *State of J&K*, (2002) 8 SCC 45: AIR 2002 SC 3164.

Bench Strength **2**. Coram: *Ruma Pal* and **Arijit Pasayat**, JJ. [Date of decision: 3-9-2002]

Ranbir v. State of Punjab, (1973) 2 SCC 444: 1973 SCC (Cri) 858, followed

[1647] — S. 161 — Delayed examination of witnesses — Effect — *Evidence so obtained when inadmissible — Effect on evidence tendered by other witnesses*

Unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion. On the other hand, if the explanation is found to be implausible, certainly the court can consider it to be one of the factors to affect credibility of the witnesses who were examined belatedly. It may not have any effect on the credibility of the prosecution's evidence tendered by the other witnesses. (Paras 18 and 20)

During trial no question was raised about the delayed examination of PWs 3 and 5 by the IO and not even a plea was raised before the trial court that the delayed examination of PWs 3 and 5 affected credibility of the prosecution version. The cross-examination was only on the aspect of the recovery of the underwear and undergarment of the accused and the deceased respectively. (Paras 7 and 21). *State of U.P.* v. *Satish*, (2005) 3 SCC 114: 2005 SCC (Cri) 642: AIR 2005 SC 1000: 2005 Cri LJ 1428.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 8-2-2005]

Ranbir v. State of Punjab, (1973) 2 SCC 444: 1973 SCC (Cri) 858; Bodhraj v. State of J&K, (2002) 8 SCC 45: 2003 SCC (Cri) 201; Banti v. State of M.P., (2004) 1 SCC 414: 2004 SCC (Cri) 294, followed

Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371: 1979 SCC (Cri) 1, distinguished

[1648] — S. 161 — Delayed examination of witnesses — Effect — *Held, unless IO is categorically asked as to why there was delay in examination of the witnesses, the defence cannot gain any advantage therefrom* (Para 14). *Ramanand Yadav* v. *Prabhu Nath Jha*, (2003) 12 SCC 606: AIR 2004 SC 1053: 2004 Cri LJ 640.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 31-10-2003]

Ranbir v. State of Punjab, (1973) 2 SCC 444: 1973 SCC (Cri) 858: AIR 1973 SC 1409; Bodhraj v. State of J&K, (2002) 8 SCC 45: 2003 SCC (Cri) 201, relied on

[1649] — S. 161 — Ipso facto cannot be a ground to doubt veracity of prosecution case in all circumstances — *If explanation offered therefor is plausible and possible and court accepts the same, there is no reason to interfere with said conclusion — In instant case, accused were arrested after about eight months of occurrence and their photographs thereafter published — PWs 3 and 4 after identifying them came to police station of their own accord and gave statements — They were independent witnesses and it would be absurd to hold that IO erred in recording their statements — If really as contended, prosecution wanted to tamper with witnesses they could have immediately done so after occurrence — Besides, no question was put to IO as regards purported delay, hence, defence cannot get any advantage therefrom* (Paras 28 to 31). *Abuthagir* v. *State*, (2009) 17 SCC 208: AIR 2009 SC 2797: 2009 Cri LJ 3987: (2009) 3 ECrN 1077 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 8-5-2009]

Ranbir v. State of Punjab, (1973) 2 SCC 444: 1973 SCC (Cri) 858; Bodhraj v. State of J&K, (2002) 8 SCC 45: 2003 SCC (Cri) 201; Banti v. State of M.P., (2004) 1 SCC 414: 2004 SCC (Cri) 294; State of U.P. v. Satish, (2005) 3 SCC 114: 2005 SCC (Cri) 642, relied on

[1650] — S. 161 — Delay in recording statement of eyewitness, effect of — *Name of eyewitness not named in FIR, held, not a significant omission but what is material is the content of statement of eyewitness — Eyewitness constantly in touch with the investigation officer but his statement recorded after one-and-half months — Held, if his statement is not recorded on the date of incident or within reasonable time therefrom, it has to be viewed with caution* (Paras 11 to 13 and 15). *Prem Narain* v. *State of M.P.*, (2007) 15 SCC 485.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 29-11-2006]

[1651] — S. 161 — Delay in recording statements of witnesses under — Credibility of such statements — *Held, unless investigating officer is asked questions about delay in recording statements and explanation is sought from witnesses as to why their statements were recorded late, statements by themselves would not become suspicious or concocted* (Para 55). *Vijay Kumar Arora* v. *State (NCT of Delhi)*, (2010) 2 SCC 353.

Bench Strength 2. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 13-1-2010]

[1652] — S. 161 — Examination of witness — Delay — Effect — *High Court rejecting evidence of PW 2 only on the ground that there was delay in recording his statement under S. 161, and that he had criminal antecedents — Held, High Court erred in observing so — PW 2 was named in FIR which supported the fact that he was present there during occurrence — Thus, even when he was of criminal character, and his statement was recorded later, his evidence was inspiring confidence, hence keeping caution in mind, same could not be rejected — Evidence Act, 1872, S. 54* (Para 27). *Murli* v. *State of Rajasthan*, (2009) 9 SCC 417: (2009) 81 AIC 43 (SC).

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 18-8-2009]

[1653] — S. 161 — Examination of witnesses by IO — Delay — Effect — *Held, unless the investigating officer is categorically asked as to why there was delay in examination of the witness, the defence cannot take advantage therefrom — In the instant case, no question had been asked to the investigating officer, PW 53 regarding the reason for delay — There was even no suggestion that PW 2 was not present in the house when the incident took place* (Para 12). *Gunnana Pentayya* v. *State of A.P.*, (2009) 16 SCC 59.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 20-8-2008]

State of U.P. v. Satish, (2005) 3 SCC 114: 2005 SCC (Cri) 642, followed

(7) Delay in questioning/examining witness/recording of statement under *(contd.)*

[1654] — S. 161 — Examination of witnesses by police — Necessity of promptness — *Statement of PW 7 who was an eyewitness and was sitting near the dead body of deceased recorded next day at about 12 p.m.; hence possibility expressed that he must have been influenced and that there was no explanation for not recording his statement at night itself — Held, delay in recording the statement is undoubtedly a circumstance which has to be taken into consideration, but at the same time, the courts must be reasonable also and should see as to whether late recording of the statement in the dead of night of a tender aged boy of 13 was possible and feasible — Further, it needs to be considered whether such delay has affected his testimony or whether there was any real apprehension of the boy being influenced by any other person or the police — In the absence of any such possibility, the evidence of the boy could not be thrown out, more particularly, when the boy had faced the ordeal of the cross-examination in a very efficient manner — Moreover, usual police apathy to record statements in the late hours can also be another factor to be considered* (Paras 18, 23 and 24). *Mallappa Siddappa Alakanur* v. *State of Karnataka*, (2009) 14 SCC 748: AIR 2009 SC 2959: (2009) 80 AIC 233 (SC).

Bench Strength 2. Coram: **V.S. Sirpurkar** and *R.M. Lodha*, JJ. [Date of decision: 7-7-2009]

[1655] — S. 161 — Delayed examination of witnesses — Effect — Admissibility — *Held, is normally looked down upon but each case has to be considered on its own facts — In the instant case, however, there is no reason to disbelieve testimonies of PWs 3 to 6 so far as A-1 is concerned* (Paras 59 and 60). *Achara-parambath Pradeepan* v. *State of Kerala*, (2006) 13 SCC 643: (2007) 49 AIC 49 (SC): (2007) 1 KLT 249.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 15-12-2006]

State of U.P. v. Satish, (2005) 3 SCC 114: 2005 SCC (Cri) 642, relied on

[1656] — Ss. 161 and 154 — Delay in giving statement by sole surviving victim in (caste related) mass murder — When not fatal — Hiding and saving oneself till police protection available, as the reason

Similarly, the High Court has failed to appreciate the circumstances in which PW 14 has survived by jumping into the river and hiding at certain places. In a genocide and massacre which was witnessed by him, wherein all his seven close relatives including his wife were killed one after the other in his presence and were thrown in River Ganges, his escaping death was a miracle. Hiding and saving his life from a mighty cruel upper caste group was a normal human instinct. Any reasonable or prudent person would have behaved in the same manner. Immediately after his escape, he tried to make a complaint but he did not succeed. Ultimately when he wrote to Smt Indira Gandhi and Shri Jagjivan Ram, perhaps at the intervention of someone, the police seriously investigated the matter and he was brought to his village under police protection. The delay in giving his statement is fully explained and in the facts and circumstances of the case delay was quite natural. (Para 40). *State of U.P.* v. *Ram Sajivan*, (2010) 1 SCC 529.

Bench Strength 2. Coram: **Dalveer Bhandari** and *A.K. Patnaik*, JJ. [Date of decision: 4-12-2009]

[1657] — Ss. 161 and 162 — Delay in recording statement of witness — When material — *Conviction on basis of last seen together theory — Proof of — High Court by impugned judgment acquitting respondent-accused finding evidence against him inadequate to sustain conviction — Prosecution case resting primarily on circumstantial evidence — PWs 3 and 8 claiming that they had seen the accused last in the company of deceased — But both claiming to have seen the accused at the same time and to have carried him on the motorcycle, which itself was an impossibility — Additionally, neither of them claiming to have seen the other witness with the accused at the relevant time — Deceased had gone missing on 1-3-1998, his dead body at instance of accused was recovered on 2-3-1998, while FIR was lodged on 3-3-1998 — Statement of accused was also recorded on 2-3-1998 and discovery panchnama of dead body prepared on that day — But, statement of PW 3, in spite of he being available in the police station on 2-3-1998 not recorded on that day — Stand of State that FIR was registered at 1.30 a.m. on 3-3-1998 and thereafter investigation started, and therefore statement of PW 3 was recorded afterwards, rejected, taking into consideration that police was already treating respondent as accused on 2-3-1998 and had obtained his signature on panchnama as such, and had started investigation — There was thus no difficulty in recording statement of PW 3 on 2-3-1998 itself — Considering parameters relating to appeal against acquittal, conviction based on circumstantial evidence, and last seen together theory, held, no interference with impugned judgment called for* (Paras 12 to 20). *State of Goa* v. *Pandurang Mohite*, (2008) 16 SCC 714: AIR 2009 SC 1066: (2009) 73 AIC 100 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 8-12-2008]

[1658] — Ss. 161 and 164 — Delay — *There was unexplained delay in recording statements of PWs 3 & 6 and their statements under S. 164 were recorded much before their statements under S. 161* (Paras 2 to 10, 13 to 18 and 20 to 23). *State of A.P.* v. *S. Swarnalatha*, (2009) 8 SCC 383: (2009) 3 SCC (Cri) 873: (2009) 81 AIC 60 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *R.M. Lodha*, JJ. [Date of decision: 4-8-2009]

[1659] — S. 161 — Examination of witnesses by police — Delay in, when explained, not fatal to the prosecution

Mere delay in examination of the witnesses for a few days cannot in all cases be termed to be fatal so far as the prosecution is concerned. There may be several reasons. When the delay is explained, whatever be the length of the delay, the court can act on the testimony of the witness if it is found to be cogent and credible. (Para 12)

In the present case as due to bomb blasts on 16-3-1993, just before midnight, 69 persons died and a large number of persons suffered injuries on account of falling of debris of buildings, the first priority was rendering assistance to those who had suffered injuries and were lying under the debris of the demolished buildings. Therefore, statement of the PW that he was busy in attending to the injured and collecting dead bodies till 18-3-1993 cannot be said to be improbable. When a large number of persons were being brought to the hospital, the foremost duty of the doctors and other members of the staff was to provide immediate treatment, and not to go about collecting information as to who had brought the injured to the hospital for treatment. That would be contrary to the normal human conduct. Looked at from any angle, the evidence of PWs cannot be said to be suffering from any infirmity. Their statements along with the confessional statements of the co-accused lend a definite assurance to the prosecution version. (Para 12). *Mohd. Khalid* v. *State of W.B.*, (2002) 7 SCC 334.

Bench Strength 3. Coram: *B.N. Kirpal*, C.J. and *K.G. Balakrishnan* and **Arijit Pasayat**, JJ. [Date of decision: 3-9-2002]

[1660] — Ss. 161 and 173(8) — Fresh examination/re-examination of witnesses — Permissibility — *Investigating officer, who took over investigation at subsequent stage upon transfer of investigation to CID, examining witnesses afresh — Prejudice caused to accused, if any*

It is a settled principle of law that the statements under Section 161 CrPC recorded during the investigation are not substantive piece of evidence but can be used primarily for a very limited purpose, that is for confronting the witnesses. If some earlier statements were recorded under Section 161 CrPC then they must be on the police file and would continue to be part of police file. However, if they have been filed on judicial record they would always be available to the accused and as such no prejudice is caused to anyone. Secondly, when the case was transferred to CID for investigation, it obviously meant that in the normal course, the authorities were not satisfied with the conduct of the investigation by PW 31 (previous investigating officer) and considered it appropriate to transfer the investigation to a specialised branch i.e. CID. Once the direction was given to PW 30 to conduct the investigation afresh and in accordance with law, there is no error of jurisdiction or otherwise committed by PW 30 in examining the witnesses afresh and filing the charge-sheet under Section 173 CrPC stating that the appellants and other accused had committed the offence and were liable to face trial under Sections 304-B and 498-A IPC. (Para 17). *Uday Chakraborty* v. *State of W.B.*, (2010) 7 SCC 518.

Bench Strength 2. Coram : Dr. B.S. Chauhan and **Swatanter Kumar**, JJ. [Date of decision : 8-7-2010]

[1661] — S. 161 — Delay in recording statement under — Effect — *Information about a fact relating to the incident and within the knowledge of PW 21, disclosed by him to the investigating agency after about 39 days of the incident — Held, merely because the evidence of a witness is recorded by the police under S. 161 CrPC belatedly, by itself, does not make the evidence unacceptable provided there is some logical or acceptable explanation for the same — On facts, held, there was no such explanation in the instant case — Hence, evidence of PW 21 disbelieved. Kantilal* v. *State of Gujarat*, (2002) 10 SCC 39: 2003 SCC (Cri) 1408: AIR 2003 SC 684: 2003 Cri LJ 850.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-12-2002]

[1662] — Ss. 161 and 154 — Delayed recording of statement of witnesses — Effect — *Dacoity with murder at night — Appreciation of evidence — Infirmities in prosecution case — Manner of dacoity and participation of accused doubtful — Long-standing dispute between parties — False implication — Likelihood of — Discrepancy between alleged eyewitness' version regarding weapons used by accused in the crime and medical evidence, according to which the corresponding injuries sustained by the victims not caused by those weapons — Discrepancy between evidence of alleged eyewitnesses and investigating officer regarding manner in which door was opened by the*

(7) Delay in questioning/examining witness/recording of statement under *(contd.)*

accused for entering into victims' room — Delay in recording statements of two PWs by police, on facts, created a strong doubt to accept their evidence that they were eyewitnesses — Though these PWs claimed to have suffered injuries in the incident, investigating officer did not say that next morning when he visited the place of occurrence, he found any injury on them — Identification of accused persons in light of a lantern was doubtful — Accused persons included an old man aged about 74 years as well as a boy aged 13 years — Accused neighbours of the informant with whom family of the informant having long-standing dispute — Held, possibility of false implication of accused persons on account of long-standing enmity utilising the incident of dacoity cannot be ruled out — High Court rightly acquitted the accused (Paras 12 to 21). *Shrishti Narain Jha* v. *Bindeshwar Jha*, (2009) 6 SCC 457.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

[1663] — S. 161 — Investigation — Delay in examining witness — *When presence of the witness at the time and scene of occurrence and his scribing the dying declaration are not in doubt, held, lapse on the part of the investigating officer in recording the statement of the eyewitness will not render outright rejection of the prosecution evidence — Penal Code, 1860 — Ss. 302, 395, 396 and 397. Nanhau Ram* v. *State of M.P.*, 1988 Supp SCC 152: 1988 SCC (Cri) 342: AIR 1988 SC 912: (1988) 2 Crimes 936.

Bench Strength 2. Coram: *A.P. Sen* and **B.C. Ray**, JJ. [Date of decision: 24-2-1988]

[1664] — Ss. 161 and 154 — Delay in offering statement for being recorded by the police — Circumstances stated by the witnesses concerned for such delay whether correct — *Finding recorded by the courts below in this regard being one of fact, held, not subject to interference by the Supreme Court in an appeal under Art. 136 — Penal Code, 1860 — S. 302 and S. 34*

Statements of both the witnesses under Section 161 CrPC were recorded on 8-1-1984, although, the first information report was lodged on 6-1-1984 at about 7.55 p.m. within the shortest possible time. Both these witnesses in their evidence on oath had stated that they were scared of the appellant and his associates who had identified them at the time of the incident. They admitted that they quietly went to their respective houses and did not disclose the fact of assault caused on *R* to anybody. They further admitted that although they attended the funeral and were in the company of the bereaved members of the family yet they did not disclose the fact of assault by the appellant on *R* to anybody. They then stated that only when the appellant came to be arrested on 8-1-1984, they came forward for recording of their statements under Section 161 CrPC. Both the courts below have considered these circumstances very carefully and concurrently held that the apprehension expressed by both these witnesses could not be said to be untrue. This being a finding of fact, it would not be possible for the Supreme Court to interfere with the said finding in an appeal filed under Section 136 of the Constitution. *Naresh Mohanlal Jaiswal* v. *State of Maharashtra*, (1996) 11 SCC 547: AIR 1997 SC 1523.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 9-10-1996]

[1665] — S. 161 — Delay in making statement under, may render evidence unreliable. *Kehar Singh* v. *State (Delhi Admn.)*, (1988) 3 SCC 609: 1988 SCC (Cri) 711: AIR 1988 SC 1883.

Bench Strength 3. Coram: **G.L. Oza**[1], **B.C. Ray**[2] and **K. Jagannatha Shetty**[3], JJ. [Date of decision: 3-8-1988]

[1666] — S. 161 — Delay in recording statement — *If explained, held, not fatal*

In the instant case, the incident occurred on the night of 14-8-1993/15-8-1993. But the IO recorded the statement of injured eyewitness PW 31 on 29-8-1993. The IO stated that when he arrived at the spot, PW 31 was unable to speak except making moaning noises. PW 31 was thereafter moved to a hospital. Despite various efforts, the IO was not allowed to record the statement of PW 31 as he was semi-conscious. The IO periodically sent his constable to the hospital to find out the condition of PW 31. As soon as he came to know on 28-8-1993 that PW 31 was discharged, the IO recorded his statement on 29-8-1993.

Held :

Unexplained delay in recording the statement may render it suspect, but the High Court cannot make a fetish out of a rule of prudence. Delay in recording the statement of the witness can occur due to various reasons and can have several explanations. It is for the court to assess the explanation and if satisfied, accept the statement of the witness. The facts in the instant case more than adequately explain the delay in recording the statement of PW 31. (Paras 10 and 22). *Prithvi* v. *Mam Raj*, (2004) 13 SCC 279: 2005 SCC (Cri) 198: AIR 2004 SC 2729.

Bench Strength 2. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 19-2-2004]

Balakrushna Swain v. State of Orissa, (1971) 3 SCC 192: 1971 SCC (Cri) 313; State of Orissa v. Brahmananda Nanda, (1976) 4 SCC 288: 1976 SCC (Cri) 596, considered and explained

Mohd. Khalid v. State of W.B., (2002) 7 SCC 334: 2002 SCC (Cri) 1734, relied on

State of Rajasthan v. Mamraj, 1996 Cri LJ 1823 (Raj), reversed

[1667] — S. 161 — Examination of witness by police — Delay — Whether fatal to prosecution — *Held, there is no fixed rule to determine credibility if prosecution case has been affected by delay in recording statements of witnesses by police — This aspect has to be measured in background of facts and circumstances* (Para 23). *Narinder Kumar* v. *State of J&K*, (2010) 9 SCC 259: AIR 2010 SC 3015: 2010 Cri LJ 3905.

Bench Strength **2**. Coram: *Aftab Alam* and **T.S. Thakur**, JJ. [Date of decision: 21-7-2010]

[1668] — S. 161 — Delay in recording statement of the witness — Effect — *Statement of the sole eyewitness, a child aged 7 years, recorded by the IO three days after occurrence and by the Judicial Magistrate six days after the occurrence — Non-explanation for the delay — Trial court taking the view that she was under a great shock and hence her statement was recorded later — Held, such reasoning cannot be sustained in view of the medical certificate certifying her fitness and the prosecution itself stating that after regaining consciousness the following day, she remained fully conscious thereafter* (Para 30). *Jagjit Singh* v. *State of Punjab*, (2005) 3 SCC 689: 2005 SCC (Cri) 893: AIR 2005 SC 913: 2005 Cri LJ 955.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **B.P. Singh**, JJ. [Date of decision: 18-1-2005]

[1669] — S. 161 — Delay in recording statement of witness — Effect — *Prosecution relying on evidence of two police officials whose statements under S. 161 CrPC were recorded after about 4-1/2 months — No explanation offered for such a long delay — Both the witnesses even after knowing that the deceased left along with the appellants and was admitted in the hospital in an injured condition not coming forward to tell about this fact — Held, in the circumstances of the case, it is not safe to accept their evidence on the circumstance that the deceased was last seen alive in the company of the appellants. Paramjit Singh* v. *State of Punjab*, (1997) 4 SCC 156: 1997 SCC (Cri) 486: AIR 1997 SC 1614: (1997) 34 ACC 272.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 10-12-1996]

[1670] — S. 161 — Delay in recording statement of witnesses — No question put to investigating officer specifically as to why there was delay — *On the contrary, witnesses themselves indicated why there was delay — Held, plea regarding delay in recording statement had no substance* (Para 14). *Sunil Kumar* v. *State of Rajasthan*, (2005) 9 SCC 283: AIR 2005 SC 1096: 2005 SCC (Cri) 1230: 2005 Cri LJ 1402.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-1-2005]

[1671] — S. 161 — Delay in questioning of witness by police — Though this would not by itself render the evidence unreliable, but while testing its credibility and intrinsic worth court should scrutinise the evidence strictly — *When witness was available to the police since the time of occurrence, non-examination of such witness at the earliest casts reflection on the conduct of investigation*

Merely because a witness was examined after a considerable period from the date of occurrence his evidence need not be discarded on that ground alone but at the same time while testing the credibility and assessing the intrinsic worth of such witnesses the delay in their examination by the police has to be borne in mind and their evidence would require a stricter scrutiny before being accepted.

When a witness who happened to be a resident of the locality where the incident occurred and took an active part in rescuing the injured persons from the burnt house in the presence of the police and then accompanied them to the hospital and was also available at the hospital when the police had come but for some mysterious reasons the police did not choose to ask him anything about the occurrence, then this conduct on the part of the investigation is highly reprehensible and indicates the callousness on the part of the investigating agency in carrying out the investigation in the case. *Mohd. Iqbal M. Shaikh* v. *State of Maharashtra*, (1998) 4 SCC 494: 1998 SCC (Cri) 1064: AIR 1998 SC 2864.

Bench Strength **2**. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 15-4-1998]

[**Ed.**: *See also* (1996) 7 SCC 194.]

[1672] — S. 161 — Delay in examination of PW 4, an injured witness — *Defence plea that incident occurred on 29-1-1977 but PW 4 was examined on 30-1-1977 and, therefore, injury said to have been sustained by him was manufactured — In view of the fact that the FIR was lodged on 29-1-1977 itself without any delay and it was mentioned therein that the accused T attacked PW 4 with a lathi, held, the said contention was liable to be rejected*

(7) Delay in questioning/examining witness/recording of statement under *(contd.)*

The FIR was lodged on 29-1-1977 itself and it is mentioned in the FIR that the accused *T* attacked PW 4 with a *lathi*. It is noticed that the FIR was lodged with no loss of time and, therefore, it cannot be said that since the injured PW 4 was examined on 30-1-1977, the injury was manufactured by the prosecution subsequently. (Para 16)

Both the trial court and the High Court also found that the accused party was the aggressor. (Para 17). *Mohar* v. *State of U.P.*, (2002) 7 SCC 606: 2003 SCC (Cri) 121: AIR 2002 SC 3279.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **H.K. Sema**, JJ. [Date of decision: 17-9-2002]

[1673] — S. 161 — Delay in examination of witnesses — By itself does not render prosecution case suspect — *Unless explanation for delay is called for, defence cannot derive any advantage from delay — Explanation for the delay if accepted by court as plausible, interference with such conclusion not called for*

Unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness, the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion. There is no justifying reason or ground substantiated on behalf of the appellants to interfere with the concurrent findings recorded by both the courts based on relevant, cogent and trustworthy evidence adduced by the prosecution to prove the guilt of the appellants beyond reasonable doubt. (Para 17). *Banti* v. *State of M.P.*, (2004) 1 SCC 414: 2004 SCC (Cri) 294: AIR 2004 SC 261: 2004 Cri LJ 372.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 4-11-2003]

Ranbir v. State of Punjab, (1973) 2 SCC 444: 1973 SCC (Cri) 858; Bodhraj v. State of J&K, (2002) 8 SCC 45: 2003 SCC (Cri) 201, relied on

[1674] — S. 161 — Delay in examining eyewitnesses — Effect — *Held, that by itself cannot be a ground to discard their testimony, more so, when in the cross-examination of the witnesses, nothing tangible had been brought out to impeach their testimony (Para 6). Ramesh* v. *State of M.P.*, (2000) 1 SCC 243: 2000 SCC (Cri) 206: AIR 1999 SC 3759: 1999 Cri LJ 4603.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *N. Santosh Hegde*, JJ. [Date of decision: 16-9-1999]

[1675] — S. 161 — Delay in examining eyewitnesses by the Investigating Officer, can on the peculiar facts of a case, amount to serious infirmity in the prosecution case. *Ganesh Bhavan Patel* v. *State of Maharashtra*, (1978) 4 SCC 371: 1979 SCC (Cri) 1: AIR 1979 SC 135: 1979 Cri LJ 51.

Bench Strength **3**. Coram: *Y.V. Chandrachud, C.J.* and **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 18-10-1978]

[1676] — S. 161 — Delay in recording statement of eyewitness (PW 31, a child of about 13 years) who sustained a serious head injury — *Explanation that after the incident, PW 31 was unable to speak except making moaning noises — Non-production of record from hospital to show inability of PW 31 to speak — Effect — Doctor, IO and neighbours unanimously saying that PW 31 was unable to communicate, though he was able to comprehend what was being asked — Held, High Court erred in disbelieving IO due to non-production of the said record — Though witness was in a position to write, held, in the circumstances of the case it was inhuman to expect IO to interrogate the child at that stage and ask him to write down what he knew — Hence, High Court erred in finding fault with IO on the ground that he did not take a statement in writing from PW 31* (Paras 12 to 14). *Prithvi* v. *Mam Raj*, (2004) 13 SCC 279: 2005 SCC (Cri) 198: AIR 2004 SC 2729.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 19-2-2004]

[1677] — S. 161 — Statement of witness — Delay in recording of, by police — Reliability of statement — *Held on facts, was still reliable because delay was due to utter confusion which prevailed at initial stages of investigation*

The trial court acquitted the appellant on the ground that prosecution could not establish its case beyond reasonable doubt. However, the High Court in appeal convicted the appellant of rape and murder. The appellant filed appeal in the Supreme Court.

Dismissing the appeal insofar the appellant's conviction under Sections 302 and 376 IPC, was concerned,

Held :

Right from the year 1994 to January 1996, that is, a few days before the murder, the appellant had been continuously harassing the deceased and that this allegation has been proved by ocular and documentary evidence. The appellant had been seen in the Faculty of Law, University of Delhi on the morning of the incident and had no business to be present at that place as he had passed out in the year 1994. He was also seen by PW 2 Shri Kuppuswami outside the house of the deceased at about 5 p.m. and was carrying a helmet with an intact fixed visor, and was seen moving out of Vasant Kunj Colony by two witnesses soon after 5 p.m. (though these witnesses ultimately turned hostile). The only argument against PW 2 is that his statement under Section 161 of the Code of Criminal Procedure had been recorded after three days. There is nothing adverse in this matter as there was utter confusion in the investigation at the initial stage. Moreover, PW 2 was a next neighbour and a perfectly respectable witness with no bias against the appellant. (Para 50)

In addition, the recovery of the helmet with a broken visor and the recovery of glass pieces apparently of the visor from near the dead body and the fact that the appellant himself sustained injuries while mercilessly beating the deceased with his helmet and causing 19 injuries including three fractured ribs, are other circumstances with regard to the murder. Assuming, therefore, for a moment, that there was some uncertainty about the rape, the culpability of the appellant for the murder is nevertheless writ large. (Para 51). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength 2. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

[1678] — S. 161 — Delay in recording statements of witnesses under — *On facts held not fatal — The fact that on account of lack of fairness on the part of the investigating officer the supervising officer transferred the investigation to another officer who after taking charge recorded the statements under S. 161, rightly held by High Court to be a sufficient explanation of 5 or 6 days' gap between the date of the incident and the date of recording of the statements. Dukhmochan Pandey* v. *State of Bihar*, (1997) 8 SCC 405: AIR 1998 SC 40.

Bench Strength 2. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 25-9-1997]

[1679] — S. 161 — Delay (of 2 1/2 months) in recording statement of a witness — *Does not invariably render the testimony of the witness doubtful though evidence has to be scanned carefully — Each case has to be considered on its own facts — If witness is found to be natural and truthful his evidence need not be doubted due to delay. Ganeshlal* v. *State of Maharashtra*, (1992) 3 SCC 106: 1992 Cri LJ 1545.

Bench Strength 2. Coram: *N.M. Kasliwal* and **K. Ramaswamy**, JJ. [Date of decision: 10-4-1992]

[1680] — S. 161 — Delay of about 24 days in examining the witness due to IO's involvement in other duties relating to the upkeep of law and order — *Held, on facts, inconsequential. State of U.P.* v. *Sikandar Ali*, (1998) 4 SCC 298: 1998 SCC (Cri) 926: AIR 1998 SC 1862: 1998 All LJ 1310.

Bench Strength 3. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas** and *S. Rajendra Babu*, JJ. [Date of decision: 3-4-1998]

[1681] — S. 161 — Delay of about 50 days in recording the statement of witnesses after the incident — Absence of any acceptable explanation therefor — Effect — *Conviction based on the testimony of two eyewitnesses (PWs 1 and 7) who did not support the prosecution case — No statement of PW 1 regarding actual participation of appellants in attack and absence of identification of accused persons by PW 7 — No acceptable explanation for the delay of about 50 days in recording the statement of PWs 1 and 7 after the incident — There was hardly any evidence worth acceptance regarding identification of the dead body — Thus, the findings of the courts below that the prosecution through the evidence of PWs 1 and 7 succeeded in establishing beyond reasonable doubt that the appellants were responsible for the murder of the deceased, held, could not be sustained — Penal Code, 1860 — Ss. 302/149, 307/149 and S. 148* (Paras 4 to 6). *Jai Pal* v. *State of U.P.*, (2003) 9 SCC 41: AIR 2003 SC 1012: 2003 Cri LJ 1243.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 31-1-2003]

[1682] — S. 161 — Delay of about 56 days in recording police statement — *Clear, cogent and satisfactory explanation for the delay given by prosecution — Trial court and High Court accepting the explanation — In the circumstances, held, concurrent findings need not be interfered with. Lalli* v. *State of W.B.*, (1986) 2 SCC 409: 1986 SCC (Cri) 174: AIR 1986 SC 990: 1986 Cri LJ 1083: 1986 ALJ 768.

Bench Strength 2. Coram: **D.P. Madon** and *B.C. Ray*, JJ. [Date of decision: 11-3-1986]

[1683] — S. 161 — Unwarranted delay in recording statement of witness and non-mentioning of names of accused allegedly seen by him in said statement — Effect — *PW 3 (injured witness) not mentioning the names of appellants in his statement to police — Further, his statement recorded on the next day of the incident — Considering the said omission and the unwarranted delay in recording the statement, held, testimony of PW 3 not liable to be relied on* (Para 7). *Maruti Rama Naik* v. *State of Maharashtra*, (2003) 10 SCC 670: AIR 2003 SC 3884: 2003 Cri LJ 4326.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 9-9-2003]

(7) Delay in questioning/examining witness/recording of statement under *(contd.)*

[1684] — S. 161 — Delay of two days in questioning the eyewitnesses (son and widow of deceased) by IO — *Held, was a serious mistake on the part of the prosecution — High Court did not err in disbelieving these witnesses* (Para 6). *Vijaybhai Bhanabhai Patel* v. *Navnitbhai Nathubhai Patel*, (2004) 10 SCC 583: 2004 SCC (Cri) 2032: 2004 Cri LJ 3832.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 26-3-2004]

[1685] — S. 161 — Delayed recording of statements of young witnesses after 3/4 days, held, cannot be doubted simply because they took help rather than themselves immediately helping their injured relations — *Eyewitnesses **A** (19 years of age) and **RP** (14 years of age) being close relatives of deceased **SU** left her injured body unattended and went to inform **SR** (the grandfather of **SU**) and their statement was recorded after three/four days — This conduct of **A** and **RP**, on facts held, is not suspicious or unnatural even if there was no independent corroboration — At the time of the occurrence of the crime, **A** was about 19 years of age whereas **RP** was hardly 14 years of age*

Though Section 161 CrPC statements of *A* and *RP* was recorded three or four days after the incident, they had not taken the injured/deceased persons immediately to the hospital inspite of being close relatives of deceased *SU* and there was no independent corroboration of their statements, the conduct of these two children (*A* and *RP*), in the circumstances, was not suspicious or unnatural. At the time of the occurrence of the crime, *A* was about 19 years of age whereas *RP* was hardly 14 years of age. Both these witnesses, as earlier stated, on seeing the appellant giving repeated knife-blows on some parts of neck, head and back of *SU* and inflicting severe injuries to *SA* and *N*, they immediately rushed to the house of *SR* and promptly reported the entire incident to him. These witnesses have withstood the cross-examination with courage and boldness and their testimony could not be impeached by the defence in regard to the genesis of the incident. The eyewitnesses have no animus against the appellant to implicate him in a false case and leaving the real assailant from the clutches of law. In the circumstances, no fault can be found in regard to the conduct of these witnesses. This contention raised deserves to be rejected. (Paras 43, 44, 53 and 65). *Mahesh* v. *State of Maharashtra*, (2008) 13 SCC 271: (2008) 67 AIC 219 (SC): 2008 Cri LJ 3602.

Bench Strength **2**. Coram: *P.P. Naolekar* and **L.S. Panta**, JJ. [Date of decision: 10-4-2008]

[1686] — S. 161 — Inordinate delay in examination of witness by police — Delay not explained — *Simply on that ground the convincing and reliable evidences given by the eyewitnesses cannot be discarded. Krishna Pal (Dr.)* v. *State of U.P.*, (1996) 7 SCC 194: 1996 SCC (Cri) 249: AIR 1996 SC 733.

Bench Strength **2**. Coram: *G.N. Ray* and *G.T. Nanavati*, JJ. [Date of decision: 30-11-1995]

[1687] — S. 161 — Three months' delay in recording statement of witness — *Adverse effect of* (Para 13). *Dasari Siva Prasad Reddy* v. *Public Prosecutor, High Court of A.P.*, (2004) 11 SCC 282: AIR 2004 SC 4383.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 20-8-2004]

Prabhakar Jasappa Kanguni v. State of Maharashtra, (1982) 1 SCC 426: 1982 SCC (Cri) 240, distinguished on facts

[1688] — S. 161 — Unexplained delay of three months in recording statement of witness — *Adverse effect of* (Para 13). *Harjinder Singh* v. *State of Punjab*, (2004) 11 SCC 253: AIR 2004 SC 3962: (2004) 21 AIC 887 (SC): 2004 Cri LJ 3854.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 27-7-2004]

(8) Other issues/infirmities

[1689] — S. 161 — Delay in sending statements of eyewitnesses recorded by IO to court — Effect — *Held, mere delay would not per se make their evidence unacceptable unless something glaring is brought on record to doubt their presence at place of occurrence — Effect of delay in sending vital documents to court would have to be assessed and appreciated on facts and circumstances of each case — In the instant case, two consecutive murders had rocked the entire city and widespread bandobasth was arranged in surrounding areas — In such circumstances, IO cannot be faulted for such delay — Moreover, IO was in charge of maintaining law and order in the area, which fact satisfactorily explained the delay* (Paras 27 to 34). *Abu Thakir* v. *State of T.N.*, (2010) 5 SCC 91.

Bench Strength **2**. Coram : **B. Sudershan Reddy** and S.S. Nijjar, JJ. [Date of decision : 19-4-2010]

Thulia Kali v. State of T.N., (1972) 3 SCC 393: 1972 SCC (Cri) 543; Marudanal Augusti v. State of Kerala, (1980) 4 SCC 425: 1980 SCC (Cri) 985, distinguished on facts

Karunakaran, In re, 1975 Cri LJ 798 (Mad): 1974 Mad LW (Cri) 190, considered

[1690] — S. 161 — Failure of IO to put the date on which statement of witness was taken — *Effect of, on testimony of that witness — IO explaining that he had forgotten to mention the same — Held, High Court erred in giving importance to the said fact while disbelieving the said witness* (Para 19). *Prithvi* v. *Mam Raj*, (2004) 13 SCC 279: 2005 SCC (Cri) 198: AIR 2004 SC 2729.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 19-2-2004]

[1691] — S. 161 — Deliberate non-examination of S who was present at scene of offence alleged — *S examined during course of investigation, his statement under S. 161 CrPC recorded, and he was even cited as PW — Moreover, during trial summons also issued to him which could not be served as he had left India — Police while filing charge-sheet naming him in list of witnesses — Held, clearly shows that prosecution had every intention of examining him — To contend that S was deliberately not examined by prosecution is absolutely baseless* (Para 229). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

Varkey Joseph v. State of Kerala, 1993 Supp (3) SCC 745: 1993 SCC (Cri) 1117, distinguished

[1692] — Ss. 161 and 482 — Date of recording statement of witness missing — Before recording a finding on such omission the investigating agency must be given opportunity to explain — *High Court not justified in putting its assessment under S. 482*. *Radhey Shyam* v. *Kunj Behari*, 1989 Supp (2) SCC 572: 1990 SCC (Cri) 194: AIR 1990 SC 121.

Bench Strength **3**. Coram: *E.S. Venkataramiah, C.J.* and *K.N. Singh* and **S. Natarajan**, JJ. [Date of decision: 17-10-1989]

Mohd. Akbar Dar v. State of J&K, 1981 Supp SCC 80, relied on

[1693] — S. 162 — Statement recorded in language not known to the accused (English), but read over, translated and explained to the maker in the language know to him (Tamil) — *In the circumstances held, no infirmity caused. CCE* v. *C. Fernandes*, (1982) 3 SCC 512: 1983 SCC (Cri) 109.

Bench Strength **3**. Coram: **O. Chinnappa Reddy**, *A.P. Sen* and *Baharul Islam*, JJ. [Date of decision: 22-7-1981]

[1694] — Ss. 162 and 313 — Circumstantial evidence — Defective investigation — Co-accused not examined under S. 313 CrPC but his statement only was recorded by police — *Held, not admissible — Terrorist And Disruptive Activities (Prevention) Act, 1987, S. 3(2)(i)*

The so-called statement of the co-accused that *D* was kidnapped by the appellant-accused is not at all admissible having been made before a police officer while in custody and in the course of alleged interrogation by PW 4. The deposition of PW 4 about the alleged occurrence is also not admissible in evidence because he also admitted that he did not send the said co-accused to any Magistrate for recording his statement. (Para 14). *Ganesh Gogoi* v. *State of Assam*, (2009) 7 SCC 404: (2009) 3 SCC (Cri) 421: (2009) 80 AIC 267 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **A.K. Ganguly**, JJ. [Date of decision: 7-7-2009]

(9) Dying declaration

See also under S. 164

See also under CRIMINAL TRIAL in Vol. 3

See also S. 32, EVIDENCE ACT, 1872

[1695] — S. 161 — Dying declaration — Meaning of — Principles governing and reasons behind its admission in evidence, restated — Reliance upon — Propriety — *On facts, Head Constable (PW 20) testifying that deceased was fully conscious when brought to police station and it was deceased who lodged complaint which was recorded by him — PW 20 also recorded statement of deceased under S. 161 CrPC — Bed-head ticket of hospital showed that when deceased was brought he was conscious and his general condition was satisfactory — These materials, held, were sufficient to discard stand of accused persons that deceased was unconscious when brought to hospital — As deceased died, relying on evidence of PW 20, trial court and High Court treated first information report to be in the nature of dying declaration along with statement of deceased — In both these statements the three accused persons were named as assailants — Trial court and High Court analysed evidence in great detail and found that prosecution established its stand because of dying declaration — Hence, in view of factual scenario as analysed and principles set out, held, trial court and High Court were justified in finding accused persons guilty — Penal Code, 1860 — S. 304 Pt. I r/w S. 34 — Evidence Act, 1872 — S. 32(1)*. *Dashrath* v. *State of M.P.*, (2007) 12 SCC 487: (2008) 3 SCC (Cri) 254: AIR 2008 SC 316.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 24-10-2007]

P.V. Radhakrishna v. State of Karnataka, (2003) 6 SCC 443: 2003 SCC (Cri) 1679, relied on

[1696] — S. 161 — Inconsistencies between dying declaration and evidence of eyewitnesses — Omissions in statement of eyewitnesses — Effect — *Accused assaulting deceased with rifles, guns and lathis — Out of the four persons who died from prosecution side, one rushing in injured position to police station and after getting himself examined under S. 161 CrPC, dying the next day in hospital — Statement made by deceased to police, which was treated as dying declaration, and evidence of sole eyewitness forming basis for conviction by Sessions Court and its subsequent affirmation by High Court — On facts, held, detailed account of occurrence could not be expected from a severely injured person, particularly, when he died the next day — Omissions in*

(9) Dying declaration *(contd.)*

statement of eyewitness under S. 161 CrPC not found so material as to impeach the version of the prosecution — Prosecution case proved beyond reasonable doubt — Impugned order not interfered with — Penal Code, 1860 — Ss. 302/34 — Evidence Act, 1872 — S. 32. Laljit Singh v. *State of U.P.*, 2000 SCC (Cri) 1501: AIR 2000 SC 3594.

Bench Strength 3. Coram: *G.B. Pattanaik, R.P. Sethi* and *Shivaraj V. Patil*, JJ. [Date of decision: 6-4-2000]

[1697] — S. 161 — PWs not mentioning about dying declaration in their statement under — Effect — *Fact that the deceased made a dying declaration implicating the appellant as assailant stated by PWs for the first time in court — Veracity of the said fact, held on facts, doubtful — Evidence Act, 1872 — S. 32(1)*

The important fact that the deceased did make a statement implicating the appellant as the assailant, was not made to IO when their statements were first recorded. Their stating for the first time before the court this fact raises some doubts as to the veracity of the said fact. Taking into consideration the nature of injuries suffered and the prosecution evidence itself that the deceased while being taken to the hospital had become unconscious, it is not safe to rely upon the evidence of these witnesses who have made this important statement as to the dying declaration for the first time before the court. While holding so, it has been kept in mind that all these witnesses are very closely related to the deceased. (Para 6). *Khalil Khan* v. *State of M.P.*, (2003) 11 SCC 19: 2004 SCC (Cri) 1052: AIR 2003 SC 4670.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 8-10-2003]

[1698] — Ss. 161 and 162(2) — Statement made under S. 161 can be used under S. 32(1) of the Evidence Act — Dying declaration — Deceased woman mentioning part of the name of the accused in FIR wrongly — *Clarificatory statement made by her under S. 161 CrPC — Admissibility of such clarificatory statement under S. 32(1) — Held, words "statement as to any of the circumstances" under S. 32(1) are by themselves capable of expanding the width and contours of the scope of admissibility of dying declaration — Anything which has nexus with the death of the deceased, proximate or distant, direct or indirect, can also fall within the purview of S. 32(1) — Further, held that after the death of a person, the endeavour should be how to include his statement within the sweep of S. 32(1) and not how to exclude it therefrom — Identity of accused proved on record — Correction in name of accused made by deceased under S. 161 CrPC, held, admissible under S. 32(1) — Words and Phrases — "Statement as to any of the circumstances" — Evidence Act, 1872 —* S. 32

There is little dispute on the fact situation that one assailant had set the deceased ablaze at the time and place mentioned in her statements. The name of the appellant, his scooter No. and the name of the father-in-law are the three specifications regarding the identity of the appellant accused which could be discerned from the statements made by the deceased to PW 5 (husband), PW 1 (Executive Magistrate) and PW 3, a pedestrian. The Prosecution was able to place materials to show that all the above three identifying features are referring to the appellant. (Paras 12 and 22)

The statement made by the deceased woman in the FIR, where she wrongly mentioned the second part of the name of the accused, had been clarified by her by giving a clarificatory statement under S. 161 CrPC, which is inextricably intertwined with the episode in which she was burnt and eventually died of such burns. (Para 32)

The provisions under S. 32(1) relates to the statement made by a person before his death. Two categories of his statements are made admissible in evidence and further made as substantive evidence. They are: (*1*) his statement as to the cause of his death; (*2*) his statement as to any of the circumstances of the transaction which resulted in his death. The second category can envelop a far wider amplitude than the first category. The words "statement as to any of the circumstances" are by themselves capable of expanding the width and contours of the scope of admissibility. When the word "circumstances" is linked to "transaction which resulted in his death" the sub-section casts the net in a very wide dimension. Anything which has a nexus with his death, proximate or distant, direct or indirect, can also fall within the purview of the sub-section. As the possibility of getting the maker of the statements in flesh and blood has been closed once and for all, the endeavour should be how to include the statement of a dead person within the sweep of the sub-section and not how to exclude it therefrom. Admissibility is the first step and once it is admitted the court has to consider how far it is reliable. Once that test of reliability is found positive the court has to consider the utility of that statement in the particular case. (Para 29)

Therefore, having regard to the aforesaid facts and reasons, the clarificatory statement made by the deceased to the investigating officer under Section 161 CrPC would fall within the ambit of Section 32(1) of the Evidence Act. (Para 32). *Patel Hiralal Joitaram* v. *State of Gujarat*, (2002) 1 SCC 22: 2002 SCC (Cri) 1: AIR 2001 SC 2944: (2002) 1 Guj LR 248.

Bench Strength 2. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 18-10-2001]

Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487; Rattan Singh v. State of H.P., (1997) 4 SCC 161: 1997 SCC (Cri) 525, relied on

[1699] — Ss. 161, 162 and 164 — Recording of dying declaration — Mode of — *IO recording statements in hospital of two injured persons sustaining burn injuries — Answers not in question-answer form, doctors certifying they were in a fit state of health to have their statements recorded only at the end of recording the statements — Also statements not recorded in presence of Magistrate — Effect — Held, treating the said statements as dying declarations, questionable — Evidence Act, 1872 — S. 32(1)* (Paras 33, 34 and 36). *C. Magesh* v. *State of Karnataka*, (2010) 5 SCC 645.

Bench Strength 2. Coram : V.S. Sirpurkar and **Deepak Verma**, JJ. [Date of decision : 30-4-2010]

[1700] — S. 161 — Dying declaration recorded by police officer — Whether deceased was in conscious and fit condition at the time of recording her statement — *Vital organs of the body not affected in the attack on the deceased — Having regard to the nature of injuries sustained by the deceased, medical evidence also confirming possibility of the deceased remaining fully conscious at the time of recording the statement — Medical evidence also corroborating deceased's statement as regards how she was attacked, the weapons used in the attack and the injuries inflicted — Police officers also confirming the conscious state of the deceased at the time of recording the statement — Initial registration of the case under S. 307, IPC on the basis of FIR lodged by the deceased herself and subsequent alteration of the case to that under S. 302, IPC lending further support to the prosecution case — Held, dying declaration acceptable and High Court erred in rejecting the same relying on a stray statement of a witness — Evidence Act, 1872 — S. 32(1). State of U.P.* v. *Chet Ram*, (1989) 2 SCC 425: 1989 SCC (Cri) 388: AIR 1989 SC 1543: 1989 Cri LJ 1785.

Bench Strength 2. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 28-3-1989]

Padam Meher v. State of Orissa, 1980 Supp SCC 434: 1981 SCC (Cri) 362; Darshan Singh v. State of Punjab, (1983) 2 SCC 411: 1983 SCC (Cri) 523, distinguished

[1701] — Ss. 162 and 164 — Evidentiary value of dying declaration where the maker survives — *Held, when a witness making a dying declaration survives, said dying declaration does not remain substantive evidence — However, where such dying declaration is recorded by Magistrate, it can be used to corroborate oral evidence of such witness — But where such statement is recorded by a police officer, its user is barred under S. 162 CrPC — On facts held, dying declaration of PW 1 was voluntary, truthful and uninfluenced by any other factor and can be used for corroborating her oral evidence — Evidence Act, 1872, Ss. 32(1) and 157* (Paras 20, 21 and 31). *Sunder Singh* v. *State of Uttaranchal*, (2010) 10 SCC 611.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *A.K. Patnaik*, JJ. [Date of decision: 16-9-2010]

Ramprasad v. State of Maharashtra, (1999) 5 SCC 30: 1999 SCC (Cri) 651, followed

[1702] — S. 161 — Statement of the injured recorded under S. 161 CrPC in hospital during course of investigation — After death of the injured that statement admitted under S. 32(1), Evidence Act, 1872 — *Some portions of the statement verbatim reproduction of statement of the deceased's companion recorded by police prior to recording of the statement of the deceased — Both the statements containing minute details such as registration number of the jeep of the accused, though the deceased was unconscious throughout the previous day — Errors such as wrong name of accused's father mentioned in the earlier statement of the deceased's companion also crept in the latter statement of the deceased — Held, the alleged dying declaration cannot be relied upon nor can any conviction be based upon it. Baldev Singh* v. *State of Punjab*, (1990) 4 SCC 692: AIR 1991 SC 31.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 18-9-1990]

[1703] — S. 161 — Dowry death — Conviction reversed — Appellants allegedly sprinkled kerosene on deceased and set her ablaze — Dying declarations recorded by doctor and by investigating officer (IO) — *Dying declaration made to IO supported by evidence of PWs 3 and 7 — High Court in appeal against conviction by trial court discarded dying declaration recorded by doctor, available in form of a xerox copy — High Court discarding the same as there was no evidence to show that original had been destroyed and thus*

(9) **Dying declaration** *(contd.)*

said, document could not be taken in evidence as secondary evidence — High Court, however, confirmed conviction relying on dying declaration recorded by IO, supported by PWs 3 and 7 — Dying declaration recorded by IO, not endorsed by doctor present there — Statement of doctor treating the injured, regarding fitness to make a statement, also not recorded therein — Statements of PWs 3 and 7, allegedly supporting said dying declaration, found doubtful — Lastly, capacity of injured to make a statement found doubtful — Hence, held, no reliance can be placed on such dying declaration recorded by IO — No presumption in favour of prosecution arises in case of murder — Evidence Act, 1872, Ss. 32(1) and 65 — Penal Code, 1860 — Ss. 302/34, 304-B/34 and 498-A (Paras 9 to 14). *Brundaban Moharana* v. *State of Orissa*, (2010) 13 SCC 381.

Bench Strength **2**. Coram: *H.S. Bedi* and *R.M. Lodha*, JJ. [Date of decision: 28-9-2010]

[1704] — S. 162 — Bride-burning — Dying declaration — Veracity of — Declarant and recorder of dying declaration not speaking the same language and said declaration being recorded with aid of translator — *Declaration if vitiated thereby — Presence of someone (the doctor in this case) other than translator, knowing both languages concerned, confirming correctness of translation — Appellant-accused not contending that recorder of said declaration recorded statement wrongly and no suggestion was put to said recorder to show that translator had in any way interfered with truthful recording of statement — Hence, held, veracity of dying declaration established — Penal Code, 1860 — Ss. 302 and 498-A — Dowry Prohibition Act, 1961 — Ss. 3 and 6 — Evidence Act, 1872 — S. 32*

PW 8 who recorded the first dying declaration deposed before the court that he asked the questions in Kannada and PW 21 translated the same and explained it to deceased *S* and thereafter she gave the answers in Telugu and the answers were repeated by PW 21 and confirmed by the doctor who was present and who knew both Kannada and Telugu. The appellants had no case that PW 8 recorded the statement wrongly and no suggestion was put to this witness to show that PW 21 had in any way interfered with the truthful recording of the statement of PW 8. (Para 5)

The second dying declaration Ext. P-13 was recorded on the next day and at that time burn injuries must have aggravated and she must have not been in a position to put her signature therefore there is no merit in the allegation that Ext. P-4, the first dying declaration contains signatures of deceased *S* whereas in Ext. P-13 statement recorded by PW 18, the signature of the deceased *S* does not find a place. (Paras 6 and 5). *Srinivasa* v. *State*, (2005) 9 SCC 327: 2005 SCC (Cri) 1249.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 12-8-2004]

[1705] — S. 162(2) — Dying declaration — Credibility — Police personnel, if may record — *Held, there is no mandatory requirement that dying declaration has to be recorded by any designated or particular person — It is only to eliminate chances of any doubt or false implication by prosecution, that such declaration should be recorded by a Magistrate or by a doctor — Dying declaration recorded by Head Constable — Head Constable received intimation from hospital and went to hospital — Dying declaration recorded by him after victim was declared fit to make statement by doctor — Mere fact that doctor had declared victim fit to make a statement does not mean that there was no imminent danger of death — Explanation rendered by prosecution as to non-recording by Magistrate was that condition of victim was worsening at Government Hospital, Palwal, therefore, he shifted to Safdarjung Hospital, New Delhi, where he died — Held, Head Constable was competent to record dying declaration — Statement read over to injured, his signatures were obtained after he found statement as correct — He was able to specify role of each accused in the occurrence — Dying declaration was clear and unambiguous about role of appellant and fully corroborated by medical evidence — There was no reason for deceased to make a false statement — Conviction confirmed — Evidence Act, 1872, S. 32(1)* (Paras 14 to 20 and 22 to 25). *Dhan Singh* v. *State of Haryana*, (2010) 12 SCC 277.

Bench Strength **2**. Coram: *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision: 22-7-2010]

Dalip Singh v. State of Punjab, (1979) 4 SCC 332: 1979 SCC (Cri) 968, relied on

Cherlopalli Cheliminabi Saheb v. State of A.P., (2003) 2 SCC 571: 2003 SCC (Cri) 659; Kanti Lal v. State of Rajasthan, (2004) 10 SCC 113: 2004 SCC (Cri) 1760, distinguished

State (Delhi Admn.) v. Laxman Kumar, (1985) 4 SCC 476: 1986 SCC (Cri) 2, cited

[1706] — S. 162 — Dying declaration — Evidentiary value of — *If conviction can be based solely on*

It is well settled that if the truthfulness or otherwise of the dying declaration cannot be doubted, the same alone can form the basis of conviction of an accused and the same does not require any corroboration, whatsoever, in law. (Para 3). *Ravi* v. *State of T.N.*, (2004) 10 SCC 776.

Bench Strength **2**. Coram: *B.N. Agrawal* and *H.K. Sema*, JJ. [Date of decision: 21-7-2004]

[1707] — S. 162 — Dying declaration — Veracity and reliability of — State of mind of the declarant — Mode of attestation of — *Literate declarant not signing declaration but only putting thumb impression — Held, veracity of recording of dying declaration cannot be doubted in any manner on the ground of dying declaration not having been signed even though the declarant was literate — On facts, doctor concerned had not only certified the fitness of the state of mind of declarant at foot of said declaration, but on a specific query pertaining thereto raised by Magistrate in court, had answered in the affirmative, that the declarant was fully conscious and in a state to answer questions put to him* (Paras 4 and 6). *Ravi* v. *State of T.N.*, (2004) 10 SCC 776.

Bench Strength **2**. Coram: *B.N. Agrawal* and *H.K. Sema*, JJ. [Date of decision: 21-7-2004]

Paparambaka Rosamma v. State of A.P., (1999) 7 SCC 695: 1999 SCC (Cri) 1361, held to have been overruled

Laxman v. State of Maharashtra, (2002) 6 SCC 710: 2002 SCC (Cri) 1491, relied on

[1708] — S. 161 — Multiple dying declarations — Second dying declaration — Credibility — Recorded by police officer — Effect — *High Court rejected dying declaration for reason of appellant's presence — No evidence of appellant's presence — Dying declaration was recorded in presence of brother and husband of deceased and they had attested this document as well — A statement recorded under S. 161 CrPC would be treated as dying declaration after death of the maker — High Court's observation that such dying declaration had no evidentiary value, held, erroneous — Evidence Act, 1872, S. 32(1)* (Paras 16, 17 and 19). *Mukeshbhai Gopalbhai Barot* v. *State of Gujarat*, (2010) 12 SCC 224: AIR 2010 SC 3692.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 4-8-2010]

[1709] — S. 162 — Dying declaration — Veracity of, when doubtful — Detailed narration of facts and meticulous attention to detail — Effect — *Three dying declarations recorded — First declaration recorded on date of occurrence, in which case of accidental fire disclosed — Second declaration recorded next day of date of occurrence, in which again case of accidental fire disclosed — Third declaration recorded after more than twenty-four hours of occurrence, running into more than two pages, wherein entire history from date of marriage till date of occurrence given in great detail, and it disclosing case of victim being set on fire after being doused with kerosene — Held, it is not possible to believe such a dying declaration where there is so much narration of facts with meticulous details of everything by a dying person — Third declaration therefore highly doubtful, and an afterthought, especially in view of case disclosed in the earlier two declarations* (Para 3). *Mannulal Sahu* v. *State of M.P.*, (2005) 10 SCC 259: 2005 SCC (Cri) 1510.

Bench Strength **2**. Coram: *B.N. Agrawal* and *H.K. Sema*, JJ. [Date of decision: 18-8-2004]

[**Ed.**: *See also* 2000 SCC (Cri) 1501.]

[1710] — Ss. 162, 161 and 164 — Dying declaration — Omissions and lapses on the part of I.O. — *Statement of the deceased recorded by the Police Sub-Inspector in a routine manner as a complaint and not as a dying declaration — Such statement taken as dying declaration after death of the deceased — Deceased found in a fit state of health to make statement but no dying declaration recorded by the I.O. or the doctor — Evidence of witnesses not suffering from any infirmity which would render the dying declaration as doubtful or unworthy of credence — Held, in the circumstances, lapses on the part of the I.O. should not be taken in favour of the accused — Prosecution evidence should be examined dehors such omissions to find out whether the said evidence is reliable or not — Evidence Act, 1872 — S. 32*

It is true that there is negligence on the part of the investigating officer. On occasions, such negligence or omission may give rise to reasonable doubt which would obviously go in favour of the accused. But in the present case, the evidence of the prosecution witnesses clearly establishes beyond reasonable doubt that the deceased was conscious and he was removed to hospital by bus. All the witnesses deposed that the deceased was in a fit state of health to make the statements on the date of the incident. He expired only after more than 24 hours. No justifiable reason is pointed out to disbelieve the evidence of the number of witnesses who rushed to the scene of offence. Their evidence does not suffer from any infirmity which would render the dying declaration as doubtful or unworthy of the evidence. In such a situation, the lapse on the part of the investigating officer should not be taken in favour of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. *Paras Yadav* v. *State of Bihar*, (1999) 2 SCC 126: 1999 SCC (Cri) 104: AIR 1999 SC 644: 1999 Cri LJ 1122.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **M.B. Shah**, JJ. [Date of decision: 12-1-1999]

Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517: 1998 SCC (Cri) 1085, relied on

(9) Dying declaration *(contd.)*

[1711] — Ss. 162 and 154 — Discrepancy between dying declaration and FIR as to number of accused persons — *Two accused (the ones in this appeal) named in both FIR and dying declaration, but the other two named only in dying declaration — Relevance of — Held, this would have been relevant for considering conviction of the other accused persons (already acquitted) — Appellant-accused cannot take advantage thereof, as their names were very much there in both documents* (Para 5). *Ravi* v. *State of T.N.*, (2004) 10 SCC 776.

Bench Strength **2**. Coram: *B.N. Agrawal* and *H.K. Sema*, JJ. [Date of decision: 21-7-2004]

[1712] — S. 162(2) — Dying declaration recorded by police officer during investigation — *Admissibility of — Evidence Act, 1872 — S. 32*

Although a dying declaration recorded by a police officer during the course of investigation is admissible under S. 32 of the Indian Evidence Act in view of the exception provided in sub-section (2) of S. 162 of the Code of Criminal Procedure, 1973, it is better to leave such dying declaration out of consideration until and unless the prosecution satisfies the court as to why it was not recorded by a Magistrate or by a doctor.

The practice of the Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged. It is not that such dying declarations are always untrustworthy, but better and more reliable methods of recording dying declaration of an injured person should be taken recourse to and the one recorded by the police officer may be relied upon if there was no time or facility available to the prosecution for adopting any better method. *Dalip Singh* v. *State of Punjab*, (1979) 4 SCC 332: 1979 SCC (Cri) 968: AIR 1979 SC 1173: 1979 Cri LJ 700.

Bench Strength **2**. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 12-1-1979]

(10) Test Identification Parade

See also CRIMINAL TRIAL — 'Test Identification Parade' in Vol. 3

See also S. 9, EVIDENCE ACT, 1872

[1713] — S. 162 — Investigation — Includes holding of TI parade — Evidentiary value of TI parade — TI parade — Object of — *Held, is (i) to enable witnesses to satisfy themselves that the person whom they suspect is really the one who was seen by them committing the offence; and (ii) to satisfy investigating authorities that suspect is the real person whom witnesses had seen in connection with said occurrence*

A-1 to A-6 were alleged to have entered house of *T* at about 10.30 p.m. on 5-6-2003 and threatened family members demanding money and valuables from them. The accused also snatched ornaments worn by them. Thereafter they went out of hut and consumed liquor. After some time they re-entered the hut, armed variously to rob further. They started assaulting the family members, and tied hands and legs of all, except PWs 1 and 8. Three of the dacoits then dragged *S*, a young girl aged fifteen years out of the hut to a guava garden and gang-raped her. She was brought back dead in naked condition with injuries on her body. PW 8 was also dragged towards the well and raped by one. She was brought back grievously injured. The dacoits thereafter raised the volume of recorder, put on their shoes and walked on the injured, who were unconscious, thinking that all of them were dead. However, PWs 1 and 8 survived, who were eyewitnesses to occurrence. In the occurrence five persons were murdered and two raped.

The accused were convicted under Section 307 read with Section 34, Section 397 read with Sections 395 & 396 and sentenced to death. The High Court by impugned judgment while upholding conviction and death sentence of A-1, A-2 & A-4, sentence in respect of A-3, A-5 & A-6 was altered to life imprisonment with fine. A-1, A-2 & A-4 were also convicted under Section 376(2)(*g*), while A-3, A-5 & A-6 were acquitted thereunder. High Court held that those who were guilty of rape and murder deserved death sentence, while those who were convicted for murder only were to be awarded life sentence. The High Court noted that the whole incident was extremely revolting, shocking the collective conscience of the community, and the aggravating circumstances outweighed the mitigating circumstances in case of Accused 1, 2 and 4; but held that in the case of others the sentence was to be altered to life sentence.

The accused filed criminal appeals, while State filed appeals challenging alteration of sentence from death to life imprisonment, and also acquittal of three accused under Section 376(2)(*g*).

Dismissing appeals filed by accused, and allowing appeals filed by the State,

Held :

TI parade of A-1 to A-5 was held on 25-7-2003. PW 1 had identified all the five accused persons, PW 8 had identified A-1, A-3, A-4 and A-5. Subsequently, A-6 was arrested on 7-10-2004 and the TI parade was held immediately thereafter where PWs 1 and 8 identified him. It is to be noted that first TI parade was held on 25-7-2003 in the jail premises where all the five accused persons were made to stand in a queue in the parade hall. PW 25 who was the Magistrate and conducted the TI parade clearly stated that he found the dummies to be acceptable and respectable persons selected by the police, and they were assessed by him and found to be reliable. There is no reason discernible to discredit their evidence. (Paras 19 and 20)

Further, if potholes were to be ferreted out from the proceedings of the Magistrate holding such parades, possibly no TI parade could escape from one or two lapses. If a scrutiny is made from that angle alone and the result of the parade is treated as vitiated every TI parade would become unusable. TI parades are not primarily meant for the court. They are meant for investigation purposes. The object of conducting TI parade is twofold. First is to enable the witnesses to satisfy themselves that the person whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. (Para 21)

Further, PWs 1 and 8 were the two eyewitnesses to the occurrence. Few discrepancies of trivial and minor nature in their evidence cannot be a reason to discard their evidence. Evidence of PWs 9 and 15 (medical officers) clearly establish allegations of rape. PWs 1 and 8 were grievously injured and were under medical treatment for one and one-and-a-half months respectively. The medical evidence clearly shows that if they had not received medical treatment, both of them would have died. (Paras 22 and 24 to 26)

The murders were not only cruel, brutal but were diabolic. Five members of a family were brutally murdered, they were not known to the accused and there was no animosity towards them. Four of the victims were of tender age, defenceless and the attack was without any provocation. Some of them were so young that they could not resist any attack by the accused. A minor girl of about fifteen years was dragged to the open field, gang-raped and done to death. Hence, there can be no doubt that the case at hand falls under the rarest of rare category. There was no reason to adopt a different yardstick for A-2, A-3 and A-5. In fact, A-3 was the main person. He assaulted PW 1 and took the money from the deceased. Therefore, A-2, A-3 & A-5 also awarded death sentence. In essence all the six accused persons deserve death sentence. (Paras 32, 33 to 35). *Ankush Maruti Shinde* v. *State of Maharashtra*, (2009) 6 SCC 667.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 30-4-2009]

Amitsingh Bhikamsingh Thakur v. State of Maharashtra, (2007) 2 SCC 310: (2007) 1 SCC (Cri) 582; Malkhan Singh v. State of M.P., (2003) 5 SCC 746; Devender Pal Singh v. State of (NCT of Delhi), (2002) 5 SCC 234: 2002 SCC (Cri) 978; State of M.P. v. Munna Choubey, (2005) 2 SCC 710: 2005 SCC (Cri) 559; Bantu v. State of U.P., (2008) 11 SCC 113: (2009) 1 SCC (Cri) 353; Union of India v. Devendra Nath Rai, (2006) 2 SCC 243, relied on

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, followed

[1714] — S. 162 — TI parade — Evidentiary value — Held, photo identification/TIP are all aids in investigation and do not form substantive evidence — *Substantive evidence is evidence of witness in court on oath — To say that photo identification is hit by S. 162 CrPC is wrong — Even TIP before Magistrate would otherwise be hit by S. 162 CrPC — Logic behind TIP/photo identification is that where an accused is not known to witnesses, IO conducts TIP to ensure that he has got the right person as accused — Practice is not borne out of procedure, but out of prudence — At best TIP can be brought under S. 8, as evidence of conduct of witness in identifying accused in presence of IO or Magistrate during investigation — Evidence Act, 1872*, Ss. 9 and 8 (Paras 252 to 254 and 259). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram : **P. Sathasivam** and Swatanter Kumar, JJ. [Date of decision : 19-4-2010]

Umar Abdul Sakoor Sorathia v. Narcotic Control Bureau, (2000) 1 SCC 138: 2000 SCC (Cri) 200; Mullagiri Vajram v. State of A.P., 1993 Supp (2) SCC 198: 1993 SCC (Cri) 496, relied on

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899, held, distinguished

N.J. Suraj v. State, (2004) 11 SCC 346: 2004 SCC (Cri) Supp 85; Laxmipat Choraria v. State of Maharashtra, AIR 1968 SC 938: 1968 Cri LJ 1124; Kanan v. State of Kerala, (1979) 3 SCC 319: 1979 SCC (Cri) 621; Dana Yadav v. State of Bihar, (2002) 7 SCC 295: 2002 SCC (Cri) 1698; Vijayan v. State of Kerala, (1999) 3 SCC 54: 1999 SCC (Cri) 378; George v. State of Kerala, (1998) 4 SCC 605: 1998 SCC (Cri) 1232; Hari Nath v. State of U.P., (1988) 1 SCC 14: 1988 SCC (Cri) 14, distinguished

[1715] — S. 162 — Evidentiary value and importance of TIP — *Held, does not constitute substantive evidence — Substantive evidence is the evidence of identification in court — Said tests however have immense corroborative value — Evidence Act, 1872 — S. 9* (Paras 17 and 16). *Munshi Singh Gautam* v. *State of M.P.*, (2005) 9 SCC 631: 2005 SCC (Cri) 1269: AIR 2005 SC 402: 2005 Cri LJ 320.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-11-2004]

[1716] — S. 162 — Test Identification Parade — When necessary — If obligatory — Held, failure to hold a test identification parade would not make inadmissible the evidence of identification

(10) Test Identification Parade *(contd.)*

in court — *Weight to be attached to such identification is a matter for court of fact — It would depend on how reliable testimony as to identification is, uncorroborated by a test identification parade — Prosecution has to be cautious to ensure that there is no scope for accused to allege that evidence of identification is vitiated due to non-holding of (a timely) TI parade — If, however, circumstances are beyond control of the prosecution and there is some delay, it cannot be said to be fatal to the prosecution — Position where accused previously known to witness concerned, not known and seen only once, and not known and seen a number of times, distinguished — On facts, a TI parade would have made no difference as one witness did not claim to have seen the accused and the other's evidence was in any case unreliable as it was full of unexplained contradictions — Evidence Act, 1872 — S. 9*

The substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of the Supreme Court. The facts which establish the identity of the accused persons are relevant under Section 9 of the Evidence Act. Identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for them in the Code and the Evidence Act. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. These parades are essentially governed by Section 162 CrPC. (Paras 17 and 16)

The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. Therefore, failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration for instance, on the basis of the identification in Court corroborated by other circumstantial evidence. The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. (Paras 16, 17 and 19)

When the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after his arrest is of great importance because it furnishes an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial. From this point of view it is a matter of great importance, both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. It is in adopting this course alone that justice and fair play can be assured both to the accused as well as to the prosecution. But the position may be different when the accused or a culprit who stands trial had been seen not once but for quite a number of times at different points of time and places which fact may do away with the necessity of TI parade. (Paras 17 and 22)

In the present case test identification parade would have been of no consequence in view of PW 14's evidence that he did not know the physical description of the accused-appellants as he had not seen them on the date of occurrence. What remains is the evidence of PW 12. The latter's evidence is full of unexplained contradictions. Therefore, the evidence of PW 12 and PW 14 are not sufficient to fasten guilt on the accused persons. (Para 27). *Munshi Singh Gautam* v. *State of M.P.*, (2005) 9 SCC 631: 2005 SCC (Cri) 1269: AIR 2005 SC 402: 2005 Cri LJ 320.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-11-2004]

Matru v. State of U.P., (1971) 2 SCC 75: 1971 SCC (Cri) 391; Santokh Singh v. Izhar Hussain, (1973) 2 SCC 406: 1973 SCC (Cri) 828; Kanta Prashad v. Delhi Admn., AIR 1958 SC 350: 1958 Cri LJ 698; Vaikuntam Chandrappa v. State of A.P., AIR 1960 SC 1340: 1960 Cri LJ 1681; Budhsen v. State of U.P., (1970) 2 SCC 128: 1970 SCC (Cri) 343; Rameshwar Singh v. State of J&K, (1971) 2 SCC 715: 1971 SCC (Cri) 638; Jadunath Singh v. State of U.P., (1970) 3 SCC 518: 1971 SCC (Cri) 124; Parkash Chand Sogani v. State of Rajasthan, Criminal App. No. 92 of 1956, decided on 15-1-1957 (SC); Harbajan Singh v. State of J&K, (1975) 4 SCC 480: 1975 SCC (Cri) 545; Ram Nath Mahto v. State of Bihar, (1996) 8 SCC 630: 1996 SCC (Cri) 726; Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60; State of U.P. v. Boota Singh, (1979) 1 SCC 31: 1979 SCC (Cri) 115; Ramanbhai Naranbhai Patel v. State of Gujarat, (2000) 1 SCC 358: 2000 SCC (Cri) 113; Maikhansingh v. State of M.P., (2003) 5 SCC 746: 2003 SCC (Cri) 1247, relied on

(11) Hearsay evidence/Extra-judicial confession

See also under S. 164, below

See also under CRIMINAL TRIAL in Vol. 3

[1717] — S. 162 — Extra-judicial confession — *In view of discrepancies regarding persons to whom and the occasion when the confession was made and the precise statement made by the accused, held, such confession is unreliable — Evidence Act, 1872 — Ss. 24 and 26. State of M.P.* v. *Dayaram*, 1981 Supp SCC 14: 1981 SCC (Cri) 601: AIR 1981 SC 2007.

Bench Strength **2**. Coram: *O. Chinnappa Reddy* and *Baharul Islam*, JJ. [Date of decision: 17-2-1981]

[1718] — S. 162 — Hearsay — Cross-examination of hostile witness bringing out by way of a contradiction that the said witness stated before police that people of locality knew that accused was a hired contract-killer — *Held, such statement not substantive evidence — Evidence Act, 1872 — Ss. 60 and 145. Bullu Das* v. *State of Bihar*, (1998) 8 SCC 130.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 3-11-1998]

— **S. 163** *See also* S. 163, Criminal Procedure Code, 1898, p. 1023 in Vol. 2

— **S. 163** *See* Ss. 154 to 173
See also Ss. 154 to 173 and 482
See also Ss. 157 to 167
See also Ss. 157 to 172 and 198
See also Ss. 157 to 173
See also Ss. 157, 160 to 168
See also Ss. 162, 163 and 313
See also Ss. 164 and 163, 162

[1719] — S. 163 — Human rights — Third-degree treatment by police offends human rights concept — *State urged to take adequate measures — Constitution of India — Art. 21. Raghbir Singh* v. *State of Haryana*, (1980) 3 SCC 70: 1980 SCC (Cri) 526: AIR 1980 SC 1087: (1980) 6 ALR 266: 1980 Cri LJ 801.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *E.S. Venkataramiah*, JJ. [Date of decision: 31-3-1980]

[1720] — S. 163 — Third-degree treatment by investigating officer causing death in lock-up — *No error in appreciation of evidence and concurrent findings of courts below on commission of offence under S. 302 by the accused officer — No interference by Supreme Court under Art. 136 called for. Raghbir Singh* v. *State of Haryana*, (1980) 3 SCC 70: 1980 SCC (Cri) 526: AIR 1980 SC 1087: (1980) 6 ALR 266: 1980 Cri LJ 801.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *E.S. Venkataramiah*, JJ. [Date of decision: 31-3-1980]

[1721] — Ss. 163, 161 and 156 — Practice of police using third degree method in investigational works deprecated — *Police should insist more on thorough investigation than on obtaining confessions from witnesses or suspects by hook or crook — Court's duty in this respect pointed out. Dagdu* v. *State of Maharashtra*, (1977) 3 SCC 68: 1977 SCC (Cri) 421: AIR 1977 SC 1579: (1977) 3 SCR 636: 1977 Cri LJ 1206.

Bench Strength **3**. Coram: **Y.V. Chandrachud**[1], **P.K. Goswami**[2] and *P.N. Shinghal*, JJ. [Date of decision: 19-4-1977]

[1722] — Ss. 163 and 161 — Third degree treatment to arrested person by police deprecated — *Police must adopt some scientific method instead of resorting to the barbaric method of physical torture*

It may be a legitimate right of any police officer to interrogate or arrest any suspect on some credible material but such an arrest must be in accordance with the law and the interrogation does not mean inflicting injuries. It should be in its true sense purposeful, namely, to make the investigation effective. Torturing a person and using third degree methods are of medieval nature and they are barbaric and contrary to law. The police would be accomplishing behind their closed doors precisely what the demands of our legal order forbid. They must adopt some scientific methods than resorting to physical torture. If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure. If police officers who have to provide security and protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a game-keeper becoming a poacher. *Bhagwan Singh* v. *State of Punjab*, (1992) 3 SCC 249: 1992 SCC (Cri) 629: AIR 1992 SC 1689: 1992 Cri LJ 3144.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *R.C. Patnaik*, JJ. [Date of decision: 8-5-1992]

Dagdu v. State of Maharashtra, (1977) 3 SCC 68: 1977 SCC (Cri) 421, relied on

[1723] — Ss. 163, 161 and 157 — Third-degree treatment by police to prosecutrix to elicit information — If justified to remove fear psychosis of the victims to encourage them to speak out about the misdeeds committed by the accused — *Allegation of torture and beating of rape victims by police — Victims, inmates of an Ashram, reluctant to disclose about rape committed by accused head of the Ashram out of fear because of threat of dire consequences given by the accused to them — Beating given by police to the victims to shake off their fear and make them free to speak truth — Held on facts and circumstances, such beating not fatal to the prosecution case*

All the victim girls were in one voice that because of fear of A-1, ladies in the Ashram did not tell the police that A-1 had sexual contact with them. They further stated that just one hour before the arrest of A-1, he called all the Ashram ladies and threatened that nobody should tell the police that he had sexual contact with them. The victim girls were also in one voice that A-1 had given a press statement that he would come out on bail in two days and the victim girls were frightened that if the accused really came out on bail he would take stern action against them. Keeping in view the trauma and agony suffered by all the victim girls at the hands of A-1, it is expected that the victim girls were reluctant to disclose the misdeeds of A-1 for fear of reprisals. Moreover, there was no complaint of torture or coercion of the prosecutrix by police before the High Court in certain habeas corpus proceedings initiated by some DWs. On the other hand, one of the prosecutrix had admitted that they had started disclosing the facts after the police beat them. It is in that context the High Court held that the so-called beating could have meant to shake off their inhibition and fear, to make them free to say what they wanted to say. In the given facts and circumstances of this case, beating will mean to remove the fear psychosis and to come out with truth. There is no infirmity in the concurrent findings recorded by both the courts below on this count. (Paras 52 to 56). *Kamalanantha* v. *State of T.N.*, (2005) 5 SCC 194: 2005 SCC (Cri) 1121: AIR 2005 SC 2132.

Bench Strength **2**. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 5-4-2005]

[1724] — Ss. 163 and 161 — Interrogation — Third-degree methods — Use of, by police during interrogation — Reasons behind such practice — Tackling of custodial violence — Improvements to be made and measures to be taken for — Custodial violence/torture — Third-degree methods — Use of, by police during interrogation — Reasons behind such practice — Tackling of custodial violence — Improvements to be made and measures to be taken for — *Held, lack of training in scientific investigation methods, lack of modern equipment and adequate police personnel and lack of a mindset respecting human rights are general reasons for the said illegal practice — Further, expectation of public (and men in power) regarding quick results from police builds enormous pressure on police leading them to resort to third-degree methods — Therefore, need is of attitudinal change not only in minds of police but also on the part of the public — Difficulties in criminal investigation and the time required for such investigation should be recognised — Police should be allowed to function methodically without interferences or unnecessary pressures — Duties of public, Govt. and men in power for better police performances, indicated — Custodial violence to be tackled by taking measures that are remedial and preventive — Award of compensation is one of the remedial measures — Preventive measures like reorientation of police training to bring change in mindset and attitude of police as regards human rights, adoption of scientific investigation methods and modern techniques of record maintenance, compliance with requirements enumerated in* D.K. Basu, *(1997) 1 SCC 416, continuous monitoring and supervision of lower level police officers, etc. commended — Emphasis laid on a balanced functioning where police respect human rights, adhere to law and take confidence-building measures and also firmly deal with serious crimes — Constitution of India — Art. 21*

Unfortunately, police in the country have given room for an impression in the minds of public that whenever there is a crime investigation usually means rounding up all persons concerned (say all servants in the event of a theft in the employer's house, or all acquaintances of the deceased, in the event of a murder) and subjecting them to third-degree interrogation in the hope that someone will spill the beans. This impression may not be correct, but instances are not wanting where police have resorted to such a practice. Lack of training in scientific investigative methods, lack of modern equipment, lack of adequate personnel and lack of a mindset respecting human rights, are generally the reasons for such illegal action. One other main reason is that the public (and men in power) expect results from police in too short a span of time, forgetting that methodical and scientific investigation is a time-consuming and lengthy process. Police are branded as inefficient even when there is a short delay in catching the culprits in serious crimes. The expectation of quick results in high-profile or heinous crimes builds enormous pressure on the police to somehow "catch" the "offender". The need to have quick results tempts them to resort to third-degree methods. They also tend to arrest "someone" in a hurry on the basis of incomplete investigation, just to ease the pressure. Time has come for an attitudinal change not only in the minds of the police, but also on the part of the public. Difficulties in criminal investigation and the time required for such investigation should be recognised, and police should be allowed to function methodically without interferences or unnecessary pressures. If police are to perform better, the public should support them, Government should strengthen and equip them, and men in power should not interfere or belittle them. The three wings of the Government should encourage, insist and ensure thorough scientific investigation under proper legal procedures, followed by prompt and efficient prosecution. (Para 48)

Custodial violence requires to be tackled from two ends, that is, by taking measures that are remedial and preventive. Award of compensation is one of the remedial measures after the event. Effort should be made to remove the very causes which lead to custodial violence so as to prevent such occurrences. Following steps, if taken, may prove to be effective preventive measures:

(*a*) Police training should be reoriented, to bring in a change in the mindset and attitude of the police personnel in regard to investigations, so that they will recognise and respect human rights, and adopt thorough and scientific investigation methods.

(*b*) The functioning of lower level police officers should be continuously monitored and supervised by their superiors to prevent custodial violence and ensure adherence to lawful standard methods of investigation.

(*c*) Compliance with the eleven requirements enumerated in *D.K. Basu*, (1997) 1 SCC 416, should be ensured in all cases of arrest and detention.

(*d*) Simple and foolproof procedures should be introduced for prompt registration of first information reports relating to all crimes.

(*e*) Computerisation, video-recording and modern methods of records maintenance should be introduced to avoid manipulations, insertions, substitutions and antedating in regard to FIRs, mahazars, inquest proceedings, post-mortem reports and statements of witnesses, etc. and to bring in transparency in action.

(*f*) An independent investigating agency (preferably the respective Human Rights Commissions or CBI) may be entrusted with adequate power, to investigate complaints of custodial violence against police personnel and take stern and speedy action followed by prosecution, wherever necessary. (Para 49)

Thus, the endeavour should be to achieve a balanced level of functioning, where police respect human rights, adhere to law, and take confidence-building measures (CBMs), and at the same time, firmly deal with organised crime, terrorism, white-collared crime, deteriorating law and order situation, etc. (Para 49). *Sube Singh* v. *State of Haryana*, (2006) 3 SCC 178: (2006) 2 SCC (Cri) 54: AIR 2006 SC 1117: (2006) 102 Cut LT 19.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and *B.N. Srikrishna* and **R.V. Raveendran**, JJ. [Date of decision: 3-2-2006]

[1725] — S. 163 — Police investigation — Third-degree treatment by police to accused criticised — *Remedy is specialised training must be given to the investigating agency*

Long-run recipes must be innovated whereby fists are replaced by wits, ignorance by awareness, 'third degree' by civilised tools and technology. Special training, special legal courses, technological and other detective updating are important. An aware policeman is the best social asset towards crimelessness. The consciousness of the official as much as of the community is the healing hope for a crime-ridden society. Judge-centred remedies don't work in the absence of community-centred rights. Investigatory personnel must be separated from the general mass and given in-service specialisation of many hues on a scientific basis. The policemen must be released from addiction to coercion and sensitized to constitutional values. *Nandini Satpathy* v. *P.L. Dani*, (1978) 2 SCC 424: 1978 SCC (Cri) 236: AIR 1978 SC 1025: 1978 Cri LJ 968.

Bench Strength **3**. Coram: **V.R. Krishna Iyer**, *Jaswant Singh* and *V.D. Tulzapurkar*, JJ. [Date of decision: 7-4-1978]

[1726] — S. 163 — Police protection — Held, should be provided to witnesses in cases of gruesome murders, so that witnesses can depose freely

In a case of gruesome murder, police protection should be given to witnesses so that they can depose freely. Unless that is done the result would be that justice would not be done to the victim. The accused persons with money and power can trample on any witness who dares to depose against them. The victor will be injustice and it would be a slur on the criminal justice system if it so happens. (Para 32). *State of Maharashtra* v. *Mangilal*, (2009) 15 SCC 418: (2009) 76 AIC 1 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-3-2009]

Section 164 — Confessions and Statements before Magistrate

— S. 164 *See also* S. 164 Criminal Procedure Code, 1898, pp. 1023 et seq. in Vol. 2

See also under CRIMINAL TRIAL in Vol. 3

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(1) Generally

See also S. 164, '(2) Manner of recording confession — Compliance with precautions under S. 164',

'(5) Admissibility of confession/statement recorded under S. 164 — Voluntariness', and

'(6) Reliability of judicial confession: basing of conviction thereon', below

[1727] — S. 164 — Recording of confession by Magistrate — Nature and object of the provision *— Provision mandatory — Procedure — Precautions to be taken*

Per K. Ramaswamy, J.

The Magistrate before recording the confession should properly question the accused, as far as may be necessary, elicit from him whatever facts he is willing to state; to understand exactly what his meaning is and how far he intends his confession or admission to go. The confession must be recorded with great care and circumspection. The Magistrate must record the questions put to the accused to ascertain whether the confession was of voluntary nature, that he will not have to go back to the police custody after statement was recorded; to warn the accused of the consequences which would ensue if the confession is false or if he has in the hope of release implicated himself and to ask the accused whether the police or any other person had subjected him to ill-treatment etc. No hard and fast rule could or should be laid down as to the procedure which would be adopted when an accused is brought before the Magistrate to record his confession. Confession extracted while in custodial interrogation excites suspicion of its voluntariness. But when it is recorded by the Judicial Magistrate it removes the stains and assures

voluntariness. The object of keeping the accused/suspect in judicial custody and giving him sufficient time for reflection and necessary warnings reinforces it since sufficient time given the accused frees himself from the pressure of police interrogation and for reflection before making confession. It will have sobering effect on the accused/suspect. *Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569: 1994 SCC (Cri) 899: 1994 Cri LJ 3139.

Bench Strength 5. Coram: **S. Ratnavel Pandian**[1], *M.M. Punchhi*[1], **K. Ramaswamy**[2], *S.C. Agrawal*[1] and **R.M. Sahai**[3], JJ. [Date of decision: 11-3-1994]

[1728] — S. 164 — "Confession" — What is — Relationship with admissions — Probative value of — *Evidence Act, 1872 — Ss. 24 and 17*

A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession. "Confessions", which is a terminology used in criminal law is a species of "admissions" as defined in Section 17 of the Evidence Act. An admission is a statement, oral or documentary which enables the court to draw an inference as to any fact in issue or relevant fact. It is trite to say that every confession must necessarily be an admission, but, every admission does not necessarily amount to a confession. (Paras 28 and 27)

Confessions are considered highly reliable because no rational person would make an admission against his interest unless prompted by his conscience to tell the truth. (Para 29). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Pakala Narayana Swami v. Emperor, AIR 1939 PC 47: 40 Cri LJ 364, relied on

Taylor's Treatise on the Law of Evidence, Vol. I, referred to

[1729] — S. 164 — Confession — Whether the statement recorded by Judicial Magistrate is a confessional statement — Test

The test of discerning whether a statement recorded by a Judicial Magistrate under Section 164 from an accused is confessional or non-confessional is not by dissecting the statement into different sentences and then to pick out some as not inculpative. The statement must be read as a whole and then only the court should decide whether it contains admissions of his incriminatory involvement in the offence. If the result of that test is positive then the statement is confessional, otherwise not. Applying that test it must be held that the confessional statement attributed to the accused *LS*, does incriminate him very much. At any rate it is not exculpative despite the possibility of reading one or two sentences culled out separately from the rest of it, in order to say that they are not tantamounting to inculpative nature. (Para 12). *Lokeman Shah* v. *State of W.B.*, (2001) 5 SCC 235: 2001 SCC (Cri) 829: AIR 2001 SC 1760: 2001 Cri LJ 2196.

Bench Strength 3. Coram: **K.T. Thomas**, *R.P. Sethi* and *S.N. Phukan*, JJ. [Date of decision: 11-4-2001]

[1730] — S. 164 — Confession must be considered so as to buttress other evidence and not vice versa (Para 133). *Aloke Nath Dutta* v. *State of W.B.*, (2007) 12 SCC 230: (2008) 2 SCC (Cri) 264.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 12-12-2006]

[1731] — Ss. 164, 154 and 276 — Contradiction/corroboration of statements in FIR and/or under S. 164 — Proper procedure, stated — Defence not having drawn prosecutrix's attention to her statements in FIR, held, cannot find contradictions in her statements made in FIR with those recorded by court under S. 276

FIR or statement recorded under Section 164 CrPC does not constitute substantive evidence of truth of the facts. But it may be used for contradiction or corroboration of a witness who made it. However previous statement in FIR cannot be used unless the attention of witness has first been drawn to those parts by which it is proposed to contradict the witness. (Paras 15 and 16)

It is for the defence to invite the victim's attention as to what she stated under Sections 154 or 164 CrPC for the purposes of bringing out the contradictions, if any, in her evidence. In the absence of the same the court cannot read the Section 164 statement and compare the same with her evidence. The attention of the prosecutrix (PW 14) has not been drawn to those parts of the FIR which according to the appellants are not in conformity with her evidence. The contents of the first information report were never put to the victim. (Paras 14 to 16). *Utpal Das* v. *State of W.B.*, (2010) 6 SCC 493.

Bench Strength 2. Coram : **B. Sudershan Reddy** and Aftab Alam, JJ. [Date of decision : 7-5-2010]

(2) Manner of recording confession — Compliance with precautions under S. 164

See also S. 164, '(5) Admissibility of confession/statement recorded under S. 164 — Voluntariness', and

'(6) Reliability of judicial confession: basing of conviction thereon' below

[1732] — S. 164 — Recording of confession "in the course of investigation" under Ch. XII — Procedure and requirements for — *An accused can himself appear before a Magistrate, instead of being produced by police, and ask for recording his confession — But unless the Magistrate has reason to believe that investigation has commenced and the person asking for recording of his confession is concerned in such case, he cannot record confession on his mere asking — If any person appears before a Magistrate and the Magistrate does not know that the appearance is in the course of investigation, he should inform the police about it so that police may take steps required under Ch. XII*

The confession of A-1 having not been recorded by the Magistrate (PW 2) "in the course of an investigation", cannot be brought under Section 164 CrPC. No doubt, an accused person can appear before a Magistrate and it is not necessary that such accused should be produced by the police for recording the confession. But it is necessary that such appearance must be "in the course of an investigation" under Chapter XII of the Code. If the Magistrate does not know that he is concerned in a case for which investigation has been commenced under the provisions of Chapter XII, it is not permissible for him to record the confession. If any person simply barges into the court and demands the Magistrate to record his confession as he has committed a cognizable offence, the course open to the Magistrate is to inform the police about it. The police in turn has to take the steps envisaged in Chapter XII of the Code. It may be possible for the Magistrate to record a confession if he has reason to believe that investigation has commenced and that the person who appeared before him demanding recording of his confession is concerned in such case. Otherwise the court of a Magistrate is not a place into which all and sundry can gatecrash and demand the Magistrate to record whatever he says as self-incriminatory. (Para 21). *Mahabir Singh* v. *State of Haryana*, (2001) 7 SCC 148: 2001 SCC (Cri) 1262: AIR 2001 SC 2503.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 26-7-2001]

Jogendra Nahak v. State of Orissa, (2000) 1 SCC 272: 2000 SCC (Cri) 210, relied on

[1733] — S. 164 — Confession — Recording of — Compliance with procedure under — Principles, stated — *Evidence Act, 1872, S. 30*

The following principles emerge with regard to recording of confessional statements under Section 164 CrPC:

(*i*) The provisions of Section 164 CrPC must be complied with not only in form, but in essence.

(*ii*) Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.

(*iii*) A Magistrate should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial.

(*iv*) The maker should be granted sufficient time for reflection.

(*v*) He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.

(*vi*) A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.

(*vii*) Non-compliance with Section 164 CrPC goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.

(*viii*) During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.

(*ix*) At the time of recording the statement of the accused, no police or police official shall be present in the open court.

(*x*) Confession of a co-accused is a weak type of evidence.

(*xi*) Usually the court requires some corroboration from the confessional statement before convicting the accused person on such a statement. (Para 64). *Dara Singh* v. *Republic of India*, (2011) 2 SCC 490.

Bench Strength 2. Coram: **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 21-1-2011]

Bhagwan Singh v. State of M.P., (2003) 3 SCC 21: 2003 SCC (Cri) 712; Shivappa v. State of Karnataka, (1995) 2 SCC 76: 1995 SCC (Cri) 323; Dagdu v. State of Maharashtra, (1977) 3 SCC 68: 1977 SCC (Cri) 421; Davendra Prasad Tiwari v. State of U.P., (1978) 4 SCC 474: 1979 SCC (Cri) 95; Kalawati v. State of H.P., AIR 1953 SC 131: 1953 Cri LJ 668: 1953 SCR 546; State v. Nalini, (1999) 5 SCC 253: 1999 SCC (Cri) 691; State of Maharashtra v. Damu, (2000) 6 SCC 269: 2000 SCC (Cri) 1088, relied on

[1734] — S. 164 — Recording of confession — Precautions to be taken by the Magistrate

The Magistrate had taken all necessary precautions to ensure that the appellant had sufficient time to reflect before he made his confessional statement and that he was under no fear or threat or allurement before appearing in the court to make the statement. The various questions put by the learned Magistrate to the appellant indicate that he had taken all reasonable precautions to remove any trace of fear from the appellant before he made the confessional statement. The caution envisaged by S. 164 CrPC was properly administered to him and he was told in no uncertain terms that he was not bound to make the statement and that if he did make one, it could be used against him. *Bheru Singh* v. *State of Rajasthan*, (1994) 2 SCC 467: 1994 SCC (Cri) 555: (1994) 1 Crimes 630: (1994) 1 ALT (Cri) 695: (1994) 31 ACC 240.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 4-2-1994]

[1735] — S. 164 — Recording of confession by Magistrate — Nature and object of the provision *— Provision mandatory — Procedure — Precautions to be taken*

Per K. Ramaswamy, J.

The Magistrate before recording the confession should properly question the accused, as far as may be necessary, elicit from him whatever facts he is willing to state; to understand exactly what his meaning is and how far he intends his confession or admission to go. The confession must be recorded with great care and circumspection. The Magistrate must record the questions put to the accused to ascertain whether the confession was of voluntary nature, that he will not have to go back to the police custody after statement was recorded; to warn the accused of the consequences which would ensue if the confession is false or if he has in the hope of release implicated himself and to ask the accused whether the police or any other person had subjected him to ill-treatment etc. No hard and fast rule could or should be laid down as to the procedure which would be adopted when an accused is brought before the Magistrate to record his confession. Confession extracted while in custodial interrogation excites suspicion of its voluntariness. But when it is recorded by the Judicial Magistrate it removes the stains and assures voluntariness. The object of keeping the accused/suspect in judicial custody and giving him sufficient time for reflection and necessary warnings reinforces it since sufficient time given the accused frees himself from the pressure of police interrogation and for reflection before making confession. It will have sobering effect on the accused/suspect. *Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569: 1994 SCC (Cri) 899: 1994 Cri LJ 3139.

Bench Strength **5**. Coram: **S. Ratnavel Pandian**[1], *M.M. Punchhi*[1], **K. Ramaswamy**[2], *S.C. Agrawal*[1] and **R.M. Sahai**[3], JJ. [Date of decision: 11-3-1994]

[1736] — Ss. 164, 281 and 463 — Judicial confession — Recording of — Procedure for — Compliance with — Defect in recording confession — Curability of — Defect of failure of Judicial Magistrate to record the question as to whether there was any pressure on maker of confession i.e. *SA* to give confessional statement — *Held, the said defect was cured by S. 463 CrPC as the mandatory requirement provided under S. 164(2) CrPC, namely, explaining to accused that he was not bound to make a statement and if a statement is made the same might be used against him had been complied with — Statement was recorded after the doctor under whose care* **SA** *was at the relevant time opined that* **SA** *was fit to make statement — Magistrate stated in his certificate appended to statement (i) that the confession was read over to* **SA** *and admitted by her to be correct and it contained a full and true account of statement made by* **SA**, *and (ii) that he believed that the confession was made voluntarily — Except Magistrate and doctor, no one was present in room while statement was recorded — Evidence of Magistrate in court that he had asked the question to* **SA** *which he failed to record — No prejudice caused to* **SA** *in her defence due to the said omission — Thus, the confession of* **SA** *having been recorded according to procedure set out in S. 164 r/w S. 281 CrPC and the defect in question being curable under S. 463 CrPC, the said confession was admissible in evidence — Evidence Act, 1872 — S. 91*

As regards the judicial confession of *SA*, it is to be seen whether it has been recorded according to the procedure prescribed by Section 164 CrPC. When the Judicial Magistrate i.e. PW 62 reached the hospital, before recording the statement of *SA* he sought opinion of the doctor (PW 32) as to the fitness of *SA* to make the statement. As in the opinion of PW 32, *SA* was fit to make the statement, PW 62 proceeded to record it. PW 62 warned *SA*

(2) Manner of recording confession — Compliance with precautions under S. 164 *(contd.)*

that she was not bound to make any confessional statement and in case she did so, it might be used against her as evidence. In spite of the said warning, *SA* volunteered to make the statement and only thereafter the statement was recorded by PW 62. In the certificate that was appended to the said confessional statement PW 62 has very categorically stated that he had explained to *SA* that she was not bound to make a confession and that if she did so, any confession she would make, might be used as evidence against her and that he believed that the confession was voluntarily made. He further stated that he read over the statement to the person making it and admitted by her to be correct and that it contained a full and true account of the statement made by her. PW 62 has stated that *SA* had given the statement after taking due time after understanding each aspect. It also appears that he was satisfied that she was not under any pressure from any corner. Therefore, it is evident from the certificate appended to the confessional statement by PW 62 that the confessional statement was made by the accused voluntarily. Of course, he failed to record the question that was put by him to the accused whether there was any pressure on her to give a statement, but PW 62 has stated in his evidence before the court that he had asked the accused orally whether she was under any pressure, threat or fear and he was satisfied that *SA* was not under any pressure from any corner, that in the room in which the said confessional statement was recorded it was only he and PW 32 who were present and none else and that no police officer was available even within the precincts of the hospital. The failure of PW 62 to record the question put and the answer given in the confessional statement has not caused prejudice to the accused in her defence. The said defect is cured by Section 463 CrPC as the mandatory requirement provided under Section 164(2) CrPC, namely, explaining to the accused that he was not bound to make a statement and if a statement is made the same might be used against him has been complied with and the same is established from the certificate appended to the statement and from the evidence of PW 62. In the light of above, there is no hesitation in holding that the judicial confession having been recorded according to the procedure set out in Section 164 read with Section 281 and the defect made while recording the same being curable by Section 463, it is admissible in evidence. (Paras 22 to 26 and 33). *Ram Singh* v. *Sonia*, (2007) 3 SCC 1: (2007) 2 SCC (Cri) 1: AIR 2007 SC 1218: 2007 Cri LJ 1642.

Bench Strength 2. Coram: **B.N. Agrawal** and *P.P. Naolekar*, JJ. [Date of decision: 15-2-2007]

State of U.P. v. Singhara Singh, AIR 1964 SC 358: (1964) 1 Cri LJ 263 (2), relied on

Nazir Ahmad v. King Emperor, (1935-36) 63 IA 372: AIR 1936 PC 253 (2); Preetam v. State of M.P., (1996) 10 SCC 432: 1996 SCC (Cri) 1343; Tulsi Singh v. State of Punjab, (1996) 6 SCC 63: 1996 SCC (Cri) 1118; Babu Singh v. State of Punjab, (1963) 3 SCR 749: (1964) 1 Cri LJ 566, distinguished on facts

[1737] — S. 164 — Confession — Precautions needed in recording — *Accused brought before Magistrate handcuffed in police custody — Magistrate must ask specific question to ensure that no physical or mental pressure was put on him by investigating agency — Magistrate must also ask why he wants to make the confessional statement which may incriminate him — Magistrate should give sufficient time to accused and also assure him of protection from any apprehended torture or pressure in case of his refusal to make confession — Confession must also be recorded in question-answer form*

The first precaution that a Judicial Magistrate is required to take is to prevent forcible extraction of confession by the prosecuting agency. The provisions of Section 164 CrPC must be complied with not only in form, but in essence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution. In this case the acquitted accused who was arrested along with the co-accused was produced handcuffed before the Judicial Magistrate in police custody for recording his confession. The Judicial Magistrate also admitted in his statement that he was produced by the police through the police station and after recording his statement, he was given back to the custody of the police. If the acquitted accused *P* was in police custody, in accordance with the requirement of Section 164 CrPC the Magistrate should have taken care to ascertain that there had been no third-degree methods used by the police against him to extract a confession. The Magistrate in deposition as PW 1 said that he questioned the accused and the latter confirmed that he was making a statement voluntarily without any pressure. But the record of confession does not show that any specific questions were put to the accused whether any physical or mental pressure was put on him by the investigating agency. There was, therefore, every possibility for the accused to have been physically and mentally pressurised for giving a judicial confession on an assurance that he would be made a prosecution witness as an approver. (Paras 27 and 29)

The Magistrate in particular should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial. He should be granted sufficient time for reflection. He should also be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement. Unfortunately, in this case, the evidence of the Judicial Magistrate (PW 1) does not show that any such precaution was taken before recording the judicial confession. (Para 28)

The confession is also not recorded in question-and-answer form which is the manner indicated in the criminal court rules. (Para 29). *Bhagwan Singh* v. *State of M.P.*, (2003) 3 SCC 21: 2003 SCC (Cri) 712: AIR 2003 SC 1088: 2003 Cri LJ 1262: (2003) 3 MPLJ 297.

Bench Strength **3**. Coram: *S. Rajendra Babu*, **D.M. Dharmadhikari** and *G.P. Mathur*, JJ. [Date of decision: 23-1-2003]

State of U.P. v. Singhara Singh, AIR 1964 SC 358: (1964) 1 Cri LJ 263(2); Shivappa v. State of Karnataka, (1995) 2 SCC 76: 1995 SCC (Cri) 323, relied on

[1738] — S. 164 — Non-compliance with while recording confessions under, not met — Effect — *Held, non-compliance with S. 164 procedures impairs evidentiary value of confession and casts a doubt on nature and voluntariness of confession on which no reliance can be placed, as in case of most accused in this case*

Dock identification or photo identification though is admissible evidence, cannot be given credence without further corroborative evidence. Though some of the witnesses identified some of the accused in the dock, without corroborative evidence dock identification alone cannot be treated as substantial evidence, though it is permissible. No importance needs to be attached on the testimony of the eyewitnesses regarding the persons acquitted by the High Court (i.e. accused persons other than A-1 and A-3) because the acquitted persons were identified for the first time before the trial court without any corroboration by previous TI parade held by the Magistrate in accordance with the procedure established. As rightly observed by the High Court, for a long number of days, many of these eyewitnesses never came forward to claim that they had seen the occurrence before the IOs and the police personnel visiting the village from time to time. (Paras 50 and 40 to 45)

Though an explanation was offered that out of fear the eyewitnesses did not name the offenders, as a safe rule of prudence, generally it is desirable to look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier TIP. Though some of them were identified by the photographs except A-1 and A-3, no other corroborative material was shown by the prosecution. (Para 43)

There is no material to prove conspiracy charge against any of the other accused. (Para 98)

In the absence of definite assertion from the prosecution side, about their specific role and involvement, as rightly observed by the High Court, it is not safe to convict the other accused. (Para 95)

Finally, insofar as the appeals filed by CBI against the order of acquittal by the High Court in respect of certain persons, it was pointed out that when two views are possible, the one in favour of the accused should be accepted. Presumption of innocence is a fundamental principle of criminal jurisprudence. (Para 94)

Section 164 CrPC requires strict and faithful compliance with sub-sections (2) to (4). The failure to observe safeguards not only impairs the evidentiary value of confession but casts a doubt on the nature and voluntariness of confession on which no reliance can be placed. As rightly observed by the High Court, no exceptional circumstances could be brought to notice by the prosecution in respect of the appellants other than A-1 and A-3, to explain away the procedural lapses. (Para 72)

The analysis of evidence of PWs 29 and 34, Judicial Magistrates shows that many of the confessional statements were recorded immediately after production of the maker after long CBI custody and in some cases after such statements were made and recorded by the Judicial Magistrate, the maker was remanded to police custody. Though the Magistrates have deposed that the procedure provided under Section 164 CrPC has been complied with, various warnings/cautions required to be given to the accused before recording such confession, have not been fully adhered to by them. In the certificate, there is no specific reference about the nature of the custody from which these persons were produced nor about the assurance that they would not be remanded to police custody if they declined. (Paras 71 and 72)

As rightly observed by the High Court, the possibility of coercion, threat or inducement to the accused A-9 to make the confession cannot be ruled out. Remanding A-9 to police custody after his statement was recorded under Section 164 CrPC is not justified. As per Section 164(3) if any accused refuses to make any confessional statement, such Magistrate shall not authorise detention of the accused in police custody. (Para 68)

(2) Manner of recording confession — Compliance with precautions under S. 164 *(contd.)*

A-12 was not cautioned that if he made any confession, the same may be used against him in evidence and on that basis he may be sentenced to death or imprisonment for life. Equally he was not cautioned by PW 29 that if he refused to make the confessional statement, he would not be remanded to police custody. (Para 69)

The confessional statement of A-11 was recorded immediately after his production before him from the police custody. He was given only 10 minutes' time for reflection after his production from police custody. (Para 70)

Both A-9 and A-12 in their confessional statements, made exculpatory statements. The entire confessional statement of A-14 is exculpatory and he also retracted from the confession. It was further found that this confessional statement was made long after the charge-sheet was filed i.e. on 22-6-1999. (Paras 69 and 70)

Hence, the reasoning and conclusion of the High Court with regard to acquittal of certain accused persons is justified. In the absence of acceptable materials and in view of the various infirmities in the prosecution case as pointed out by the High Court, the order of acquittal of others (except A-1 and A-3) who are all poor tribals is confirmed. (Paras 95 and 98). *Dara Singh* v. *Republic of India*, (2011) 2 SCC 490.

Bench Strength **2**. Coram: **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 21-1-2011]

Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1: (2010) 2 SCC (Cri) 1385; Umar Abdul Sakoor Sorathia v. Narcotic Control Bureau, (2000) 1 SCC 138: 2000 SCC (Cri) 200; Dana Yadav v. State of Bihar, (2002) 7 SCC 295: 2002 SCC (Cri) 1698; Malkhansingh v. State of M.P., (2003) 5 SCC 746; State of U.P. v. Nandu Vishwakarma, (2009) 14 SCC 501: (2010) 1 SCC (Cri) 1429; Sambhaji Hindurao Deshmukh v. State of Maharashtra, (2008) 11 SCC 186: (2009) 2 SCC (Cri) 464; Raghunath v. State of Haryana, (2003) 1 SCC 398: 2003 SCC (Cri) 326; Allarakha K. Mansuri v. State of Gujarat, (2002) 3 SCC 57: 2002 SCC (Cri) 519, relied on

[1739] — S. 164 — Confession recorded by the magistrate in question-answer form by putting leading questions to and cross-examining the accused and recording whatever the accused stated in answer, held, must be rejected. *State of M.P.* v. *Dayaram*, 1981 Supp SCC 14: 1981 SCC (Cri) 601: AIR 1981 SC 2007.

Bench Strength **2**. Coram: *O. Chinnappa Reddy* and *Baharul Islam*, JJ. [Date of decision: 17-2-1981]

[1740] — S. 164 — Judicial confession — Compliance with statutory provisions in S. 164 — Necessity and importance of — *Held, compliance with the statutory provision is mandatory which should be in letter and spirit and not in a routine or mechanical manner — Sufficient time must be given to the accused to decide whether he was willing to make a confession — In the instant case, Magistrate recorded two judicial confessions of the appellant in two different cases within a very short span of time — First confession was recorded in 15 minutes which included the questions which were required to be put to the appellant by the learned Magistrate for arriving at his satisfaction that the confession was voluntary in nature, truthful and free from threat, coercion or undue influence — Held, both the cases involved serious offences resulting in extreme penalty — Magistrate, therefore, should have allowed some more time to the appellant to make his statement — He should have satisfied himself as regards the voluntariness and truthfulness of the confession of the appellant — Moreover, appellant was produced from judicial custody but he was in police custody for 16 days, which fact should have been noticed by the Magistrate — Non-compliance with the statutory provision in letter and spirit — Hence, conviction, relying principally on the said judicial confession unsustainable — Evidence Act, 1872 — S. 24* (Paras 15, 16, 17 and 18). *Babubhai Udesinh Parmar* v. *State of Gujarat*, (2006) 12 SCC 268: (2007) 1 SCC (Cri) 702: AIR 2007 SC 420: (2007) 49 AIC 618 (SC): 2007 Cri LJ 786: (2007) 1 Guj LR 742.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

Devendra Prasad Tiwari v. State of U.P., (1978) 4 SCC 474: 1979 SCC (Cri) 95; Kashmira Singh v. State of M.P., 1952 SCR 526: AIR 1952 SC 159: 1952 Cri LJ 839; Parmananda Pegu v. State of Assam, (2004) 7 SCC 779: 2004 SCC (Cri) 2081, relied on

State of Gujarat v. Babubhai Udesing Parmar, (2005) 3 Guj LH 769, reversed

[1741] — S. 164 — Magistrate recording dying declaration must put a direct question to the injured whether he was mentally capable of making the statement — *Certificate by doctor that the injured was in a fit state of mind to make the statement not conclusive — Evidence Act, 1872 — S. 32. K. Ramachandra Reddy* v. *Public Prosecutor*, (1976) 3 SCC 618: 1976 SCC (Cri) 473: AIR 1976 SC 1994: 1977 MLJ (Cri) 1: 1976 Cri LJ 1548.

Bench Strength **2**. Coram: *A.C. Gupta* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 5-5-1976]

[1742] — Ss. 164, 273 and 327(2) — Recording of statement of a victim of sexual abuse — Precautions in, and protection to — *Use of a screen to shield the victim, or the use of videotaping or closed-circuit camera to record evidence —*

Recording of evidence in the presence of the accused — Does not necessarily imply that the accused should have full view of the victim or the witness — Held, rules of procedure are the handmaiden of justice, meant to advance not obstruct justice — Therefore courts can enlarge the meaning of such provisions in order to elicit the truth and do justice — Recording of evidence by way of video-conferencing vis-à-vis S. 273 has been held to be permissible

The petitioner requested that the below-mentioned precautions be followed while recording statements of victims of sexual abuse, since mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses, or can put them in a state of shock and since questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse.

The petitioner requested that especially in the cases of the child sexual abuse the following precautions be followed:

(*i*) Permitting use of a videotaped interview of the child's statement by the judge (in the presence of a child-support person).

(*ii*) Allow a child to testify via closed-circuit television or from behind a screen to obtain a full and candid account of the acts complained of.

(*iii*) The cross-examination of a minor should only be carried out by the judge based on written questions submitted by the defence upon perusal of the testimony of the minor.

(*iv*) Whenever a child is required to give testimony, sufficient breaks should be given as and when required by the child.

Allowing this request,

Held :

The whole inquiry before a court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273 CrPC merely requires the evidence to be taken in the presence of the accused. The section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by video-conferencing has already been upheld. Moreover, there is major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are handmaiden of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the court to expand or enlarge the meanings of such provisions in order to elicit the truth and do justice with the parties. (Para 31)

Recording of evidence by way of video-conferencing vis-à-vis Section 273 CrPC has been held to be permissible. (Para 31)

The writ petition be disposed of with the following directions:

* * *

(2) In holding trial of child sex abuse or rape:

(*i*) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;

(*ii*) the questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

(*iii*) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required. (Para 34)

These directions are in addition to those given in *State of Punjab* v. *Gurmit Singh*. (Para 34) . *Sakshi* v. *Union of India*, (2004) 5 SCC 518: 2004 SCC (Cri) 1645: AIR 2004 SC 3566: (2004) 98 Cut LT 491: (2004) 112 DLT 457.

Bench Strength **2**. Coram: *S. Rajendra Babu, C.J.* and **G.P. Mathur**, J. [Date of decision: 26-5-2004]

State of Maharashtra v. Dr Praful B. Desai, (2003) 4 SCC 601: 2003 SCC (Cri) 815; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, followed

[1743] — S. 164(2) — Compliance with the requirements under, is sine qua non for recording a confession under S. 164(1)

Since the confession recorded by the Magistrate, PW 2, cannot be brought under Section 164 of the Code, it is an idle exercise to consider whether it was voluntary or true. PW 2 has not stated that before taking down the confession he explained to A-1 that he was not bound to make the confession, and that if he did so, such confession might be used as evidence against him. This is the sine qua non for recording a confession. Further, a Magistrate is forbidden from recording any such confession until he gets satisfaction that the person is going to make a voluntary confession. There is nothing in the evidence of PW 2 that he had adopted such precaution. For all those

(2) Manner of recording confession — Compliance with precautions under S. 164 *(contd.)*

reasons that document has to be kept out of the ken of consideration in this case. (Para 22). *Mahabir Singh* v. *State of Haryana*, (2001) 7 SCC 148: 2001 SCC (Cri) 1262: AIR 2001 SC 2503.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 26-7-2001]

[1744] — S. 164 — Confession — Admissibility — Requisites — *Statement by A-1 to PW 46 (Executive Magistrate) in hospital implicating appellant that he was given contract killing — Held, for admissibility as confession such statement must be voluntarily made with full statutory compliance — In instant case, statement of A-1 neither recorded by Judicial Magistrate, nor procedural requirements including that of a certificate to be appended by Magistrate fulfilled — Moreover, there was doubt regarding voluntariness of said statement — Hence, inadmissible as confession* (Paras 41 to 46). *S. Arul Raja* v. *State of T.N.*, (2010) 8 SCC 233.

Bench Strength **2**. Coram : **Dr. M.K. Sharma** and C.K. Prasad, JJ. [Date of decision : 30-7-2010]

Aloke Nath Dutta v. State of W.B., (2007) 12 SCC 230: (2008) 2 SCC (Cri) 264; Babubhai Udesinh Parmar v. State of Gujarat, (2006) 12 SCC 268: (2007) 1 SCC (Cri) 702; State of U.P. v. Singhara Singh, AIR 1964 SC 358: (1964) 1 Cri LJ 263 (2): (1964) 4 SCR 485, relied on

Shankaria v. State of Rajasthan, (1978) 4 SCC 453: 1979 SCC (Cri) 74, cited

[1745] — S. 164 — Recording of confession — *Confessional statement must be shown to have been voluntarily made — Question intended to be put under sub-s. (2) should not be allowed to become a matter of a mere casual and mechanical enquiry — Magistrate should be fully satisfied that it is in fact and in substance voluntary* (Para 16). *Ayyub* v. *State of U.P.*, (2002) 3 SCC 510: 2002 SCC (Cri) 673: AIR 2002 SC 1192.

Bench Strength **2**. Coram: *R.P. Sethi* and **K.G. Balakrishnan**, JJ. [Date of decision: 28-2-2002]

Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637: 1957 Cri LJ 1014; Shivappa v. State of Karnataka, (1995) 2 SCC 76: 1995 SCC (Cri) 323, relied on

[1746] — S. 164 — Recording of confession — Adequate time to be given to accused for reflection prior to — *Two hour's time given to accused — Contention that the said time was not sufficient in view of the decision in* Sarwan Singh, *1957 SCR 953, held, not sustainable* (Para 13). *Sidharth* v. *State of Bihar*, (2005) 12 SCC 545: AIR 2005 SC 4352.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 30-9-2005]

Sarwan Singh v. State of Punjab, 1957 SCR 953: AIR 1957 SC 637: 1957 Cri LJ 1014, explained

***Distinguished** in Aloke Nath Dutta v. State of W.B., (2007) 12 SCC 230*

[1747] — S. 164 — Recording of confession — Administering of oath is prohibited (Para 10). *Babubhai Udesinh Parmar* v. *State of Gujarat*, (2006) 12 SCC 268: (2007) 1 SCC (Cri) 702: AIR 2007 SC 420: (2007) 49 AIC 618 (SC): 2007 Cri LJ 786: (2007) 1 Guj LR 742.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

[1748] — S. 164 — Recording of confession — Inquiry by Magistrate to ascertain voluntary character of the confession — Procedure to be followed — *Magistrate must comply not merely in the form but also in essence with provisions of S. 164 and the rules and guidelines framed by the High Court — Non-compliance thereof renders the confession unworthy of credence — Magistrate must also leave such material on record as would show that the confession was voluntary and statutory provisions were complied with — On facts held, confession was not voluntary and could not be acted upon — Evidence Act, 1872 — S. 24*

From the plain language of Section 164 CrPC and the rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under Section 164 CrPC, it is manifest that the said provisions emphasise an inquiry by the Magistrate to ascertain the *voluntary* nature of the confession. This inquiry appears to be the most significant and an important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 CrPC. The failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same. Full and adequate compliance not merely in form but in essence with the provisions of Section 164 CrPC and the rules framed by the High Court is imperative and its non-compliance goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the Magistrate discovers on such enquiry that there is ground for such supposition he should give the accused sufficient time for reflection before he is asked to make his statement and should assure himself that during the time of reflection, he is completely out of police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial, even if he contrives subsequently to retract the confession. Besides administering the caution, warning specifically provided for in the first part of sub-section (2) of Section 164 namely, that the accused is not bound to make a statement and that if he makes one it may be used against him as evidence in relation to his complicity in the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement and be given the assurance that even if he declined to make the confession, he shall not be remanded to police custody. (Para 6)

The Magistrate who is entrusted with the duty of recording confession of an accused coming from police custody or jail custody must appreciate his function in that behalf as one of a judicial officer and he must apply his judicial mind to ascertain and satisfy his conscience that the statement the accused makes is not on account of any extraneous influence on him. That indeed is the essence of a 'voluntary' statement within the meaning of the provisions of Section 164 CrPC and the rules framed by the High Court for the guidance of the subordinate courts. Moreover, the Magistrate must not only be satisfied as to the voluntary character of the statement, he should also make and leave such material on the record in proof of the compliance with the imperative requirements of the statutory provisions, as would satisfy the court that sits in judgment in the case, that the confessional statement was made by the accused voluntarily and the statutory provisions were strictly complied with. (Para 7)

In the present case the Magistrate did not disclose to the appellant that he was a Magistrate and that the confession was being recorded by him in that capacity nor made any enquiry to find out whether he had been influenced by anyone to make the confession. It is further revealed that the Magistrate did not lend any assurance to the appellant that he would not be sent back to the police custody in case he did not make the confessional statement. That apart the Magistrate did not question the appellant as to why he wanted to make the confession or as to what had prompted him to make the confession. The failure of the Magistrate to make a real endeavour to ascertain the voluntary character of the confession, impels us to hold that the evidence on the record does not establish that the confessional statement of the appellant recorded under Section 164 CrPC was voluntary. The cryptic manner of holding the enquiry to ascertain the voluntary nature of the confession has left much to be desired and has detracted materially from the evidentiary value of the confessional statement. It would, thus, neither be prudent nor safe to act upon the confessional statement of the appellant. (Para 8). *Shivappa* v. *State of Karnataka*, (1995) 2 SCC 76: 1995 SCC (Cri) 323: AIR 1995 SC 980: (1995) 1 Crimes 138.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *M.K. Mukherjee*, JJ. [Date of decision: 29-11-1994]

[1749] — S. 164 — Murder trial — Investigation — Taking of specimen signature of accused for examination by expert to corroborate confessional letters written by him — Court below adopting proper procedure in appreciating this evidence — Such confessional letters relied on to confirm conviction — *Evidence Act, 1872, Ss. 45 and 30 — Penal Code, 1860 — S. 302*

One *G*, a Christian missionary from Australia, was working among the tribal people especially lepers of the State of Orissa and was engaged in propagating and preaching Christianity in the tribal areas. On 22-1-1999, his missionary team as usual conducted different programmes in the village near the church and retired for the day. *G* and his two minor sons slept in their vehicle parked outside the church. In the midnight, a mob came to the spot and set fire to the vehicle in which the deceased persons were sleeping. The mob prevented the deceased to get themselves out of the vehicle as a result of which all the three persons got burnt in the vehicle.

The local police was informed the next day. But since the local police and CID were unable to proceed with the investigation satisfactorily, CBI took over the investigation on 3-5-1999.

The trial court convicted all the accused and sentenced them for offences punishable under various sections. The death sentence was passed against A-1 and others were awarded sentence of life imprisonment.

The High Court by the impugned judgment awarded life imprisonment to A-1 and A-3 and acquitted the rest.

Dismissing the appeals filed by A-1, A-3 and CBI,

Held :

All the eyewitnesses examined by the prosecution consistently stated that during occurrence the miscreants raised slogans in the name of A-1 as "Dara Singh zindabad". The story of this slogan was also mentioned in the FIR lodged soon after the occurrence. This slogan in the name of A-1, corrob-

(2) Manner of recording confession — Compliance with precautions under S. 164 *(contd.)*

orates the identification before the trial court for the first time. In addition to the same, some of the witnesses identified A-1 by photo identification. Photo and dock identification coupled with the other corroborative evidence are permissible. In addition to the same, all the witnesses mentioned about the blowing of whistle by A-1. (Para 89)

Identification of A-3 for the first time in the trial court is an exceptional case and even in the absence of further corroboration by way of previously held TIP, his involvement in the crime is amply corroborated by the letters written by him. There were three types of evidence against A-3 i.e. (*a*) confession; (*b*) testimony of eyewitnesses/identification in court/PW 23; and (*c*) absconding of the accused. (Paras 85 and 86)

The contents of the two letters written by A-3, though denied by A-3, clearly amounts to confession and lend ample corroboration to the evidence in identification before the trial court for the first time as narrated by PW 23. The entire contents of the letter used by the trial Judge were rightly accepted by the High Court. The confessional statement of A-3 inculpated himself and A-1. A-3 in his letter dated 10-2-1999 confessed that he along with A-1 had burnt "Jisu" (the Christian missionary). All the ocular witnesses have testified that after setting fire to vehicles and burning *G* and his two sons alive, the miscreants raised slogans "Jai Bajarang Bali" and "Dara Singh zindabad". (Paras 79 to 87)

A-3 in his statement recorded under Section 313 CrPC on 4-2-2002 admitted to have set fire to the vehicles and in his statement recorded under Section 313 CrPC on 24-3-2003 has admitted to have filed petitions pleading guilty and to have stated in his earlier examination under Section 313 CrPC that he had set fire to the vehicles. There is no impediment in relying on a portion of the statement of the accused and finding him guilty in consideration of the other evidence against him as laid by the prosecution. (Para 84)

The other circumstance urged by the prosecution was that A-3 absconded soon after the incident and avoided arrest and this abscondence being a conduct under Section 8, Evidence Act, 1872 should be taken into consideration along with other evidence to prove his guilt. The fact remains that he was not available for quite some time till he was arrested which fact has not been disputed by the defence. (Para 88)

The procedure adopted by the investigating agency i.e. taking of specimen signature and writing of A-3 for examination by the expert as analysed and approved by the trial court and confirmed by the High Court cannot be faulted with. In view of the oral report of PW 4 which was reduced into writing, the evidence of PW 23, the two letters of A-3 to the trial Judge admitting his guilt coupled with the other materials, the conclusion arrived at by the High Court is confirmed. (Paras 78 and 75)

The Presiding Officer concerned has to meet the requirements of Section 164 CrPC. Before accepting the contents of the two letters and the evidence of PW 23, the trial Judge afforded A-3 the required opportunity and followed the procedure, which was rightly accepted by the High Court. The trial Judge accepted the entire contents of the admission made by A-3 and affording reasonable opportunity and by following the appropriate procedure coupled with the corroborative evidence of PW 23, upheld his involvement and participation in the crime along with A-1 which resulted in rioting, arson and murder of three persons. (Paras 87 and 88)

Even in the midst of uncertainties as the eyewitnesses have specified the roles of A-1 and A-3 during the murder, their conviction and sentence of life imprisonment imposed on them by the High Court is maintainable. (Para 98). *Dara Singh* v. *Republic of India*, (2011) 2 SCC 490.

Bench Strength **2**. Coram: **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 21-1-2011]

State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808: (1961) 2 Cri LJ 856: (1962) 3 SCR 10, relied on

M.P. Sharma v. Satish Chandra, AIR 1954 SC 300: 1954 Cri LJ 865: 1954 SCR 1077, referred to

[1750] — S. 164 — Recording of confession — Language — *Confessional statements recorded in Hindi — Plea that the accused did not know Hindi raised about 1½ years after recording of such statement — Finding of the trial court that accused persons understood Hindi — Question put to the accused persons under S. 313 CrPC answered by them without expressing any difficulty — Held, in the circumstances, of the case, plea that the accused did not know Hindi not maintainable* (Para 14). *Wariyam Singh* v. *State of U.P.*, (1995) 6 SCC 458: 1995 SCC (Cri) 1124: AIR 1996 SC 305.

Bench Strength **2**. Coram: *G.N. Ray* and *G.T. Nanavati*, JJ. [Date of decision: 19-9-1995]

Madi Ganga v. State of Orissa, (1981) 2 SCC 224: 1981 SCC (Cri) 411: AIR 1981 SC 1165: 1981 Cri LJ 628

[1751] — S. 164 — Where magistrate records confession of the accused after putting to him all necessary questions and appends a certificate with the confession document showing voluntary nature of the confession, held, the confessional statement is admissible in evidence and the magistrate need not be further examined as a witness to confirm its reliability — *Accused can be convicted on the basis of the confessional statement if the general trend of his confession is substantiated by other evidence — Evidence Act, 1872 — S. 80. Madi Ganga* v. *State of Orissa*, (1981) 2 SCC 224: 1981 SCC (Cri) 411: AIR 1981 SC 1165: 1981 Cri LJ 628.

Bench Strength **2**. Coram: **O. Chinnappa Reddy** and *Baharul Islam*, JJ. [Date of decision: 19-2-1981]

[1752] — S. 164 — Time for reflection to be granted before recording of confession — *Though there is no hard-and-fast rule therefor, time of 5 or 10 minutes is, by all standards, utterly inadequate — Evidence Act, 1872 — S. 24 — Prevention of Terrorism Act, 2002 — S. 32*

There is no hard-and-fast rule regarding grant of time for reflection before recording a confession and the rules and guidelines applicable to a confession under Section 164 CrPC do not govern, but in the present case, the time of 5 or 10 minutes is, by all standards, utterly inadequate. Granting reasonable time for reflection before recording a confession is one way of ensuring that the person concerned gets the opportunity to deliberate and introspect once again when he is brought before the prescribed authority for recording the confession. That it is one of the relevant considerations in assessing the voluntariness of the confession. (Para 184)

Sufficient time was not given for reflection after the accused (Afzal/Shaukat) were produced before PW 60 recording the confession. PW 60 stated in the evidence that he gave only 5 to 10 minutes time to the accused for thinking/reflection. (Para 184). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

[1753] — S. 164 — Recording of confession of accused under TADA — Procedure to be followed — Strict compliance with — Necessity of — *Held, necessary so as to render confessional statement such as would need no corroboration or contemporaneous record to prove its veracity — Strict compliance not necessary in cases (such as the present) where confessional statements in question being mainly used for purpose of corroborating another confession/other evidence — Especially when the defects were curable ones — Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 15 — Terrorist and Disruptive Activities (Prevention) Rules, 1987, R. 15. Ahmed Hussein Vali Mohammed Saiyed* v. *State of Gujarat*, (2009) 7 SCC 254: (2009) 3 SCC (Cri) 368: (2009) 79 AIC 229 (SC).

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and **P. Sathasivam** and *J.M. Panchal*, JJ. [Date of decision: 12-5-2009]

State v. Nalini, (1999) 5 SCC 253: 1999 SCC (Cri) 691, relied on

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; Bharatbhai v. State of Gujarat, (2002) 8 SCC 447: 2003 SCC (Cri) 93, explained

[1754] — S. 164 — Recording of confession of accused under TADA — Procedure to be followed — *Requirements of obtaining signature of accused, appending certificate and making memorandum at the end of confession, as required under R. 15(3), TADA Rules — Omission as to — Effect — Curability of the said defect — Reiterated, said omission in obtaining signature of accused or appending certificate at the end of confession is curable in view of provision contained in S. 463 CrPC — In present case, certain confessional statements recorded without appending certificate or making memorandum in terms of R. 15(3)(b) — Confessional statements containing opening words similar to subject-matter of memorandum to be made under R. 15(3)(b) — Further, said confessional statements mainly corroborating the confession made strictly in compliance with all necessary provisions of TADA Act and Rules — Considering the facts, held, the defect, if any, present in the confessional statements got cured through reliable and trustworthy depositions made by the respective recording officers before the trial court — Terrorist and Disruptive Activities (Prevention) Rules, 1987, R. 15(3). Ahmed Hussein Vali Mohammed Saiyed* v. *State of Gujarat*, (2009) 7 SCC 254: (2009) 3 SCC (Cri) 368: (2009) 79 AIC 229 (SC).

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and **P. Sathasivam** and *J.M. Panchal*, JJ. [Date of decision: 12-5-2009]

State v. Nalini, (1999) 5 SCC 253: 1999 SCC (Cri) 691, relied on

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; Bharatbhai v. State of Gujarat, (2002) 8 SCC 447: 2003 SCC (Cri) 93, explained

(2) Manner of recording confession — Compliance with precautions under S. 164 *(contd.)*

[1755] — Ss. 164 and 463 — Confession — Omission to affix signature on the last two pages of the 18-page confession statement — Effect — *How that omission affected the defence of the accused not shown — Confession corroborated in material particulars by independent evidence apart from the evidence of co-accused — Confession statement promptly sent to CJM and Designated Court — Held, confession duly made and recorded and failure to obtain signature of the accused on the last two pages would not be fatal on the ground of violation of R. 15(3) — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 15 — Terrorist and Disruptive Activities (Prevention) Rules, 1987, R. 15(3)*

Contention in the case of Nalini (A-1) was that the mandatory provisions of Rule 15(3) had been violated as confession was in 18 pages out of which only pp. 1 to 16 bore her signatures while pp. 17 and 18, which were crucial to the confession, did not bear her signatures. The police officer had appended his certificate at the end of the confession but his recording of the certificate was immaterial if the accused did not append his signatures at the end of the confession. Omission of signatures of Nalini (A-1) cannot cure the defect and her confession had to be rejected in its entirety. The Superintendent of Police, who recorded the confession, merely stated in the examination-in-chief that his not getting the signatures of Nalini (A-1) was an omission. No explanation had been given as to why the omission occurred and it was not for the accused to bring out in cross-examination as to the circumstances under which signatures of Nalini (A-1) could not be obtained at the end of the confession. It was also not relevant if each page of the confession was signed, signature had to be put on the last page at the end of the confession and only then endorsement by the police officer recording the confession has a meaning. Both the signatures at the end of the confession and the certificates of the police officer must go together. Rule 15 provided an assurance that confession recorded is as per prescribed provisions.

Held :

Per Wadhwa, J.

When the requirement of law is that confession should be signed by the person making it, it would mean his signatures at the end of the confession. It has not been suggested or brought on record as to how not getting signatures of Nalini (A-1) on the last pages of the confession had injured her in her defence on the merits of the case. The confession has been corroborated in material particulars by means of independent evidence even if the confessions of the co-accused are set apart. Confession of Nalini (A-1) was recorded on 7-8-1991 and was sent to the Court of the Chief Judicial Magistrate on the following day and on 9-8-1991, it was sent to the Designated Court. The confession was duly made and the objection that Rule 15(3) of the TADA Rules has been violated cannot be accepted. (Para 404). *State* v. *Nalini*, (1999) 5 SCC 253: 1999 SCC (Cri) 691: AIR 1999 SC 2640: 1999 Cri LJ 3124.

Bench Strength **3**. Coram: **K.T. Thomas**[1], **D.P. Wadhwa**[2] and **S.S.M. Quadri**[3], JJ. [Date of decision: 11-5-1999]

Abdul Razak Shaikh v. State of Maharashtra, 1988 Cri LJ 382: 1987 Mah LJ 863 (Bom); Neharoo Mangtu Satnami v. Emperor, AIR 1937 Nag 220: 38 Cri LJ 642, overruled

[1756] — S. 164 — Safeguards provided in — Applicability to recording confession of accused under S. 108, Customs Act — *Customs Officer recording such statement, held, need not follow the safeguards provided in S. 164 CrPC — Customs Act, 1962 — S. 108* (Para 15). *Gulam Hussain Shaikh Chougule* v. *S. Reynolds, Supdt. of Customs*, (2002) 1 SCC 155: 2002 SCC (Cri) 116: AIR 2001 SC 2930.

Bench Strength **2**. Coram: **D.P. Mohapatra** and *K.G. Balakrishnan*, JJ. [Date of decision: 19-10-2001]

CCE v. Duncan Agro Industries Ltd., (2000) 7 SCC 53: 2000 SCC (Cri) 1275, followed

[1757] — S. 164(2) — Recording of confession by the Magistrate — Failure to put questions to ascertain voluntary nature of confession — *Held, the confessional statement is inadmissible in evidence — Evidence Act, 1872 — S. 24*

Under sub-section (2) of Section 164 the Magistrate is first required to explain to the accused that he was not bound to make a confession and that if he does so it might be used against him. Though this requirement has been complied with in the instant case, the other requirement which obligates the Magistrate to put questions to the accused to satisfy himself that the confession was voluntary so as to enable him to give the requisite certificate under sub-section (4), has not been fulfilled since the Magistrate did not ask any question whatsoever to ascertain whether the appellant was making the confession voluntarily. In view of such flagrant omission to comply with the mandatory requirement of Section 164(2) CrPC the High Court was not at all justified in entertaining the confession as a piece of evidence, much less, a reliable one. *Preetam* v. *State of M.P.*, (1996) 10 SCC 432: 1996 SCC (Cri) 1343: AIR 1997 SC 445.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *G.B. Pattanaik*, JJ. [Date of decision: 26-3-1996]

[1758] — S. 164(2) — Confessional statement recorded by Magistrate — Reliability — Compliance with sub-section (2) — What is — *Confessional statement made freely and voluntarily by accused while released on bail, held, cannot be rejected merely because Magistrate used the expression "evidence" instead of "confession" while warning the accused — Magistrate having recorded in the statement that she (Magistrate) gave the statutory warning and advice that accused was not bound to make the statement, S. 164(2) complied with — Evidence Act, 1872, S. 28* (Paras 25 to 28, 30). *M.A. Antony* v. *State of Kerala*, (2009) 6 SCC 220.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 22-4-2009]

State of U.P. v. Singhara Singh, AIR 1964 SC 358, relied on

[1759] — Ss. 164(2) and (4) — Non-compliance of sub-s. (2) — *Confession recorded by the Magistrate not indicating anywhere as to whether before recording the same he gave the accused requisite caution and put questions to satisfy himself that it was being made voluntary — Held, confession not voluntary and it cannot be acted upon — Mere endorsement in accordance with sub-s. (4) after recording it would not fulfil the requirement of sub-s. (4)*

Though the Magistrate testified that before recording the confession he satisfied himself that the accused was making a voluntary statement and that after giving due caution he recorded it, the confession does not anywhere indicate as to whether before recording the same he gave him the requisite caution and put questions to satisfy himself that it was being made voluntarily. These are the basic prerequisites for recording a confession under sub-section (2) of Section 164 CrPC and a mere endorsement in accordance with sub-section (4) after recording it would not fulfil the requirements of the former sub-section. Since none of the two requirements of Section 164(2) CrPC has been complied with there is no other alternative but to hold that the Special Court was not at all justified in entertaining the confession as a voluntary one. *Tulsi Singh* v. *State of Punjab*, (1996) 6 SCC 63: 1996 SCC (Cri) 1118: AIR 1996 SC 3477.

Bench Strength 2. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 7-8-1996]

[1760] — Ss. 164(2) and 463 — Confession — Formal defect in recording, curable and not fatal *— But non-compliance with mandatory requirement of sub-s. (2) would render the confession inadmissible in evidence — Evidence Act, 1872 — S. 24*

The confession of an accused (Satwant) was recorded in Tihar Jail. It was contended that the confession being not recorded in open court as required under the provisions of S. 164 of Criminal Procedure Code, is inadmissible in evidence and it cannot be adhered to for convicting the accused.

Held :

Per Ray, J.

The compliance with sub-s. (2) of S. 164 is mandatory and imperative and non-compliance of it renders the confession inadmissible in evidence. If the court comes to a finding that such a compliance had in fact been made the mere omission to record the same in the proper form will not render it inadmissible evidence and the defect is cured under S. 463 (S. 533 of the old Criminal Procedure Code) but when there is non-compliance of the mandatory requirement of S. 164(2) and it comes out in evidence that no such explanation as envisaged in the aforesaid sub-section has been given to the accused by the Magistrate, this substantial defect cannot be cured under S. 463.

In the present case the accused was asked the necessary questions and was given the warning that he was not bound to make any statement and in case any statement is made, the same might be used against him by the prosecution for his conviction. Of course, no question was put by the Magistrate to the accused as to why he wanted to make a confessional statement. The confessional statement was made voluntarily by the accused. So the defect in recording the statement in the form prescribed is cured by S. 463. Though the said confession was retracted subsequently by the accused, the same can be used by the Court against the accused in convicting him. The confessional statements were corroborated by independent evidence which clearly prove the guilt of the accused. *Kehar Singh* v. *State (Delhi Admn.)*, (1988) 3 SCC 609: 1988 SCC (Cri) 711: AIR 1988 SC 1883.

Bench Strength 3. Coram: **G.L. Oza**[1]· **B.C. Ray**[2] and **K. Jagannatha Shetty**[3], JJ. [Date of decision: 3-8-1988]

[1761] — S. 164(4) — Magistrate certifying that he "hoped" the confession of accused was voluntary and not that he "believed" that the confession was voluntary *— Confession cannot be used as evidence against the accused*

The Magistrate did not comply with S. 164(3), Criminal Procedure Code inasmuch as instead of certifying that he believed that the confession of the appellant was voluntarily made, he certified that "I hope that this statement was made by him voluntarily".

(2) Manner of recording confession — Compliance with precautions under S. 164 *(contd.)*

Held :

The word "hope" suggests a lingering doubt that what is desired and expected may not turn out to be true whereas the word "believe", in the sense in which it is used in S. 164, Criminal Procedure Code has logical confidence or rational conviction as its essential element.

Therefore, it must be held that the Magistrate advisedly and deliberately chose to use the word "hope" instead of the word "believe" because he was not fully convinced that the confession made by the appellant before him was voluntarily made and the Magistrate had suspicion and doubt as to the voluntariness of the confession. Therefore, the confession must be excluded from consideration of evidence against the appellant. *Chandran* v. *State of T.N.*, (1978) 4 SCC 90: 1978 SCC (Cri) 528: AIR 1978 SC 1574: 1978 Cri LJ 1693.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *P.S. Kailasam*, JJ. [Date of decision: 16-8-1978]

[1762] — S. 164(4) — Magistrate not filing memorandum as required by the section — *When a matter of form curable by his oral testimony*

The Magistrate did not comply with S. 164(3), Criminal Procedure Code inasmuch as the Magistrate omitted to certify that the confession was taken in his presence and hearing and was read over to the person making it and that it was admitted by him to be correct and that it contains a full and true account of the statements made by him. This is obviously a defect of form which could be cured by oral testimony of the Magistrate. *Chandran* v. *State of T.N.*, (1978) 4 SCC 90: 1978 SCC (Cri) 528: AIR 1978 SC 1574: 1978 Cri LJ 1693.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *P.S. Kailasam*, JJ. [Date of decision: 16-8-1978]

[1763] — S. 164(4) — Recording of confessional statement — Requirement of obtaining signature of the person making confession is mandatory — *Non-compliance with it renders the entire confessional statement inadmissible where making of the confession is disputed — Magistrate recording confession should ensure that all the requirements of the provision are complied with*

The function of the Magistrate in recording confession under Section 164 of the Code is a very solemn act which he is obliged to perform by taking due care to ensure that all the requirements of Section 164 are fully satisfied. The Magistrate recording such a statement should not adopt a casual approach. Besides ensuring that the confessional statement being made before him is voluntary and without pressure, the Magistrate must record the confession in the manner laid down by the section. Omission to comply with the mandatory provisions, one of such being as incorporated in sub-section (4) of Section 164 is likely to render the confessional statement inadmissible. The words "shall be signed by the person making the confession", are mandatory in nature and the Magistrate recording the confession has no option. Mere failure to get the signature of the person making the confession may not be very material if the making of such statement is not disputed by the accused but in cases where the making of the statement itself is in controversy, the omission to get the signature is fatal. No reliance can therefore be placed on the judicial confession of A-4. (Para 20)

If a part of confession is excluded under any provision of law, the entire confessional statement in all its parts, including the admission of minor incriminating facts must be excluded unless proof of it is permitted by some other section, such as Section 27 of the Evidence Act. (Para 21)

Where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all. (Para 23). *Dhanajaya Reddy* v. *State of Karnataka*, (2001) 4 SCC 9: 2001 SCC (Cri) 652: AIR 2001 SC 1512: 2001 Cri LJ 1712.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 14-3-2001]

Kehar Singh v. State (Delhi Admn.), (1988) 3 SCC 609: 1988 SCC (Cri) 711: AIR 1988 SC 1883; State of U.P. v. Singhara Singh, AIR 1964 SC 358: (1964) 1 Cri LJ 263 (2), relied on

Shamla Hardeo Teli v. Emperor, AIR 1941 Nag 17: 42 Cri LJ 117; Abdul Razak Shaikh v. State of Maharashtra, 1988 Cri LJ 382: (1987) 89 Bom LR 408 (Bom), approved

(3) Who can record confession under S. 164

[1764] — S. 164 — Power under, to record confessions and statements — Authority competent to exercise such power, held, is only a Judicial Magistrate — Even a police officer on whom power of a Magistrate has been conferred, held, cannot exercise such power

The power conferred by Section 164 CrPC to record confessions and statements can be exercised only by a Judicial Magistrate. Even a police officer on whom power of a Magistrate has been conferred is forbidden from recording a confession. Sub-sections (2) and (4) deal with procedure which such Magistrate has to follow while recording inculpatory statements made by persons. (Para 10). *CCE* v. *Duncan Agro Industries Ltd.*, (2000) 7 SCC 53: 2000 SCC (Cri) 1275: AIR 2000 SC 2901: (2000) 120 ELT 280.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 7-8-2000]

[1765] — S. 164 — Recording of confession — Magistrate who can record — *Mere fact CJM had not nominated the Judicial Magistrate of the taluk where the accused was locked up in sub-jail and instead nominated another Judicial Magistrate, held, not sufficient to vitiate the recording of confession — Evidence Act, 1872 — S. 30*

It was contended that the Magistrate who had recorded the confession was a Judicial Magistrate at Ahmednagar, whereas, there was a Judicial Magistrate, Ist Class at Newasa itself and as the accused was locked up in the sub-jail at Newasa, there was no explanation why a Magistrate belonging to a distant place was asked to record the confession, in preference to a Magistrate at a near place. Rejecting the contention,

Held :

Newasa is a taluk located within the territorial limits of the district of Ahmadnagar. The Chief Judicial Magistrate, Ahmadnagar was approached for nominating a Magistrate within his jurisdiction for recording the confession. There could have been a variety of reasons for the Chief Judicial Magistrate for choosing a particular Magistrate to do the work. When not even a question was put to the Magistrate who recorded the confession and the investigating officer as to why the CJM, Ahmadnagar did not assign the work to a Magistrate at Newasa, it is not proper for the High Court to have used that as a ground for holding that voluntariness of the confession was vitiated. (Para 22). *State of Maharashtra* v. *Damu*, (2000) 6 SCC 269: 2000 SCC (Cri) 1088: AIR 2000 SC 1691: 2000 Cri LJ 2301.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 1-5-2000]

[1766] — Ss. 164(1), 167, 3, 6, 20(1) and (4) — Inclusion of Executive Magistrate or Special Executive Magistrate within the purview of Ss. 164 and 167 CrPC — *Held, not violative of Arts. 50, 14 and 21 — Likewise S. 15(a) of Special Courts Act also does not suffer from any infirmity — Executive Magistrates also constitute a class of criminal court — Executive Magistrates are judicial officers — However, whenever Judicial Magistrate is available, he should record confession or statement in presence of Executive Magistrate — Terrorist Affected Areas (Special Courts) Act, 1984 — S. 15(a) — Constitution of India — Arts. 50, 14 and 21 — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20(3) and (4)(a) (as amended by Act 43 of 1993)*

A reading of sub-section (3) of S. 20 of TADA Act and sub-section (1) of S. 164 CrPC in juxtaposition shows that S. 164(1) of the Code is made substantially applicable in relation to a case involving an offence punishable under the TADA Act or any rule made thereunder. But the modification is only to the extent that the Executive Magistrate and Special Executive Magistrate are included along with the Metropolitan Magistrate and Judicial Magistrate and they are all empowered to record the confession or statement. It was contended that the inclusion of the Executive Magistrate or Special Executive Magistrate to record any confession or statement is with an oblique motive of making it possible that the confession or statement may be recorded and admitted in evidence even if the confessions or statements are not made voluntarily but are extorted under coercion or inducement. The empowering of these two Magistrates, it was contended, is against the very principle of separation of judiciary from the executive enunciated in Art. 50 of the Constitution, and therefore, this provision is bad under Arts. 14 and 21 of the Constitution. It was further stated that the conferment of judicial functions on the newly added non-judicial authorities, who cannot be expected to have judicial integrity and independence, is totally opposed to the fundamental principle of governance contained in Art. 50 of the Constitution.

Held :

Per curiam

(1) The Executive Magistrates are also brought in as one of the classes of criminal courts in every State. This revised set-up and the allocation of magisterial functions between the two categories of Magistrates, judicial under the control of the High Court and the executive under the control of the State Government, the new Code has provided for, make for the simple scheme of separation of the judiciary from the executive on an all-India basis. The Executive Magistrates have not been further classified evidently for the reason that the judicial functions to be performed by the Executive Magistrates under the new Code are very few. Broadly speaking the functions which are essentially of judicial nature are for the Judicial Magistrates and the functions which are of police and administrative nature are for the Executive Magistrates as appears from the rules of construction contained in sub-section (4) of S. 3. When S. 6 brings Executive Magistrates' Courts as one of the classes of criminal courts, it must be held that it is acting as a criminal court. The orders passed by the criminal courts inclusive of the Executive Magistrates are revisable as having been passed in 'judicial proceedings'.

There is no classification or gradation of the Courts of Executive Magistrates but the Special Executive Magistrate is the one appointed by the State Government for a particular area or for the purpose of particular functions.

Therefore, merely because the Executive Magistrates and Special Executive Magistrates are included along with the other Judicial Magistrates in S. 164(1) of the Code and empowered with the authority of recording confessions in relation to the case under the TADA Act, it cannot be said that it is contrary to the accepted principles of criminal jurisprudence and that the Executive Magistrates and Special Executive Magistrates are personam outside the ambit of machinery for adjudication of criminal cases.

The Executive Magistrates while exercising their judicial or quasi-judicial functions though in a limited way within the frame of the Code of Criminal Procedure, which judicial functions are normally performed by Judicial Magistrates can be held to be holding the judicial office. Therefore, the contention that the conferment of judicial functions on the Executive Magistrates and Special Executive Magistrates is opposed to the fundamental principle of governance contained in Art. 50 of the Constitution cannot be countenanced. Resultantly, it is held that sub-section (3) of S. 20 of the TADA Act does not offend either Art. 14 or Art. 21 and hence this sub-section does not suffer from any constitutional invalidity.

Though S. 20(3) is constitutionally valid, but in order to remove the apprehension that the Executive Magistrates and the Special Executive Magistrates who are under the control of the State may not be having judicial integrity and independence as possessed by the Judicial Magistrates and the recording of confessions and statements by those Executive Magistrates may not be free from any possible oblique motive, it would be always desirable and appreciable that a confession or statement of a person is recorded by the Judicial Magistrate whenever the Magistrate is available in preference to the Executive Magistrates unless there is compelling and justifiable reason to get the confession or statement, recorded by the Executive or Special Executive Magistrates.

(2) The modification in sub-section (4)(*a*) of S. 20 is in the same line of sub-section (3); in that the Executive Magistrate and the Special Executive Magistrate are included along with the Judicial Magistrate. Therefore, whenever a person is arrested for an offence under the provisions of TADA Act, the arrestee can be transmitted to the Judicial Magistrate or the Executive Magistrate or the Special Executive Magistrate though the transmission of the accused under S. 167(1) for other offences is still only to the Judicial Magistrate. For the reasons mentioned above while disposing the submission made with reference to sub-section (3) of S. 20, it must be held that the criticism that the inclusion of Executive Magistrate and Special Executive Magistrate in sub-section (1) of S. 167 is with an ulterior motive, cannot be countenanced and this provision cannot be said to be unconstitutional.

Thus sub-sections (3) and (4)(*a*) of S. 20 do not suffer from any infirmity on account of the inclusion of the Executive Magistrate and Special Executive Magistrate within the purview of Ss. 164 and 167 of the Code of Criminal Procedure in respect of their application in relation to a case involving an offence punishable under the TADA Act or any rule made thereunder. Likewise, clause (*a*) of S. 15 of the Special Courts Act, 1984 does not suffer from any infirmity. *Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569: 1994 SCC (Cri) 899: 1994 Cri LJ 3139.

Bench Strength 5. Coram: **S. Ratnavel Pandian**[1], *M.M. Punchhi*[1], **K. Ramaswamy**[2], *S.C. Agrawal*[1] and **R.M. Sahai**[3], JJ. [Date of decision: 11-3-1994]

(4) Person who may get statement recorded under S. 164

[1767] — Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311 — Locus standi to get one's statement recorded under S. 164 — A person who is neither an accused nor sponsored by the investigating agency, held, has no locus standi to apply to the Magistrate to record his statement under S. 164 — *However, further held, evidence of such a person can, at the instance of any of the parties, be taken during the trial*

In an incident two persons sustained injuries and one of them later succumbed to the injuries. On completion of investigation, the police filed final report against the accused persons. Four other persons, appellants herein, who were strangers to the said case, filed a writ petition before the High Court seeking an order to the Magistrate to record their statements under Section 164 CrPC. The High Court issued such an order. Subsequently, at the instance of the first informant in the criminal case, the High Court after hearing both sides revoked that order, dismissed the writ petition and ordered each of the writ petitioners to pay a cost of Rs 2500 "for filing frivolous and vexatious petition". Before the Supreme Court they contended that the Magistrate could, under Section 164 CrPC, record the statement of a witness even at his instance. They also challenged the imposition of costs on them.

Confirming the High Court's order,

Held :

A confession of the accused can certainly be recorded by a Magistrate. An accused is a definite person against whom there would be an accusation and the Magistrate can ascertain whether he is in fact an accused person. Such a confession can be used against the maker thereof. If it is a confessional statement, the prosecution has to rely on it against the accused. But that cannot be said of a person who is not an accused. No such person can straight away go to a Magistrate and require him to record a statement which he proposes to make. (Para 12)

In Sections 154 to 160 and 165 to 173 CrPC contained in Chapter XII thereof, which has the appellation "Information to the police and their power to investigate" there is no set or stage at which a Magistrate can take note of a stranger individual approaching him directly with a prayer that his statement may be recorded in connection with some occurrence involving a criminal offence. Even for willing witnesses whose statement the investigating officer might be disinclined to record provisions are available in law e.g. the accused can cite them as defence witnesses during trial or the court can be requested to summon them under Section 311 CrPC. Therefore, the Magistrate should not be burdened with the additional task of recording the statements of all and sundry who may knock at the door of the court with a request to record their statements under Section 164 CrPC. Otherwise, too many persons sponsored by culprits might throng before the portals of the Magistrates' Courts for the purpose of creating record in advance for the purpose of helping the culprits. In the present case, one of the arguments advanced by the accused for grant of bail to them was based on the statements of the four appellants recorded by the Magistrate under Section 164 CrPC. It is not part of the investigation to open up such a vista nor can such step be deemed necessary for the administration of justice. (Paras 19, 22 and 23)

Therefore, Section 164(1) cannot be interpreted as empowering a Magistrate to record the statement of a person unsponsored by the investigating agency. Of course, the said course will be without prejudice to their evidence being adduced during trial, if any of the parties requires it. (Para 24). *Jogendra Nahak* v. *State of Orissa*, (2000) 1 SCC 272: 2000 SCC (Cri) 210: AIR 1999 SC 2565: 1999 Cri LJ 3976.

Bench Strength 3. Coram: **K.T. Thomas**, *D.P. Mohapatra* and *U.C. Banerjee*, JJ. [Date of decision: 4-8-1999]

C.W. Casse, Re, AIR 1948 Mad 489: (1948) 1 MLJ 404: (1949) 50 Cri LJ 28; State of Orissa v. Amitava Prasad Das, (1979) 47 Cut LT 298; Kunjukutty v. State of Kerala, 1988 Cri LJ 504: 1986 Ker LT 1011, overruled

(5) Admissibility of confession/statement recorded under S. 164 — Voluntariness

See also S. 164, '(1) Generally', and

'(2) Manner of recording confession — Compliance with precautions under S. 164', above and

'(6) Reliability of judicial confession: basing of conviction thereon', below

See also under CRIMINAL TRIAL in Vol. 3

See also Ss. 24 to 31, EVIDENCE ACT, 1872

[1768] — S. 164 — If any part of the confessional statement is excluded under any provision of law, then the entire confessional statement must be excluded unless proof of it is permitted by some other provision (Para 21). *Dhanajaya Reddy* v. *State of Karnataka*, (2001) 4 SCC 9: 2001 SCC (Cri) 652: AIR 2001 SC 1512: 2001 Cri LJ 1712.

Bench Strength 2. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 14-3-2001]

Abdul Razak Shaikh v. State of Maharashtra, 1988 Cri LJ 382: (1987) 89 Bom LR 408 (Bom), approved

[1769] — S. 164 — Judicial confession — Admissibility — *Held, is admissible in evidence and is a relevant fact — Further held, judgment of conviction can also be based on confession if it is found to be truthful, deliberate and voluntary and if clearly proved — Voluntary nature of confession depends upon whether there was any threat, inducement or promise and its truth is judged on the basis of the entire prosecution case — Retracted confession, however, must be looked upon with greater concern unless the reasons given for having made it in the first instance are on the face of them false — Evidence Act, 1872 — S. 24* (Paras 12, 13 and 14). *Babubhai Udesinh Parmar* v. *State of Gujarat*, (2006) 12 SCC 268: (2007) 1 SCC (Cri) 702: AIR 2007 SC 420: (2007) 49 AIC 618 (SC): 2007 Cri LJ 786: (2007) 1 Guj LR 742.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

Bharat v. State of U.P., (1971) 3 SCC 950: 1972 SCC (Cri) 198; Subramania Goundan v. State of Madras, 1958 SCR 428: AIR 1958 SC 66: 1958 Cri LJ 238; State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600: 2005 SCC (Cri) 1715, relied on

Taylor's Treatise on the Law of Evidence, Vol. I, cited

[1770] — S. 164 — Judicial confession — Admissibility — *Ordinarily admissible in evidence and can solely form the basis of conviction, provided it is voluntary, truthful and is corroborated by independent evidence — Confession being detailed by itself may not raise presumption of its truthfulness*

Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and

(5) **Admissibility of confession/statement recorded under S. 164 — Voluntariness** *(contd.)*

subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (*i*) voluntariness of the confession; (*ii*) truthfulness of the confession; (*iii*) corroboration. (Para 87)

A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof. (Para 89)

Section 164 CrPC makes the confession before a Magistrate admissible in evidence. The manner in which such confession is to be recorded by the Magistrate is provided under Section 164 of the Code. The said provision, inter alia, seeks to protect an accused from making a confession, which may include a confession before a Magistrate, still as may be under influence, threat or promise from a person in authority. It takes into its embrace the right of an accused flowing from Article 20(3) of the Constitution of India as also Article 21 thereof. Although, Section 164 provides for safeguards, the same cannot be said to be exhaustive in nature. The Magistrate putting the questions to an accused brought before him from police custody, should sometime, be more intrusive than what is required in law. (Para 104)

In this case, the courts below have failed to notice the legality of the judicial confession. There did not exist any evidence against the co-accused. The courts apparently considered the extra-judicial confession of the main accused *A* (wherein he took the blame entirely upon himself without implicating the other accused) and then started connecting links therefrom and again came back to the confession for completing the chain. Confession must be considered so as to buttress other evidence and not vice versa. (Para 133). *Aloke Nath Dutta* v. *State of W.B.*, (2007) 12 SCC 230: (2008) 2 SCC (Cri) 264.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 12-12-2006]

Shankaria v. State of Rajasthan, (1978) 3 SCC 435: 1978 SCC (Cri) 439; Anil v. Admn. of Daman and Diu, Daman, (2006) 13 SCC 36: (2008) 1 SCC (Cri) 72; Muthuswami v. State of Madras, AIR 1954 SC 4: 1954 Cri LJ 236; Babubhai Udesinh Parmar v. State of Gujarat, (2006) 12 SCC 268: (2007) 1 SCC (Cri) 702, relied on

[1771] — Ss. 164 and 162 — Recording of confession — Source from which investigating officer came to know about accused's willingness to make confession, held, not relevant

It is a worthless exercise to ponder over how or from which source the investigating officer would have come to know that the accused was desiring to confess. The investigating officer can have different sources to know that fact and he is not obliged to state in court the same, particularly in view of the ban contained in Section 162 CrPC. (Para 22). *State of Maharashtra* v. *Damu*, (2000) 6 SCC 269: 2000 SCC (Cri) 1088: AIR 2000 SC 1691: 2000 Cri LJ 2301.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 1-5-2000]

[1772] — S. 164 — Confessional statement of accused recorded by Magistrate — Reliability — Confession made freely and voluntarily when accused was released on bail and thus was a free man — *Accused in his statement under S. 313 CrPC or during cross-examination never suggested that his statement under S. 164 was false — Allegation of presence of police officers at the time of recording of the confessional statement was without material — Requirements of S. 164(2) complied with — Held, confessional statement was fit to be accepted — Evidence Act, 1872, Ss. 21 and 28* (Paras 27 to 30). *M.A. Antony* v. *State of Kerala*, (2009) 6 SCC 220.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 22-4-2009]

[1773] — S. 164 — Confession before Magistrate — Voluntary nature of — *On facts, confessional statement held, voluntary and not made under influence of police. Akella Subrahmanyam* v. *State of A.P.*, (1980) 1 SCC 590: 1980 SCC (Cri) 299.

Bench Strength 2. Coram: **Jaswant Singh** and *P.S. Kailasam*, JJ. [Date of decision: 27-11-1978]

[1774] — S. 164 — Confession must be shown to be voluntary — *Circumstances necessary to show. Davendra Prasad Tiwari* v. *State of U.P.*, (1978) 4 SCC 474: 1979 SCC (Cri) 95: AIR 1978 SC 1544: 1978 Cri LJ 1614.

Bench Strength 2. Coram: **Jaswant Singh** and *P.S. Kailasam*, JJ. [Date of decision: 29-8-1978]

[1775] — S. 164 — Confession of accused — Voluntary nature of — Determination of — Retraction at later stage — Effect of — *Held, merely because the confession was retracted later, that does not mean that the confession was not voluntary in nature — Whether the accused was willing to give confession voluntarily or not is to be determined from his mental state at the time when he gave the confession — In the present case, confession of accused recorded by Dy. Commissioner of Police (DCP) under TADA Act — Accused had expressed his willingness to make the confession —*

DCP took all precautions to ascertain that the confession was voluntary — Confession recorded after complying with all procedural formalities and these facts incorporated in confessional statement — Before the Magistrate, accused had no case that he was put under pressure or third-degree methods had been used against him to extract confession — In view of the said facts, held, the above confession was voluntary, truthful and admissible in evidence — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 15 — Evidence Act, 1872 — S. 24

Merely because the confession was retracted later, that does not mean that the confession was not voluntary in nature. All confessions are invariably retracted at a later stage, therefore, the retraction by itself is not a ground to discard the confession by holding that it was not voluntarily made. Whether the accused was willing to give a confession voluntarily or not is to be determined from his mental state at the time when he gave the confession. (Paras 13 and 8)

In the present case, the accused was arrested by the police and as he expressed his willingness to make a confession, he was produced before the DCP and told that he was not legally bound to give a voluntary statement and that in case any statement is found to be false, it would be used against him. The DCP had taken all precautions to ascertain that the confession was voluntary. All formalities had been complied with and these facts are incorporated in the confessional statement. There is nothing on record to show that the accused was under pressure to give any confession. When he was produced before the Magistrate, he had no case that he was put under pressure or third-degree methods had been used against him to extract the confession. When he was questioned under Section 313 CrPC, he had only stated that he had not given any confession as recorded by DCP. The facts indicate that the confession was voluntary and was recorded by DCP after apprising him that he was not bound to give a confession and in case he gave the confession, it would be used against him. Therefore, there is no force in the contention of the accused-appellants regarding the inadmissibility of the confession. There is ample evidence to show that the confession was truthful and gained support from other items of evidence. (Paras 8 and 13). *Abdulvahab Abdulmajid Shaikh* v. *State of Gujarat*, (2007) 4 SCC 257: (2007) 2 SCC (Cri) 276: (2007) 55 AIC 204 (SC): (2007) 3 Guj LR 1841.

Bench Strength **2**. Coram: **K.G. Balakrishnan, C.J.** and *G.P. Mathur*, J. [Date of decision: 24-4-2007]

[1776] — S. 164 — Confession of accused when may be acted upon

It is true that the appellant was given by the magistrate only 15 to 20 minutes for reflection before recording his confession, but in fact, he was for more than 30 hours in judicial custody free from fear or influence of the police. There is no statutory provision that the accused should be given 24 hours for reflection. How much time should be given for reflection depends on the circumstances of each case, but what is important is that the magistrate, recording the confession, should be satisfied that it was being made voluntarily. The magistrate, in the present case, testified that he was so fully satisfied and the large number of pointed questions put to the appellant and his answers show that the magistrate had cogent reasons for being so satisfied.

The appellant was not, after his confession was recorded, handed over to the police and hence there was no violation of S. 164(3), Criminal Procedure Code.

The failure of the appellant to say in his confessional statement the precise number of blows given to the victim, does not amount to a material discrepancy between the confession and medical evidence. *Shankaria* v. *State of Rajasthan*, (1978) 3 SCC 435: 1978 SCC (Cri) 439: AIR 1978 SC 1248: 1978 Cri LJ 1251.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *N.L. Untwalia* and *P.S. Kailasam*, JJ. [Date of decision: 26-4-1978]

[1777] — S. 164 — Confession whether voluntary — *On facts, the evidence, including that of the cross-examination of the Judicial Magistrate before whom the confession was made, show that the confession was voluntarily made — No discrepancy between the confessional statement and the medical evidence found — Confession held voluntary. Shankaria* v. *State of Rajasthan*, (1978) 4 SCC 453: 1979 SCC (Cri) 74: AIR 1978 SC 1399: 1978 Cri LJ 1414.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *N.L. Untwalia* and *P.S. Kailasam*, JJ. [Date of decision: 26-4-1978]

[1778] — S. 164 — Confessional statement of accused found to have been recorded by a Judicial Magistrate after taking all necessary precautions — Confession corroborated by the report of Serologist and other evidence, both direct and circumstantial — *On facts held, confessional statement voluntary and could be acted upon. Bheru Singh* v. *State of Rajasthan*, (1994) 2 SCC 467: 1994 SCC (Cri) 555: (1994) 1 Crimes 630: (1994) 1 ALT (Cri) 695: (1994) 31 ACC 240.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 4-2-1994]

(5) Admissibility of confession/statement recorded under S. 164 — Voluntariness *(contd.)*

[1779] — S. 164 — Confession when admissible — Vitiation of voluntariness of confession — Extent of proof necessary — *Need for confession to have been made with full knowledge of nature and consequences of the confession — Held, court need not go to extent of holding that said vitiation (from threat etc.) or lack of said knowledge has in fact been proved — It is enough if evidence adduced raises reasonable doubts as to said requirements — Twin tests for evaluation of confession restated — Evidence Act, 1872 — S. 24*

Before acting upon a confession the court must be satisfied that it was freely and voluntarily made. Section 24 of the Evidence Act lays down the obvious rule that a confession made under any inducement, threat or promise becomes irrelevant in a criminal proceeding. The expression "appears" connotes that the court need not go to the extent of holding that the threat etc. has in fact been proved. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it be a confession made to a Magistrate or a person other than a police officer. Further, the confession should have been made with full knowledge of the nature and consequences of the confession. If any reasonable doubt is entertained by the court that these ingredients are not satisfied, the court should eschew the confession from consideration. Recognising the stark reality of the accused being enveloped in a state of fear and panic, anxiety and despair while in police custody, the Evidence Act has excluded the admissibility of a confession made to the police officer. (Paras 27 and 29)

The twin tests to be applied to evaluate a confession are: (*1*) whether the confession was perfectly voluntary, and (2) if so, whether it is true and trustworthy. If the first test is not satisfied the question of applying the second test does not arise. One broad method by which a confession can be evaluated is that the Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test. (Para 36). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Shankaria v. State of Rajasthan, (1978) 3 SCC 435: 1978 SCC (Cri) 439, relied on

[1780] — S. 164 — Voluntary nature of confession — *To be ascertained from facts and circumstances of the case including the nature of confession made — Three hours' time given for reflection before recording confession — That by itself would not render the confession involuntary — If confessional statement amply corroborated by circumstantial evidence, its subsequent retraction by its maker would not make it unreliable — On facts held, confessional statements voluntary and could be acted upon — Evidence Act, 1872 — S. 24*

Although Magistrate should give some more time to the accused for reflection before recording his confession but a confessional statement cannot be rejected merely because only three hours' time had been given for the reflection, if it is otherwise acceptable. It is necessary to see what the maker of the statement stated in his confession to find out whether intrinsically it is a voluntary statement or tutored one made under coercion.

In the present case the confessional statements show that they were more or less exculpatory of the maker in which each accused attributed the important role in the crime to the other and were quite long and full of facts and minute details. These would not be there normally if the confessions are the result of tutoring or of compulsion. The circumstantial evidence relied upon by the trial court and the High Court lend assurance to the genuineness and voluntary nature of these confessions. Although they had been retracted, but in view of the fact that they are generally corroborated by the circumstantial evidence in ample measure, there is no satisfactory reason for the confessions not being accepted and acted upon.

The confessional statements cannot be said to be not of voluntary nature in this case. The Judicial Magistrate who recorded the statements had given the necessary warning to the accused as required under S. 164(2). After the accused told him that his mind was clear from the time of his arrest and that he wanted to confess out of repentance for what he had done he gave him three hours' time for reflection and put him in the custody of a peon of the Chief Judicial Magistrate in his own chamber and saw to it that no police officer was allowed to enter the court until the recording of the confessional statement of the accused was over. After the accused was brought before him from his chamber after the said interval he cautioned him again and after being satisfied that the accused was going to confess voluntarily he recorded his statement.

Although one of the accused had injury on his person but the injury was not serious enough to force the accused to make a false confessional statement. It was not improbable in this case that the accused was roughed up and given some beating by the police when he tried to escape before he was forcibly put into the police vehicle and taken to the police station resulting in some injury to his person. The accused had not told the Judicial Magistrate that he was beaten by the police for causing him to make a confessional statement. It is also not possible to hold that the statement of the other accused was not voluntary merely because he had on a prior occasion declined to make a confessional statement. *Henry Westmuller Roberts* v. *State of Assam*, (1985) 3 SCC 291: 1985 SCC (Cri) 364: AIR 1985 SC 823: 1985 Cri LJ 1079.

Bench Strength **3**. Coram: *S. Murtaza Fazal Ali*, **A. Varadarajan** and *Sabyasachi Mukharji*, JJ. [Date of decision: 27-3-1985]

[1781] — S. 164 — Whether confession recorded was voluntary — *Submission that the fact that one of the persons arrested along with accused-appellant had died in police lock-up shows physical torture by police — Such submission raised before Supreme Court in appeal under Art. 136, in absence of any other material, held, not sufficient to doubt voluntariness of a confession*

Dealing with the contention that the confession was not voluntary attention of the court was drawn to the fact that one of the persons arrested along with the appellant died in the lock-up and that would give sufficient indication as to the physical torture which the persons involved in this case would have been subjected to.

Held :

Neither the prosecution nor the defence could show how that person died when he was in police custody. The defence did not even bother to ask the investigating officer about the result of the enquiry conducted by a Magistrate under Section 176 CrPC, regarding the death of that person (if he had died while he was in the lock-up the aforementioned provision mandates that the enquiry should have been conducted by a Magistrate). There is no allegation that the Judicial Magistrate had not adopted all the precautions enjoined by law before recording the confession. No other formality prescribed under law had been infringed by the Judicial Magistrate. In the absence of any such material it is too late in the day for the Supreme Court, particularly dealing with the appeal under Article 136 of the Constitution, to use the death of that person as a sufficient ground to eclipse the voluntariness of the confession of *LS* which was recorded by a Judicial Magistrate. (Para 14). *Lokeman Shah* v. *State of W.B.*, (2001) 5 SCC 235: 2001 SCC (Cri) 829: AIR 2001 SC 1760: 2001 Cri LJ 2196.

Bench Strength 3. Coram: **K.T. Thomas**, *R.P. Sethi* and *S.N. Phukan*, JJ. [Date of decision: 11-4-2001]

[1782] — Ss. 164 and 163, 162 — Confession — Reliability — *Comparison of confession with record in case diary illegal — Direction by Magistrate, while remanding the accused to judicial custody, to keep away the accused from police does not indicate involuntariness of the confession — Merely because the Magistrate started recording the confession within a short time after the accused was produced before him, it could not be inferred that the confession was not voluntarily made — Confession retracted four days after the accused was released on bail — No such complaint made while he was in judicial custody for about a fortnight — Merely because the accused while retracting the confession and during his examination under S. 313 CrPC alleged that he made the confession under pressure and force from the police it cannot be concluded that the confession was not voluntarily made — Trial court not justified in considering length of confession as a suspicious circumstance — Accused clearly warned that his confession was likely to be used against him — Omission to inquire from the accused as to whether he was promised to be made an approver if he made the confession is inconsequential — Separate reasons not required to be recorded for believing that the confession was made voluntarily — Held, in the circumstances of the case, the High Court was justified in placing reliance upon the confession made by the accused — Evidence Act, 1872 — S. 24.* *Ammini* v. *State of Kerala*, (1998) 2 SCC 301: 1998 SCC (Cri) 618: AIR 1998 SC 260: 1998 Cri LJ 481.

Bench Strength **2**. Coram: **G.T. Nanavati** and *M. Jagannadha Rao*, JJ. [Date of decision: 18-11-1997]

[1783] — S. 164 — Applicability — Statement recorded under S. 14, Central Excise Act without complying with S. 164 CrPC, held, nonetheless admissible in evidence subject to the conditions in S. 24 of Evidence Act — *Central Excise Act, 1944 — Ss. 14 and 9(1) — Evidence Act, 1872 — Ss. 24, 25 and 26 — Customs Act, 1962 — S. 108(3)*

Certain cigarette-manufacturing companies and some of their Directors were prosecuted before the Court of Special Judge (Economic Offences) at Hyderabad for offences under Section 9(1) of the Central Excise Act and Section 120-B of the Penal

Code. The Special Judge found them to be not guilty and, therefore, acquitted them. The Revenue filed an appeal together with a petition for leave to appeal which came up before a Single Judge of the A.P. High Court. In an earlier case, a Division Bench of that High Court had held that any inculpatory statement recorded by the authorities under Section 108 of the Customs Act without following and complying with the constraints prescribed in Section 164 CrPC would be inadmissible evidence in a trial against the maker of that statement. Following that decision, the Single Judge excluded all the confessional statements from consideration. Therefore, finding the remaining evidence to be insufficient to establish the guilt of the accused persons, he dismissed the petition for leave to appeal as well as the appeal itself.

Then the Revenue approached the Supreme Court. Allowing the appeal,

Held :

Section 171-A of the Sea Customs Act, 1878 (repealed by the Customs Act) corresponds to Section 108 of the Customs Act. In this context, Section 14 of the Central Excise Act is practically the same as Section 108 of the Customs Act. So the decision rendered by the Supreme Court under the other corresponding provisions will be of much advantage to discern how the scope of the provisions has been understood by the Supreme Court earlier. (Para 9)

A confession made to a police officer can be recorded by him without any of the constraints incorporated under Section 164 CrPC. But the safety of the confessor in such an event is that such confession is forbidden from use in evidence. The ban contained in Section 25 of the Evidence Act is an absolute ban. But there is no ban in regard to the confession made to any person other than a police officer, except when such confession was made while he is in police custody. The inculpatory statement made by any person under Section 108 is to non-police personnel and hence it has no tinge of inadmissibility in evidence if it was made when the person concerned was not then in police custody. Nonetheless such a statement should be scrutinised by the court in the same manner as confession made by an accused person to any non-police personnel. The court has to be satisfied in such cases, that any inculpatory statement made by an accused person to a gazetted officer must also pass the tests prescribed in Section 24 of the Evidence Act. (Paras 12 and 17). *CCE* v. *Duncan Agro Industries Ltd.*, (2000) 7 SCC 53: 2000 SCC (Cri) 1275: AIR 2000 SC 2901: (2000) 120 ELT 280.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 7-8-2000]

N.S.R. Krishna Prasad v. Collector of Customs, (1992) 57 ELT 568 (AP), overruled on this point and, held, reversed on a different point

Haroom Haji Abdulla v. State of Maharashtra, AIR 1968 SC 832: (1968) 2 SCR 641; Ramesh Chandra Mehta v. State of W.B., AIR 1970 SC 940: (1969) 2 SCR 461: 1970 Cri LJ 863; Harbansingh Sardar Lenasingh v. State of Maharashtra, (1972) 3 SCC 775: 1972 SCC (Cri) 843; Veera Ibrahim v. State of Maharashtra, (1976) 2 SCC 302: 1976 SCC (Cri) 278; Poolpandi v. Supdt., Central Excise, (1992) 3 SCC 259: 1992 SCC (Cri) 620, followed

Asstt. CCE v. Duncan Agro Industries Ltd., 1992 Cri LJ 231 (AP), reversed

(6) Reliability of judicial confession: basing of conviction thereon

See also S. 164, '(2) Manner of recording confession — Compliance with precautions under S. 164', and

'(5) Admissibility of confession/statement recorded under S. 164 — Voluntariness', above

See also under CRIMINAL TRIAL in Vol. 3

See also Ss. 24 to 31, EVIDENCE ACT, 1872

[1784] — Ss. 164 and 313 — Confession by accused — Admissibility in evidence — Need for corroboration — *Held, confession would not ordinarily be considered the basis for a conviction — However, it is admissible and conviction may also be based thereon if it is found truthful and voluntary and in the given case, some corroboration thereof — Confession which is not retracted even at a later stage of the trial and even accepted by the accused in his examination under S. 313 can be fully relied upon — Further held, where sufficient material is brought on record to lend assurance to the court in regard to the truthfulness of the confession made, which is corroborated by several independent circumstances lending assurance thereto, even a retracted confession may be acted upon — In the instant case, confession made by Appellant 1 was not retracted and he even accepted the same in his examination under S. 313 — Hence, conviction on the basis of, together with other circumstantial evidence, sustainable* (Paras 31 to 39). *Bishnu Prasad Sinha* v. *State of Assam*, (2007) 11 SCC 467: AIR 2007 SC 848: (2007) 53 AIC 166 (SC): 2007 Cri LJ 1145.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 16-1-2007]

Aloke Nath Dutta v. State of W.B., (2007) 12 SCC 230; State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600: 2005 SCC (Cri) 1715; Sidharth v. State of Bihar, (2005) 12 SCC 545: (2006) 1 SCC (Cri) 175; State of T.N. v. Kutty, (2001) 6 SCC 550: 2001 SCC (Cri) 1177; Bhagwan Singh v. State of M.P., (2003) 3 SCC 21: 2003 SCC (Cri) 712; Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637: 1957 SCR 953: 1957 Cri LJ 1014, relied on

[1785] — S. 164 — Confession — Conviction can be based on confession even if it is not corroborated

It is not possible to accept the contention that the confession without corroboration cannot be acted on for the purpose of entering a conviction. Confession if true and reliable can form the basis of conviction. (Para 13). *Lokeman Shah* v. *State of W.B.*, (2001) 5 SCC 235: 2001 SCC (Cri) 829: AIR 2001 SC 1760: 2001 Cri LJ 2196.

Bench Strength **3**. Coram: **K.T. Thomas**, *R.P. Sethi* and *S.N. Phukan*, JJ. [Date of decision: 11-4-2001]

Balbir Singh v. State of Punjab, AIR 1957 SC 216: 1957 Cri LJ 481; Pyare Lal Bhargava v. State of Rajasthan, AIR 1963 SC 1094: 1963 Supp (1) SCR 689: (1963) 2 Cri LJ 178; Ram Chandra Prasad Sharma v. State of Bihar, AIR 1967 SC 349: (1966) 3 SCR 517: 1967 Cri LJ 409; Hem Raj Devilal v. State of Ajmer, AIR 1954 SC 462: 1954 SCR 1133: 1954 Cri LJ 1313, relied on

[1786] — S. 164 — Confession — Conviction based on — Propriety — *Recorded confession showing that Magistrate followed the legal formalities in recording confession of the accused-appellant and that confession was voluntary in nature — Statement of appellant that he was beaten up by police for three days not believed by Magistrate in view of appellant's failure to show marks of injury on his body — As, after putting preliminary questions and recording answers of appellant, further confession was recorded by the Magistrate two hours thereafter, appellant had time for reflection, who was then in judicial custody — Appellant in his confession gave details as to how the incident had happened — Description of injuries, found on the dead body of the deceased in the post-mortem report, in conformity with the overt acts described in the confession statement which proved that confession was fully corroborated by medical evidence — Bloodstained dhariya (crime weapon) and turban allegedly worn by appellant at the time of the incident recovered at the instance of the appellant from his house — Held, there was satisfactory evidence to prove the case against the appellant and the Sessions Judge as well as the High Court had rightly convicted the appellant for the offence punishable under S. 302 — Penal Code, 1860 — S. 302 — Evidence Act, 1872 — S. 24* (Para 7). *Devi Singh* v. *State of Rajasthan*, (2005) 10 SCC 453: 2005 SCC (Cri) 1580.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Arun Kumar*, JJ. [Date of decision: 8-12-2004]

[1787] — S. 164 — Confessions when may not to be relied on — Graham Staines murder case — Acquittal of accused persons other than main assailants (A-1 and A-3) confirmed — *Dock and photo identification being done for the first time in court without any corroboration — There being procedural lapses and doubt of involvement of accused persons (except A-1 and A-3) — Accused persons at midnight setting on fire a vehicle parked in front of a church in which* **G** *(a Christian missionary from Australia) and his two children were sleeping — As accused prevented deceased from escaping from vehicle, the three getting burnt in vehicle and dying — For many days, many of the eyewitnesses not coming forward to claim that they had seen occurrence, before IOs and police personnel who had visited village from time to time — Confessional statements of A-9, A-12 and A-14 being exculpatory — Many of the confessional statements being recorded immediately after production of maker after long CBI custody and in some cases after recording of such statements maker being remanded to police custody — A-11 being given only 10 minutes' time for reflection after his production from police custody — Various warnings/cautions required to be given to the accused before recording such confession, not having been fully adhered to by Magistrates recording confessions under S. 164 CrPC — There being procedural lapses and absence of acceptable materials, High Court acquitting all accused except A-1 and A-3, held, justified — Dock identification or photo identification though is admissible evidence, cannot be given credence without further corroborative evidence like earlier TI parade or other corroborative evidence — Explanation that out of fear eyewitnesses turned up late, cannot be accepted because as per rule of prudence generally it is desirable to look for corroboration — Though there was corroboration in respect of A-1 and A-3 (those rightly convicted by High Court), criminal conspiracy was not established against the rest (those acquitted by High Court) — Though eyewitnesses proved that a mob consisting of A-1 and A-3 set fire to vehicle causing death of deceased, there being absence of definite assertion from prosecution about specific role and involvement of other accused persons — The poor tribals were, therefore, entitled to benefit of doubt — Evidence Act, 1872, S. 24 — Penal Code, 1860 — S. 302*

Dock identification or photo identification though is admissible evidence, cannot be given credence without further corroborative evidence. Though some of the witnesses identified some of the accused in the dock, without corroborative evidence dock identification alone cannot be treated as substantial evidence, though it is permissible. No importance needs to be attached on the testimony of the eyewitnesses regarding the persons acquitted by the High Court (i.e. accused persons other than A-1 and A-3) because the acquitted persons were identified for the first time before the trial court without any corroboration by previous TI parade held by the

(6) Reliability of judicial confession: basing of conviction thereon *(contd.)*

Magistrate in accordance with the procedure established. As rightly observed by the High Court, for a long number of days, many of these eyewitnesses never came forward to claim that they had seen the occurrence before the IOs and the police personnel visiting the village from time to time. (Paras 50 and 40 to 45)

Though an explanation was offered that out of fear the eyewitnesses did not name the offenders, as a safe rule of prudence, generally it is desirable to look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier TIP. Though some of them were identified by the photographs except A-1 and A-3, no other corroborative material was shown by the prosecution. (Para 43)

There is no material to prove conspiracy charge against any of the other accused. (Para 98)

In the absence of definite assertion from the prosecution side, about their specific role and involvement, as rightly observed by the High Court, it is not safe to convict the other accused. (Para 95)

Finally, insofar as the appeals filed by CBI against the order of acquittal by the High Court in respect of certain persons, it was pointed out that when two views are possible, the one in favour of the accused should be accepted. Presumption of innocence is a fundamental principle of criminal jurisprudence. (Para 94)

Section 164 CrPC requires strict and faithful compliance with sub-sections (2) to (4). The failure to observe safeguards not only impairs the evidentiary value of confession but casts a doubt on the nature and voluntariness of confession on which no reliance can be placed. As rightly observed by the High Court, no exceptional circumstances could be brought to notice by the prosecution in respect of the appellants other than A-1 and A-3, to explain away the procedural lapses. (Para 72)

The analysis of evidence of PWs 29 and 34, Judicial Magistrates shows that many of the confessional statements were recorded immediately after production of the maker after long CBI custody and in some cases after such statements were made and recorded by the Judicial Magistrate, the maker was remanded to police custody. Though the Magistrates have deposed that the procedure provided under Section 164 CrPC has been complied with, various warnings/cautions required to be given to the accused before recording such confession, have not been fully adhered to by them. In the certificate, there is no specific reference about the nature of the custody from which these persons were produced nor about the assurance that they would not be remanded to police custody if they declined. (Paras 71 and 72)

As rightly observed by the High Court, the possibility of coercion, threat or inducement to the accused A-9 to make the confession cannot be ruled out. Remanding A-9 to police custody after his statement was recorded under Section 164 CrPC is not justified. As per Section 164(3) if any accused refuses to make any confessional statement, such Magistrate shall not authorise detention of the accused in police custody. (Para 68)

A-12 was not cautioned that if he made any confession, the same may be used against him in evidence and on that basis he may be sentenced to death or imprisonment for life. Equally he was not cautioned by PW 29 that if he refused to make the confessional statement, he would not be remanded to police custody. (Para 69)

The confessional statement of A-11 was recorded immediately after his production before him from the police custody. He was given only 10 minutes' time for reflection after his production from police custody. (Para 70)

Both A-9 and A-12 in their confessional statements, made exculpatory statements. The entire confessional statement of A-14 is exculpatory and he also retracted from the confession. It was further found that this confessional statement was made long after the charge-sheet was filed i.e. on 22-6-1999. (Paras 69 and 70)

Hence, the reasoning and conclusion of the High Court with regard to acquittal of certain accused persons is justified. In the absence of acceptable materials and in view of the various infirmities in the prosecution case as pointed out by the High Court, the order of acquittal of others (except A-1 and A-3) who are all poor tribals is confirmed. (Paras 95 and 98). *Dara Singh* v. *Republic of India*, (2011) 2 SCC 490.

Bench Strength **2**. Coram: **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 21-1-2011]

Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1: (2010) 2 SCC (Cri) 1385; Umar Abdul Sakoor Sorathia v. Narcotic Control Bureau, (2000) 1 SCC 138: 2000 SCC (Cri) 200; Dana Yadav v. State of Bihar, (2002) 7 SCC 295: 2002 SCC (Cri) 1698; Malkhansingh v. State of M.P., (2003) 5 SCC 746; State of U.P. v. Nandu Vishwakarma, (2009) 14 SCC 501: (2010) 1 SCC (Cri) 1429; Sambhaji Hindurao Deshmukh v. State of Maharashtra, (2008) 11 SCC 186: (2009) 2 SCC (Cri) 464; Raghunath v. State of Haryana, (2003) 1 SCC 398: 2003 SCC (Cri) 326; Allarakha K. Mansuri v. State of Gujarat, (2002) 3 SCC 57: 2002 SCC (Cri) 519, relied on

[1788] — S. 164 — Effect of non-compliance with — *Submission by appellant that: no reliance can be placed on the statement under S. 164 CrPC as there was non-compliance with the provisions therof — Held, appellant never retracted the said confession — Apart from the judicial confession appellant had also made extra-judicial confessions — Hence, appellant rightly convicted under S. 302 and sentenced to life imprisonment — Penal Code, 1860, S. 302* (Paras 14, 21 and 23 to 28). *Mondri Sreenu* v. *State of A.P.*, (2008) 17 SCC 43: AIR 2009 SC 677.

Bench Strength **2**. Coram: *S.B. Sinha* and *Cyriac Joseph*, JJ. [Date of decision: 15-10-2008]

[1789] — S. 164 — Scope and applicability — *Trial court, inter alia, relying on judicial confession of respondent-accused, convicting him under S. 302 IPC for allegedly killing his parents — However, High Court, on ground that requisite procedure for recording confession under S. 164 was not followed, directing acquittal — Sustainability — Held, act of recording confessions under S. 164 is a very solemn act and in discharging his duties under the said section, Judicial Magistrate is required to take care to see that requirements of S. 164(2) are fully satisfied — It is necessary in every case to put questions as intended to be asked under S. 164(2) — In the instant case, a bare perusal of evidence of PW 9 (Judicial Magistrate) shows that necessary questions were asked and due care was taken before recording statement of accused — It was specifically told to accused that statement could be used in evidence against him — Time was given to accused to ensure that he was making statement voluntarily without any pressure — Therefore, High Court was not justified in holding non-compliance with provisions of S. 164 — Moreover, it is not the case of respondent that any mitigating factor existed — Hence, impugned judgment liable to be set aside — Penal Code, 1860, S. 302* (Paras 16, 17 and 20). *State of Punjab* v. *Harjagdev Singh*, (2009) 16 SCC 91.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 22-4-2009]

State of Rajasthan v. Raja Ram, (2003) 8 SCC 180: 2003 SCC (Cri) 1965; Ram Singh v. Sonia, (2007) 3 SCC 1: (2007) 2 SCC (Cri) 1, relied on

R. v. Warickshall, (1783) 1 Leach 263: 168 ER 234, cited

Woodroffe's Evidence, 9th Edn., p. 284, cited

[1790] — S. 164 — Applicability — Prosecutrix giving statement only under S. 164 — Prosecutrix not giving any evidence in court — During alleged crime other accused bringing prosecutrix to appellant's house but nothing on record to show appellant's involvement — Effect — Mere S. 164 CrPC statement of prosecutrix, held, is not enough to convict appellant — S. 164 CrPC statement is not substantive evidence and can be utilised only to corroborate or contradict the witness vis-à-vis statement made in court — *Penal Code, 1860, Ss. 366-A or 363* (Paras 6 to 8)

In appeal, the High Court altered the conviction from one under Section 366-A to Section 363 IPC. One out of the four accused died, one was released on the basis of reduction of sentence to imprisonment already undergone and the appellant and his brother were sentenced to one year's RI. The SLP of appellant's brother was dismissed because he did not surrender to custody.

Allowing the appeal,

Held :

Statement under Section 164 CrPC is not substantive evidence and can be utilised only to corroborate or contradict the witness vis-à-vis statement made in court. (Para 6)

The conviction of the appellant under Section 363 IPC is set aside because the only material that has been used against the appellant is the statement under Section 164 CrPC. The prosecutrix was not produced as a witness as she had since been married in Nepal and her husband had refused to let her return to India for the evidence. In this light her statement under Section 164 cannot be used against the appellant. (Paras 7 and 6)

Even otherwise the appellant could not be implicated in the offence under Section 363 or 366-A IPC dehors other evidence to show his involvement in the events preceding the kidnapping when as per the Section 164 CrPC statement of the prosecutrix she was brought to appellant's house by other kidnappers. (Para 7). *Baij Nath Sah* v. *State of Bihar*, (2010) 6 SCC 736.

Bench Strength **2**. Coram : H.S. Bedi and C.K. Prasad, JJ. [Date of decision : 29-4-2010]

Ram Kishan Singh v. Harmit Kaur, (1972) 3 SCC 280: 1972 SCC (Cri) 493, relied on

[1791] — S. 164 — Confession — Exculpatory — Inadmissibility — *Alleged confession read as a whole exculpatory of the offence of murder for which appellant was charged, the same have been committed by way of private defence when the deceased tried to rape the accused — Such statement, held, was inadmissible and could not be the basis for her conviction — Appellant acquitted of the charge of murder — Penal Code, 1860 — Ss. 100, 302 and 376 — Conviction based on exculpatory statement. Champa Rani Mondal* v. *State of W.B.*, (2000) 10 SCC 608: 2001 SCC (Cri) 1514.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *B.N. Kirpal*, JJ. [Date of decision: 16-9-1998]

(6) Reliability of judicial confession: basing of conviction thereon *(contd.)*

[1792] — S. 164 — Post-recovery judicial confession — Reliability of — *Merely because a judicial confession regarding murder and theft was made after recovery of the articles belonging to the victim at the behest of the confessor, confession does not become unreliable*

A judicial confession would also not become bad by reason of the fact that articles belonging to the victims were recovered prior to the making of the confession. That aspect, instead of vitiating the confession, could be a factor in favour of the voluntariness of the confession. When the culprit finds that the articles concealed by him are all disinterred, it is possible that he might feel that there is no use in concealing the facts any more. Then he may desire to make a clean breast of everything to any person or authority. (Para 14)

On the facts of the case there was no reason to think that A-2 had been prevailed upon by any extraneous influence to make the confession. The Judicial Magistrate who heard the confession certified that in his opinion the accused made the confession voluntarily. That satisfaction could be disrupted only if there are sturdy reasons. Even regarding the truthfulness of the version given by the accused in the confession, it is open to the court to ascertain whether there are other materials to lend assurance to the court about the truth of it. (Para 18). *State of T.N.* v. *Kutty*, (2001) 6 SCC 550: 2001 SCC (Cri) 1177: AIR 2001 SC 2778.

Bench Strength 2. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 10-8-2001]

[1793] — S. 164 — Use of threat, inducement or promise alleged — *Held, the burden of proof is on the accused, though it is not as high as on the prosecution — Further, once the accused is able to prove the facts creating a reasonable doubt that the confession was not voluntary or was obtained by threat, coercion or inducement, the burden would be on the prosecution to prove that the confession was made voluntarily — Evidence Act, 1872 — Ss. 24, 30 and 101-106*

In a trial and proprio vigore in a criminal trial, courts are required to marshal the evidence. It is the duty of the prosecution to prove the case beyond reasonable doubt. The evidence may consist of direct evidence, confession or circumstantial evidence. In a criminal trial punishable under the provisions of the IPC it is now a well-settled legal position that confession can form the sole basis for conviction. If it is retracted, it must first be tested whether the confession is voluntary and truthful inculpating the accused in the commission of the crime. Confession is one of the species of admission dealt with under Sections 24 to 30 of the Evidence Act and Section 164 of the Code. It is an admission against the maker of it, unless its admissibility is excluded by some of those provisions.

If a confession is proved by unimpeachable evidence and if it is of voluntary nature, it when retracted, is entitled to high degree of value as its maker is likely to face the consequences of confession by a statement affecting his life, liberty or property. Burden is on the accused to prove that the statement was obtained by threat, duress or promise if it is established from the record or circumstances that the confession is shrouded with suspicious features, then it falls in the realm of doubt. The burden of proof on the accused is not as high as on the prosecution. If the accused is able to prove the facts creating reasonable doubt that the confession was not voluntary or it was obtained by threat, coercion or inducement etc., the burden would be on the prosecution to prove that the confession was made by the accused voluntarily. *K.I. Pavunny* v. *Asstt. Collector (HQ), Central Excise Collectorate*, (1997) 3 SCC 721: 1997 SCC (Cri) 444: (1997) 1 KLT 489.

Bench Strength 3. Coram: **K. Ramaswamy**, *S. Saghir Ahmad* and *G.B. Pattanaik*, JJ. [Date of decision: 3-2-1997]

Bhagwan Singh v. State of Punjab (I), AIR 1952 SC 214: 1952 SCR 812, followed

[1794] — S. 164 — Effect of clerical mistake on credibility of recorded statement — *Held, reliable substantive evidence not to be doubted where a presumption of clerical mistake might explain the incompatibility in accommodating the evidence — Authentic substantive evidence of Special Judicial Magistrate while recording dying declaration was relied on which was further corroborated by another analogous dying declaration by PSI (PW 7) — Therefore, clerical mistake (of typing 11.55 p.m instead of 11.55 a.m. while recording dying declaration) was presumed to accommodate the reliable substantive evidence of dying declaration recorded by Special Judicial Magistrate* (Paras 24 to 26). *Vikas* v. *State of Maharashtra*, (2008) 2 SCC 516: (2008) 1 SCC (Cri) 486.

Bench Strength 2. Coram: **C.K. Thakker** and *Markandey Katju*, JJ. [Date of decision: 21-1-2008]

[1795] — Ss. 164 and 313 — Kidnapping of a 5-year-old boy for ransom — Victim subsequently murdered and thereafter his dead body burnt — Two of the three persons involved in the crime committing suicide — *The third one i.e. the appellant, who had worked as a driver in the house of victim, making a disclosure statement as a result of which bones of victim and his burnt clothes etc.*

were recovered — Medical evidence including DNA test report showing that remnants of body were that of victim — Confession made by appellant before Judicial Magistrate was to the effect that he only kidnapped the boy while the other two killed him — Appellant was seen 5-6 days prior to the incident moving around the house of the victim — Motive for crime was to extort ransom — Considering the above circumstances, the trial court convicted the appellant under Ss. 364-A and 201 IPC and passed death sentence — High Court affirmed the said judgment — Challenge to circumstance of discovery of bones not sustainable — Confession of appellant was recorded after complying with requirements of law and the same was voluntary and truthful in nature — Said confession not retracted during trial — Retraction purported to have been done only during examination of appellant under S. 313 CrPC — In this view, held, appellant was guilty of crime committed — Penal Code, 1860 — Ss. 364 and 201

Both PW 2 and PW 3 as also PW 10 gave a vivid description as to the mode and manner in which the appellant pointed out the place whereat the dead body of the victim was burnt, the nalla wherefrom the bones were recovered and the spot where some burnt pieces of cardboard and ashes were seen. (Para 21)

The appellant was not in police custody when a request was made to record his confessional statement. He was in judicial custody. He was produced before the Magistrate on 16-8-2000. The Magistrate took the requisite precaution in not recording his statement on that day. The requirements of Section 164 CrPC have, thus, fully been complied with. The appellant was asked to come on the next day. A note of caution as envisaged in law was again administered. His statement was recorded on 17-8-2000. The questions put to the appellant clearly go to show that the Magistrate took all the requisite precautions before recording the said statement. (Paras 29 and 30)

The confession made by the appellant was voluntary in nature and the same was free from undue influence, coercion and threat. There is a ring of truth in the confession of the appellant. (Para 41)

The confession was not retracted during the course of the trial. It was purported to have been done only in his examination under Section 313 CrPC. (Para 32). *Anil* v. *Admn. of Daman & Diu, Daman*, (2006) 13 SCC 36: (2008) 1 SCC (Cri) 72: (2007) 49 AIC 65 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600: 2005 SCC (Cri) 1715; Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129; Palvinder Kaur v. State of Punjab, AIR 1952 SC 354: 1953 SCR 94: 1953 Cri LJ 154; Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217: 1956 Cri LJ 426; Subramania Goundan v. State of Madras, AIR 1958 SC 66: 1958 SCR 428: 1958 Cri LJ 238; Bharat v. State of U.P., (1971) 3 SCC 950: 1972 SCC (Cri) 198; Bhagwan Singh Rana v. State of Haryana, (1976) 3 SCC 101: 1976 SCC (Cri) 373, relied on

(7) Retracted judicial confession

See also under CRIMINAL TRIAL in Vol. 3

See also Ss. 24 to 31, EVIDENCE ACT, 1872

[1796] — S. 164 — Retracted confession — Court should be assured of its voluntary nature and truthfulness — Procedural requirements — *After confession is recorded by apprising the accused of its implications, court called upon to consider evidence against accused, should ascertain whether there were any circumstances casting doubt on voluntary nature of the confession — Court should apply its mind and form a prima facie opinion as to whether confession was free from threat, duress and inducement — Thereafter, court should determine whether the confession was true — Fact that confession was made voluntary and without threat and inducement may raise a presumptive evidence about its truthfulness — Court should also have regard to corroboration from other evidence so as to be assured of truth of the confession — However, corroboration need not be in respect of each and every material particular but it should be such that taken as a whole it should fit into the facts proved by other evidence — On facts held, confession which was retracted by accused received no corroboration from any other evidence and also contradicted the medical evidence as regards death of the deceased which was an important aspect of the confession — Hence it would be unsafe to convict the accused solely on the basis of the retracted confession — Evidence Act, 1872 — S. 24*

Before acting on a confession made before a Judicial Magistrate in terms of Section 164, the court must be satisfied first that the procedural requirements laid down in sub-sections (2) to (4) are complied with. These are salutary safeguards to ensure that the confession is made voluntarily by the accused after being apprised of the implications of making such confession. After this first requirement of acting on a confession is satisfied, the court, called upon to consider the evidence against the accused, should still see whether there are any circumstances appearing from the record which may cast a doubt on the voluntary nature of the confession. The endeavour of the court should be to apply its mind to the question whether the accused was free from threat, duress or inducement at the time of making the confession. In doing so, the Court

(7) Retracted judicial confession *(contd.)*

should bear in mind, that under Section 24 of the Evidence Act, a stringent rule of proof as to the existence of threat, duress or inducement should not be applied and a prima facie opinion based on evidence and circumstances may be adopted as the standard laid down. Having thus reached a finding as to the voluntary nature of a confession, the truth of the confession should then be tested by the court. The fact that the confession has been made voluntarily, free from threat and inducement, can be regarded as presumptive evidence of its truth. Still, there may be circumstances to indicate that the confession cannot be true wholly or partly in which case it loses much of its evidentiary value. In order to be assured of the truth of confession, the rule of prudence is that the court should look to corroboration from other evidence. However, there need not be corroboration in respect of each and every material particular. The expression "corroboration of material particulars" does not imply that there should be meticulous examination of the entire material particulars. It is enough that there is broad corroboration in conformity with the general trend of the confession. Broadly, there should be corroboration so that the confession taken as a whole fits into the facts proved by other evidence. In substance, the court should have assurance from all angles that the retracted confession was, in fact, voluntary and it must have been true. (Paras 17 to 20)

In *Chandrakant Chimanlal Desai case*, (1992) 1 SCC 473, the Court imported the observations which were made in *Kashmira Singh case*, AIR 1952 SC 149 in the context of evidentiary value of the confession of co-accused and applied them to the case of retracted confession. It appears that the learned Judges went by the headnote in the AIR to *Kashmira Singh* which opens up with the sentence: (AIR p. 159) "The confession of an accused person...." However, in the text of the judgment it is crystal clear that the entire discussion and the statement of law was only with reference to the confession of the co-accused. In view of the error in comprehending the scope of the decision in *Kashmira Singh case* the decision in *Chimanlal case* falls close to the category of decisions rendered per incuriam. If followed, it would run counter to a catena of coordinate Bench decisions and the larger Bench decision in *Pyare Lal case*, 1963 Supp (1) SCR 689. (Paras 21 and 23)

In the present case, the confessional statement of the accused-appellant far from receiving corroboration of any sort from other circumstances, contradicts the medical evidence relating to cause of death which is an important aspect of the confession. Therefore, it is not safe to convict the appellant solely on the basis of the alleged confession which has been retracted. (Para 25). *Parmananda Pegu* v. *State of Assam*, (2004) 7 SCC 779: 2004 SCC (Cri) 2081: AIR 2004 SC 4197.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 2-9-2004]

Pyare Lal Bhargava v. State of Rajasthan, 1963 Supp (1) SCR 689: (1963) 2 Cri LJ 178; Subramania Goundan v. State of Madras, 1958 SCR 428: 1958 Cri LJ 238; Kashmira Singh v. State of M.P., AIR 1952 SC 159: 1952 Cri LJ 839; State of Maharashtra v. Damu, (2000) 6 SCC 269: 2000 SCC (Cri) 1088, relied on

Chandrakant Chimanlal Desai v. State of Gujarat, (1992) 1 SCC 473: 1992 SCC (Cri) 157, held, per incuriam

[1797] — S. 164 — Retracted confession — Reliability of — *Merely because a judicial confession is retracted by its maker, it does not become unreliable — Court has to ascertain whether the confession is voluntary and true and is not vitiated by any other reason and if so, court cannot refuse to act on it — Evidence Act, 1872 — S. 24*

A film actress and her mother were murdered in their house. A-1, their driver, A-2, their watchman and A-3, their cook were convicted for murder and theft and sentenced to death by the trial court. But the High Court while confirming the conviction of A-1, altered his sentence to imprisonment for life and acquitted A-2 and A-3. Thereupon A-1 moved the Supreme Court for special leave to appeal but the SLP was dismissed. The State filed appeals before the Supreme Court against the acquittal of A-2 and A-3. A-3 could not be traced out in spite of repeated searches made for effecting the service of notice on him and finally the appeal filed against him was also dismissed. Thus the appeal by special leave filed against acquittal of A-2 remained to be decided. The prosecution case against A-2 was based on his confession recorded by a Judicial Magistrate. The High Court had declined to act on the said confession mainly for two reasons. Firstly, that the confession was retracted by the maker thereof and secondly, that the recovery of articles was made prior to the confession. If the said confession could not, for any reason whatsoever, be used by the court, it would not be possible to reverse the acquittal with the help of the remaining evidence. Allowing the State's appeal, setting aside the acquittal of A-2 and restoring the order of conviction passed by the trial court,

Held :

It is not the law that once a confession is retracted the court should presume that the confession is tainted. To retract from a confession is the right of the confessor and all the accused against whom confessions were produced by the prosecution have invariably adopted that right. It would be injudicious to jettison a judicial confession on the mere premise that its maker has retracted from it. The court has a duty to evaluate the evidence concerning the confession by looking at all aspects. The twin tests of a confession are to ascertain whether it was voluntary and true. Once those tests are found to be positive the next endeavour is to see whether there is any other reason which stands in the way of acting on it. Even for that, retraction of the confession is not a ground to throw the confession overboard. (Para 13)

On the facts of the case there was no reason to think that A-2 had been prevailed upon by any extraneous influence to make the confession. The Judicial Magistrate who heard the confession certified that in his opinion the accused made the confession voluntarily. That satisfaction could be disrupted only if there are sturdy reasons. Even regarding the truthfulness of the version given by the accused in the confession, it is open to the court to ascertain whether there are other materials to lend assurance to the court about the truth of it. (Para 18)

There were several circumstances which would lend assurance to the court about the facts contained in the judicial confession made by A-2. He being a watchman, his disappearance from the scene after the occurrence and his absconding for more than 15 days are circumstances effectively corroborating the confession. A large number of articles belonging to the deceased were recovered at his instance. Further, in the absence of any explanation as to how the finger impression of A-2, who was a watchman, had appeared on the door of the kitchen of the house, it can safely be treated also as an incriminating circumstance against him because the place of a watchman of the house is normally outside the house, if not outside the gate of the compound itself. (Para 21)

Thus the High Court should not have sidelined the judicial confession. It has, therefore, gone seriously wrong in interfering with the conviction passed by the trial court regarding A-2. (Para 23)

However, the lesser sentence of imprisonment for life is sufficient to be imposed on A-2 for the offence under Section 302 read with Section 34 IPC. (Para 24). *State of T.N.* v. *Kutty*, (2001) 6 SCC 550: 2001 SCC (Cri) 1177: AIR 2001 SC 2778.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 10-8-2001]

Distinguished in Aloke Nath Dutta v. State of W.B., (2007) 12 SCC 230

[1798] — S. 164 — Retracted confession — When can be sole basis of conviction — Corroboration of — *Nature and extent of by independent evidence explained — Rule one of practice and prudence requires that the court seek assurance that there be any other facts and circumstances to corroborate the retracted confession — Customs Act, 1962 — S. 108 — Evidence Act, 1872 — S. 24*

There is no prohibition under the Evidence Act to rely upon a retracted confession to prove the prosecution case or to make the same basis for conviction of the accused. Practice and prudence require that the court could examine the evidence adduced by the prosecution to find out whether there were any other facts and circumstances to corroborate the retracted confession. It is not necessary that there should be corroboration from independent evidence adduced by the prosecution to corroborate each detail contained in the confessional statement. The court is required to examine whether the confessional statement was voluntary; in other words, whether it was not obtained by threat, duress or promise. If the court is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is true. If the court on examination of the evidence finds that the retracted confession is true, that part of the inculpatory portion could be relied upon to base the conviction. However, prudence and practice require that court would seek assurance getting corroboration from other evidence adduced by the prosecution. *K.I. Pavunny* v. *Asstt. Collector (HQ), Central Excise Collectorate*, (1997) 3 SCC 721: 1997 SCC (Cri) 444: (1997) 1 KLT 489.

Bench Strength **3**. Coram: **K. Ramaswamy**, *S. Saghir Ahmad* and *G.B. Pattanaik*, JJ. [Date of decision: 3-2-1997]

[1799] — S. 164 — Retracted judicial confession — Reliability — Nature and extent of corroboration required — *Though conviction based on uncorroborated confession of an accused person is not illegal but as a rule of prudence, which has become a rule of law, courts look for corroboration before accepting retracted confession — Each and every circumstance mentioned in the confession is not required to be separately and independently proved — Corroborative evidence itself need not be sufficient for conviction — Retracted confession*

(7) Retracted judicial confession *(contd.)*

corroborated by evidence of eyewitnesses and other circumstances including discovery of dead body and jewels of deceased at the instance of accused and evidence of last seen together — On facts held, retracted confessions of accused persons are true and voluntary and the same are sufficiently corroborated in all material particulars establishing guilt of the accused

The judicial confessions are those which are made before a Magistrate or in court in due course of legal proceedings and when such a confession is retracted, the courts have held that apart from the statement being voluntary it should be true and should receive sufficient corroboration in material particulars by independent evidence. The rule of prudence namely requiring corroboration does not mean that each and every circumstance mentioned in the confession with regard to the participation of the accused in the crime must be separately and independently corroborated. It is sufficient if there is general corroboration of the important incidents, just like in the case of an approver's evidence and it is not necessary that the corroborative evidence itself should be sufficient for conviction. It is not illegal to base a conviction on an uncorroborated confession of an accused person but as a rule of prudence which has sanctified itself to the rule of law, the courts do look for corroboration before acting upon and accepting the retracted confession and what amount of corroboration would be necessary in a case would be a question of fact to be determined in the light of the circumstances of the case. *Shankar* v. *State of T.N.*, (1994) 4 SCC 478: 1994 SCC (Cri) 1252: 1994 Cri LJ 3071: (1994) 2 Crimes 1: (1994) 2 An LT(Cri) 429.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 4-4-1994]

[1800] — S. 164 — Offences under Ss. 302/149 and 148 — Confession — Retracted judicial confession — Reliance on — *On facts, held, did not substantiate the said offence — Accused confessing about a conspiracy to commit murder of the deceased but not confessing that he was a party to the murder — Such a confessional statement, held, exculpatory — Hence, in view of his having already been acquitted of the charge under S. 120 IPC, held, there was no substantive evidence to connect him with the said offences — More so, when his name was not mentioned in the FIR — Penal Code, 1860 — Ss. 302/149, 148 and 120 — Evidence Act, 1872 — S. 24. Shabad Pulla Reddy* v. *State of A.P.*, (1997) 8 SCC 495: AIR 1997 SC 3087: 1997 Cri LJ 3753.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S. Saghir Ahmad*, JJ. [Date of decision: 20-8-1997]

[1801] — S. 164 — Retracted confession — Admissibility of against confessor — Rule of corroboration — Nature of and rationale for — Extent of corroboration necessary — *Evidence Act, 1872 — S. 24*

A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an afterthought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its user. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires corroboration that the retraction was an afterthought and that the earlier statement was true. However, this is not a rule of law, but is only rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances can such a conviction be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars. (Paras 32 and 34)

As to the extent of corroboration required each and every circumstance mentioned in the retracted confession regarding the complicity of the maker need not be separately and independently corroborated. It would be sufficient that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession. (Paras 32 to 35 and 37). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Bharat v. State of U.P., (1971) 3 SCC 950: 1972 SCC (Cri) 198; Subramania Goundan v. State of Madras, 1958 SCR 428: 1958 Cri LJ 238; Pyare Lal Bhargava v. State of Rajasthan, 1963 Supp (1) SCR 689: AIR 1963 SC 1094: (1963) 2 Cri LJ 178; Parmananda Pegu v. State of Assam, (2004) 7 SCC 779: 2004 SCC (Cri) 2081, followed

Haroon Haji Abdulla v. State of Maharashtra, (1968) 2 SCR 641: 1968 Cri LJ 1017, clarified

***Impliedly distinguished in** Kanhaiyalal v. Union of India, (2008) 4 SCC 668*

[1802] — S. 164 — Retracted confession — Confession not retracted at the first opportunity available at the time when the charge was framed but only later when the accused was examined under S. 313 — *Held, militates against the plea that the confession was not voluntary. Shankaria* v. *State of Rajasthan*, (1978) 4 SCC 453: 1979 SCC (Cri) 74: AIR 1978 SC 1399: 1978 Cri LJ 1414.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *N.L. Untwalia* and *P.S. Kailasam*, JJ. [Date of decision: 26-4-1978]

[1803] — S. 164 — Retracted judicial confession — Court's approach — *Court should look at retracted confession with some amount of suspicion and should be slow and cautious in accepting the same — Except where there is per se evidence of motivating factors of retraction or retraction is based on extraneous circumstances, court should probe deeper to find whether it was voluntary and truthful or was obtained by inducement, threat or torture — In absence of any objective evidence verifying conditions in which confession was retracted, court should extend the spirit of S. 24 and give the accused benefit of doubt — Courts should be guided by their past experience and decisions rendered by superior courts*

In a case where confession is made in the presence of a Magistrate conforming to the requirements of Section 164, if it is retracted at a later stage, the court should probe deeper into the matter. Despite procedural safeguards contained in the said provision, the Magistrate should satisfy himself whether the confession was of voluntary nature and had not been by reason of any inducement, threat or torture. There can be times where despite such procedural safeguards, confessions are made for unknown reasons and in fact made out of fear of police. (Paras 105 and 106)

The past experience of the courts as also the decisions rendered by the superior courts should be taken as a wholesome guide. Despite the fact that procedural safeguards contained in Section 164 CrPC may be satisfied, it may be retracted subsequently. The court must, thus, take adequate precaution. Affirmative indication of external pressure will render the retracted confession nugatory in effect. The court must play a proactive role in unearthing objective evidence forming the backdrop of retraction and later the examination of such evidence of retraction. However in cases where none exists, the court must give the benefit of doubt to the accused. Where there is no objective material available for verifying the conditions in which the confession was retracted, the spirit of Section 24 of the Evidence Act (irrelevance of confession caused by inducement) may be extended to retracted confession. An inverse presumption must be drawn from absence of materials. (Para 108)

A retracted confession is a weak evidence. In a case of retracted confession, the courts while arriving at a finding of guilt would not ordinarily rely solely thereupon and would look forward for corroboration of material particulars. Such corroboration must not be referable in nature. Such corroboration must be independent and conclusive in nature. A retracted confession of a co-accused cannot be relied upon for the purpose of finding corroboration for the retracted confession of an accused. (Paras 125, 109 and 110)

In this country, retractions are as plentiful as confessions. In a case of retracted confession, the courts should evidently be a little slow in accepting the confession, although the accused may not be able to fully justify the reasons for his retraction. Caution and prudence in accepting a retracted confession is an ordinary rule. Although retracted confession is admissible, the same should be looked at with some amount of suspicion — a stronger suspicion than that which is attached to the confession of an approver who leads evidence in the court. (Paras 111, 114 and 117)

The court shall consider the materials on record objectively in regard to the reasons for retraction. It must arrive at a finding that the confession was truthful and voluntary. Merit of the confession being the voluntariness and truthfulness, the same, in no circumstances, should be compromised. In some of the decisions the Supreme Court proceeded on the basis that conviction of an accused on the basis of a retracted confession is permissible but only if it is found that retraction made by the accused was wholly on a false premise. (Para 116). *Aloke Nath Dutta* v. *State of W.B.*, (2007) 12 SCC 230: (2008) 2 SCC (Cri) 264.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 12-12-2006]

Bhuboni Sahu v. R., (1948-49) 76 IA 147: AIR 1949 PC 257: (1949) 50 Cri LJ 872; Haricharan Kurmi v. State of Bihar, AIR 1964 SC 1184: (1964) 6 SCR 623: (1964) 2 Cri LJ 344; State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600: 2005 SCC (Cri) 1715; Bharat v. State of U.P., (1971) 3 SCC 950: 1972 SCC (Cri) 198; Puran v. State of Punjab (I), AIR 1953 SC 459: 1953 Cri LJ 1925; Kora Ghasi v. State of Orissa, (1983) 2 SCC 251: 1983 SCC (Cri) 387; Preetam v. State of M.P., (1996) 10 SCC 432: 1996 SCC (Cri) 1343; Bhagwan Singh v. State of M.P., (2003) 3 SCC 21: 2003 SCC (Cri) 712; R. v. Thompson, (1893) 2 QB 12: (1891-94) All ER Rep 376; Subramania Goundan v. State of Madras, AIR 1958 SC 66: 1958 Cri LJ 238; Pyare Lal Bhargava v. State of Rajasthan, AIR 1963 SC 1094: (1963) 2 Cri LJ 178; Balbir Singh v. State of Punjab, AIR 1957 SC 216: 1957 Cri LJ 481, relied on

(7) Retracted judicial confession *(contd.)*

Sidharth v. State of Bihar, (2005) 12 SCC 545: (2006) 1 SCC (Cri) 175; State of T.N. v. Kutty, (2001) 6 SCC 550: 2001 SCC (Cri) 1177, distinguished

[1804] — S. 164 — Retracted confession — Admissibility and use of against co-accused, explained in detail — Evidentiary value of such confession — *Held, confession of a co-accused cannot be elevated to status of substantive evidence which can form basis of conviction of the co-accused — Evidence Act, 1872, Ss. 30 and 24*

The proper way to approach a case of this kind is, first, to marshal the evidence against the [co-]accused excluding the confession altogether from consideration and see whether, *if it is believed*, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept. (Para 38)

The court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. (Para 40)

The crucial expression used in Section 30 of the Evidence Act, 1872 is "the Court may take into consideration such confession". These words imply that the confession of a co-accused cannot be elevated to the status of substantive evidence which can form the basis of conviction of the co-accused. (Para 39). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Kashmira Singh v. State of M.P., 1952 SCR 526: AIR 1952 SC 159: 1952 Cri LJ 839; Bhuboni Sahu v. R., AIR 1949 PC 257: 50 Cri LJ 872: 76 IA 147; Hari Charan Kurmi v. State of Bihar, (1964) 6 SCR 623: (1964) 2 Cri LJ 344, followed

[1805] — S. 164 — Retracted judicial confession — Nature, admissibility and consideration of — Impact of Art. 20(3) of the Constitution — Conviction when may be based on — *Held, retracted confession should be construed in the light of Art. 20(3) which includes right to remain silent, Art. 21 as also provisions of Ss. 24 to 26 and S. 30 of the Act and basic tenets of Safeguards provided under S. 164 are not exhaustive — Retracted confession is a weak piece of evidence — Conviction cannot be solely based upon it unless confession is voluntary, truthful and is corroborated by independent and cogent evidence — Constitution of India — Arts. 20(3) & 21*

Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (*i*) voluntariness of the confession; (*ii*) truthfulness of the confession; (*iii*) corroboration. (Para 87)

A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof. (Para 89)

Article 20(3) of the Constitution of India provides that no person accused of any offence shall be compelled to be a witness against himself. The right to remain silent is an extension of the rule of civil liberty enjoined by our Constitution. Considering the guarantee under Article 20(3) and also humanising standards under Article 21, court is required to tread cautiously while construing retracted confession. To withdraw from what has been said previously needs to be interpreted in the vein of right to remain silent as an extension of this civil liberty. (Paras 95, 96 and 99)

Section 164 CrPC makes the confession before a Magistrate admissible in evidence. The manner in which such confession is to be recorded by the Magistrate is provided under Section 164 of the Code. The said provision, inter alia, seeks to protect an accused from making a confession, which may include a confession before a Magistrate, still as may be under influence, threat or promise from a person in authority. It takes into its embrace the right of an accused flowing from Article 20(3) of the Constitution of India as also Article 21 thereof. Although, Section 164 provides for safeguards, the same cannot be said to be exhaustive in nature. The Magistrate putting the questions to an accused brought before him from police custody, should sometime, be more intrusive than what is required in law. (Para 104)

In this regard it is important to consider the retracted confession within the legislative paradigm laid down under Sections 24 to 26 of the Evidence Act and Section 162(1) and Section 164 CrPC. Also it will be in the fitness of the case to appraise the value of retracted confession for the co-accused under Section 30 of the Evidence Act. The basic tenets of criminal law cannot also be lost sight of. In similar vein the law on retracted confession must be judged in the context of each case. (Paras 100, 101 and 99)

Sections 24 to 30 deal with confession. Sections 25 and 26 are simple corollaries flowing out of the axiomatic and generalised proposition (confession caused by inducement where inducement proceeds from a person in authority, is bad in law) contained in Section 24. They are directed towards assessing the value of a confession made to a police officer or in police custody. The policy underlying Sections 25 and 26 is to make it a substantive rule of law that confessions whenever and wherever made to the police, or while in the custody of the police unless made in the immediate presence of a Magistrate, shall be presumed to have been obtained under the circumstances mentioned in Section 24 and, therefore, inadmissible, except so far as is provided by Section 27 of the Act. (Paras 102 and 103). *Aloke Nath Dutta* v. *State of W.B.*, (2007) 12 SCC 230: (2008) 2 SCC (Cri) 264.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 12-12-2006]

Shankaria v. State of Rajasthan, (1978) 3 SCC 435: 1978 SCC (Cri) 439; Anil v. Admn. of Daman and Diu, Daman, (2006) 13 SCC 36: (2008) 1 SCC (Cri) 72; Muthuswami v. State of Madras, AIR 1954 SC 4: 1954 Cri LJ 236; Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424: 1978 SCC (Cri) 236; State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600: 2005 SCC (Cri) 1715; Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440: 1994 SCC (Cri) 785; Balkishan A. Devidayal v. State of Maharashtra, (1980) 4 SCC 600: 1981 SCC (Cri) 62; Babubhai Udesinh Parmar v. State of Gujarat, (2006) 12 SCC 268: (2007) 1 SCC (Cri) 702; Bhuboni Sahu v. R., (1948-49) 76 IA 147: AIR 1949 PC 257: (1949) 50 Cri LJ 872; Haricharan Kurmi v. State of Bihar, AIR 1964 SC 1184: (1964) 6 SCR 623: (1964) 2 Cri LJ 344; Bharat v. State of U.P., (1971) 3 SCC 950: 1972 SCC (Cri) 198; Puran v. State of Punjab (I), AIR 1953 SC 459: 1953 Cri LJ 1925; Kora Ghasi v. State of Orissa, (1983) 2 SCC 251: 1983 SCC (Cri) 387; Preetam v. State of M.P., (1996) 10 SCC 432: 1996 SCC (Cri) 1343; Bhagwan Singh v. State of M.P., (2003) 3 SCC 21: 2003 SCC (Cri) 712; R. v. Thompson, (1893) 2 QB 12: (1891-94) All ER Rep 376; Subramania Goundan v. State of Madras, AIR 1958 SC 66: 1958 Cri LJ 238; Pyare Lal Bhargava v. State of Rajasthan, AIR 1963 SC 1094: (1963) 2 Cri LJ 178; Balbir Singh v. State of Punjab, AIR 1957 SC 216: 1957 Cri LJ 481, relied on

Sidharth v. State of Bihar, (2005) 12 SCC 545: (2006) 1 SCC (Cri) 175; State of T.N. v. Kutty, (2001) 6 SCC 550: 2001 SCC (Cri) 1177, distinguished

[1806] — S. 164 — Retracted judicial confession — Involuntary nature — Adverse inference against prosecution case — When can be drawn — *Accused produced before Magistrate straightaway from police custody — Magistrate ordered the accused to be sent to judicial custody for two days for self-introspection — Although thereafter he was supposed to be produced directly from the jail to the Magistrate, he was allegedly taken out of jail 2½ hours before the time fixed therefor — Accused then made a complaint that before he had been produced before the Magistrate he was taken to police station and was tortured and tutored there and was made to make the confession — Accused maintained that stand in his examination under S. 313 but prosecution did not make any attempt to disprove the allegation — Although it appeared from accused's examination under S. 313 that he had named the Police Inspector who allegedly tortured him but that Police Inspector had not been cross-examined on that point — Application made by accused calling for some records from the jail but no order passed thereupon — Held, in such a situation court should issue a suo motu direction to jail authorities to produce the records, and if even then authorities fail to produce the documents, an adverse inference can be drawn — In absence of substantive corroboration, the retracted confession not reliable*

In this case it is not in dispute that the co-accused *M* has retracted from his confession. The value of the retracted confession was required to be considered on the accusation of the accused (*M*) that the confession was not voluntary. Although sufficient time (2 days) was given to the accused (*M*) to confirm his willingness to confess and finalise the contents of the confession. The reasons for which the confession had been retracted and the subsequent events wherein the appellants intended to prove a certain state of affairs, namely, although he was supposed to have been produced directly from the jail to the Magistrate concerned but in fact he was taken out of jail 2 1/2 hours before the time fixed therefor, could be a pointer to the fact as to whether the confession was a voluntary one. The lawyer appearing for the accused (*M*) had made a submission that an application had been filed praying for calling of some records from the Presidency Jail. No order had been passed thereupon. It is expected in a situation of this nature that the court will issue a suo motu direction to the authority to produce the records. There was absolutely no reason as to why the records would not be produced by the Presidency Jail Authorities for a period of two months. If the said records had not been produced, it was obligatory on the part of the court to issue a

(7) Retracted judicial confession *(contd.)*

suo motu notice. The court was dealing with a serious matter. More than one life hinged on that valuable material. If a public authority does not produce a document despite being called upon to do so, an adverse inference is to be drawn. Converse is not the law. (Paras 120, 122, 118 and 121)

It may be true that an application for adducing evidence had been filed by the appellants in terms of Section 311 CrPC, but the said evidence, if adduced would have tilted the balance one way or the other so as to enable the court to come to the conclusion as to whether the purported judicial confession made by the accused (*M*) satisfies the tests laid down by the Supreme Court in a large number of decisions. There was no reason for the court to draw an adverse inference that the records had been destroyed. No such inference could be drawn in law either in terms of Section 114 of the Evidence Act or any other law. The period during which such documents are preserved under the provisions of the jail manual have not been referred to. No evidence had been brought on record to show that the documents had in fact been destroyed. The least the jail authorities could do was to produce the destruction register. (Para 123)

In the aforementioned backdrop, the court should give the benefit of doubt to the co-accused instead of the prosecution. The trial Judge should not have closed the case. He should have invoked his jurisdiction under Section 311 in the interest of justice and instead of blaming the defence for non-examination of the Superintendent of Presidency Jail, the court itself should have called upon authorities to produce the document. (Para 124). *Aloke Nath Dutta* v. *State of W.B.*, (2007) 12 SCC 230: (2008) 2 SCC (Cri) 264.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 12-12-2006]

[1807] — S. 164 — Retraction of confession — Delay in and inconsistencies in grounds on which confession retracted — Effect — *Held, would not impart credibility to confession, if otherwise the prosecution cannot establish the same — Prevention of Terrorism Act, 2002 — S. 32 — Evidence Act, 1872 — S. 24*

It cannot be held that there was abnormal delay in disowning the confession, the effect of which would be to impart credibility to the confessional statement. The fact that there is an alleged inconsistency in the grounds on which the confessional statement was refuted by Afzal will not give rise to an inference that the confessional statement was true and voluntary. It is the substance of what the accused said while refuting the statement that has to be seen rather than building up a case on the basis of some inconsistencies in the defence plea. (Paras 187 and 188). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

(8) Confession/Statement of co-accused/ approver

[1808] — S. 164 — Confession of co-accused — Effect of his acquittal for main offence on admissibility of the confession — *Use of such confession for corroboration and not as substantive evidence — Permissibility — Joint trial of A-1 to A-2 for the same offences viz. those punishable under Ss. 302, 120-B, 201 and 397 read with S. 34 IPC — Confession made by A-2 before Magistrate stating that A-1 (A-2's father) had committed the murders though he (A-2) had destroyed the evidence relating to the murders — Confessional statement proved in court by examining the Magistrate who had recorded the same — Trial court convicting both the accused under the aforesaid provisions of IPC — High Court convicting A-1 under S. 302 alone on the basis of proved circumstantial evidence and relying upon the confessional statement of A-2 by way of corroboration of the proved circumstances and acquitting A-2 of the main offence of murder and convicting him only under S. 201 IPC — Held, acquittal of A-2 of offence under S. 302 would not render his confessional statement inadmissible in evidence insofar as it corroborated the circumstantial evidence connecting A-1 with the offence of murder — Conviction of A-2 under S. 201 IPC upheld — Penal Code, 1860 — Ss. 302 and 201 — Evidence Act, 1872 — Ss. 30 and 24*

It was submitted that the High Court has given benefit of doubt to A-2 with regard to conspiracy for commission of murders and, therefore, as he was acquitted for the main offence, his confessional statement would not be admissible in evidence.

Held :

The submission on behalf of A-2 is without substance. Firstly, the confessional statement of A-2 recorded under Section 164 CrPC by the Magistrate would be admissible in evidence as Accused 1 and 2 were jointly tried. The said statement was proved by examining the Magistrate who recorded the same. Conviction of A-1 for the offence for which he was charged was based on circumstantial evidence. Conviction of A-2 for the offence punishable under Section 201 was also based on circumstantial evidence and after taking into consideration the confessional statement. The circumstantial evidence which gets corroboration from the confessional statement of A-2 for connecting A-1 with the crime could be relied upon. In view of Section 30 of the Evidence Act the court may take into consideration such confession against the maker thereof as well as against such persons (who are being jointly tried for the same offence). The High Court has not relied upon the confessional statement as a substantive piece of evidence to convict Accused 1. It has been used for lending assurance to the proved circumstances. The High Court held that the proved circumstances would not involve A-2 for the offence punishable under Section 302 IPC and the circumstantial evidence did not establish that there was any common intention or conspiracy between A-1 and A-2 to commit the offence. However, the Court held that A-2 had seen A-1 committing multiple murders and when he (A-2) destroyed the evidence relating to those murders, it was absolutely clear that he did this with the primary object of saving his father A-1 and, therefore, he would be liable to be convicted for the offence under Section 201 IPC. Hence, it cannot be said that confessional statement was wholly exculpatory. (Paras 18 to 20). *Prakash Dhawal Khairnar (Patil)* v. *State of Maharashtra*, (2002) 2 SCC 35: 2002 SCC (Cri) 281: AIR 2002 SC 340: 2002 Cri LJ 928.

Bench Strength **2**. Coram: **M.B. Shah** and *R.P. Sethi*, JJ. [Date of decision: 12-12-2001]

Ghulam Hussain v. R. (1950) 52 Bom LR 508; Aghnoo Nagesia v. State of Bihar, AIR 1966 SC 119: 1966 Cri LJ 100: (1966) 1 SCR 134; State v. Nalini, (1999) 5 SCC 253: 1999 SCC (Cri) 691, relied on

[1809] — S. 164 — Confessional statement of approver given to the Magistrate before tender of pardon — Held, can be used as corroborative material — However, it being former statement of an accomplice not much weight can be attached to it — *Evidence Act, 1872 — Ss. 133 and 114 Ill. (b)* (Para 25). *Ramprasad* v. *State of Maharashtra*, (1999) 5 SCC 30: 1999 SCC (Cri) 651: AIR 1999 SC 1969: 1999 Cri LJ 2889.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 12-5-1999]

[1810] — S. 164 — Retracted confession — Admissibility and use of against co-accused, explained in detail — Evidentiary value of such confession — *Held, confession of a co-accused cannot be elevated to status of substantive evidence which can form basis of conviction of the co-accused — Evidence Act, 1872, Ss. 30 and 24*

The proper way to approach a case of this kind is, first, to marshal the evidence against the [co-]accused excluding the confession altogether from consideration and see whether, *if it is believed*, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, *if believed*, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept. (Para 38)

The court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. (Para 40)

The crucial expression used in Section 30 of the Evidence Act, 1872 is "the Court may take into consideration such confession". These words imply that the confession of a co-accused cannot be elevated to the status of substantive evidence which can form the basis of conviction of the co-accused. (Para 39). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Kashmira Singh v. State of M.P., 1952 SCR 526: AIR 1952 SC 159: 1952 Cri LJ 839; Bhuboni Sahu v. R., AIR 1949 PC 257: 50 Cri LJ 872: 76 IA 147; Hari Charan Kurmi v. State of Bihar, (1964) 6 SCR 623: (1964) 2 Cri LJ 344, followed

[1811] — S. 164 — Statement of co-accused recorded under — Evidentiary value — *Such a statement made by a person arrayed in the same case and against whom a charge had been framed, held, could not be treated as evidence for deciding to proceed against another accused — More so when the statement was exculpatory in nature — Evidence Act, 1872 — S. 30* (Para 11). *State of T.N.* v. *J. Jayalalitha*, (2000) 5 SCC 440: 2000 SCC (Cri) 981: AIR 2000 SC 1589.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.C. Lahoti*, JJ. [Date of decision: 9-5-2000]

[1812] — Ss. 164 and 313 — Reliance upon, to convict both accused — *Evidence Act, 1872, S. 30. Dara Singh* v. *Republic of India*, (2011) 2 SCC 490.

Bench Strength **2**. Coram: **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 21-1-2011]

State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808: (1961) 2 Cri LJ 856: (1962) 3 SCR 10, relied on

M.P. Sharma v. Satish Chandra, AIR 1954 SC 300: 1954 Cri LJ 865: 1954 SCR 1077, referred to

(8) Confession/Statement of co-accused/approver *(contd.)*

[1813] — S. 164 — Statement under, of co-accused/accomplice — Use of, against accused — *Held, the court cannot start with the confession of a co-accused and must begin with other evidence adduced by the prosecution — But the court can use confession of co-accused to lend support or assurance to the conclusion of guilt which the court is about to reach on the other evidence — In the present case, the statements of PWs 11 and 15 under S. 164 were not the only evidence on which reliance was placed — Those statements were used more as a corroboration — Further, PWs 11 and 15 were not "co-accused" or "accomplices" or "abettors" — Hence, contention that their said statements could not be used as evidence against accused, held on facts, misleading — Evidence Act, 1872 — S. 30* (Para 25). *R. Janakiraman* v. *State*, (2006) 1 SCC 697: (2006) 1 SCC (Cri) 442: AIR 2006 SC 1106: (2006) 39 AIC 479 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

Hari Charan Kurmi v. State of Bihar, (1964) 6 SCR 623: AIR 1964 SC 1184: (1964) 2 Cri LJ 344; Dagdu v. State of Maharashtra, (1977) 3 SCC 68: 1977 SCC (Cri) 421, relied on

(9) Extra-judicial confession/ Hearsay evidence

See also under Ss. 161-162, above

See also under CRIMINAL TRIAL in Vol. 3

[1814] — S. 164 — Confession — Need not be made to an authorised person only — *Any person can give evidence in court regarding confession made by an accused to him — If confession made to a Magistrate, same has to be recorded in the manner prescribed by law — If it is made to any other person the court has to consider whether evidence of that person can be believed which depends upon the credibility of the witness giving such evidence in court — Evidence Act, 1872 — S. 24 (Para 6). Sasi* v. *State of Kerala*, (2000) 10 SCC 360.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 10-8-1999]

[1815] — S. 164 — Extra-judicial confession — Before a confession is relied on it must be clear and unequivocal whether it is in a judicial or in an extra-judicial confession — Bride burning — Confession made at a panchayat — *In the panchayat names of a large number of persons referred to as to have confessed their guilt, including the accused-appellant — Names including the names of those who were not even the accused — Fact that the appellant had burnt the deceased not mentioned in such confession — Held, no reliance can be placed on such so-called confession — Alleged confession by a large number of persons is more in a general and vague term — CrPC, 1973 — S. 164* (Para 23). *Kishan Lal* v. *State of Rajasthan*, (2000) 1 SCC 310: 2000 SCC (Cri) 182: AIR 1999 SC 3062: 1999 Cri LJ 4070.

Bench Strength **2**. Coram: *K.T. Thomas* and **A.P. Misra**, JJ. [Date of decision: 17-8-1999]

[1816] — S. 164 — Retracted extrajudicial confession — *Confessions made by the appellants, on identical terms, before three different persons who live far off from their villages at periodical intervals found to be artificial and unnatural — Appellants could have surrendered before the police instead of taking a circuitous route of first approaching the said three witnesses more so when there is nothing on record to show that they were persons of their confidence — Held, in the circumstances, extrajudicial confessions purportedly made by the three appellants do not bear any scrutiny. Ballu* v. *State of Haryana*, 1997 SCC (Cri) 234.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 10-10-1996]

[1817] — S. 164 — Extra-judicial confession — Evidentiary value — Corroboration, on facts, held, was not necessary — *Sepoy in Army in his written and signed statement, made to his superiors and attested by four of them, unambiguously confessing to have killed his wife by strangulating her, cut off her head and thumbs, thrown the headless trunk and the head in two different wells and the thumbs at another place — Both the courts below concurrently finding the statement to have been made voluntarily — At the time of making of the statement neither the sepoy nor his officers knowing that headless trunk of the deceased had been recovered from a well — Officers not biased or inimical to the sepoy — One of the four officers who had attested the confessional statement, examined as a PW and proving the sepoy's statement — Sepoy's vague plea that the statement was obtained by inducement or promise found to be untrue — In such circumstances, held, the court could hold the sepoy to be guilty of murder on the basis of such statement without seeking any corroboration — More so when at the instance of the said sepoy the head of the deceased was recovered from a well and the presence of the head had been in the exclusive knowledge of the sepoy — While relying on such confessional statement High Court rightly held that variations, if any, between the details and other evidence on record were inconsequential — Evidence Act, 1872 — Ss. 24 and 27. Vinayak Shivajirao Pol* v. *State of Maharashtra*, (1998) 2 SCC 233: 1998 SCC (Cri) 610: AIR 1998 SC 1096.

Bench Strength **2**. Coram: *M.M. Punchhi, C.J.* and **M. Srinivasan**, J. [Date of decision: 22-1-1998]

Nishi Kant Jha v. *State of Bihar, (1969) 1 SCC 347; Harchand Singh* v. *State of Haryana, (1974) 3 SCC 397: 1973 SCC (Cri) 962; Makhan Singh* v. *State of Punjab, 1988 Supp SCC 526: 1988 SCC (Cri) 916; Chhittar* v. *State of Rajasthan, 1995 Supp (4) SCC 519: 1995 SCC (Cri) 248, distinguished*

[1818] — S. 164 — Delay in recording PW's statement relating to extra-judicial confession made to him — *When immaterial — Murder of 10 year old girl — Accused making extra-judicial confession to PW — PW interrogated by police on the next day of the occurrence and PW stated the said fact — In such circumstances delay, if any, in recording the PW's statement under S. 164, held, not attributable to the PW and did not vitiate his testimony. State of A.P.* v. *Shaik Mazhar*, AIR 2001 SC 2427.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 6-2-2001]

[1819] — S. 164 — Extra-judicial confessions — Inadmissibility — Statements made to TV and press reporters by accused in immediate presence of, and while in police custody — Held, inadmissible — *Evidence Act, 1872 — Ss. 24, 25, 26 and 17*

The talk which Afzal had with the TV and press reporters admittedly in the immediate presence of the police and while he was in police custody, should not be relied upon irrespective of the fact whether the statement was made to a police officer within the meaning of Section 162 CrPC or not. No weight or credibility can be attached to the statements made in the course of such interview prearranged by the police. The police officials in their over-zealousness arranged for a media interview which has evoked serious comments from the counsel about the manner in which publicity was sought to be given thereby. The wrong step taken by the police should not enure to the benefit or detriment of either the prosecution or the accused. (Para 176). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

[1820] — S. 164(1) — Doctrine of res gestae — Nature and scope of — Exception to general rule of inadmissibility of hearsay evidence — *Fact or statement must form part of the same transaction — Interval between act constituting the offence and making of the statement renders the statement inadmissible — Statement recorded by the Magistrate as dying declaration — Maker thereof not dying — Held, such statement neither admissible as res gestae nor as dying declaration — It can be used to corroborate or contradict the testimony of its maker — Words "investigate" and "legally competent" in S. 157 — Meaning of — Evidence Act, 1872 — Ss. 6, 32 and 157*

The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of res gestae recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae.

In the present case there was some appreciable interval between the acts of incendiarism indulged in by the miscreants and the Judicial Magistrate recording statements of the victims. That interval, therefore, blocks the statements from acquiring legitimacy under Section 6 of the Evidence Act.

Though the statement given to a magistrate by someone under expectation of death ceases to have evidentiary value under Section 32 of the Evidence Act if the maker thereof does not die, such a statement has, nevertheless, some utility in trials. It can be used to corroborate this testimony in court under Section 157 of the Evidence Act which permits such use, being a statement made by the witness "before any authority legally competent to investigate". The word 'investigate' has been used in the section in a broader sense. Similarly the words "legally competent" denote a person vested with the authority by law to collect facts. A magistrate is legally competent to record dying declaration "in the course of an investigation" as provided in Chapter XII of the Code of Criminal Procedure, 1973. The contours provided in Section 164(1) would cover such a statement also. However, such a statement, so long as its maker remains alive, cannot be used as substantive evidence. Its user is limited to

(10) Dying declaration

Corroboration or contradiction of the testimony of its maker. *Gentela Vijayavardhan Rao* v. *State of A.P.*, (1996) 6 SCC 241: 1996 SCC (Cri) 1290: AIR 1996 SC 2791.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 28-8-1996]

R. v. Lillyman, (1896) 2 QB 167: (1895-99) All ER Rep 586; Teper v. R., (1952) 2 All ER 447, approved

Maqsoodan v. State of U.P., (1983) 1 SCC 218: 1983 SCC (Cri) 176, relied on

(10) Dying declaration

See also under Ss. 161-162, above

See also S. 164, '(11) Dying declarant surviving', below

See also under CRIMINAL TRIAL in Vol. 3

See also S. 32(1), EVIDENCE ACT, 1872

[1821] — S. 164 — Dying declaration — Recording of — Omission to question about mental condition of deceased — *Magistrate who recorded the dying declaration stating that he was fully satisfied about the mental condition of the deceased — Answers given by the deceased also showing that he was in a fit condition to make the statement — Held, in the circumstances omission on the part of Magistrate to question the deceased regarding his state of mind could not be a ground to reject the dying declaration outright — Non-mention of name of one of the participants in the earlier dying declaration recorded by the Investigating Officer not fatal to the prosecution — Possibility of the deceased failing to remember his name due to injuries cannot be ruled out*

Whether the injured person who made the statement was in a fit condition depends on several circumstances. No doubt, a Judicial Magistrate who knows the law well would do better if such a question is put, but the mere absence of such a question being put, could not be a ground to reject the dying declaration outright. The Court has looked to the entire statement and the answers duly recorded by the Magistrate along with the doctor's evidence. The Magistrate in the instant case as PW has deposed that he was fully satisfied that the deceased was in a fit condition while making the statement. On examination of the questions and answers, particularly, the first question and the answer to that it is clear that the deceased must have been in a fit condition to make the statement. (Para 4). *Bolem Bhaskara Rao* v. *State of A.P.*, 1995 Supp (4) SCC 211: 1996 SCC (Cri) 49.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 30-3-1993]

K. Ramachandra Reddy v. Public Prosecutor, (1976) 3 SCC 618: 1976 SCC (Cri) 473, explained and distinguished

[1822] — S. 164 — Dying declaration — Bride burning — Contradictory dying declarations — Credibility of evidence recorded by Magistrate over other dying declarations — *Evidentiary value of dying declaration recorded by a competent Magistrate having no animus and not being an interested witness, reiterated, would stand on a much higher footing — Deceased had in her dying declaration before the Special Judicial Magistrate (PW 5) and PSI (PW 7) accused the appellants (accused persons) for her burn injuries — PW 1 (father of the deceased) and PW 2 giving false depositions — Oral dying declaration revealed by PW 1 and PW 2 contradictory to dying declaration recorded separately by Magistrate and PSI (PW 7) — No material on record to ascribe any animus to Magistrate or to show that he was interested in fabricating the dying declaration — On facts, held, High Court was right in relying upon evidence of Magistrate (PW 5) and dying declaration of the deceased*

The High Court was right in relying upon evidence of Special Judicial Magistrate (PW 5) and the dying declaration of deceased. PW 5 was a retired gazetted officer of armed forces aged about 76 years. Where a dying declaration is recorded by a competent Magistrate, it would stand on a "much higher footing". A competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and in absence of circumstances showing anything to the contrary, he should not be disbelieved by the court. In the present case both the dying declarations i.e. dying declaration recorded by PW 5 and dying declaration recorded by PW 7 the deceased clearly and unequivocally attributed burn injuries caused to her to the appellants (A-1, A-2, and A-3). Therefore there is no ground to interfere with the order of conviction and sentence recorded by the trial court and confirmed by the High Court. (Paras 23, 24, 46, 48, 27 and 53). *Vikas* v. *State of Maharashtra*, (2008) 2 SCC 516: (2008) 1 SCC (Cri) 486.

Bench Strength **2**. Coram: **C.K. Thakker** and *Markandey Katju*, JJ. [Date of decision: 21-1-2008]

Khushal Rao v. State of Bombay, AIR 1958 SC 22: 1958 SCR 552; Ravi Chander v. State of Punjab, (1998) 9 SCC 303: 1998 SCC (Cri) 1004; Harjit Kaur v. State of Punjab, (1999) 6 SCC 545: 1999 SCC (Cri) 1130, applied

[1823] — S. 164 — Recording of dying declaration — *Dying declaration recorded by Taluka Magistrate after obtaining certificate of doctor that deceased was in a 'fit state of mind' to make statement — Similar certificate obtained by the Magistrate after obtaining the statement of the deceased — Simply because the Magistrate did not put a direct question to the deceased as to whether* *she was in a fit state of mind to make the statement, the dying declaration cannot be discarded — In facts and circumstances of the case no distinction between 'fit state of mind' and 'conscious state of mind' — Merely because the deceased was suffering from great physical pain due to extensive burn injuries it cannot be presumed that she was not in a fit state of mind*

Dying declaration was recorded by Taluka Magistrate after obtaining a certificate from the doctor that the deceased was in a fit state of mind to make the statement. Even after recording such dying declaration, the Magistrate obtained a further certificate from the doctor that the deceased was in fit state of mind to make the statement. The distinction sought to be made out by the Sessions Judge that 'fit state of mind' and 'conscious state of mind' were not the same thing, is too hypertechnical in the facts and circumstances of the case. The Magistrate put the questions to the deceased and then recorded the statement. It will be wholly unjustified to hold that simply because the Magistrate did not put a direct question to the deceased as to whether she was in a fit state of mind to make the statement, the dying declaration was required to be discarded. There is no manner of doubt that the deceased was suffering from great physical pain because of extensive burn injuries but on that score alone it could not be presumed that she was not in a fit state of mind to make the statement particularly when the doctor had certified both before and after the statement that she had a state of mind to make the statement. *Goverdhan Raoji Ghyare* v. *State of Maharashtra*, 1993 Supp (4) SCC 316: 1994 SCC (Cri) 15.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 19-8-1993]

[**Ed.**: But see *K. Ramachandra Reddy v. Public Prosecutor*, (1976) 3 SCC 618 wherein omission to question the deceased regarding his state of mind was considered to be a serious irregularity. In that case the injured was suffering from pain and was unable to sign and was taking time to answer the questions.]

[1824] — S. 164 — Recording of dying declaration — Mode of — Deceased answering questions in Bagri language while Magistrate recording it in Hindi — Answers recorded not in the form of question and answers but in a narrative form — *Held, dying declaration was not vitiated and conviction could be based on it — High Court erred in not relying on the dying declaration and setting aside the conviction recorded by the trial court — Evidence Act, 1872 — S. 32*

Assuming that the deceased gave her statement in her own language, the dying declaration would not vitiate merely because it was recorded in a different language. It is not unusual that courts record evidence in the language of the court even when witnesses depose in their own language. Judicial officers are used to the practice of translating the statements from the language of the parties to the language of the court. Such translation process would not upset either the admissibility of the statement or its reliability, unless there are other reasons to doubt the truth of it.

Nor would a dying declaration go bad merely because the magistrate did not record it in the form of questions and answers. It is axiomatic that what matters is the substance and not the form. Questions put to the dying man would have been formal and hence the answers given are material. Criminal courts may evince interest in knowing the contents of what the dying person said and the questions put to him are not very important normally. That part of the statement which relates to the circumstances of the transaction which resulted in his death gets the sanction of admissibility. Here it is improper to throw such statement overboard on a pedantic premise that it was not recorded in the form of questions and answers. *State of Rajasthan* v. *Bhup Singh*, (1997) 10 SCC 675: 1997 SCC (Cri) 1032: (1997) 1 An LT (Cri) 588.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 13-1-1997]

Ganpat Mahadeo Mane v. State of Maharashtra, 1993 Supp (2) SCC 242: 1993 SCC (Cri) 491, followed

[1825] — S. 164 — Safeguards to be observed by the Magistrate when recording dying declaration

There are certain safeguards which must be observed by a Magistrate when requested to record a dying declaration. The Magistrate before recording the dying declaration must satisfy himself that the deceased is in a proper mental state to make the statement. He must record that satisfaction before recording the dying declaration. He must also obtain the opinion of the doctor, if one is available, about the fitness of the patient to make a statement and the prosecution must prove that opinion at the trial in the manner known to law. These safeguards have not been observed in the present case. (Para 11). *Kanchy Komuramma* v. *State of A.P.*, 1995 Supp (4) SCC 118: 1996 SCC (Cri) 31.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 24-2-1994]

Kundula Bala Subrahmanyam v. State of A.P., (1993) 2 SCC 684: 1993 SCC (Cri) 655, followed

(11) Dying declarant surviving

See also S. 164, '(10) Dying declaration', above

[1826] — Ss. 164 and 162 — Statement made to a Magistrate under expectation of death but maker thereof surviving — His statement not admissible under S. 32, Evidence Act, 1872 — It can be used to corroborate him as provided in S. 157 or to contradict him as provided under S. 155, Evidence Act, 1872 — *Evidence Act, 1872 — Ss. 32, 155 and 157*

The statement of a person surviving cannot be used as evidence under Section 32 though it was recorded as a dying declaration. At the time when the witness gave the statement he would have been under expectation of death but that is not sufficient to wiggle it into the cassette of Section 32. As long as the maker of the statement is alive it would remain only in the realm of a statement recorded during investigation. (Para 14)

Section 157 permits proof of any former statement made by a witness relating to the same fact before "any authority legally competent to investigate the fact" but its use is limited to corroboration of the testimony of such a witness. Though a police officer is legally competent to investigate, any statement made to him during such an investigation cannot be used to corroborate the testimony of a witness because of the clear interdict contained in Section 162 of the Code. But a statement made to a Magistrate is not affected by the prohibition contained in the said section. A Magistrate can record the statement of a person as provided in Section 164 of the Code and such a statement would either be elevated to the status of Section 32 if the maker of the statement subsequently dies or it would remain within the realm of what it was originally. A statement recorded by a Magistrate under Section 164 becomes usable to corroborate the witness as provided in Section 157 of the Evidence Act or to contradict him as provided in Section 155 thereof. (Para 15). *Ramprasad* v. *State of Maharashtra*, (1999) 5 SCC 30: 1999 SCC (Cri) 651: AIR 1999 SC 1969: 1999 Cri LJ 2889.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 12-5-1999]

Maqsoodan v. State of U.P., (1983) 1 SCC 218: 1983 SCC (Cri) 176, followed

[1827] — S. 164 — Dying declarant surviving — *His dying declaration can be treated as statement recorded under S. 164, CrPC and can be used for corroboration or contradiction — Evidence Act, 1872 — S. 32. Sunil Kumar* v. *State of M.P.*, (1997) 10 SCC 570: 1997 SCC (Cri) 879: AIR 1997 SC 940: 1997 Cri LJ 1183.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *B.N. Kirpal*, JJ. [Date of decision: 28-1-1997]

[1828] — S. 164 — Situation where maker of purported dying declaration survives — Effect — *Held, the said declaration is then not a statement under S. 32, Evidence Act but a statement under S. 164 CrPC — It can be used under S. 157, Evidence Act for the purpose of corroboration and under S. 155, Evidence Act for the purpose of contradiction — Evidence Act, 1872 — Ss. 32(1), 157 and 155* (Para 5). *State of U.P.* v. *Veer Singh*, (2004) 10 SCC 117: 2004 SCC (Cri) 1672: 2004 All LJ 2809: 2004 Cri LJ 3835.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 28-4-2004]

Ramprasad v. State of Maharashtra, (1999) 5 SCC 30: 1999 SCC (Cri) 651; Sunil Kumar v. State of M.P., (1997) 10 SCC 570: 1997 SCC (Cri) 879; Gentela Vijayavardhan Rao v. State of A.P., (1996) 6 SCC 241: 1996 SCC (Cri) 1290, relied on

(12) Statements of witnesses recorded under S. 164

[1829] — S. 164 — Statement recorded under — Evidentiary value — *Held, cannot be used as substantive evidence — Can be used only to contradict or corroborate the maker of the statement — Evidence Act, 1872 — Ss. 145 and 157. George* v. *State of Kerala*, (1998) 4 SCC 605: AIR 1998 SC 1376: 1998 Cri LJ 2034.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 18-3-1998]

[1830] — S. 164 — Statement under — Significance of

Section 164 of the Criminal Procedure Code possesses great probative value and affords an unerring assurance to the court. (Para 8). *Kishore Chand* v. *State of H.P.*, (1991) 1 SCC 286: 1991 SCC (Cri) 172: AIR 1990 SC 2140: 1990 Cri LJ 2289.

Bench Strength **2**. Coram: *P.B. Sawant* and **K. Ramaswamy**, JJ. [Date of decision: 29-8-1990]

[1831] — S. 164 — Statements of witnesses by Investigating Officer got recorded under S. 164 — Applicability of the rule of caution to the testimony of such witnesses at the trial

It would be wrong to find fault with the Investigating Officer merely because he got the statements of witnesses recorded under S. 164. Nor can the evidence of a witness be discarded for the mere reason that his statement was recorded under S. 164. But the evidence of witnesses whose statements are recorded under S. 164 must be approached with caution. Such witnesses feel tied to their previous statements given on oath and have but a theoretical freedom to depart from the earlier version. A prosecution for perjury could be the price of that freedom. It is, of course, open to the Court to accept the evidence of a witness whose statement was recorded under S. 164, but the salient rule of caution must always be borne in mind. that is all the more necessary when almost all the eye-witnesses are subjected to this tying-up process. *Balak Ram* v. *State of U.P.*, (1975) 3 SCC 219: 1974 SCC (Cri) 837: AIR 1974 SC 2165: 1974 Cri LR (SC) 530: 1974 Cri LJ 1486.

Bench Strength 2. Coram: *H.R. Khanna* and **Y.V. Chandrachud**, JJ. [Date of decision: 16-8-1974]

[1832] — S. 164 — Testimony of independent witness, cannot be doubted merely because his statement was got recorded by police under S. 164 CrPC

The evidence of an independent witness cannot become suspect merely because the statement under S. 164 CrPC was got recorded by the police. Perhaps with a view to see that he cannot be gained over, the police in its usual precaution has got his statement recorded under S. 164 CrPC. It might be that there is an attempt to pressurise him by getting the statement under S. 164 and the prosecution attempted to pin him down to the statement given to them. But that ground should be taken as a caution to scrutinise his evidence and subject it to critical examination. In this case the evidence of the independent witness was consistent though there were some discrepancies in his evidence vis-à-vis the statement under S. 161 which were not on material particulars of the prosecution case. *Harish Kumar* v. *State (Delhi Admn.)*, 1994 Supp (1) SCC 462: 1994 SCC (Cri) 581: AIR 1993 SC 973.

Bench Strength 2. Coram: *K. Ramaswamy* and *S. Mohan*, JJ. [Date of decision: 29-1-1992]

[1833] — S. 164 — Evidence of witnesses cannot be discarded merely because their statements were got recorded under S. 164 — All that is required as a matter of caution is a careful analysis of the evidence (Para 8). *State of M.P.* v. *Mansingh*, (2003) 10 SCC 414.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 13-8-2003]

Balak Ram v. State of U.P., (1975) 3 SCC 219: 1974 SCC (Cri) 837: AIR 1974 SC 2165; Ram Charan v. State of U.P., AIR 1968 SC 1270: 1968 Cri LJ 1473, relied on

[1834] — S. 164 — Evidence of witnesses whose statements are got recorded by Magistrate under — Effect — *Held, that by itself would not discredit the said evidence — It is only that the evidence of such witnesses must be considered with caution and if there are other circumstances on record which might support the truth of the evidence of such witnesses, it can be acted upon — Presence of PWs 1 to 3 at the time of occurrence not doubtful — In regard to actual assault though there were certain minor embellishments, still there was sufficient consistency as to the role played by the accused-appellants — Hence, in spite of the fact that PWs 1 to 3's evidence was recorded under S. 164 CrPC, the same was acceptable to base a conviction* (Para 6). *Ramesh Singh* v. *State of A.P.*, (2004) 11 SCC 305: 2004 Cri LJ 3354.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 25-3-2004]

Ram Charan v. State of U.P., AIR 1968 SC 1270: (1968) 3 SCR 354: 1968 Cri LJ 1473; Balak Ram v. State of U.P., (1975) 3 SCC 219: 1974 SCC (Cri) 837, explained and followed

Emperor v. Manu Chik, AIR 1938 Pat 290: 39 Cri LJ 635, held, overruled

Gopisetti Chinna Venkata Subbaiah, In re, ILR 1955 AP 633: AIR 1955 AP 161, held, approved

[1835] — S. 164 — Merely because the statement of witness is got recorded under S. 164, held, would not automatically dilute the worth of his evidence (Para 9). *N. Somashekar* v. *State of Karnataka*, (2004) 11 SCC 334.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 6-5-2004]

State of Assam v. Jilkadar Ali, (1972) 2 SCC 320: 1972 SCC (Cri) 662; Vishwanath v. State of U.P., AIR 1960 SC 67: 1960 Cri LJ 154, relied on

[1836] — S. 164 — Recording of statement of a witness by Magistrate during police investigation — Held, by itself does not affect the credibility of the witness

Ordinarily the police in the course of investigation sends witnesses for having their statements recorded by a magistrate under S. 164, Criminal Procedure Code, when they feel that there may be some uncertainty about the evidence or such a witness may at some distant time prevaricate. There cannot be any hard and fast rule of law for treating a witness as suspect from the mere fact of his statement being recorded under S. 164. If the Court finds that the evidence of the witness has been consistent throughout and there was no reason whatsoever for the police to have taken the step for his statement being recorded under S. 164, CrPC, the fact of such recording would be of no moment in appraising the testimony of such a witness. *Badri* v. *State of Rajasthan*, (1976) 1 SCC 442: 1976 SCC (Cri) 60: AIR 1976 SC 560: (1976) 2 SCR 339: 1976 Cri LJ 496.

Bench Strength 2. Coram: *M.H. Beg* and **P.K. Goswami**, JJ. [Date of decision: 6-11-1975]

[1837] — S. 164 — Conviction of appellant-accused M confirmed, but reversed in case of appellant-accused A — *M, A and R (absconding accused) allegedly raped PW 6 (prosecutrix) — High Court convicted M and A under aforementioned sections — Sustainability — Held, statements of PW 6 (prosecutrix), PW 5 (constable)*

(12) Statements of witnesses recorded under S. 164 *(contd.)*

and PW 9 (investigating officer) were categoric insofar as presence of ***M*** *was concerned — In her statement recorded under S. 164 CrPC, prosecutrix clearly stated that she was kidnapped and then raped by* ***M*** *and* ***R*** *and that* ***A*** *joined them much later who merely held her hand while she was raped second time by* ***M*** *and* ***R*** *— Thus, prosecutrix had not attributed any rape to* ***A*** *— Likewise, she had stated that* ***A*** *was not one of those who kidnapped her — It is true that in her statement in court, she attributed rape to* ***A*** *as well, but in light of contradictions, some doubt created with regard to* ***A****'s involvement — Again, PW 5 (constable) made a statement which was corroborated by PW 9 (investigating officer), that only* ***M*** *and* ***R*** *along with prosecutrix were brought to police station as* ***A*** *had run away while en route to police station — Resultantly, an inference can rightly be drawn that* ***A*** *was perhaps not in the car (in which prosecutrix was kidnapped) when* ***M***, ***R*** *and prosecutrix were apprehended by PW 5 — Therefore, involvement of* ***A***, *held, uncertain — Hence, conviction of* ***M*** *confirmed, however, reversed in case of* ***A*** *— Penal Code, 1860 — Ss. 375 and 376 and Ss. 376/34 and 336/34* (Paras 7 to 12). *Abbas Ahmad Choudhary* v. *State of Assam*, (2010) 12 SCC 115: 2010 Cri LJ 2060.

Bench Strength 2. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 25-11-2009]

[1838] — S. 164 — Statement of witnesses recorded under — Evidentiary value — *No invariable rule of law that statement of eyewitnesses (chowkidars in the present case) recorded under S. 164 should be viewed with some initial distrust, though sometimes the police gets the statements recorded in a routine manner — Held, in the present case there was no reason to discard the evidence of the eyewitnesses on that ground. Kanwar Pal Singh* v. *State of Haryana*, 1994 SCC (Cri) 150: AIR 1994 SC 1045: 1994 Cri LJ 1392.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 24-9-1992]

[1839] — Ss. 164, 451, 452 and 457 — Statement made under S. 164 by driver of car indicating that the accused persons had travelled in his car to, and returned from, a place near the place of murder — Whether on facts involuntary — *The mere fact that the car was released about one long month after its seizure, held, did not justify the inference that the driver had made such a statement to oblige the police as his brother had been arrested in an excise case. George* v. *State of Kerala*, (1998) 4 SCC 605: AIR 1998 SC 1376: 1998 Cri LJ 2034.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 18-3-1998]

(13) Confession recorded under S. 164 at instance of police

[1840] — S. 164 — Recording of confession — Police influence — *Merely because a person is produced from police custody before Magistrate for recording confession, held, such confession cannot be discredited — Magistrate is not to record the confession until the lapse of such time, as he thinks necessary to extricate the accused's mind completely from fear of the police to have the confession in his own way by telling the Magistrate the true facts — However, in the instant case there was an interval of about a month after the accused was removed from police custody to judicial custody when his confession was recorded* (Paras 19 and 20). *State of Maharashtra* v. *Damu*, (2000) 6 SCC 269: 2000 SCC (Cri) 1088: AIR 2000 SC 1691: 2000 Cri LJ 2301.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 1-5-2000]

[1841] — S. 164 — Recording of confession — Police influence — Geographical distance between the sub-jail and police station — *Mere fact that the sub-jail, in which the accused was interred, was located adjacent to the police station, held, not sufficient to infer police control over the accused*

The geographical distance between the two buildings — the sub-jail and the police station — should not have been a consideration to decide the possibility of the police exerting control over a detenu. To keep a detenu in police fear, it is not necessary that the location of the police station should be proximal to the edifice in which the prisoner is detailed in judicial custody. In many places judicial courts are situated very near to police station houses, or the offices of higher police officers would be housed in the same complex. It is not a contention to be countenanced that such nearness would vitiate the independence of judicial function in any manner. (Para 21). *State of Maharashtra* v. *Damu*, (2000) 6 SCC 269: 2000 SCC (Cri) 1088: AIR 2000 SC 1691: 2000 Cri LJ 2301.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 1-5-2000]

[1842] — S. 164-A — Right to privacy — Basis, scope and extent — Privacy as an aspect of personal liberty — Mental privacy and physical privacy — Protection of mental privacy is available to accused as well as to victim of an offence — A female who alleges to be victim of sexual offence cannot be subjected to polygraph test to ascertain whether she is making truthful allegation — *Held, while physical privacy may be curtailed to some extent in reasonable exercise of police powers under CrPC, there is no corresponding provision for intruding upon a person's mental privacy — Extracting testimonial responses by means of narcoanalysis, polygraph and BEAP tests, held, intrude upon a person's mental privacy and are therefore impermissible in law — Evidence Act, 1872, Ss. 24 to 27 and 114-A — Laboratory Procedure Manual for Polygraph Examination, Para 3.4(v) — European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Art. 8 — Police and Criminal Evidence Act, 1984 (UK), S. 64(1-A) — Constitution of India — Arts. 21 and 20(3)*

A distinction must be made between the character of restraints placed on the right to privacy. While ordinary exercise of police powers contemplates restraints of a physical nature such as extraction of bodily substances and use of reasonable force for subjecting a person to a medical examination, it is not viable to extend these police powers to forcible extraction of testimonial responses. In conceptualising right to privacy, distinction between privacy in a physical sense and the privacy of one's mental processes, has to be kept in view. (Para 224)

So far, judicial understanding of privacy in India has mostly stressed on protection of body and physical spaces from intrusive actions by the State. While the scheme of criminal procedure as well as evidence law mandates interference with physical privacy through statutory provisions that enable arrest, detention, search and seizure among others, the same cannot be the basis for compelling a person to impart personal knowledge about a relevant fact. Theory of interrelationship of rights mandates that right against self-incrimination should also be read as a component of personal liberty under Article 21. Hence, understanding of right to privacy should account for its intersection with Article 20(3). Furthermore, rule against involuntary confessions as embodied in Sections 24, 25, 26 and 27 of the Evidence Act, 1872 seeks to serve both the objectives of reliability as well as voluntariness of testimony given in a custodial setting. A conjunctive reading of Articles 20(3) and 21 of the Constitution along with the principles of evidence law leads to a clear answer. Importance of personal autonomy must be recongised in aspects such as choice between remaining silent and speaking. An individual's decision to make a statement is the product of a private choice and there should be no scope for any other individual to interfere with such autonomy, especially in circumstances where the person faces exposure to criminal charges or penalties. (Para 225)

Medical test for ascertaining mental condition of a person is most likely to be in the nature of a psychiatric evaluation which usually includes testimonial responses. Subjecting a person to the impugned techniques (narcoanalysis, lie-detector and BEAP tests) in an involuntary manner violates prescribed boundaries of privacy. Forcible interference with a person's mental processes is not provided for under any statute and it most certainly comes into conflict with right against self-incrimination. However, this determination does not account for circumstances where a person could be subjected to any of the impugned tests but not exposed to criminal charges and the possibility of conviction. In such cases, he/she could still face adverse consequences such as custodial abuse, surveillance, undue harassment and social stigma among others. In order to address such circumstances, it is important to examine some other dimensions of Article 21. (Paras 204 and 226)

There is possibility that victims of offences could be forcibly subjected to any of these techniques during the course of investigation. There is provision in *Laboratory Procedure Manual* for polygraph tests which contemplates the same for ascertaining the testimony of victims of sexual offences. Irrespective of the need to expedite investigations in such cases, no person who is a victim of an offence can be compelled to undergo any of the tests in question. Such a forcible administration would be an unjustified intrusion into mental privacy and could lead to further stigma for the victim. (Para 254). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength **3**. Coram : **K.G. Balakrishnan, C.J.** and R.V. Raveendran and J.M. Panchal, JJ. [Date of decision : 5-5-2010]

M.P. Sharma v. Satish Chandra, AIR 1954 SC 300: 1954 Cri LJ 865: 1954 SCR 1077; Kharak Singh v. State of U.P., AIR 1963 SC 1295: (1963) 2 Cri LJ 329; Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Gobind v. State of M.P., (1975) 2 SCC 148: 1975 SCC (Cri) 468; R. Rajagopal v. State of T.N., (1994) 6 SCC 632; People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301; 'X' v. Hospital 'Z', (2003) 1 SCC 500; Attorney General's Reference (No. 3 of 1999), (2001) 2 AC 91: (2001) 2 WLR 56: (2001) 1 All ER 577 (HL), relied on

M. Vijaya v. Singareni Collieries Co. Ltd., AIR 2001 AP 502; R.(S) v. Chief Constable of the South Yorkshire Police, (2002) 1 WLR 3223: (2003) 1 All ER 148 (CA), approved

'X' v. Hospital 'Z', (1998) 8 SCC 296, held, partly overruled

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— **S. 165** *See* Ss. 57 and 165
See also Ss. 91, 165 and 166
See also Ss. 93 to 101 and 165
See also Ss. 100, 102, 103 and 165
See also Ss. 100 and 165
See also Ss. 100(4) and 165
See also Ss. 102, 100 and 165
See also Ss. 104, 102 and 165
See also Ss. 154 to 173
See also Ss. 154 to 173 and 482
See also Ss. 156, 157, 161 and 165
See also Ss. 157, 156, 165 and 482
See also Ss. 157 to 167
See also Ss. 157 to 172 and 198
See also Ss. 157 to 173
See also Ss. 157, 160 to 168
See also Ss. 157 and 165
See also Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311
See also Ss. 190, 161, 165 and 173

[1843] — Ss. 165 and 102 — Search and seizure — Challenge to — Proper stage for — *Where the Supreme Court set aside the order of High Court, which quashed the investigation, and directed the investigation to proceed, held on facts, it was not proper to consider the legality of search and seizure at this stage — The accused if put up for trial, held, could challenge the same before the trial court*

It is premature at this stage to consider whether search and seizure were done in accordance with law as that is a question which has to be considered by the court, if the accused is ultimately put up for trial and he challenges the search and seizure made. *CBI* v. *Tapan Kumar Singh*, (2003) 6 SCC 175: 2003 SCC (Cri) 1305: AIR 2003 SC 4140: 2003 Cri LJ 2322.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 10-4-2003]

[1844] — Ss. 165 and 102 — Even if search is illegal, that will not vitiate the seizure and the further investigations. *State of Maharashtra* v. *Natwarlal Damodardas Soni*, (1980) 4 SCC 669: 1981 SCC (Cri) 98: AIR 1980 SC 593: 1980 Cri LJ 429.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 4-12-1979]

[1845] — Ss. 165, 102 and 100 — Illegality of search would not render the seizure effected pursuant to the search also illegal so as to enable the accused to claim return of the seized material — *However, courts must be cautious while dealing with evidence collected during the illegal search. Partap Singh (Dr.)* v. *Director of Enforcement*, (1985) 3 SCC 72: 1985 SCC (Cri) 312: AIR 1985 SC 989: (1985) 155 ITR 166.

Bench Strength **2**. Coram: **D.A. Desai** and *V. Balakrishna Eradi*, JJ. [Date of decision: 26-4-1985]

[1846] — Ss. 165 and 100 — Illegal search — Evidence obtained under, held, is not completely excluded unless it has caused serious prejudice to the accused — *Such evidence could be admitted provided there is no express statutory violation or violation of the constitutional provisions i.e. where certain specific enactments are made and the search or seizure is to be effected in accordance with the provisions thereof, the authorities shall comply with such provisions — Thus, general provisions in CrPC are to be treated as guidelines and if at all there is any minor violation, still the court can accept the evidence — Courts have discretion to decide whether such evidence is to be accepted or not — On facts, evidence regarding seizure of articles from the house of the accused could not be rejected merely because the witness who accompanied the police officer conducting the search was not from the same locality* (Paras 28 and 31 to 33). *State of M.P.* v. *Paltan Mallah*, (2005) 3 SCC 169: 2005 SCC (Cri) 674: AIR 2005 SC 733: 2005 Cri LJ 918.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 20-1-2005]

Radhakishan v. State of U.P., 1963 Supp (1) SCR 408: AIR 1963 SC 822: (1963) 1 Cri LJ 809; Pooran Mal v. Director of Inspection, (1974) 1 SCC 345: 1974 SCC (Tax) 114; Partap Singh (Dr.) v. Director of Enforcement, (1985) 3 SCC 72: 1985 SCC (Cri) 312: 1985 SCC (Tax) 352, followed

Kuruma v. R., 1955 AC 197: (1955) 1 All ER 236: (1955) 2 WLR 223 (PC), relied on

[1847] — Ss. 165, 102 and 100 — If empowered officer while effecting search or arrest in accordance with Ss. 100 and 165 CrPC, fails to record reasons, such a failure will not amount to an illegality vitiating the trial — *Mere non-compliance with Ss. 100 and 165 CrPC would not by itself vitiate the trial — Effect of such non-compliance stated — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 41(2) and 42(1)*

If a police officer, even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation into offences purely under the provisions of CrPC fails to strictly comply with the provisions of Ss. 100 and 165 CrPC including the requirement to record reasons, such failure would only amount to an irregularity.

Neither S. 41(2) nor S. 42(1) of NDPS Act mandates such empowered officer to record the grounds of his belief. It is only proviso to S. 42(1) read with S. 42(2) which makes it obligatory to record grounds for his belief. To that extent it has already been held that the provisions are mandatory. A fortiori, the empowered officer though is expected to record reasons of belief as required under S. 165, failure to do so cannot vitiate the trial particularly when S. 41 or 42 of NDPS Act do not mandate recording of reasons while making a search. Section 165 CrPC in the context has to be read along with Ss. 41(2) and 42(1) whereunder the officer is not required to record his reasons. The general principles laid down regarding the irregularities committed in such searches, equally apply even to cases where the grounds of belief as required under S. 165 are not recorded.

If an empowered officer or an authorised officer under S. 41(2) of the NDPS Act carries out a search, he would be doing so under the provisions of CrPC namely Ss. 100 and 165 CrPC and if there is no strict compliance with the provisions of CrPC then such search would not per se be illegal and would not vitiate the trial.

The effect of such failure has to be borne in mind by the courts while appreciating the evidence in the facts and circumstances of each case. The court has to consider whether any prejudice has been caused to the accused and also examine the evidence in respect of search in the light of the fact that these provisions have not been compiled with and further consider whether the weight of evidence is in any manner affected because of the non-compliance. The effect of such non-compliance will have a bearing on the appreciation of evidence of the official witness and other material depending upon the facts and circumstances of each case. The testimony of a witness is not to be doubted or discarded merely on the ground that he happens to be an official but as a rule of caution and depending upon the circumstances of the case, the courts look for independent corroboration. This again depends on the question whether the official has deliberately failed to comply with these provisions or failure was due to lack of time and opportunity to associate some independent witnesses with the search and strictly comply with these provisions. *State of Punjab* v. *Balbir Singh*, (1994) 3 SCC 299: 1994 SCC (Cri) 634: AIR 1994 SC 1872: (1994) 1 Crimes 753.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 1-3-1994]

Bai Radha v. State of Gujarat, (1969) 1 SCC 43, followed

Deepak Ghanshyam Naik v. State of Maharashtra, 1989 Cri LJ 1181: 1989 Mah LJ 276 (Bom); Sunil Kumar v. State, 1990 Cri LJ 414 (Del), approved

[1848] — Ss. 165, 102 and 100 — Search and seizure — Illegality in — Effect of — Illegality in — Effect of — Held, is not always fatal to prosecution case — *It would have a bearing on the appreciation of evidence of the official witnesses and other materials depending on the facts of each case — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 50 and 42* (Para 11). *Ravindran* v. *Supdt. of Customs*, (2007) 6 SCC 410: (2007) 3 SCC (Cri) 189: AIR 2007 SC 2040.

Bench Strength **2**. Coram: **B.P. Singh** and *Tarun Chatterjee*, JJ. [Date of decision: 14-5-2007]

Ritesh Chakarvarti v. State of M.P., (2006) 12 SCC 321: (2007) 1 SCC (Cri) 744, relied on

[1849] — Ss. 165 and 102 — Further proceedings closed against accused in respect of material seized during search — Inference that the search was vexatious cannot be drawn therefrom. *Partap Singh (Dr.)* v. *Director of Enforcement*, (1985) 3 SCC 72: 1985 SCC (Cri) 312: AIR 1985 SC 989: (1985) 155 ITR 166.

Bench Strength **2**. Coram: **D.A. Desai** and *V. Balakrishna Eradi*, JJ. [Date of decision: 26-4-1985]

[1850] — Ss. 165 and 102 — Seizure of incriminating documents from the person of the accused — Evidence of — *Entry in Malkana Register said to be verbatim copy of seizure memo — Endorsement or note in the register that the document though said to be recovered but not deposited in police station — In the circumstances, nature of the entry in the register only shows recovery of certain articles but would not prove recovery of the documents — Evidence Act, 1872 — S. 27. Kehar Singh* v. *State (Delhi Admn.)*, (1988) 3 SCC 609: 1988 SCC (Cri) 711: AIR 1988 SC 1883.

Bench Strength **3**. Coram: **G.L. Oza**[1], **B.C. Ray**[2] and **K. Jagannatha Shetty**[3], JJ. [Date of decision: 3-8-1988]

[1851] — Ss. 165, 102, 100(4) and 154 — Search and seizure — Investigating Officer taking signature of accused persons as witnesses to the seizure memo — *No independent person of locality or nearby village joined to witness the seizure — Articles recovered from the house of the accused persons found to be exactly of same number, description and details as mentioned in Fard-beyan and FIR — Even weight of the ornaments and cash seized tallying with weight mentioned in Fard-beyan and FIR — Held, in the circumstances, it can be inferred that Fard-beyan and FIR had been recorded after seizure of articles from the house of the accused persons and the accused persons had not been named as accused till then. Arjun Marik* v. *State of Bihar*, 1994 Supp (2) SCC 372: 1994 SCC (Cri) 1551.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 2-3-1994]

[1852] — Ss. 165 and 102 — Non-seizure — Effect — *Non-seizure of torchlight used by the witness to see the occurrence — Held, does not render the evidence of the eyewitness concerned untrustworthy*

If the accused had used a torchlight or if the victim had a torchlight with him during the occurrence there would be much force in insisting that the investigating officer should have seized it as the same could be used as a material object during trial but a torchlight used by the witness to see the occurrence cannot be equated with the torchlight used by the victim or the assailants in the encounter for evidentiary purposes. Non-seizure of such a torchlight cannot, therefore, be considered as a lapse on the part of any investigating officer, much less a ground for impairment of the testimony of the eyewitness concerned. *Balo Yadav* v. *State of Bihar*, (1997) 5 SCC 360: 1997 SCC (Cri) 701: AIR 1997 SC 2678: 1997 Cri LJ 3395.

Bench Strength **2**. Coram: *G.N. Ray* and **K.T. Thomas**, JJ. [Date of decision: 29-4-1997]

[1853] — Ss. 165, 166(3) & (4) and 100(4) — Statement of prosecution witness contradicting the recovery — On facts, statement of witness not found reliable — *Witness stating recovery of revolver from vehicle on the following day of murder whereas revolver, in fact, recovered from another place after 5 months — Discarding the statement of witness, held, there was no reason for police to conceal the revolver for 5 months after it was recovered from vehicle on the next day of murder — Evidence Act, 1872 — S. 27 — Penal Code, 1860 — Ss. 302, 364 r/w Ss. 120-B & 34. Manish Dixit* v. *State of Rajasthan*, (2001) 1 SCC 596: 2001 SCC (Cri) 235: AIR 2001 SC 93: 2001 Cri LJ 133.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 18-10-2000]

[1854] — Ss. 165, 102, 166(3) & (4) and 100(4) — Search and seizure — Objections raised on the ground of non-compliance with Ss. 165 and 166(3) CrPC — *In view of the facts of case, evidence of police officer not spurned down despite no signature of any independent witness of locality on seizure memo — When the police officers of Jaipur conducting search at Delhi had given information of the search to their higher officer, who agreed to forward the same to police officers of Delhi concerned, held, compliance with Ss. 166(3) and (4) was not liable to be questioned — Penal Code, 1860 — Ss. 302, 364 r/w Ss. 120-B & 34. Manish Dixit* v. *State of Rajasthan*, (2001) 1 SCC 596: 2001 SCC (Cri) 235: AIR 2001 SC 93: 2001 Cri LJ 133.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 18-10-2000]

[1855] — Ss. 165, 102 and 100 — Seizure memo — Mahazar — Preparation of, and writing of — Distinction between — *Constable preparing mahazar on dictation of Sub-Inspector — In such circumstances, Sub-Inspector's statement that mahazar was written by the Constable and the Constable's statement that mahazar was prepared by Sub-Inspector, held, not contradictory — Even assuming them to be contradictory, held, the contradiction was not a material contradiction affecting the merits of the case — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 42 and 51*

There is no contradiction between the statements of PWs 1 and 2. The constable in question obviously prepared the mahazar on the dictation of PW 1 which PW 2 interpreted to mean that the mahazar was prepared by PW 1. Preparation of mahazar and writing down of the contents of the mahazar are two different things. (Para 6). *P.P. Fathima* v. *State of Kerala*, (2003) 8 SCC 726.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 4-11-2003]

[1856] — Ss. 165 and 100 — Non-examination of independent witnesses to search — Effect of — *Held, is not fatal to prosecution case — But, where such witness is not examined in the course of trial, the evidence of official witnesses may be approached with suspicion and corroboration may be insisted upon — In the present case, the courts below while passing conviction had critically scrutinised the evidence of the official witnesses applying the rule of caution — There was no reason to disagree with their findings — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 50 and 42* (Paras 12 and 13). *Ravindran* v. *Supdt. of Customs*, (2007) 6 SCC 410: (2007) 3 SCC (Cri) 189: AIR 2007 SC 2040.

Bench Strength **2**. Coram: **B.P. Singh** and *Tarun Chatterjee*, JJ. [Date of decision: 14-5-2007]

Koluttumottil Razak v. State of Kerala, (2000) 4 SCC 465: 2000 SCC (Cri) 829; M. Prabhulal v. Asstt. Directorate of Revenue Intelligence, (2003) 8 SCC 449: 2003 SCC (Cri) 2024, relied on

[1857] — S. 165 — Compliance with rigours of S. 42 NDPS Act, 1985 — Necessity of — Compliance with S. 165 CrPC — Sufficiency of — *Held, for the said purpose, a distinction is to be borne in mind between a search conducted on the basis of a prior information and a case where the authority comes across a case of commission of an offence under the NDPS Act accidentally or per chance — Rigours of law need not be complied with in a case where the purpose for making search and seizure would be defeated, if strict compliance therewith is insisted upon — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 42*

A declaration to the effect that the minimum requirement, namely, compliance with Section 165 CrPC would serve the purpose may not suffice as non-compliance with the said provision would not render the search a nullity. A distinction therefore must be borne in mind between a search conducted on the basis of a prior information and a case where the authority comes across a case of commission of an offence under the NDPS Act accidentally or per chance. It is also possible to hold that rigours of the law need not be complied with in a case where the purpose for making search and seizure would be defeated, if strict compliance therewith is insisted upon. (Para 14). *Directorate of Revenue* v. *Mohd. Nisar Holia*, (2008) 2 SCC 370: (2008) 1 SCC (Cri) 415.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-12-2007]

[1858] — S. 165 — Applicability — No question of applicability of R. 14, TADA Rules arose when no case for offence was pending — *Search and seizure was carried out by higher officer, namely SP, CID Crime Branch — Being a cognizable offence, on the basis of information received that large quantity of arms and explosive substances were stored in the premises, the police officer was entitled to exercise power under S. 165 CrPC — Exercise of power under R. 14 by the District Magistrate does not take away the authority of the police officer to search under S. 165 CrPC — Terrorist and Disruptive Activities (Prevention) Rules, 1987, R. 14* (Para 89). *Lal Singh* v. *State of Gujarat*, (2001) 3 SCC 221: 2001 SCC (Cri) 472: AIR 2001 SC 746: (2001) 2 Cal LT 8 (SC): 2001 Cri LJ 978.

Bench Strength 2. Coram: **M.B. Shah** and *S.N. Phukan*, JJ. [Date of decision: 9-1-2001]

[1859] — S. 165 — Requirement of recording written reasons under, not mandatory for the purpose of S. 37, Foreign Exchange Regulation Act, 1973. *Partap Singh (Dr.)* v. *Director of Enforcement*, (1985) 3 SCC 72: 1985 SCC (Cri) 312: AIR 1985 SC 989: (1985) 155 ITR 166.

Bench Strength 2. Coram: **D.A. Desai** and *V. Balakrishna Eradi*, JJ. [Date of decision: 26-4-1985]

[1860] — Ss. 165(4) and 100(4) — Search of smuggled goods — *No person from the locality called upon to witness and instead Customs officers and an independent witness witnessing the search — In case of search of smuggled goods, local witnesses are not always available — Hence, evidence of such witnesses to the search, held, cannot be rejected if otherwise reliable*

When dealing with the recovery of smuggled goods, the Customs authorities have to maintain top secrecy lest the recovery should prove abortive by reason of any leakage. Furthermore, smuggled goods are often kept in lonely places which may or may not have habitation. In the present case, the articles were got recovered from a lonely sea shore and a far-off island and the articles were concealed in the bushes growing there. In these circumstances, it would neither be practical nor reasonable to expect any person of the locality to witness the search. *State of Maharashtra* v. *P.K. Pathak*, (1980) 2 SCC 259: 1980 SCC (Cri) 428: AIR 1980 SC 1224: 1980 Cri LJ 923.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 5-2-1980]

— S. 166 *See* Ss. 91, 165 and 166

See also Ss. 154 to 173

See also Ss. 154 to 173 and 482

See also Ss. 157 to 167

See also Ss. 157 to 172 and 198

See also Ss. 157 to 173

See also Ss. 157, 160 to 168

See also Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311

— S. 166(3) *See* Ss. 100(4) & (5) and 166(3) & (4)

See also Ss. 165, 102, 166(3) & (4) and 100(4)

See also Ss. 165, 166(3) & (4) and 100(4)

[1861] — Ss. 166(3) and (4) — Search by IO of a place in the limits of another police station — *Requirement on the part of the IO to send notice and a copy of the list prepared under S. 100 to the officer-in-charge of the other police station — IO deposing that he had written two letters to the police station in whose jurisdiction the search and seizure were made — However, copies of those letters not produced before court — Held, presumption under Ill. (e) of S. 114 of the Evidence Act would arise and the official acts would be deemed to have been performed regularly — Evidence Act, 1872 — S. 114 Ill. (e). Ronny* v. *State of Maharashtra*, (1998) 3 SCC 625: 1998 SCC (Cri) 859: AIR 1998 SC 1251.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S.S.M. Quadri**, JJ. [Date of decision: 5-3-1998]

— S. 166(4) *See* Ss. 100(4) & (5) and 166(3) & (4)

See also Ss. 165, 102, 166(3) & (4) and 100(4)

See also Ss. 165, 166(3) & (4) and 100(4)

See also Ss. 166(3) and (4)

— S. 166-A *See* Ss. 157, 173(8) and 166-A

See also Ss. 482, 397, 166-A and 401

[1862] — S. 166-A — "Letter rogatory" — Meaning of

'Letter Rogatory' is a formal communication in writing sent by a Court in which action is pending to a foreign Court or Judge requesting the testimony of a witness residing within the jurisdiction of that foreign Court may be formally taken thereon under its direction and transmitted to the issuing Court making such request for use in a pending legal contest or action. This request entirely depends upon the comity of Courts towards each other, that is to say, on the friendly recognition accorded by the Court of one nation to the laws and usages of the Court of another nation. *Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260: 1993 SCC (Cri) 1171: AIR 1993 SC 1082: 1993 Cri LJ 859.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 17-12-1992]

[1863] — S. 166-A — Bofors gun deal case — Letter rogatory issued by Special Judge to authorities in Switzerland — *Held, on facts, not vitiated by non-application of mind*

The Special Judges cannot be found fault with to have issued letter rogatory casually or mechanically. They have issued the letter rogatory only after applying their mind and on being satisfied that the FIR constitutes a cognizable offence or offences and that a competent officer under the Code of Criminal Procedure had made a request for issuance of letter rogatory. *Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260: 1993 SCC (Cri) 1171: AIR 1993 SC 1082: 1993 Cri LJ 859.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 17-12-1992]

[1864] — S. 166-A — Letter rogatory — *Initially issued to competent authority for investigation in a foreign country (confederation of Switzerland) under Memorandum of Understanding prior to coming into force of S. 166-A — But amended letter rogatory issued subsequent to enforcement of S. 166-A — Held, amended letter legal and valid — Bofors case. Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260: 1993 SCC (Cri) 1171: AIR 1993 SC 1082: 1993 Cri LJ 859.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 17-12-1992]

[1865] — S. 166-A — Letter rogatory — Opportunity of being heard before issuing — *Held, not required to be afforded to the accused — Accused has no right at this stage to contest the investigating agency seeking the letter rogatory. Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260: 1993 SCC (Cri) 1171: AIR 1993 SC 1082: 1993 Cri LJ 859.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 17-12-1992]

— S. 166-B *See* Ss. 176, 177, 166-B, 188 and 190

[1866] — S. 166-B — Invocation of, if proper — Letter of request received from Govt. of Canada addressed to Govt. of India to obtain appellant's statement and his blood sample on voluntary basis to conform with Canadian law prohibiting compulsion in this regard — *In such situation, held, S. 166-B was wrongly invoked by CBI since the directions of the Magistrate necessarily implied compulsion which was contrary to the request of the Canadian authorities — Impugned orders of Magistrate are unsustainable in law — Question as to correct interpretation of S. 166-B left open as case was decided on facts, that is, on basis of contents of letter of Canadian authorities* (Paras 8 and 9). *Narinder Singh Bogarh* v. *State of Punjab*, (2004) 11 SCC 180.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 10-2-2004]

[1867] — S. 166-B — Enforcement of red corner notice issued by Interpol on the ground that fugitive criminal in India has violated order of a foreign civil court — *Held, Indian court can examine whether tests laid down under Ss. 13 and 44-A CPC are satisfied — Extradition Act, 1962, Ss. 4 to 10 — CPC, 1908, Ss. 13 and 44-A* (Para 114). *Bhavesh Jayanti Lakhani* v. *State of Maharashtra*, (2009) 9 SCC 551.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-8-2009]

[1868] — Ss. 166-B and 173(5) — Inquiry by Magistrate on request for extradition — Compliance with requirement of S. 173(5) CrPC at the stage of — Necessity of — *Extradition Act, 1962 — S. 7* (Para 50). *Sarabjit Rick Singh* v. *Union of India*, (2008) 2 SCC 417: (2008) 1 SCC (Cri) 449.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-12-2007]

[1869] — S. 166-B — Evidence of documents — *Govt. of India's order under S. 5, Extradition Act, 1962 for conducting inquiry by Magistrate in the matter of USA's request for extradition of a fugitive as also all the documents which were sent along with the duly authenticated and certified letter of request of USA presented by Govt. of India to the Magistrate — Held, these documents were eligible to be treated and received as evidence under S. 10, Extradition Act, 1962 — Since these documents were placed on file of the Magistrate and copies thereof given to the fugitive within the period of two months from the date of his apprehension as prescribed under the treaty, there was no violation of the treaty — Extradition Act, 1962 — Ss. 5 and 10. Rosiline George* v. *Union of India*, (1994) 2 SCC 80: 1994 SCC (Cri) 304: (1993) 2 ALT (Cri) 672: (1994) 1 KLT 36.

Bench Strength 2. Coram: **Kuldip Singh** and *S.P. Bharucha*, JJ. [Date of decision: 11-10-1993]

Section 167 — Detention without charge pending investigation

— **S. 167** *See also* S. 167 Criminal Procedure Code, 1898, p. 1035 in Vol. 2

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— **S. 167 proviso (a)** *See* Ss. 439 and 167 proviso (a)

— **S. 167(2)** *See* Ss. 167(1), 57 and 167(2)

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(1) Generally

[1870] — S. 167 — Detention in contravention of provisions under S. 167(2) proviso — Violation of right to life — *When maximum period of custody is provided under, any further detention of the accused beyond that period without filing a challan would amount to violation of Art. 21 — Constitution of India — Article 21*

Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21. (Para 13). *Uday Mohanlal Acharya* v. *State of Maharashtra*, (2001) 5 SCC 453: 2001 SCC (Cri) 760: AIR 2001 SC 1910: 2001 Cri LJ 1832.

Bench Strength 3. Coram: **G.B. Pattanaik**[1], *U.C. Banerjee* and **B.N. Agrawal**[2], JJ. [Date of decision: 29-3-2001]

[1871] — Ss. 167, 41, 44 and 46 — 'Person arrested' — 'Arrest' — Meaning of — 'Arrest' and 'custody' — Distinction — *Arrest condition precedent to judicial custody*

(1) Generally *(contd.)*

The word 'arrest' is derived from the French word 'arreter' meaning "to stop or stay" and signifies a restraint of the person.

The Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. The arrest of a person is a condition precedent for taking him into judicial custody thereof. The taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender. In every arrest, there is custody but not vice versa. The words 'custody' and 'arrest' are not synonymous terms. Though 'custody' may amount to an arrest in certain circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation which if under all circumstances accepted and adopted, would lead to a startling anomaly resulting in serious consequences. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

Roshan Beevi v. Govt. of T.N., 1984 Cri LJ 134: (1984) 15 ELT 289: 1983 MLW (Cri) 289 (Mad), approved

Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559: 1980 SCC (Cri) 508, relied on

[1872] — Ss. 167, 202(1), 204, 273 Expln. and 319 — 'Accused' — Meaning of

Generally speaking, to accuse means to allege whether the person is really guilty of the crime or not. Accusation according to *Black's Law Dictionary* means a formal charge against a person, to the effect that he is guilty of a punishable offence laid before a court or Magistrate having jurisdiction to inquire into the alleged crime. In this sense accusation may be said to be equivalent of information at common law which is mere allegation of prosecuting officer by whom it is preferred.

In the Code of Criminal Procedure, 1973, the expression 'the accused' has been used in the narrower sense. In S. 167 the words 'the accused' have been used only in respect of a case where there are grounds for believing that the accusation or information is well founded. 'Information' and 'accusation' are synonymously used. In S. 202(1) the expression "the accused" has been used in relation to a complaint case under this section even before issue of process. It also appears that in the Code the expression "the accused" is used after cognizance is taken by the Magistrate. In S. 204 one is referred to as 'the accused' even before issue of process. The explanation to S. 273 says that "accused" includes a person in relation to whom any proceeding under Chap. VIII (Security for keeping the peace and good behaviour) has been commenced under this Code. In view of S. 319 persons who have been discharged under S. 245 of all or some of the charges are 'accused' and hence cannot be proceeded against under S. 319. However, power to order inquiry under S. 398 may be invoked. *Sohan Lal* v. *State of Rajasthan*, (1990) 4 SCC 580: 1990 SCC (Cri) 650: AIR 1990 SC 2158: (1990) 3 Crimes 120.

Bench Strength 2. Coram: **K.N. Saikia** and *K. Ramaswamy*, JJ. [Date of decision: 21-8-1990]

[1873] — S. 167 — 'Police officer' — *Includes authorised or empowered officer under FERA or Customs Act*

Neither the Police Act, 1861 (Act V of 1861) nor any other statute defines the expression 'police officer'. Shortly stated, the main duties of the police are the prevention, detention and investigation of crimes. Though the powers of customs officers and enforcement officers are not identical to those of police officers qua the investigation under Chapter XII of the Code yet the officers under the FERA and Customs Act are vested with certain powers similar to the powers of police officers. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

[1874] — Ss. 167 and 3 — Special Judge created by Criminal Law (Amendment) Act, 1952 is a 'Magistrate having jurisdiction' within the meaning of S. 167 to authorise detention of accused in police custody — *General Clauses Act, 1897 — S. 32*

The Criminal Procedure Code is applicable when there is no conflict with the provisions of the Criminal Law (Amendment) Act. While S. 8 of the Amendment Act empowers the Special Judge to take cognizance of the offence without the accused being committed to him, neither a Sessions Judge nor a Magistrate is so empowered under the Code. If a Special Judge having such a power is not empowered to exercise powers of remanding an accused person produced before him or release him on bail it will lead to an anomalous situation.

Besides, S. 3 of the Code suggests that if the context otherwise requires, the word 'Magistrate' may include Magistrates who are not specified in the section. Read along with the definition of 'Magistrate' in S. 32 of the General Clauses Act, the Special Judge can be held to be a Magistrate for the purposes of S. 167. Thus, although the words "Special Judge" are not mentioned in S. 167, that would not exclude the Special Judge from being a Magistrate having jurisdiction to try cases under S. 167. *State of T.N.* v. *V. Krishnaswami Naidu*, (1979) 4 SCC 5: 1979 SCC (Cri) 887: AIR 1979 SC 1255: 1979 Cri LJ 1069: (1980) 1 MLJ 16 (SC).

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and **P.S. Kailasam**, JJ. [Date of decision: 3-5-1979]

[1875] — S. 167 — 'Accused' — Meaning of, in the context — *Covers person arrested under FERA or Customs Act — Different from 'person accused of an offence' under Art. 20(3) — Penal Code, 1860 — S. 11 — General Clauses Act, 1897 — S. 3(42)*

Though the word "person" is defined in the Indian Penal Code (S. 11) and the General Clauses Act [S. 3(42)] which are identical and are not exhaustive but an inclusive one, the words 'accused' or 'accused person' or 'accused of an offence' are not defined either in the Indian Penal Code or in the Indian Evidence Act or in the General Clauses Act, 1897. In the Code of Criminal Procedure also, these words are not defined except an inclusive meaning of the word 'accused' is given in the Explanation to S. 273 of the Code of 1973, of course, confined only to the mode of taking and recording evidence in the course of the trial or other proceedings as envisaged in the said section. Though this explanation of the word 'accused' limited to that S. 273 cannot and should not be strained and stretched to such an extreme extent to make it applicable in all circumstances wherever the word 'accused' appears in the Code, this explanation gives a clue providing or suggesting an answer to the problem.

The prohibitive sweep of Art. 20(3) which imposes the ban on self-accusation reads, "No person accused of any offence shall be compelled to be a witness against himself." To bring a person within the meaning of 'accused of any offence', that person must assimilate the character of an 'accused person' in the sense that he must be accused of any offence.

While referring to a person arrested and detained neither Art. 22 nor S. 167 employs the expression "accused of any offence". Section 24 of the Evidence Act uses the expression 'accused person' whereas in Ss. 25 and 27, the identical expression "person accused of any offence" is used. But in S. 26 neither of these two expressions is used but "any person". It was only while in examining the admissibility or otherwise of a statement of an 'accused person' or "a person accused of any offence", this Court in a series of judgments has dealt with the connotation of these two expressions but not otherwise.

The word 'accused' in the Code denotes different meanings according to the context in which it is deployed; in that sometimes the said word is employed to denote a person arrested, sometimes a person against whom there is an accusation, but who is yet not put on trial and sometimes to denote a person on trial and so on.

An officer-in-charge of a police station who is empowered under S. 156 to investigate on an information received under S. 154 or otherwise takes up the investigation by proceeding to the spot "for the discovery and arrest of the *offender* when he has reason to suspect the commission of an offence" as contemplated under S. 157 of the Code. At that stage, the investigating officer does not suddenly jump to a conclusion that the person against whom the investigation has commenced has committed an offence. But he can arrive at such a conclusion only when the investigation consummates to a finality on the collection of evidence eliminating all suspicion and establishing the commission of the offence. In case the investigating officer arrives at a conclusion that no offence is made out he forwards his final report to that effect.

The view of majority in the impugned judgment that the person arrested under the FERA or Customs Act cannot fall within the meaning of the word 'accused' for invoking S. 167 solely based on the decisions of the Supreme Court, namely *Ramesh Chandra Mehta*, AIR 1970 SC 940: (1969) 2 SCR 461: 1970 Cri LJ 863 as well as *Illias* v. *Collector of Customs, Madras*, AIR 1970 SC 1065: (1969) 2 SCR 613 is not logically concluded for more than one reason.

Firstly, almost all the decisions of the Supreme Court holding that "a person arrested by an Enforcement Officer or Customs Officer, as the case may be, is not a 'person accused of an offence' " have been rendered only in the context of examining the question of admissibility or otherwise of the statement of a person arrested under those special Acts but not with reference to authorising the detention of an arrestee under S. 167 of the Code by a Magistrate and so the dictum laid down in those decisions is clearly distinguishable;

Secondly, in the teeth of the newly introduced explanation to S. 273 of 1973 Code it is made clear that the word 'accused' includes a person against whom any proceeding under Chapter VIII of the

(1) Generally *(contd.)*

Code has been commenced. Thus the explanation gives a clear clue that in given situation the word 'person' can be construed as 'accused' or 'accused person'.

Thirdly, in the Code different expressions are used under various provisions to denote a person involving in a criminal proceeding such as 'offender', 'person', 'accused', 'accused person', "accused of an offence" depending on the nature of the proceeding.

Fourthly, the very legislative change made in S. 436 of the old Code corresponding to S. 398 of the new Code substituting the words "person accused of an offence" in the place of "accused person" as originally stood makes it clear that in the procedural code, these two expressions cannot always denote the same meaning or be construed as synonymous or interchangeable and this legislative change indicates that the Legislature in its wisdom intended to make a clear distinction between these expressions for the reasons mentioned supra.

Fifthly, if the expression 'accused person' and "a person accused of an offence" are to be held denoting the same meaning and interchangeable at all times and situations, it will become fallacious and pernicious in the implementation of the procedural law of the Code.

Sixthly, in interpreting a statute in its true spirit, the right direction should be to give a full and literal meaning to the language aiming ever to show fidelity to the meaningful purpose of the statute and never to make it sterile and impotent by giving a strict literal interpretation putting blinkers for judicial approach; because such interpretation will run counter to the legislative intent.

The word 'accused' in the Code denotes different meanings according to the context in which it is deployed; in that sometimes the said word is employed to denote a person arrested, sometimes a person against whom there is an accusation, but who is yet not put on trial and sometimes to denote a person on trial and so on. The word 'accused' or 'accused person' is used only in a generic sense in Ss. 167(1) and (2) denoting the 'person' whose liberty is actually restrained on his arrest by a competent authority on well-founded information or formal accusation or indictment. Therefore, the word 'accused' limited to the scope of Ss. 167(1) and (2) — particularly in the light of Explanation to S. 273 of the Code includes "any person arrested". The inevitable consequence that follows is that "any person is arrested" occurring in the first limb of S. 167(1) of the Code takes within its ambit "every person arrested" under S. 35 of FERA or S. 104 of the Customs Act also as the case may be and the 'person arrested' can be detained by the Magistrate in exercise of his power under S. 167(2) of the Code. In other words, the 'person arrested' under FERA or Customs Act is assimilated with the characteristics of an 'accused' within the range of S. 167(1) and as such liable to be detained under S. 167(2) by a Magistrate when produced before him. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

Supdt. of Customs, C.I.U., Cochin v. P.K. Ummerkutty, 1983 Cri LJ 1860 (Ker); M.K. Ayoob v. Superintendent, C.I.W., Cochin, 1984 Cri LJ 949: 1984 KLT 215 (Ker); N.H. Dave v. Mohmed Akhtar, (1984) 15 ELT 353 (Guj); Senior Intelligence Officer v. M.K.S. Abu Bucker, 1989 LW (Cri) 325, approved

Union of India v. O.P. Gupta, (1990) 2 Del Lawyer 23 (FB), affirmed

Deepak Mahajan v. Directorate of Enforcement, 1991 Cri LJ 1124 (FB) (Del), reversed

[1876] — S. 167 — Allegations made against accused in application moved by police for accused's remand to police custody — Accused's failure to object to those allegations would not amount to his admission — *Evidence Act, 1872 — S. 17*

Per Shetty, J.

The averments in the remand application are only self-serving. The silence of the accused cannot be construed as his admission of those allegations. *Kehar Singh* v. *State (Delhi Admn.)*, (1988) 3 SCC 609: 1988 SCC (Cri) 711: AIR 1988 SC 1883.

Bench Strength 3. Coram: **G.L. Oza**[1], **B.C. Ray**[2] and **K. Jagannatha Shetty**[3], JJ. [Date of decision: 3-8-1988]

[1877] — Ss. 167(1) and 2(h) — 'Investigation' — Scope of — *Not limited to that made by police officer alone but includes that made by authorised or empowered officer under special Acts such as FERA or Customs Act*

The word 'investigation' cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or empowered or authorised officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation.

It cannot be said that either the Officer of Enforcement or the Customs Officer is not empowered with the power of investigation though not with the power of filing a final report as in the case of a police officer. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

(2) Expeditious investigation and duty and powers of police under S. 167

See also under S. 173, below

[1878] — S. 167 — Object

Though S. 167(1) refers to the investigation by the police and the transmission of the case diary to the nearest Magistrate as prescribed under the Code etc., the main object of sub-section (1) of S. 167 is the production of an arrestee before a Magistrate within twenty-four hours as fixed by S. 57 when the investigation cannot be completed within that period so that the Magistrate can take further course of action as contemplated under sub-section (2) of S. 167. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

[1879] — S. 167 — Applicability — Conditions precedent — *Registration of case and entries in diary relating to that case not sine qua non — Arrest need not be by police officer alone but may be by an authorised officer or officer empowered to arrest*

A Magistrate can himself arrest or order any person to arrest any offender if that offender has committed an offence in his presence and within his local jurisdiction or on his appearance or surrender or is produced before him and take that person (offender) into his custody subject to the bail provisions. If a case is registered against an offender arrested by the Magistrate and a follow-up investigation is initiated, or if an investigation has emanated qua the accusations levelled against the person appearing or surrendering or being brought before the Magistrate, the Magistrate can in exercise of the powers conferred on him by S. 167(2) keep that offender or person under judicial custody in case the Magistrate is not inclined to admit that offender or person to bail.

The above deliberation leads to a derivation that to invoke S. 167(1), it is not an indispensable prerequisite condition that in all circumstances, the arrest should have been effected only by a police officer and none else and that there must necessarily be records of entries of a case diary. Therefore, it necessarily follows that a mere production of an arrestee before a competent Magistrate by an authorised officer or an officer empowered to arrest (notwithstanding the fact that he is not a police officer in its stricto sensu) on a reasonable belief that the arrestee "has been guilty of an offence punishable" under the provisions of the special Act is sufficient for the Magistrate to take that person into his custody on his being satisfied of the three preliminary conditions, namely (1) the arresting officer is legally competent to make the arrest; (2) that the particulars of the offence or the accusation for which the person is arrested or other grounds for such arrest do exist and are well-founded; and (3) that the provisions of the special Act in regard to the arrest of the person and the production of the arrestee serve the purpose of S. 167(1) of the Code. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

[1880] — Ss. 167, 209 and 309 — Expeditious disposal of cases including investigations and trials emphasised — *Pre-trial detention for a considerable period goes against the spirit of the Code and the Constitution*

The Criminal Procedure Code in Ss. 167, 209 and 309 has emphasised the importance of expeditious disposal of cases including investigations and trials. Therefore, the Government will do well to comply with the spirit of the Code especially in the matter of persons sought to be bound over for good behaviour, persons against whom summons cases are pending and persons who have been in custody for more than six months. *Nimeon Sangma* v. *Govt. of Meghalaya*, (1980) 1 SCC 700: 1980 SCC (Cri) 328: AIR 1979 SC 1518: 1979 Cri LJ 941.

Bench Strength 3. Coram: **V.R. Krishna Iyer**, *R.S. Pathak* and *A.D. Koshal*, JJ. [Date of decision: 30-4-1979]

[1881] — S. 167 — Test identification parade — Unexplained delay in holding, held, adversely affects the value of evidence of identification — *Where the identification parade was held 1½ long months after the occurrence in question and after*

(2) Expeditious investigation and duty and powers of police under S. 167 *(contd.)*

the expiry of the maximum permissible period (15 days) for producing the arrested accused before the court; there was no explanation for the delay; there was nothing on record to show that while taking the accused to and producing them before the court the identity of the accused was not revealed; and the witnesses had at no earlier stage revealed any special identifying features, held, exclusive reliance could not be placed on such identification — Hence, conviction and sentence set aside — Evidence Act, 1872 — S. 9. Satrughana v. *State of Orissa*, 1995 Supp (4) SCC 448: 1994 SCC (Cri) 1424.

Bench Strength **3**. Coram: *A.M. Ahmadi, M.M. Punchhi* and *K. Ramaswamy*, JJ. [Date of decision: 10-12-1992]

[1882] — S. 167 — Remand application filed by investigating agency — Object of — *Several persons arrested in connection with an offence — Materials collected against any person so far not arrested need not be disclosed in the application*

Remand applications are to be filed by the Investigating Agency to satisfy the Court that there are justifiable grounds to detain an accused already arrested, in police or judicial custody. By such applications the Investigating Agency is required to bring to the notice of the Court the materials collected against an arrested accused to persuade the Court to remand him to custody for the purpose of further investigation. To put it negatively, the Investigating Agency is not required to state in such application the materials, if any, collected against a person who is yet to be arrested. Such being the limited purpose of a remand application the non-disclosure of the name of the respondent as a conspirator (who was not arrested till then) in the remand applications of others arrested could not — and ought not to — have been made a ground by the High Court for disbelieving the prosecution case qua the respondent and for that matter, granting bail to him. *State of Maharashtra* v. *Ramesh Taurani*, (1998) 1 SCC 41: 1998 SCC (Cri) 257: AIR 1998 SC 586: 1998 Cri LJ 855.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *K.T. Thomas*, JJ. [Date of decision: 26-11-1997]

[1883] — S. 167(1) — 'Entries in the diary' — *'Diary' refers to the special diary mentioned in S. 167(2) — Contents of the diary*

The expression 'diary' referred to in S. 167(1) of the Code is the special diary mentioned in S. 167(2) which should contain full and unabridged statements of persons examined by the police so as to give the Magistrates on a perusal of the said diary, a satisfactory and complete source of information which would enable him to decide whether or not the accused person should be detained in custody but it is different from the general diary maintained under S. 44 of the Police Act. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

[1884] — Ss. 167(1), 57 and 167(2) — Legal obligation on the police officer concerned to forward the accused to the nearest Judicial Magistrate within 24 hours of arrest — Omission to discharge — Effect — *Where the person arrested was neither an "enemy alien" nor was the arrest under any law of preventive detention, such omission on the part of the police officer, held, vitiated the further detention of the arrested person — That the person was already in jail in another State in another case, held, was not a valid excuse for not producing the accused before the Magistrate in the instant case — Ss. 167(1) and 57 and not S. 167(2), held, relevant in such a case — Constitution of India — Arts. 22(2) and 21 — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 15*

The appellant was arrested in connection with a case involving Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act") in Rajasthan on 22-6-1998. On 7-8-1998 while still in custody, he was recorded as arrested in another case under the NDPS Act in Madhya Pradesh. In the Rajasthan case, the Rajasthan High Court directed him to be released on bail but the M.P. High Court did not grant him bail in the M.P. case. Therefore, he remained in jail. Since in the M.P. case no charge-sheet was laid within ninety days of the appellant's arrest, he moved an application under the proviso to Section 167(2) for bail before the Special Judge who rejected that application. Then the appellant approached the M.P. High Court which also held the appellant to be not entitled to the benefit of the said provision on the premise that having not been produced before any court pursuant to his arrest on 7-8-1998 he could not be treated to be in judicial custody in the M.P. case.

Allowing his appeal,

Held :

It is settled that benefit of the proviso to Section 167(2) CrPC would endue to an accused involved in the offences under the NDPS Act as well. But in the present case, the position is slightly different because the appellant is not continuing in custody pursuant to any order passed under that section. Section 167(2) would apply only to an accused who was forwarded to a Magistrate under Section 167(1) because further detention of the accused can be made only if it is so authorised by such a Magistrate. In the instant case rather Sections 167(1) and 57 are relevant. In view of Section 167(1), the police officer who conducts investigation cannot obviate the legal obligation under Section 167(1) CrPC read with Section 57 thereof to perform two requisites if he knows that investigation cannot be completed within 24 hours after the arrest of the accused. One requisite is, to transmit a copy of the case-diary to the nearest Judicial Magistrate. The other is, to forward the accused to such Magistrate simultaneously. The only exceptional ground on which the police officer can avoid producing the arrested person before such Magistrate is when the officer concerned is satisfied that there are no grounds for believing that the information or accusation was well founded. In such a case, the accused has to be released from custody.

It is a constitutional mandate that no person shall be deprived of his liberty except in accordance with the procedure established in law. The Constitution further directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours of such arrest. The only time permitted to be excluded from the said period of 24 hours is "the time necessary for going from the place of arrest to the court of the Magistrate". Only under two contingencies can the said direction be obviated. One is when the person arrested is an "enemy alien" and the second when the arrest is under any law for preventive detention. In all other cases the Constitution has prohibited peremptorily that "no such person shall be detained in custody beyond the said period without the authority of a Magistrate".

Since after his arrest in the M.P. case the appellant was not produced before the nearest Magistrate, his detention sequel to the arrest became unlawful beyond the said period of 24 hours. Excuses advanced by the respondent-State for their inability to produce the accused before the nearest Magistrate within the required period cannot be recognized by law. *Manoj* v. *State of M.P.*, (1999) 3 SCC 715: 1999 SCC (Cri) 478: AIR 1999 SC 1403: 1999 Cri LJ 2095.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 5-4-1999]

Union of India v. Thamisharasi, (1995) 4 SCC 190: 1995 SCC (Cri) 665, relied on

[1885] — Ss. 167(2) and 468 — Undertrials, right of speedy trial — *Investigations to be completed within a time-bound programme — Action directed against non-commencement of trials since several years — State Government and High Court to report compliance with S. 167(2) — State Government to submit data of those charged with minor offences and have been held beyond the maximum period for which they could be sentenced on conviction — Release directed under S. 468, of those against whom no charge-sheet filed within the period of limitation — State Government and High Court directed to ensure compliance with S. 167(5) — Constitution of India — Art. 21. Hussainara Khatoon (III)* v. *State of Bihar*, (1980) 1 SCC 93: 1980 SCC (Cri) 35: AIR 1979 SC 1360 (Order: 1979 Cri LJ 1036.

Bench Strength 2. Coram: *P.N. Bhagwati* and *A.P. Sen*, JJ. [Date of decision: 26-2-1979]

(3) Remand to custody up to and beyond 15 days — S. 167(2) and proviso thereto and S. 167(2-A)

See also under Section 167, '(7) S. 167(5) as amended in State of W.B.', below

[1886] — S. 167(2) and proviso thereto — Object

The object behind the enactment of S. 167 of the Code was that the detention of an accused person should not be permitted in custody pending investigation for any unreasonably longer period. However, realising that it may not be possible to complete the investigation in every case within 24 hours or even 15 days, as the case may be, even if the investigating agency proceeds with utmost promptitude, Parliament introduced the proviso to S. 167(2) of the Code prescribing the outer limit within which the investigation must be completed. The proviso to sub-section (2) fixes the outer limit within which the investigation must be completed and in case the same is not completed within the said prescribed period, the accused would acquire a right to seek to be released on bail and if he is prepared to and does furnish bail, the Magistrate *shall* release him on bail and such release shall be deemed to be grant of bail under Chapter XXXIII of the Code of Criminal Procedure. *Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 4 SCC 602: 1994 SCC (Cri) 1087: AIR 1994 SC 2623.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 12-7-1994]

(3) Remand to custody up to and beyond 15 days — S. 167(2) and proviso thereto and S. 167(2-A) *(contd.)*

[1887] — S. 167(2) — Remand to police custody — Temporal limits — *Any remand to police custody including second remand application, held, can be made only within first 15 days after the arrest and not thereafter* (Paras 16 and 12). *Devender Kumar* v. *State of Haryana*, (2010) 6 SCC 753.

Bench Strength 2. Coram : **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision : 5-5-2010]

CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141: 1992 SCC (Cri) 554, followed

[1888] — Ss. 167(2) and (2-A) — Total period of remand to police or judicial custody shall initially be 15 days by a single order or several orders of Judicial Magistrate or 7 days by order/orders of Executive Magistrate, as the case may be — *Period of remand ordered by Executive Magistrate shall be deducted in computing total period of custody — First period of detention shall be computed from the date of order of remand — After expiry of the period of first 15 days of custody, further remand for 90/60 days under proviso to sub-s. (2) shall only be to judicial custody — But in connection with a different offence alleged against the same accused in any other case there can again be an order of remand to police custody — If investigation remain incomplete even after expiry of 90/60 days of custody, accused shall be released on bail*

Section 167 is supplementary to S. 57. The investigation should be completed in the first instance within 24 hours; if not the arrested person should be brought by the police before a Magistrate as provided under S. 167. While doing so, the police should also transmit a copy of the entries in the diary relating to the case which is meant to afford to the Magistrate the necessary information upon which he can take the decision whether the accused should be detained in the custody further or not. Even at this stage the Magistrate can release him on bail if an application is made and if he is satisfied that there are no grounds to remand him to custody but if he is satisfied that further remand is necessary then he should act as provided under S. 167.

The Judicial Magistrate can in the first instance authorise the detention of the accused in either police or judicial custody from time to time but the total period of detention cannot exceed fifteen days in the whole. Within this period of fifteen days there can be more than one order changing the nature of such custody either from police to judicial or vice-versa.

If the arrested accused is produced before Executive Magistrate having judicial powers where Judicial Magistrate is not available, the Executive Magistrate is empowered to authorise the detention in such custody either police or judicial only for a week, in the same manner namely by one or more orders but after one week he should transmit him to the nearest Judicial Magistrate along with the records. When the arrested accused is so transmitted the Judicial Magistrate, for the remaining period, that is to say excluding one week or the number of days of detention ordered by the Executive Magistrate, the Judicial Magistrate, may authorise further detention within that period of first fifteen days to such custody either police or judicial.

On a combined reading of Ss. 167(2) and (2-A) it emerges that the Judicial Magistrate to whom the Executive Magistrate has forwarded the arrested accused can order detention in such custody namely police custody or judicial custody under S. 167(2) for the rest of the first fifteen days after deducting the period of detention ordered by the Executive Magistrate. The detention thereafter could only be in judicial custody.

Likewise the remand under S. 309 CrPC can be only to judicial custody in terms mentioned therein. Section 309 comes into operation after taking cognizance and not during the period of investigation and the remand under this provision can only be to judicial custody and there cannot be any controversy about the same.

After the expiry of the first period of fifteen days the further remand during the period of investigation can only be in judicial custody. Police custody if found necessary can be ordered only during the first period of fifteen days. If a further interrogation is necessary after the expiry of the period of first fifteen days there is no bar for interrogating the accused who is in judicial custody during the periods of 90 days or 60 days. The detention in police custody is generally disfavoured by law. The whole scheme underlying S. 167 is intended to limit the period of police custody in order to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers.

There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under S. 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above.

If the investigation is not completed within the period of ninety days or sixty days as provided under the proviso to sub-section (2) of S. 167 then the accused has to be released on bail as provided under the proviso to S. 167(2).

The period of ninety days or sixty days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police. Consequently the first period of fifteen days mentioned in S. 167(2) has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody. *CBI* v. *Anupam J. Kulkarni*, (1992) 3 SCC 141: 1992 SCC (Cri) 554: AIR 1992 SC 1768: 1992 Cri LJ 2768: (1992) 2 An WR 15 (SC).

Bench Strength **2**. Coram: *A.M. Ahmadi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 8-5-1992]

Natabar Parida v. State of Orissa, (1975) 2 SCC 220: 1975 SCC (Cri) 484; Chaganti Satyanarayana v. State of A.P., (1986) 3 SCC 141: 1986 SCC (Cri) 321, relied on

State (Delhi Admn.) v. Dharam Pal, 1982 Cri LJ 1103: (1982) 21 DLT 50: 1982 Chand Cri C (Del) 114; State (Delhi Admn.) v. Ravinder Kumar Bhatnagar, 1982 Cri LJ 2366: (1982) 84 Punj LR (D) 114: (1982) 21 DLT 442; State of Kerala v. Sadanadan, 1984 KLT 747; S. Harsimran Singh v. State of Punjab, 1984 Cri LJ 253: ILR (1984) 2 P&H 139, approved

Gian Singh v. State (Delhi Admn.), 1981 Cri LJ 100: (1981) 19 DLT 168: (1981) 83 Punj LR (D) 85; Trilochan Singh v. State (Delhi Admn.), 1981 Cri LJ 1773: 1981 Rajdhani LR 635, ***overruled***

State v. Mehar Chand, (1969) 5 DLT 179, distinguished

[1889] — Ss. 167(2), proviso (a)(i)&(ii), 57 and 309 — Total period of 90 days or 60 days prescribed in sub-clauses (i) and (ii) of proviso (a) to be computed from the date of remand of the accused and not from the date of his arrest under S. 57 — *Remand to police custody cannot be beyond the period of 15 days — Further remand must be to judicial custody*

Construing proviso (*a*) either in conjunction with sub-section (2) of S. 167 or as an independent paragraph, it is clear that the total period of 90 days under Cl. (*i*) and the total period of 60 days under Cl. (*ii*) have to be calculated only from the date of remand and not from the date of arrest.

The earlier period when the accused is in the custody of a police officer in exercise of his powers under S. 57 cannot constitute detention pursuant to an authorisation issued by the magistrate. The powers of remand given to a magistrate become exercisable only after an accused is produced before him in terms of S. 167(1).

Further, if an accused were to contend that he was taken into custody more than 24 hours before his production before the magistrate and the police officer refutes the statement, the magistrate will have to indulge in a fact-finding inquiry to determine when exactly the accused was arrested and from what point of time the remand period of 15 days is to be reckoned. This is not contemplated or provided for in the Code.

Moreover, the magistrate will be disentitled to placing an accused in police custody for a full period of 15 days or in judicial custody for a full period of 15 days if the period of custody is to be reckoned from the date of arrest because the period of custody prior to the production of the accused will have to be excluded from the total period of 15 days.

As S. 167(2) as well as proviso (1) to S. 309(2) relate to the powers of remand of a magistrate, though under different situations, the two provisions call for a harmonious reading insofar as the periods of remand are concerned. The words"15 days in the whole" occurring in S. 167(2) would be tantamount to a period of "15 days at a time" in S. 309(2). A magistrate can, therefore, authorise the detention of the accused for a maximum period of 15 days from the date of remand and place the accused either in police custody or in judicial custody during the period of 15 days' remand. But if an accused is remanded to police custody the maximum period during which he can be placed in police custody is only 15 days. Beyond that period no magistrate can authorise the detention of the accused in police custody. Where an accused is placed in police custody for the maximum period of 15 days allowed under law either pursuant to a single order of remand or to more than one order, when the remand is restricted on each occasion to a lesser number of days, further detention of the accused, if warranted, has to be necessarily to judicial custody and not otherwise.

Where the person arrested under S. 57 on the previous day is produced before an Executive Magistrate next day within 24 hours and remand is obtained for 7 days under S. 167(2-A), the Judicial Magistrate is obliged to take into consideration only the period of detention actually undergone by the accused pursuant to the orders of remand passed by the Executive Magistrate. There cannot be different modes of computation of the period of remand depending upon whether the accused person is forwarded to a Judicial Magistrate or an Executive Magistrate for purposes of remand.

(3) Remand to custody up to and beyond 15 days — S. 167(2) and proviso thereto and S. 167(2-A) *(contd.)*

Furthermore, the legislature has consciously referred to the date of arrest in S. 167(5) but has made no such reference in S. 167(2) or proviso (*a*) thereto.

The substitution of the words 'under this paragraph' for the words 'under this section' in proviso (*a*) to S. 167(2) by the Amending Act 45 of 1978 indicates that the words occurring in proviso (*a*) should be construed within the frame-work of the proviso itself without any reference to S. 167(2). That being so the period of 90 days or 60 days as the case may be, will commence running only from the date of remand and not from any anterior date in spite of the fact that the accused may have been taken into custody earlier by a police officer and deprived of his liberty.

The historical background of the proviso to S. 167(2) shows that the proviso has been enacted to not only safeguard the liberty of the citizens but also to safeguard the interests of the State or in other words the public. *Chaganti Satyanarayana* v. *State of A.P.*, (1986) 3 SCC 141: 1986 SCC (Cri) 321: AIR 1986 SC 2130.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 8-5-1986]

Fakira Naik v. State of Orissa 1983, Cri LJ 1336 (Cri), overruled

[1890] — S. 167(2) — Person held in judicial custody can, if circumstances justify, be transferred to police custody or vice versa within the period referred to in S. 167(2) CrPC — *In the circumstances of the case it cannot be said that grounds for police custody did not exist — Order for change of custody upheld with a condition that counsel of the accused would be entitled to visit the place of detention twice a day and if discovers evidence of maltreatment he shall be entitled to require the District Medical Officer to examine the accused and make a report — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20(4). Kosanapu Ramreddy* v. *State of A.P.*, AIR 1994 SC 1447.

Bench Strength **3**. Coram: *M.N. Venkatachaliah, P.B. Sawant* and *N.P. Singh*, JJ. [Date of decision: 28-7-1992]

[1891] — S. 167(2) proviso (a) — Applicability to offence under S. 304-B IPC — *Held, in a case involving offence under S. 304-B IPC, period of remand would be 90 days under cl. (i) and not 60 days under cl. (ii) of the proviso — S. 304-B(2) IPC provides for minimum punishment of 7 years and maximum punishment of imprisonment for life and it is for the court to decide what would be the adequate punishment in facts and circumstances of the case — It can impose punishment of imprisonment for life as well and merely because minimum sentence is provided, it does not mean that only that is imposable — Word "punishable" in proviso (a)(i) means liable to be punished or may be punished and not must be punished*

The first information report was lodged by the respondent against the appellants on the allegation of commission of murder of wife of Appellant 1. Appellants 1 and 2 were arrested on 5-8-2004 while Appellant 3 was arrested on 7-8-2004 for alleged commission of offence under Section 304-B IPC. The challan was filed on 30-10-2004 and the trial court passed an order to the effect that the Ahlmad was to check and report. The Ahlmad examined the challan and noted: "Challan checked and found that negatives of the three photographs are not attached therewith." The negatives were filed on 1-11-2004 and it was indicated that "challan checked, found correct".

A prayer for bail was made before Judicial Magistrate on 4-11-2004 on the ground that since challan was not filed in time they were entitled to bail in terms of Section 167(2) proviso (*a*)(*ii*) CrPC. The Magistrate rejected the application stating that the challan was presented in the court prior to the completion of 90 days and, therefore, it was presented within the prescribed period. The order was challenged before the Sessions Judge who granted bail, holding that in relation to Section 304-B IPC period of 60 days of remand and not 90 days of remand would be applicable for the purpose of Section 167(2)(*a*)(*ii*). The High Court in revision petition filed by the respondent held that the period during which the challan had to be filed was 90 days under proviso (*a*)(*i*) and not 60 days under proviso (*a*)(*ii*) to Section 167(2) CrPC. Therefore, the order granting bail was set aside.

Two questions arose for consideration before the Supreme Court in appeal:

(*a*) In a case involving offence punishable under Section 304-B, is the period for filing challan 90 days or 60 days?

(*b*) Does mere filing of challan without relevant documents satisfy the requirement of filing the challan within a stipulated period for the purpose of Section 167(2)(*a*)?

There is no dispute that all the relevant documents were before the court before expiry of 90 days. In case it is held that the period is 90 days and not 60 days in relation to an offence punishable under Section 304-B IPC, the second question would become academic so far as the facts of the present case are concerned.

Allowing the appeal,

Held :

The question is whether Section 304-B is an offence "punishable" with imprisonment for life. Under Section 304-B IPC the minimum sentence is 7 years but in a given case sentence of imprisonment for life can be awarded. Put differently, sentence of imprisonment for life can be awarded in respect of an offence punishable under Section 304-B IPC. The range varies between 7 years and imprisonment for life. Where minimum and maximum sentences are prescribed, both are imposable depending on the facts of the cases. What should be the adequate punishment in a given case has to be decided by the court on the basis of the facts and circumstances involved in the particular case. The stage of imposing a sentence comes only after recording the order of conviction of the accused person. The significant word in the proviso is "punishable". The word "punishable" as used in statutes which declare that certain offences are punishable in a certain way means liable to be punished in the way designated. It is ordinarily defined as deserving of or capable or liable to punishment, capable of being punished by law or right, may be punished or liable to be punished, and not must be punished. It cannot, therefore, be accepted that only the minimum sentence is imposable and not the maximum sentence. Merely because minimum sentence is provided that does not mean that the sentence imposable is only the minimum sentence. The High Court's view in the impugned order that permissible period of filing of challan is 90 days is the correct view. (Paras 11 and 15). *Bhupinder Singh* v. *Jarnail Singh*, (2006) 6 SCC 277: (2006) 3 SCC (Cri) 101: AIR 2006 SC 2622: (2006) 4 KLT 460.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-7-2006]

Rajeev Chaudhary v. State (NCT of Delhi), (2001) 5 SCC 34: 2001 SCC (Cri) 819; Sunil Kumar v. State of Jharkhand, (2003) 2 Rec Cri R 135: 2002 Cri LJ 2507 (Jhar), overruled

Keshav Dev v. State of Rajasthan, 2005 Cri LJ 3306 (Raj); State of H.P. v. Lal Singh, 2003 Cri LJ 1668 (HP); Kuldeep Singh v. State of Punjab, (2005) 3 RCR 599 (P&H), approved

Sube Singh v. State of Haryana, (1989) 1 SCC 235: 1989 SCC (Cri) 101, relied on

[1892] — S. 167(2) proviso (a)(i) — Expression — "Imprisonment for a term of not less than ten years" — Meaning — Held, covers offences punishable with imprisonment for a clear period of 10 years or more — *Hence, offence under S. 386 IPC, being punishable with imprisonment for less than ten years, proviso (a)(i) to S. 167(2) would not apply to such offence — Penal Code, 1860 — S. 386*

The appellant was arrested in connection with an offence punishable under Sections 386, 506 and 120-B IPC. He was produced before the Metropolitan Magistrate and was released on bail by the Magistrate on the ground that charge-sheet was not submitted within 60 days as provided under Section 167(2) CrPC. That order was challenged before the Sessions Court by filing revision. The revision was allowed. The Additional Sessions Judge held that for an offence under Section 386 IPC, period of sentence could be up to 10 years' RI. Hence, clause (*i*) of proviso (*a*) to Section 167(2) would be applicable. But the High Court set aside the order passed by the Additional Sessions Judge.

Dismissing the appeal,

Held :

From the relevant part of Section 167 CrPC it is apparent that in cases where offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days. In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if clause (*i*) of proviso (*a*) to Section 167(2) is considered, it would be applicable in case where investigation relates to an offence punishable (*1*) with death; (2) imprisonment for life; and (*3*) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. Under Section 386 IPC, imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years. (Para 6). *Rajeev Chaudhary* v. *State (NCT of Delhi)*, (2001) 5 SCC 34: 2001 SCC (Cri) 819: AIR 2001 SC 2369: 2001 Cri LJ 2941.

Bench Strength **2**. Coram: **M.B. Shah** and *S.N. Variava*, JJ. [Date of decision: 4-5-2001]

Rajeev Chaudhary v. State, (2000) 86 DLT 203, affirmed

[1893] — S. 167(2) proviso (a) — After expiry of period of 15 days of police remand, order for police remand for a further period of 7 days, held, violated S. 167 (Para 5). *Budh Singh* v. *State of Punjab*, (2000) 9 SCC 266.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and *S.N. Variava*, JJ. [Date of decision: 3-4-2000]

CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141: 1992 SCC (Cri) 554, followed

(3) Remand to custody up to and beyond 15 days — S. 167(2) and proviso thereto and S. 167(2-A) *(contd.)*

[1894] — Ss. 167 proviso (a) (as stood prior to 1978 amendment) 170 and 437 — Further detention beyond 60 days from the date of arrest of the accused, held, by itself not illegal or void — *If charge-sheet is not submitted by police to the Magistrate within 60 days, held, accused would be entitled to be released on bail, notwithstanding anything to the contrary in S. 437(1) — But if the accused does not apply to the Magistrate for release on bail on the expiry of 60 days from the date of his arrest, his continued detention would not be illegal. State of U.P.* v. *Lakshmi Brahman*, (1983) 2 SCC 372: 1983 SCC (Cri) 489: AIR 1983 SC 439: 1983 Cri LJ 839: 1983 ALJ 419.

Bench Strength **2**. Coram: **D.A. Desai** and *R.B. Misra*, JJ. [Date of decision: 11-3-1983]

(4) Duties of remanding Magistrate

See also under Section 167, '(7) S. 167(5) as amended in State of W.B.', below

[1895] — S. 167 — Injury sustained by under trial prisoner — Forwarding report sent by Police Officer-in-Charge referring to the injuries — *Held, Judicial Magistrate must enquire into the matter and should not mechanically sign the order of remand even if the injured accused is not physically produced before the magistrate. Khatri (II)* v. *State of Bihar*, (1981) 1 SCC 627: 1981 SCC (Cri) 228: AIR 1981 SC 928.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *A.P. Sen*, JJ. [Date of decision: 19-12-1980]

[1896] — S. 167(2) — Remand orders should be passed by Magistrate on proper application of mind and not mechanically. *State of U.P.* v. *Ram Sagar Yadav*, (1985) 1 SCC 552: 1985 SCC (Cri) 127: AIR 1985 SC 416.

Bench Strength **2**. Coram: **Y.V. Chandrachud, C.J.** and *A.N. Sen*, J. [Date of decision: 22-1-1985]

[1897] — Ss. 167, 56 and 57 — Order of remand to police custody obtained from Magistrate at his residence after office hours without producing the accused — *Passing of remand order in such casual manner shows lack of any sense of responsibility or possible collusion with police. Bhim Singh* v. *State of J&K*, (1985) 4 SCC 677: 1986 SCC (Cri) 47: AIR 1986 SC 494.

Bench Strength **2**. Coram: **O. Chinnappa Reddy** and *V. Khalid*, JJ. [Date of decision: 22-11-1985]

[1898] — S. 167(2) — Undertrial prisoners — Petitioners imprisoned for more than seven years without any investigation and laying any charge-sheet — Magistrates mechanically authorising repeated detentions — *Held, Art. 21, as also S. 167(2), CrPC violated — Authorities directed to release the petitioners forthwith on their own bond without sureties, subject to the legal proceedings that State may take if warranted. Mantoo Majumdar* v. *State of Bihar*, (1980) 2 SCC 406: 1980 SCC (Cri) 504: AIR 1980 SC 847: 1980 Cri LJ 546: 1980 BLJR 577.

Bench Strength **3**. Coram: **V.R. Krishna Iyer**, *A.C. Gupta* and *R.S. Pathak*, JJ. [Date of decision: 27-2-1980]

(5) Rights of undertrials/Right to bail under S. 167(2) proviso and Expln. I thereto

See also under Section 167, '(6) Remand to custody before and after charge-sheet/cognizance — Ss. 167 and 309', below

See also under CrPC, 1973 Ss. 437 and 439 pp. 430 et seq. in Vol. 2

[1899] — S. 167(2) proviso — Bail-on-default — Object

Per Ahmadi, J.

The provisions of the Code, in particular Ss. 57 and 167, manifest the legislative anxiety that once a person's liberty has been interfered with by the police arresting him without a court's order or a warrant, the investigation must be carried out with utmost urgency and completed within the maximum period allowed by the proviso (*a*) to S. 167(2) of the Code. The legislative object was to ensure speedy investigation after a person has been taken in custody. It expects that the investigation should be completed within 24 hours and if this is not possible within 15 days and failing that within the time stipulated in clause (*a*) of the proviso to S. 167(2) of the Code. The law expects that the investigation must be completed with dispatch and the role of the Magistrate is to oversee the course of investigation and to prevent abuse of the law by the investigating agency. The said proviso was introduced in the Code by way of enlargement of time for which the arrested accused could be kept in custody. Therefore, the prosecuting agency must realise that if it fails to show a sense of urgency in the investigation of the case and omits or defaults to file a charge-sheet within the time prescribed, the accused would be entitled to be released on bail and the order passed to that effect under S. 167(2) would be an order under S. 437(1) or (2) or S. 439(1) of the Code.

Per Ramaswamy, J. (concurring)

The purpose of the proviso to S. 167(2) read with Chapter XXXIII of the Code is to impress upon the need for expeditious completion of the investigation by the police officer within the prescribed limitation and to prevent laxity in that behalf. On its default the Magistrate shall release the accused on bail if the accused is ready and does furnish the bail. At the same time during investigation or trial the power of the court to have the bail cancelled and have the accused taken into custody are preserved. *Aslam Babalal Desai* v. *State of Maharashtra*, (1992) 4 SCC 272: 1992 SCC (Cri) 870: AIR 1993 SC 1.

Bench Strength 3. Coram: **A.M. Ahmadi**[1], **M.M. Punchhi**[2] and **K. Ramaswamy**[3], JJ. [Date of decision: 15-9-1992]

[1900] — S. 167(2) proviso — Delay beyond the period specified in cl. (a) of the proviso in completion of investigation — Grant of bail to accused — Object, scope and effect of the proviso — *Held, per majority, accused has an indefeasible right to be released on bail when investigation is not complete within the specified period — In order to avail of such right, accused is only required to file an application before the Magistrate seeking release on bail alleging that no challan has been filed within the period prescribed and he is prepared to offer bail on being directed by the Magistrate — Expression "if not already availed of" used by Supreme Court in* Sanjay Dutt case, *has to be understood in this manner — Magistrate has to dispose of such application forthwith and on being satisfied that the accused has been in custody for the specified period, that no charge-sheet has been filed and that accused is prepared to furnish bail, Magistrate is obliged to grant bail even if after filing of the application by accused, a charge-sheet had been filed — Therefore, where accused's application is erroneously rejected by Magistrate and accused then moves the higher forum but during pendency of the matter before that forum a charge-sheet is filed, accused's indefeasible right is not affected — In case, however, accused fails to furnish the bail as directed by the Magistrate, his right to be released on bail would be extinguished — Per Agrawal, J. (dissenting), though accused's right to be released on bail on default of completing investigation within the specified period is a valuable right, but this right is subject to the condition that the accused is not only prepared to but also "does furnish" the bail and vide Expln. I he "shall be detained in custody so long as he does not furnish bail" — Hence in order to avail of this right, mere filing of application for bail expressing willingness to furnish bail bond is not enough but the stage for actual furnishing of bail bond must reach — If challan is filed before that, accused's right would be extinguished — In that case question of grant of bail can be considered only with reference to merits of the case under the relevant provisions relating grant of bail after filing of challan — Where, however, court concerned adopts dilatory tactics to defeat the right of the accused, it is open to him to immediately move the superior court for appropriate direction — Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (16 of 2000) — Applicability of S. 167(2) CrPC*

The accused after surrendering himself in the court was remanded to judicial custody by order of the Magistrate on 17-6-2000. A case had been instituted against him under Sections 406 and 420 IPC r/w Maharashtra Protection of Interest of Depositors (in Financial Establishment)s Act, 1999. The period of 60 days for filing of charge-sheet was completed on 16-8-2000. On the next day i.e. 17-8-2000, an application for being released on bail was filed before the Magistrate alleging that non-filing of challan within 60 days entitled the accused to be released on bail under proviso to Section 167(2) CrPC. The Magistrate rejected the prayer on the same day on the conclusion that Section 167(2) CrPC had no application to cases pertaining to the MPID Act. The accused, therefore, preferred a criminal application before the Bombay High Court. A Single Judge after hearing the contentions, referred the matter to the Division Bench on 23-8-2000 and the matter was listed before a Division Bench on 29-8-2000. On that date the Division Bench adjourned the matter for argument to 31-8-2000 and in the meanwhile a charge-sheet was filed before the trial Judge on 30-8-2000. The Division Bench held that an accused arrested for commission of an offence under Section 3 of the MPID Act is entitled to claim release on bail on expiry of total period specified in Section 167 if the challan is not filed within that period. However, the High Court ultimately refused to grant relief on the ground that by the time the application for bail before the Division Bench came to be considered on 31-8-2000, a charge-sheet had been filed before the Magistrate on 30-8-2000 and, therefore, the so-called enforceable right did not survive or remain enforceable. Allowing the appeal (by majority),

Held :

Per majority

Section 167 is in fact supplementary to Section 57, in consonance with the principle that the accused is entitled to demand that justice is not delayed. The object of requiring the accused to be produced before a Magistrate is to enable the Magistrate to see that remand is necessary and also to enable the accused to make a representation which he may wish to make. The power under Section 167 is given to detain a person in custody while the

(5) Rights of undertrials/Right to bail under S. 167(2) proviso and Expln. I thereto *(contd.)*

police goes on with the investigation and before the Magistrate starts the enquiry. Section 167, therefore, authorises the Magistrate to permit detention of an accused in custody and prescribes the maximum period for which such detention could be ordered. Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days on the whole. (Paras 5 and 13)

Having prescribed the maximum period what would be the consequences thereafter has been indicated in the proviso to sub-section (2) of Section 167. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and does furnish the bail as directed by the Magistrate. The proviso is unambiguous and clear and stipulates that the *accused shall be released on bail if he is prepared to and does furnish the bail* which has been termed by judicial pronouncement to be "compulsive bail" and such bail would be deemed to be a bail under Chapter 33. The proviso to sub-section (2) of Section 167 is a beneficial provision for curing the mischief of indefinitely prolonging the investigation and thereby affecting the liberty of a citizen. (Paras 13 and 5)

Even though a Magistrate does not possess any jurisdiction to refuse the bail when no charge-sheet is filed after expiry of the period stipulated under the proviso to sub-section (2) of Section 167 and even though the accused may be prepared to furnish the bail required, but such furnishing of bail has to be in accordance with the order passed by the Magistrate. In other words, without an order of the Magistrate the legislative mandate engrafted in the proviso to sub-section (2) of Section 167 cannot be given effect to. Necessarily, therefore, an order of the court has to be passed. (Paras 6 and 13)

If, however, the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in para (*a*) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished. (Para 13)

The indefeasible right of the accused does not survive or remain enforceable on the challan being filed, if already not availed of, as has been held by the Constitution Bench of the Supreme Court in *Sanjay Dutt case*. The expression "if not already availed of" used in *Sanjay Dutt case* must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in para (*a*) of the proviso to sub-section (2) of Section 167 if the accused files an application for bail, alleging that no challan has been filed and he is prepared to offer the bail that is ordered, and it is found as a fact that no challan has been filed within the period prescribed from the date of the arrest of the accused, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail and the accused has not furnished the same. With the aforesaid interpretation of the expression "availed of", if the charge-sheet is filed subsequent to the availing of the indefeasible right by the accused then that right would not stand frustrated or extinguished. Necessarily therefore, if an accused entitled to be released on bail by application of the proviso to sub-section (2) of Section 167, makes the application before the Magistrate, but the Magistrate erroneously refuses the same and rejects the application and then the accused moves the higher forum and while the matter remains pending before the higher forum for consideration, a charge-sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby and on the other hand, the accused has to be released on bail. (Para 13)

When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated. (Para 13)

This is the only way how a balance can be struck between the so-called indefeasible right of the accused on failure on the part of the prosecution to file a challan within the specified period and the interest of the society, at large, in lawfully preventing an accused from being released on bail on account of inaction on the part of the prosecuting agency. Such interpretation would subserve the purpose and the object for which the provision in question was brought on to the statute-book. Since the legislature has given its mandate it would be the bounden duty of the court to enforce the same and it would not be in the interest of justice to negate the same by interpreting the expression "if not availed of" in a manner which is capable of being abused by the prosecution. Accused persons in several serious cases would get themselves released on bail, but that is what the law permits, and that is what the legislature wanted and an indefeasible right to an accused flowing from any legislative provision ought not to be defeated by a court by giving a strained interpretation of the provisions of the Act. (Para 13)

Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21. (Para 13)

Such an accused, who thus is entitled to be released on bail in enforcement of his indefeasible right will, however, have to be produced before the Magistrate on a charge-sheet being filed in accordance with Section 209 and the Magistrate must deal with him in the matter of remand to custody subject to the provisions of the Code relating to bail and subject to the provisions of cancellation of bail, already granted in accordance with the law laid down by this Court in the case of *Mohd. Iqbal* v. *State of Maharashtra*. (Para 13)

Per Agrawal, J. (dissenting)

Framers of the Code conceived and desired that after expiry of the period prescribed in the proviso to Section 167(2) CrPC, an accused has to be released on bail if no challan is filed because after the expiry of the statutory period prescribed therein, there is no power in the Magistrate to remand for further custody. But the same proviso prescribes in clause (*a*)(*ii*) that "the accused person shall be released on bail if he is prepared to and does furnish bail". To be released on bail because of the default in submission of challan within the statutory period is a valuable right of the accused, but the framers of the Code have prescribed a condition in that very proviso referred to above that this right to be released on bail can be exercised only on furnishing of bail. Clause (*a*)(*ii*) of the proviso to Section 167(2) not only says that the accused "is prepared to", but also says that the "accused does furnish bail" and Explanation I to Section 167(2) clearly mandates that "notwithstanding the expiry of the period specified in paragraph (*a*), the accused shall be detained in custody so long as he does not furnish bail". It cannot be conceived that if the accused is prepared to furnish bail but does not furnish the same, even in that eventuality the court concerned shall direct his release from custody only on the ground that the statutory period of filing the challan has expired. Therefore, for release from custody both the conditions aforesaid, read with the Explanation referred to above, must be fulfilled. (Para 20)

It is true that the right of an accused to be released on bail for default in submission of a challan is a valuable and indefeasible right, but by the time the court is considering the exercise of the said right if a challan is filed then the question of grant of bail has to be considered only with reference to merits of the case under the provisions of the Code relating to grant of bail after filing of the challan. (Para 28)

The right accruing under the proviso to Section 167(2) of the Code on the expiry of the statutory period of sixty days cannot be said to have been *availed of* by mere making of an application for bail expressing therein willingness to furnish bail, but on furnishing bail bond as required under clause (*a*)(*ii*) of the proviso read with Explanation I to Section 167(2). The stage for actual furnishing of bail bond must reach. If the challan is filed before that, then there is no question of enforcing the right, howsoever valuable or indefeasible it may be, after filing of the challan because thereafter the right under default clause cannot be exercised. If because of any bona fide view or procedure adopted by the court concerned some delay is caused and in the meantime the challan is filed, the court has no power to direct release under the proviso to Section 167(2). (Paras 31 and 30)

In case the court concerned has adopted any dilatory tactics or an attitude to defeat the right of the accused to be released on bail on the ground of default, the accused should immediately move the

(5) Rights of undertrials/Right to bail under S. 167(2) proviso and Expln. I thereto *(contd.)*

superior court for appropriate direction. But if the delay is bona fide and unintentional and in the meantime challan is filed then in view of the aforesaid judgments of this Court, such a petition has to be dismissed and it cannot be said that the accused has already availed of the right accruing under the proviso to Section 167 of the Code. (Para 31)

When the writ petition filed either under Article 32 or Article 226 of the Constitution, as the case may be, for issuance of a writ of habeas corpus on the ground that the accused was under custody without a valid order of remand has to be dismissed if during the pendency of such a petition a valid order of remand has been passed by the court concerned, then the right of an accused claiming relief on the ground that he has a statutory right under the proviso to Section 167(2) cannot be put on a higher footing than the constitutional right. (Para 24)

The present case, where the prosecution was for an offence under the MPID Act, being a case of first impression, the court concerned was of the bona fide opinion that the provisions of Section 167(2) of the Code were not applicable. That view of the Special Judge was reversed by the High Court, but before it could fully apply its mind, the challan was filed. In this background, I am clearly of the opinion that the right of the accused to be enlarged on bail under the proviso to Section 167(2) of the Code cannot be said to have been "*availed of*" in the present case. Therefore, the High Court has not committed any error in passing the impugned order so as to be interfered with by the Supreme Court. (Paras 32 and 33). *Uday Mohanlal Acharya* v. *State of Maharashtra*, (2001) 5 SCC 453: 2001 SCC (Cri) 760: AIR 2001 SC 1910: 2001 Cri LJ 1832.

Bench Strength **3**. Coram: **G.B. Pattanaik**[1], *U.C. Banerjee* and **B.N. Agrawal**[2], JJ. [Date of decision: 29-3-2001]

Sanjay Dutt v. State through CBI, (1994) 5 SCC 410: 1994 SCC (Cri) 1433, explained and distinguished

State of M.P. v. Rustam, 1995 Supp (3) SCC 221: 1995 SCC (Cri) 830, overruled

State through CBI v. Mohd. Ashraft Bhat, (1996) 1 SCC 432: 1996 SCC (Cri) 117; Bipin Shantilal Panchal (Dr.) v. State of Gujarat, (1996) 1 SCC 718: 1996 SCC (Cri) 200; Makhan Singh Tarsikka v. State of Punjab, AIR 1952 SC 27: 1952 Cri LJ 321: 1952 SCR 368; Abdul Latif Abdul Wahab Sheikh v. B.K. Jha, (1987) 2 SCC 22: 1987 SCC (Cri) 244, distinguished

Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722: 1996 SCC (Cri) 202; Naranjan Singh Nathawan v. State of Punjab, AIR 1952 SC 106: 1952 Cri LJ 656: 1952 SCR 395; Ram Narayan Singh v. State of Delhi, AIR 1953 SC 277: 1953 Cri LJ 1113: 1953 SCR 652; A.K. Gopalan v. Govt. of India, AIR 1966 SC 816: 1966 Cri LJ 602: (1966) 2 SCR 427, relied on

Uday Mohanlal Acharya v. State of Maharashtra, (2001) 1 Bom CR 354 (Bom), reversed

[1901] — S. 167(2) — Undertrials, rights of — *In respect of remand of prisoners to judicial custody S. 167(2) must be strictly complied with in letter and spirit — Constitution of India — Art. 21. Hussainara Khatoon (IV)* v. *State of Bihar*, (1980) 1 SCC 98: 1980 SCC (Cri) 40: AIR 1979 SC 1369: 1979 Cri LJ 1045: 1980 MLJ (Cri) 86.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *D.A. Desai*, JJ. [Date of decision: 9-3-1979]

[1902] — S. 167(2) proviso (a) — Undertrials — Remand of — Production after detention of 90 or 60 days — Duties of Magistrate — *When an undertrial who has been in detention for 90 or 60 days, as the case may be, is produced before the Magistrate, held, he is bound to inform the accused that he is entitled to bail as provided by proviso (a) to S. 167(2) — Held, further, the State is bound to provide free legal aid to enable the accused to exercise that right and the Magistrate must ensure that he is so provided — Magistrate bound to follow guidelines laid down in Hussainara I — This constitutional mandate, held, binds every Magistrate and every State Government — Magistrate to apply his mind before passing remand order — Constitution of India — Art. 21. Hussainara Khatoon (V)* v. *State of Bihar*, (1980) 1 SCC 108: 1980 SCC (Cri) 50: AIR 1979 SC 1377: 1979 Cri LJ 1052: 1980 MLJ (Cri) 93.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *O. Chinnappa Reddy* and *A.P. Sen*, JJ. [Date of decision: 19-4-1979]

[1903] — Ss. 167(2) proviso, 309, 173 and 190 — Right to bail under S. 167(2) proviso — Non-availability of, after cognizance has been taken — Effect of investigating agency (erroneously) filing applications for remand under S. 167(2) [instead of S. 309(2)] — *Held, citing of the wrong provision of law would be of no consequence if in effect and substance the orders were passed by the court in exercise of power under S. 309(2) — Irrespective of the stand of investigating agency/prosecution, the law will prevail — Laxity of investigating agency, deprecated*

If a thing cannot be done directly, the same cannot be permitted to be done indirectly. If the order taking cognizance exists, irrespective of the conduct of CBI in treating the investigation to be open or filing applications for remand of the accused to police custody or judicial remand under Section 167(2) CrPC stating that the further investigation was pending, would be of no consequence if in effect and substance such orders were being passed by the court in exercise of its power under Section 309(2) CrPC. Though there are no words to deprecate the stand of CBI; and that it should have taken a clear and categorical stand in the matter, irrespective of the stand taken by CBI, the law will prevail. (Paras 30 to 32). *Dinesh Dalmia* v. *CBI*, (2007) 8 SCC 770: (2007) 59 AIC 145 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

[1904] — S. 167(2) — Bail — Entitlement to, on expiry of statutory period of detention as prescribed under proviso to S. 167(2) — Reckoning of said period of detention — Starting point for — Voluntary surrender before Judicial Magistrate in present case while in custody in another case — Effect of — *Held, since the condition under S. 167 CrPC is that the accused must be in custody of police, notional surrender/so-called deemed surrender before Judicial Magistrate while in custody in another case could not be taken as starting point for computation of 15 days' period of police remand or 90 days' or 60 days' period of detention as prescribed under S. 167(2) — Custody of police as contemplated by S. 167 CrPC is police custody in a particular case and not judicial custody/detention in another case — Hence, the statutory period of detention in present case was required to be counted from the date when the accused came in custody of police subsequently — Accused already in custody in relation to certain cases at city* ***M*** *in one State and wanted in two more cases registered at city* ***C*** *in another State — Accused voluntarily surrendering before Magistrate at* ***M*** *in cases relating to FIR at* ***C*** *— Held, such notional surrender could not be treated as police custody so as to count 90 days from that notional surrender as regards cases pending at* ***C*** *— 90 days to be counted from the date when the accused was produced before the Magistrate at* ***C*** *and the said Magistrate directed custody of accused to police*

The present case pertained to claim of the accused to be released on bail in terms of Section 167(2) CrPC on expiry of 90 days' period of detention as prescribed under that section. The time from which the said period of detention should be reckoned was the main issue involved herein.

A first information report was lodged against certain persons including the respondent in Calcutta. Prior to that the respondent was arrested in New Delhi by CBI in connection with some other case. Thereafter, on transit remand, the respondent was produced before the Additional Chief Metropolitan Magistrate, Chennai. In the meantime, the officer investigating the present case also prayed for issuance of production warrant against the respondent before the Chief Metropolitan Magistrate, Calcutta. The said Magistrate allowed that prayer directing that the accused-respondent be produced before it on or before 22-2-2006. On 14-2-2006, the said order was brought to the notice of the Additional Chief Metropolitan Magistrate, Chennai. The Additional Chief Metropolitan Magistrate, Chennai observed that the matter of Calcutta Police would be considered after the period of CBI custody was over. On 27-2-2006 when the accused was in custody in CBI case at Chennai, he voluntarily surrendered before the Magistrate, Chennai in connection with the two cases at Calcutta. The said surrender was accepted by that Magistrate on the same date. But the said Magistrate remanded the respondent to the judicial custody till 13-3-2006.

Thereafter on 11-3-2006 the accused was handed over to Calcutta Police to be escorted to Calcutta for production before the Magistrate at Calcutta. On 13-3-2006 the accused was produced in the Court of Chief Metropolitan Magistrate, Calcutta. The investigating officer of the instant case requested the said court to hand over the accused for 15 days on police remand for investigation. But the accused moved an application for bail and contended that as he had surrendered on 27-2-2006 before the Magistrate at Chennai and the period of 15 days was over and the police had not filed the challan, he should be released on bail. The said court rejected that application and took the view that the custody of the accused could not be considered unless and until he was physically produced before the court and since in the present case it was done on 13-3-2006 on the strength of the production warrant issued by it, the period of police custody was to be considered from the date of his physical production. The accused-respondent was remanded to the police custody till 28-3-2006. Against the said order, the respondent approached the High Court. The High Court took the view that the Chief Metropolitan Magistrate did not correctly approach the matter and wrongly opined that the accused did not surrender before the Metropolitan Magistrate, Chennai on 27-2-2006. However, the accused was given liberty to file an application before the said court afresh and the Magistrate was directed to consider the same in the light of the aforesaid judgment.

The accused again moved the bail application before the Chief Metropolitan Magistrate, Calcutta, who rejected the same holding that the statutory period of 90 days had not expired.

After the final report under Section 173(2) CrPC was submitted, another bail application was filed before the Magistrate concerned but the same was rejected holding that the court had no power to

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review its earlier order. Against the said order, the accused filed a revision petition before the High Court, which was allowed. The High Court took the view that the detention of the accused should be counted w.e.f. 27-2-2006 when the accused surrendered himself at Chennai and therefore 90 days' period had expired. The matter was directed to be considered again in the light of the observation made by the court. Hence, the present appeal.

The accused claimed that as the challan had not been filed within the period of 90 days as prescribed under proviso to Section 167(2) CrPC, he was entitled to bail as per Section 167(2) CrPC. In this regard, the crucial question which arose for consideration before the Supreme Court was whether the detention period should be counted from 13-3-2006 when the police took the accused in custody or from 27-2-2006 when the accused surrendered before the Metropolitan Magistrate, Chennai.

Allowing the appeal by setting aside the order of the High Court,

Held :

The whole purpose of Section 167 CrPC is that the accused should not be detained for more than 24 hours and subject to 15 days' police remand and it can further be extended up to 90/60 days as the case may be. From a reading of sub-sections (1) and (2) of Section 167 CrPC with proviso it clearly transpires that the incumbent should be in fact under the detention of police for investigation. But the custody of police for investigation purpose cannot be treated as judicial custody/detention in another case. The police custody here means the police custody in a particular case for investigation and not judicial custody in another case. (Para 16)

In the present case, the accused was not arrested by the police nor was he in the police custody before 13-3-2006. The accused was very well aware that there were two cases registered against him in Calcutta for which he was required by the police, so he voluntarily surrendered before the Additional Chief Metropolitan Magistrate, Chennai on 27-2-2006 when he was already in custody in relation to the CBI case. This voluntary surrender cannot be conceived to be detention under a case registered at Calcutta. Such notional surrender cannot be treated as police custody for counting the required period. A notorious criminal may have number of cases pending in various police stations in a city or outside the city. So if notional surrender in pending case for another FIR outside the city or of another police station in same city is counted then the police will not get the opportunity to get custodial investigation. The period of detention before a Magistrate cannot be treated as a device to avoid physical custody of the police and claim the benefit of proviso to sub-section (2). The condition is that the accused must be in the custody of the police and so-called deemed surrender in another criminal case cannot be taken as starting point for counting 15 days' police remand or 90 days or 60 days as the case may be. (Paras 16 and 14)

Therefore, so-called notional surrender of the accused in Chennai cannot be deemed to be a custody of the police for investigation for a case registered against the accused at Calcutta. The police custody will be treated from 13-3-2006 and not from 27-2-2006. (Paras 14 and 21). *State of W.B.* v. *Dinesh Dalmia*, (2007) 5 SCC 773: (2007) 3 SCC (Cri) 19: AIR 2007 SC 1801: 2007 Cri LJ 2757: (2007) 55 AIC 178 (SC).

Bench Strength **2**. Coram: **A.K. Mathur** and *Tarun Chatterjee*, JJ. [Date of decision: 25-4-2007]

State of Maharashtra v. Bharati Chandmal Varma, (2002) 2 SCC 121: 2002 SCC (Cri) 299; Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440: 1994 SCC (Cri) 785; CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141: 1992 SCC (Cri) 554, relied on

Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559: 1980 SCC (Cri) 508, distinguished

[1905] — S. 167(2) — Bail — Release on bail under, deemed to be release under Ch. XXXII

A conjoint reading of S. 57 (corresponding to S. 61 of the old Code) and S. 167(1) and (2) barring the provisos to sub-section (2) of the Code together, manifestly shows that the legislature has contemplated that the investigation of the offence in case of a person arrested without a warrant should be completed in the first instance within twenty-four hours and if the investigation cannot be completed within that period, then the Magistrate can authorise the detention of the accused in such custody as he thinks fit for a term not exceeding fifteen days. The present proviso (*a*)(*i*) and (*ii*) of S. 167(2) empowers the Magistrate to authorise the detention of the accused person otherwise than in the custody of the police beyond the period of fifteen days. If the investigation is not completed within the prescribed period, the accused is entitled to bail as embodied in the statute itself, provided the accused person is 'prepared to and does furnish bail' and the person released on bail under S. 167(2) of the Code should be deemed to have been so released under the provisions of Chapter XXXII for the purposes of that Chapter. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

[1906] — S. 167(2) — Bail under — Non-filing of charge-sheet within 90 days — *FIR in same offence registered at two places (one at Karnal, where arrest was made and the other at New Delhi, where offence was alleged to be committed) — 90 days expiring only with respect to the date of arrest at Karnal — Appellant-accused, after the grant of bail by ACJM, Karnal, instead of being released handed over to Delhi Police — Bail petition under S. 167(2) rejected by Magistrate and by Additional Sessions Judge, New Delhi as well as by High Court — Interference under Art. 136 not called for as the bail petition was meritless and also the charge-sheet was subsequently filed in the case registered at Delhi — Appellant allowed to apply for regular bail — Penal Code, 1860 — Ss. 302, 201, 34 and 120-B — Constitution of India — Art. 136. Sukhjinder Singh* v. *State (NCT of Delhi)*, (2001) 8 SCC 630: 2002 SCC (Cri) 11: AIR 2001 SC 2941.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 18-10-2001]

[1907] — Ss. 167(2) & 437(5), (1) and (2) — Cancellation of bail — Release on bail under S. 167(2) should be considered as one under S. 437(1) or (2) — *Held neither mere filing of challan by police subsequent to such release nor dismissal on merits of bail application before release are sufficient grounds for cancellation of the bail. Bashir* v. *State of Haryana*, (1977) 4 SCC 410: 1977 SCC (Cri) 608: AIR 1978 SC 55: 1978 Cri LJ 173.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **P.S. Kailasam**, JJ. [Date of decision: 3-10-1977]

[1908] — S. 167(2) proviso — Accused entitled to be released on bail under, not applying for bail when such right accrued — Held, he cannot exercise that right after filing of charge-sheet — *However, if he exercises that right and is released on bail he cannot be rearrested on mere filing of the charge-sheet — S. 37 NDPS Act does not exclude applicability of proviso to S. 167(2) CrPC — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 37*

If an accused person fails to exercise his right to be released on bail for the failure of the prosecution to file the charge-sheet within the maximum time allowed by law, he cannot contend that he had an indefeasible right to exercise it at any time notwithstanding the fact that in the meantime the charge-sheet is filed. But on the other hand if he exercises the right within the time allowed by law and is released on bail under such circumstances he cannot be rearrested on the mere filing of the charge-sheet. *Bipin Shantilal Panchal (Dr.)* v. *State of Gujarat*, (1996) 1 SCC 718: 1996 SCC (Cri) 200: AIR 1996 SC 2897.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and *B.P. Jeevan Reddy* and **N.P. Singh**, JJ. [Date of decision: 8-1-1996]

Union of India v. Thamisharasi, (1995) 4 SCC 190: 1995 SCC (Cri) 665; Sanjay Dutt v. State through CBI, (1994) 5 SCC 410: 1994 SCC (Cri) 1433; Aslam Babalal Desai v. State of Maharashtra, (1992) 4 SCC 272: 1992 SCC (Cri) 870, followed

[1909] — Ss. 167 (as stood before 1978 amendment) and 170 — Magistrate has jurisdiction to grant bail — *Police investigation becomes complete as soon as charge-sheet is submitted under S. 170, unless further investigation is ordered by the Magistrate*

The jurisdiction to grant bail, in case investigation is not completed within the prescribed time limit as incorporated in the provision as it then stood, vests in the Magistrate if the accused applies and is prepared to furnish bail. Section 167 envisages a stage when a suspect is arrested and the investigation is not completed within the prescribed period. The investigation would come to an end the moment charge-sheet is submitted as required under S. 170 unless the Magistrate directs further investigation. *State of U.P.* v. *Lakshmi Brahman*, (1983) 2 SCC 372: 1983 SCC (Cri) 489: AIR 1983 SC 439: 1983 Cri LJ 839: 1983 ALJ 419.

Bench Strength **2**. Coram: **D.A. Desai** and *R.B. Misra*, JJ. [Date of decision: 11-3-1983]

[1910] — S. 167(2) proviso — Compulsive bail — Computation of the period prescribed under the proviso — *Held, the day on which the accused remanded to the judicial custody should be excluded and the day on which challan filed in the court should be included — Accused remanded to the judicial custody on 3-9-1993 — Challan submitted in the court on 2-12-1993 — Held, period of 90 days not expired — General Clauses Act, 1897 — Ss. 9 and 10. State of M.P.* v. *Rustam*, 1995 Supp (3) SCC 221: 1995 SCC (Cri) 830.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 1-2-1995]

[1911] — S. 167(2) proviso — Grant of bail — Order of Magistrate necessary to give effect to the mandate under the proviso — *Bail to be furnished in accordance with such order*

Even though a Magistrate does not possess any jurisdiction to refuse the bail when no charge-sheet is filed after expiry of the period stipulated under the proviso to sub-section (2) of Section 167 and even though the accused may be prepared to furnish the bail required, but such furnishing of bail has to be in accordance with the order passed by the

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Magistrate. In other words, without an order of the Magistrate the legislative mandate engrafted in the proviso to sub-section (2) of Section 167 cannot be given effect to. Necessarily, therefore, an order of the court has to be passed. (Paras 6 and 13)

If, however, the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in para (*a*) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished. (Para 13). *Uday Mohanlal Acharya* v. *State of Maharashtra*, (2001) 5 SCC 453: 2001 SCC (Cri) 760: AIR 2001 SC 1910: 2001 Cri LJ 1832.

Bench Strength 3. Coram: **G.B. Pattanaik**[1], *U.C. Banerjee* and **B.N. Agrawal**[2], JJ. [Date of decision: 29-3-2001]

[1912] — S. 167(2) proviso — Right to compulsive bail — *Held, does not survive after filing of the challan — Court must examine the availability of right to compulsive bail on the date it is considering the question of bail and not barely on the date of presentation of the petition for bail. State of M.P.* v. *Rustam*, 1995 Supp (3) SCC 221: 1995 SCC (Cri) 830.

Bench Strength 2. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 1-2-1995]

Overruled in (2001) 5 SCC 453, 470

[1913] — Ss. 167(2) proviso — 'Shall be deemed to be so released under the provisions of Ch. XXXIII' — Effect of

Per Ahmadi, J.

The deeming fiction of correlating the release on bail under sub-section (2) of S. 167 with Chapter XXXIII, i.e. Ss. 437 and 439 of the Code, was to treat the order as one passed under the latter provisions. Once the order of release is by fiction of law an order passed under S. 437(1) or (2) or S. 439(1) it follows as a natural consequence that the said order can be cancelled under sub-section (5) of S. 437 or sub-section (2) of S. 439 on considerations relevant for cancellation of an order thereunder.

Per Ramaswamy, J.

The fiction of law under the proviso applying the provisions in Chapter XXXIII is to serve the purpose of law, namely not only the release of the accused on taking the requisite bond and conditions to be incorporated therein as envisaged in the said Chapter, but also the power of the court to cancel the bail and to take the accused into detention for the grounds mentioned under the relevant provisions in Ss. 437(5) and 439(2) of the Code.

Per Punchhi, J.

The mere circumstance that S. 167(2) ordains that every person released on bail under sub-section (2) shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter does not ipso facto mean that the bail order assumes the content and character of bail orders on merit, of the kind conceived of in sub-sections (1) and (2) of S. 437 or sub-section (1) of S. 439 of the Code. The deeming requirement of S. 167(2) puts the release on bail of such person as if under the provisions of Chapter XXXIII but only for the purposes of that Chapter. By this fiction the provision is to be read as a part of Chapter XXXIII so that it invites the purposes of that chapter such as filling of bonds, provision of sureties etc., as also permitting cancellation of bail. It is on the thrust of such inclusion that cancellation under S. 437(5) can be attempted as if fictionally the bail order had been passed under sub-sections (1) and (2) of S. 437 but not on considerations as if the bail order was on merit. Fiction of this kind cannot be permitted to go to the length of converting an order of bail not on merit as if passed on merit. *Aslam Babalal Desai* v. *State of Maharashtra*, (1992) 4 SCC 272: 1992 SCC (Cri) 870: AIR 1993 SC 1.

Bench Strength 3. Coram: **A.M. Ahmadi**[1], **M.M. Punchhi**[2] and **K. Ramaswamy**[3], JJ. [Date of decision: 15-9-1992]

[1914] — Ss. 167(2) proviso, 437 and 439 — Bail-on-default under proviso to S. 167(2) if different from bail granted on merits under S. 437 or S. 439

Per Ahmadi, J.

It is wrong to think that bail secured by virtue of the proviso (*a*) to S. 167 is an undeserved one as to so think is to doubt the legislative wisdom in prescribing the outer limit for filing the charge-sheet and to ignore the legislative history.

Per Punchhi, J. (dissenting)

When a decision of bail already made on merit, after due deliberation, is required to be reviewed on prayer for cancellation of bail, it would require the exercise to be undertaken with the necessary care and circumspection. The power of the High Court or Court of Session to cancel bail is exercisable vis-à-vis an order passed by the High Court or the Court of Session under sub-section (1) of S. 439, as the case may be, as also to an order of bail passed by a Court other than the High Court or the Court of

Session under sub-sections (1) and (2) of S. 437 of the Code. Bail orders under the aforesaid provisions by the very nature are decisions on merit and if a review is attempted a strong case has to be made out so as to secure cancellation of bail. Hence the apparent distinction in the approach of the Court while granting bail and cancelling bail. This field is covered entirely by judge-made law.

The tests to be applied by courts in granting bail is by reference to many considerations, such as the nature of the accusation, the evidence in support thereof, the severity of punishment on conviction which would entail; the character, behaviour, means and standing of the accused etc. etc. But alongside is the larger interest of the State to be kept in view in granting or refusing bail. By no means are the afore-mentioned factors exhaustive. There may be other considerations which may be determinative for taking one view or the other. The Court is obligated, all the same, to strike a balance. The decision of the Court after consideration of the afore factors and others of the like conceivable results in a verdict judicial in character capable of being reviewed or altered again by a judicial exercise within judicially set out parameters.

A compulsive bail order made by a court under S. 167(2) of the Code being one not on merit, when required to be cancelled after the filing of the challan, would not involve any review of a decision made on merit. Such bail is cancellable if the court has reason to entertain the belief that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. The mere circumstance that S. 167(2) ordains that every person released on bail under sub-section (2) shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter does not ipso facto mean that the bail order assumes the content and character of bail orders on merit, of the kind conceived of in sub-sections (1) and (2) of S. 437 or sub-section (1) of S. 439 of the Code. The deeming requirement of S. 167(2) puts the release on bail of such person as if under the provisions of Chapter XXXIII but only for the purposes of that Chapter. By this fiction the provision is to be read as a part of Chapter XXXIII so that it invites the purposes of that chapter such as filling of bonds, provision of sureties etc., as also permitting cancellation of bail. It is on the thrust of such inclusion that cancellation under S. 437(5) can be attempted as if fictionally the bail order had been passed under sub-sections (1) and (2) of S. 437 but not on considerations as if the bail order was on merit. Fiction of this kind cannot be permitted to go to the length of converting an order of bail not on merit as if passed on merit. *Aslam Babalal Desai* v. *State of Maharashtra*, (1992) 4 SCC 272: 1992 SCC (Cri) 870: AIR 1993 SC 1.

Bench Strength 3. Coram: **A.M. Ahmadi**[1], **M.M. Punchhi**[2] and **K. Ramaswamy**[3], JJ. [Date of decision: 15-9-1992]

[1915] — Ss. 167(2) proviso, 437(5), 439(2), 57 and 173 — Bail-on-default granted under proviso to S. 167(2) — Cancellation of, on challan being filed under S. 173 subsequently — Cancellation of bail by High Court under S. 439(2) on ground that investigation revealed commission of a non-bailable offence by accused and it was necessary to commit him to custody — *Held (per Ahmadi, J., Ramaswamy, J. concurring, Punchhi, J. contra),High Court erred in cancelling the bail in absence of any strong ground on mere production of charge-sheet — By virtue of the deeming provision under proviso to S. 167(2), bail order passed thereunder would be one under S. 437(1) or (2) or S. 439(1) and therefore, power to cancel bail would lie under Ss. 437(5) and 439(2) which can be exercised only for special reasons and on strong prima facie evidence — (Per Ramaswamy, J.) merits of the case should be examined — (Per Punchhi, J., contra) grant of bail-on-default being not on merits, court's power is preserved to cancel the bail after filing of challan on being satisfied on merits about commission of non-bailable offence and necessity to commit accused to custody — In view of non-consideration of merits in case of compulsive bail under proviso to S. 167(2), subsequent cancellation of the bail on merits does not involve review of the earlier decision — On facts, (Per Punchhi, J.) a strong case for cancellation of bail had been made out*

Per Ahmadi, J.

Once an accused is released on bail under S. 167(2) he cannot be taken back in custody merely on the filing of a charge-sheet but there must exist special reasons for so doing besides the fact that the charge-sheet reveals the commission of a non-bailable crime. The ratio of *Rajnikant case* to the extent it is inconsistent herewith does not, with respect, state the law correctly.

The order of release on bail under the proviso to S. 167(2) is by the deeming fiction provided therein an order passed under S. 437(1) or (2) or S. 439(1). It, therefore, follows as a natural consequence that the said order can be cancelled under S. 437(5) or S. 439(2) on considerations relevant for cancellation of an order under S. 437(1) or (2) or S. 439(1).

(5) Rights of undertrials/Right to bail under S. 167(2) proviso and Expln. I thereto *(contd.)*

It is wrong to think that bail secured by virtue of the proviso (*a*) to S. 167 is an undeserved one as to so think is to doubt the legislative wisdom in prescribing the outer limit for filing the charge-sheet and to ignore the legislative history. It would not be permissible to interfere with the legislative mandate on imaginary apprehensions, e.g., an obliging investigation officer deliberately not filing the charge-sheet in time, as such misconduct can be dealt with departmentally. Once the accused has been released on bail his liberty cannot be interfered with lightly i.e. on the ground that the prosecution has subsequently submitted a charge-sheet. Such a view would introduce a sense of complacency in the investigating agency and would destroy the very purpose of instilling a sense of urgency expected by Ss. 57 and 167(2) of the Code.

Even where two views are possible, this being a matter belonging to the field of criminal justice involving the liberty of an individual, the provision must be construed strictly in favour of individual liberty since even the law expects early completion of the investigation. The delay in completion of the investigation can be on pain of the accused being released on bail. The prosecution cannot be allowed to trifle with individual liberty if it does not take its task seriously and does not complete it within the time allowed by law. It would also result in avoidable difficulty to the accused if the latter is asked to secure a surety and a few days later be placed behind the bars at the sweet will of the prosecution on production of a charge-sheet. Therefore, unless there are strong grounds for cancellation of the bail, the bail once granted cannot be cancelled on mere production of the charge-sheet.

In the present case the High Court relying on the ratio of *Rajnikant case* cancelled the bail solely on the ground that the bail was granted on technical grounds and the investigation revealed that there was eyewitness account disclosing the commission of a serious offence of murder. It is difficult to agree with the High Court. Therefore, the matter is remitted to the High Court for reconsideration and disposal on merits in the light of the legal position hereinabove stated.

Per Ramaswamy, J.

I am in full agreement with the view expressed by brother Ahmadi, J. and the order proposed by him.

The fiction of law under the proviso applying the provisions in Chapter XXXIII is to serve the purpose of law, namely not only the release of the accused on taking the requisite bond and conditions to be incorporated therein as envisaged in the said Chapter, but also the power of the court to cancel the bail and to take the accused into detention for the grounds mentioned under the relevant provisions in Ss. 437(5) and 439(2) of the Code. But on the happening of the catalyst act i.e. expiry of 90/60 days the hammer of release on default would fall, though it might be possible to abuse the proviso by deliberate delay in completing the investigation to facilitate the release of the accused on bail. Later filing of the charge-sheet (challan) is not by itself relevant to have the bail cancelled on committing the accused for trial or taking cognizance of the offence. On curing the defect by filing the charge-sheet (challan) if the prosecution seeks to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest and commit him into custody, prima facie at that stage, strong grounds indeed are necessary. For cancellation of the bail after filing of the charge-sheet the factum of dismissal of the bail on the earlier occasion is not relevant. Merits brought out in the charge-sheet and attending circumstances are relevant, as the bail was granted due to default of the investigating officer without court's adverting to the merits but during investigation some strong prima facie evidence and gravity and magnitude of the crime or the manner in which the crime was committed and other attending circumstances may be relevant as prima facie grounds to have a fresh look to cancel the bail. The grounds for cancellation of the bail in Chapter XXXIII are, dehors the merits in the matter, namely, necessity due to the conduct of the accused and abuse of liberty i.e. obstruction of the smooth investigation or suborning witnesses or attempting to tamper the evidence, threatening the witnesses with dire consequences or making or attempting to remove himself beyond the reach of the court to hamper the smooth trial, etc. are independent of the merits in the matter. Cancellation of the bail would be necessitated by the conduct of the accused himself after the release. The High Court or the Court of Sessions should consider the merits of the case.

Per Punchhi, J.(dissenting)

The occasion to grant or refuse bail on merit becomes available to the Court after the filing of the challan because earlier thereto merit of bail could not figure at the time of the grant of compulsive bail. The goal of the court in any event is to strike a judicial balance depending on the exigencies of the situation keeping in view amongst others the claims of personal liberty and the larger interests of the State. It cannot be overlooked that a bail order under S. 167(2) of the Code could even be managed through a convenient investigating officer, however heinous be the crime. The Court would have to grant bail under the mandate of law, debarred as it is to see to the merits of the case at that stage. To say that thenceforth the Court is for ever shut to see to the merits of the case, though it otherwise has power to cancel bail, is to deprive it of its elementary function to administer justice and weigh the claims on merit inter se. Such an interpretation would frustrate justice, and would on the other hand let the Court have the power to cancel bail, for once examining the merits of the case in such a situation.

The High Court in the instant case when approached for cancellation of bail applied its mind on the merits of the case and relied on *Rajnikant Jivan Lal case*. The High Court rightly relied on this decision when *Raghubir Singh case* was the basis thereof. These two cases have summed up and have drawn the demarcation between bail orders granted on merit and bail granted under the compulsion and thrust of S. 167(2) of the Code and the parameters of cancellation. Challan for prosecution has been filed. The appellant was described to be a gang leader who had arrived at the scene of the occurrence along with some others and committed the murder of a man on account of gang rivalry. He was accused of having taken part in it by inflicting wounds on the deceased. The allegations have supportive eyewitnesses. The accusation against the appellant is pointedly there. His role in the crime as an active participant could lead the High Court to entertain the view that the appellant has committed a non-bailable offence which may invite capital punishment or imprisonment for life and that there were sufficient grounds to arrest him and commit him into custody. And on coming to that view, the strong ground for cancellation of bail was made out. *Aslam Babalal Desai* v. *State of Maharashtra*, (1992) 4 SCC 272: 1992 SCC (Cri) 870: AIR 1993 SC 1.

Bench Strength 3. Coram: **A.M. Ahmadi**[1], **M.M. Punchhi**[2] and **K. Ramaswamy**[3], JJ. [Date of decision: 15-9-1992]

*Rajnikant Jivanlal Patel v. NCB, New Delhi, (1989) 3 SCC 532: 1989 SCC (Cri) 612, **overruled***

Bhagirathsinh v. State of Gujarat, (1984) 1 SCC 284: 1984 SCC (Cri) 63, relied on

Natabar Parida v. State of Orissa, (1975) 2 SCC 220: 1975 SCC (Cri) 484; Bashir v. State of Haryana, (1977) 4 SCC 410: 1977 SCC (Cri) 608, followed

[1916] — Ss. 167(2), proviso (a), 309(2), 437(5), 439(2), 441, 442(1) and 444 — Grant of bail under proviso (a) to S. 167(2) — *Not extinguished by lapse of time, subsequent discharge of surety, filing of charge-sheet or remand to custody under S. 309(2) — Remains effective until cancellation under Ss. 437(5) and 439(2)*

An order for release on bail made under the proviso to S. 167(2) is not defeated by lapse of time, the filing of the charge-sheet or by remand to custody under S. 309(2).

There is no limit of time within which the bond may be executed after the order for release on bail is made. Sections 441 and 442 are in the nature of provisions for the execution of orders for the release on bail of accused persons. The accused persons are not to be deprived of the benefit of the order for release on bail in their favour because of their inability to furnish bail straightway.

On the discharge of surety under S. 444 the responsibility of the surety ceases and the accused person is put back in the position where he was immediately before the execution of the bond. The order for release on bail is not extinguished and is not to be defeated by the discharge of the surety and the inability of the accused to straightway produce a fresh surety. The accused person may yet take advantage of the order for release on bail by producing a fresh, acceptable surety.

The order for release on bail does not stand extinguished on the remand of the accused to custody under S. 309(2), CrPC. Section 309(2) merely enables the court to "remand the accused if in custody". It does not empower the court to remand the accused if he is on bail. It does not enable the court to 'cancel bail' as it were.

Release on bail under the proviso to S. 167(2) is deemed to be release on bail under the provisions of Ch. XXXIII. Therefore, an order for release under the proviso to S. 167(2) is also subject to the provisions of Ss. 437(5) and 439(2) and may be extinguished by an order under either of these provisions. When an accused person is granted bail, whether under the proviso to S. 167(2) or under the provisions of Ch. XXXIII the only way the bail may be cancelled is to proceed under S. 437(5) or S. 439(2). *Raghubir Singh* v. *State of Bihar*, (1986) 4 SCC 481: 1986 SCC (Cri) 511: AIR 1987 SC 149.

Bench Strength 2. Coram: **O. Chinnappa Reddy** and *M.M. Dutt*, JJ. [Date of decision: 19-9-1986]

[1917] — S. 167(2) proviso (a) and Ch. XXXIII (Ss. 436-450) — Release of accused on bail under Proviso (a) to S. 167(2) — *Accused deemed to be so released under Chapter XXXIII of the Code — Only method by which bail may be cancelled is to proceed under S. 437(5) or S. 439(2)*

When an accused is granted bail, whether under proviso (a) to S. 167(2) or under the general provisions of Ch. XXXIII, the only method by which the bail may be cancelled is to proceed under S. 437(5) or S. 439(2). That is because the person released on bail under the proviso to S. 167(2) shall be deemed to be so released under the provisions of Ch. XXXIII of the Code. *Rajnikant Jivanlal* v. *Intelligence Officer, Narcotic Control Bureau*, (1989) 3 SCC 532: 1989 SCC (Cri) 612: AIR 1990 SC 71.

Bench Strength 1. Coram: **K. Jagannatha Shetty**, J. [Date of decision: 26-6-1989]

[1918] — S. 167(2) proviso — Rejection of a bail application that is not pressed, held, not improper — *Accused was thereby not "prepared to" be released on bail — This is so even where the period has been wrongly extended underS. 20(4)(bb), TADA, 1987. Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 4 SCC 602: 1994 SCC (Cri) 1087: AIR 1994 SC 2623.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 12-7-1994]

[1919] — S. 167(2) proviso (a)(i) — Release on bail after expiry of 90 days — *Where accused was arrested for offences under IPC and was remanded first to police custody and then to judicial custody but later approval was accorded under S. 23 of Maharashtra Control of Organised Crime Act for conducting investigation into offences under the said Act, held, period of 90 days contemplated under proviso (a)(i) to S. 167(2) must be reckoned from the date of accused's remand at the first instance and not from the date of grant of approval for investigation under the said Act — A new period of 90 days does not commence from the date of grant of approval for investigation under the Act — Second proviso to S. 167(2) inserted by S. 21(2)(b) of the said Act which provides for extension of the period up to 180 days cannot apply where Public Prosecutor does not submit any report indicating specific reasons for detention beyond the period of 90 days — Where charge-sheet could not be laid within 90 days from the date of remand to the custody at the first instance, accused would be entitled to bail — That the provision regarding bail under the said Act is very stringent would be a relevant aspect for consideration only when any motion for bail would be made dehors S. 167(2) CrPC — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999) — Ss. 21(2)(b) and 23(1)(a)*

In this case charge-sheet was not laid within 90 days from the date the accused respondent was remanded to the custody at the first instance. The Public Prosecutor has not filed any report before the Special Court showing reasons for the detention of the respondent beyond 90 days from the date of the first remand order. Hence he is disabled from contending that the proviso to Section 21(2) of the MCOC Act would enable the investigating agency to have the pre-trial custody of the respondent extended beyond 90 days. (Para 7)

It is not possible to agree with the contention that a new period of 90 days would commence from the date when approval was accorded under Section 23 of the MCOC Act for initiating investigation for any offence under the said Act. For the application of the proviso to Section 167(2) of the Code there is no necessity to consider when the investigation could legally have commenced. That proviso is intended only for keeping an arrested person under detention for the purpose of investigation and the legislature has provided a maximum period for such detention. On the expiry of the said period the further custody becomes unauthorized and hence it is mandated that the arrested person shall be released on bail if he is prepared to and does furnish bail. It may be a different position if the same accused was found involved in some other offence disconnected from the offence for which he was arrested. In such an eventuality the officer investigating such second offence can exercise the power of arresting him in connection with the second case. But if the investigation into the offence for which he was arrested initially had revealed other ramifications associated therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to Section 167(2) would remain unextendable. In the present case, the accused would be entitled to bail, not on the merits of the case, but on account of the default of the investigating agency to complete the investigation within 90 days from the date of the first remand of the respondent. (Paras 12 and 11)

The further contention that the provision regarding bail under the said Act is very stringent would become germane only when any motion for bail is made dehors Section 167(2) of the Code. Therefore, that contention is left without expressing any opinion on the merits since it is open to the court concerned to consider that aspect when any motion is made in that behalf. (Paras 7 to 9) . *State of Maharashtra* v. *Bharati Chandmal Varma*, (2002) 2 SCC 121: 2002 SCC (Cri) 299: AIR 2002 SC 285: 2002 Cri LJ 575: (2002) 1 CHN (Supp) 95.

Bench Strength 2. Coram: **K.T. Thomas** and *S.N. Phukan*, JJ. [Date of decision: 4-12-2001]

Uday Mohanlal Acharya v. *State of Maharashtra*, (2001) 5 SCC 453: 2001 SCC (Cri) 760, *relied on*

[1920] — S. 167(2) proviso (a)(i) — Jurisdiction under — Proper mode of invocation of — *Whether opposing a custodial remand order before Special Judge/High Court, sufficient — Whether filing separate bail application before Special Judge, necessary, even if the remand order has been opposed before Special Judge/High Court*

ATS staff (which had jurisdiction over entire Maharashtra) intercepted and apprehended A-1, which resulted in seizure of 10 AK-47 rifles, 2000 live rounds, 30 kg RDX, etc. and the panchnama went on from 9-5-2006 to 10-5-2006. Investigation was started for offences under Section 120-B IPC read with Sections 4, 5 of the Explosive Substances Act, 1908 read with Sections 5, 6, 9, 9-B of the Explosives Act, 1884 read with Sections 3, 4, 25 of the Arms Act, 1959 read with Sections 10, 13, 16, 18, 23 of the Unlawful Activities (Prevention) Act, 1967.

The appellants (A-5 to A-8) were arrested on 13-5-2006. The first extension under Section 167(2) CrPC was granted on 7-8-2006 for a period of 15 days i.e. up to 21-8-2006 and the second extension was granted on 21-8-2006 for a period of 15 days i.e. up to 4-9-2006 and the charge-sheet was filed on 4-9-2006. The application under Section 21(2)(*b*) of the Maharashtra Control of Organised Crime Act, 1999 (the MCOC Act) read with Section 167(2) CrPC for bail on the default ground came to be filed for the first time on 4-9-2006 i.e. the date on which the charge-sheet was submitted. The said bail application under Section 167(2) proviso (*a*)(*i*) was rejected by the Special Judge. Prior to filing of the bail application before the Special Judge (i.e. on the date of filing of charge-sheet after 120 days), an appeal under Section 12 of the MCOC Act had also been filed on 18-8-2006. The Division Bench of the High Court by the impugned order upheld the remand order and rejection of bail application by the Special Judge.

Section 21(2)(*a*), MCOC Act modified the Section 167(2) CrPC to the effect that the "fifteen days", and "sixty days" occurrences are replaced by "thirty days" and "ninety days" respectively. And Section 21(2)(*b*), MCOC Act amended Section 167(2) CrPC to include a second proviso which allowed a maximum period of 180 days for completion of investigation subject to specified conditions that the Public Prosecutor reports to Special Judge indicating the progress of the investigation and the Special Judge records specific reasons for detention beyond 90 days.

Dismissing the appeals,

Held :

Section 167(2) CrPC cannot be lost sight of. Section 167 CrPC and Section 21 of the MCOC Act deal with power of custodial remand. The provisions of Section 21 of the MCOC Act must be read in the light of Section 167 CrPC. Section 167(2) CrPC itself indicates that power of remand has to be exercised from time to time and this clearly dispels any doubt as regard the true effect of Section 167(2) second proviso added by Section 21(2) of the MCOC Act, 1999. (Para 15)

The criminal appeal under Section 12 of the MCOC Act to the High Court filed on 18-8-2006 cannot be considered as an application for bail. Even if it is treated as an application for bail, the same was not tenable on default ground as the Special Court extended the period of custodial remand on 7-8-2006 till 21-8-2006 and further extended the period on 21-8-2006 till 4-9-2006. The contention of the appellants was that the appeal filed by them on 18-8-2006 should be considered as their application for bail. This appeal filed in the High Court was challenging the order dated 7-8-2006 of the Special Court granting extension of custodial remand till 21-8-2006 and on 21-8-2006 extension was granted till 4-9-2006. The impugned judgment of the High Court does not suffer from any infirmity to warrant interference. (Paras 17 and 18). *Mustaq Ahmed Mohammed Isak* v. *State of Maharashtra*, (2009) 7 SCC 480: (2009) 3 SCC (Cri) 449.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 8-5-2009]

[**Ed.**: Here a question may arise that when a custodial remand application is pressed by the prosecution to extend the time for investigation beyond 90 days, whether the accused persons are entitled to oppose the same having regard to principles of natural justice? And when they have opposed the same before the Special Judge and then challenged the custodial remand order by filing appeal under S. 12 of the MCOC Act in the High Court, whether such opposition to custodial remand order would not amount to seeking a release under bail? And therefore, whether a separate filing of bail application before the Special Judge/Magistrate along with opposing the custodial remand order is necessary?]

[1921] — S. 167(2) proviso (a)(i) (as substituted by Act 45 of 1978) — Bail on default of completion of investigation within 90 days — Successive extensions of time of custodial remand for investigation after expiry of 90 days — Permissibility and whether a ground for grant of bail — *Appellant-accused persons charged for offences under S. 120-B IPC r/w Ss. 4, 5 of Explosive Substances Act, 1908 r/w Ss. 5, 6, 9, 9(B) of the Explosives Act, 1884*

(5) Rights of undertrials/Right to bail under S. 167(2) proviso and Expln. I thereto *(contd.)*

r/w Ss. 3, 4, 25 of Arms Act, 1959 r/w Ss. 10, 13, 16, 18, 23 of Unlawful Activities (Prevention) Act, 1967 — Prosecution not completing investigation within 90 days and seeking extension [by relying on amendments in S. 167(2) CrPC made by S. 21(2)(b) proviso of MCOC Act, 1999 for extension of investigation up to 180 days] — Appellant-accused persons preferring appeal under S. 12 of MCOC Act against the first remand order dated after 105 days of arrest extending time for completion of investigation for a period of 15 days — Appellant-accused persons filing bail application and prosecution filing charge-sheet after 120 days of arrest i.e. on the day when the second extension of time for investigation expired — Legality — Held, there is nothing in the language of S. 167(2) second proviso CrPC as amended by S. 21(2) of MCOC Act to indicate that the power of extension can be exercised only once — Special Court can exercise power under the said proviso from time to time however, the total period for filing charge-sheet/challan cannot exceed 180 days — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999), S. 21(2) [modifying S. 167(2) CrPC] — Explosive Substances Act, 1908, Ss. 4 and 5 — Explosives Act, 1884, Ss. 5, 6, 9 and 9(B) — Arms Act, 1959, Ss. 3, 4 and 25 — Unlawful Activities (Prevention) Act, 1967, Ss. 10, 13, 16, 18 and 23

ATS staff (which had jurisdiction over entire Maharashtra) intercepted and apprehended A-l, which resulted in seizure of 10 AK-47 rifles, 2000 live rounds, 30 kg RDX, etc. and the panchnama went on from 9-5-2006 to 10-5-2006. Investigation was started for offences under Section 120-B IPC read with Sections 4, 5 of the Explosive Substances Act, 1908 read with Sections 5, 6, 9, 9-B of the Explosives Act, 1884 read with Sections 3, 4, 25 of the Arms Act, 1959 read with Sections 10, 13, 16, 18, 23 of the Unlawful Activities (Prevention) Act, 1967.

The appellants (A-5 to A-8) were arrested on 13-5-2006. The first extension under Section 167(2) CrPC was granted on 7-8-2006 for a period of 15 days i.e. up to 21-8-2006 and the second extension was granted on 21-8-2006 for a period of 15 days i.e. up to 4-9-2006 and the charge-sheet was filed on 4-9-2006. The application under Section 21(2)(*b*) of the Maharashtra Control of Organised Crime Act, 1999 (the MCOC Act) read with Section 167(2) CrPC for bail on the default ground came to be filed for the first time on 4-9-2006 i.e. the date on which the charge-sheet was submitted. The said bail application under Section 167(2) proviso (*a*)(*i*) was rejected by the Special Judge. Prior to filing of the bail application before the Special Judge (i.e. on the date of filing of charge-sheet after 120 days), an appeal under Section 12 of the MCOC Act had also been filed on 18-8-2006. The Division Bench of the High Court by the impugned order upheld the remand order and rejection of bail application by the Special Judge.

Section 21(2)(*a*), MCOC Act modified the Section 167(2) CrPC to the effect that the "fifteen days", and "sixty days" occurrences are replaced by "thirty days" and "ninety days" respectively. And Section 21(2)(*b*), MCOC Act amended Section 167(2) CrPC to include a second proviso which allowed a maximum period of 180 days for completion of investigation subject to specified conditions that the Public Prosecutor reports to Special Judge indicating the progress of the investigation and the Special Judge records specific reasons for detention beyond 90 days.

Dismissing the appeals,

Held :

There is nothing in the language of Section 167(2) second proviso CrPC as amended by Section 21(2) of the Maharashtra Control of Organised Crime Act, 1999 (the MCOC Act) to indicate that the power of extension can be exercised only once as contended by the appellant-accused persons. The only possible interpretation of the said proviso is that the Special Court can exercise power under the said proviso from time to time however, the total period for filing charge-sheet/challan cannot exceed 180 days. Affidavit of Assistant Commissioner of Police specifically stated that the application for bail on a default ground was made for the first time on a date 120 days after date of arrest and not on a date 103 days after date of arrest as incorrectly contended by the appellants herein. (Paras 15 and 16)

Section 167(2) CrPC cannot be lost sight of. Section 167 CrPC and Section 21 of the MCOC Act deal with power of custodial remand. The provisions of Section 21 of the MCOC Act must be read in the light of Section 167 CrPC. Section 167(2) CrPC itself indicates that power of remand has to be exercised from time to time and this clearly dispels any doubt as regard the true effect of Section 167(2) second proviso added by Section 21(2) of the MCOC Act, 1999. (Para 15)

The criminal appeal under Section 12 of the MCOC Act to the High Court filed on 18-8-2006 cannot be considered as an application for bail. Even if it is treated as an application for bail, the same was not tenable on default ground as the Special Court extended the period of custodial remand on 7-8-2006 till 21-8-2006 and further extended the period on 21-8-2006 till 4-9-2006. The contention of the appellants was that the appeal filed by them on 18-8-2006 should be considered as their application for bail. This appeal filed in the High Court was challenging the order dated 7-8-2006 of the Special Court granting extension of custodial remand till 21-8-2006 and on 21-8-2006 extension was granted till 4-9-2006. The impugned judgment of the High Court does not suffer from any infirmity to warrant interference. (Paras 17 and 18). *Mustaq Ahmed Mohammed Isak* v. *State of Maharashtra*, (2009) 7 SCC 480: (2009) 3 SCC (Cri) 449.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 8-5-2009]

Sanjay Dutt v. State, (1994) 5 SCC 410: 1994 SCC (Cri) 1433, relied on

Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602: 1994 SCC (Cri) 1087, distinguished

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; Usmanbhai Dawoodbhai Memon v. State of Gujarat, (1988) 2 SCC 271: 1988 SCC (Cri) 318; Naranjan Singh Nathawan v. State of Punjab, AIR 1952 SC 106; Ram Narayan Singh v. State of Delhi, AIR 1953 SC 277; A.K. Gopalan v. Govt. of India, AIR 1966 SC 816, cited

[**Ed.**: Here a question may arise that when a custodial remand application is pressed by the prosecution to extend the time for investigation beyond 90 days, whether the accused persons are entitled to oppose the same having regard to principles of natural justice? And when they have opposed the same before the Special Judge and then challenged the custodial remand order by filing appeal under S. 12 of the MCOC Act in the High Court, whether such opposition to custodial remand order would not amount to seeking a release under bail? And therefore, whether a separate filing of bail application before the Special Judge/Magistrate along with opposing the custodial remand order is necessary?]

[1922] — S. 167(2) proviso and Ch. XXXIII (Ss. 436 to 450) — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20(4) — Accused released on bail on ground of default in completion of investigation within the statutory period — He shall be deemed to have been so released under Ch. XXXIII of the Code — *His bail cannot be cancelled on mere filing of charge-sheet — His bail can be cancelled only when a case for cancellation has been made out under S. 437(5) or S. 439(2) of the Code*

Any accused released on bail under proviso (*a*) to Section 167(2) of the Code read with Section 20(4)(*b*) or Section 20(4)(*bb*) TADA, because of the default on the part of the investigating agency to conclude the investigation within the period prescribed, in view of proviso (*a*) to Section 167(2) itself, shall be deemed to have been so released under the provisions of Chapter XXXIII of the Code. It cannot be held that an accused charged of any offence, including offences under TADA, if released on bail because of the default in completion of the investigation, then no sooner the charge-sheet is filed, the order granting bail to such accused is to be cancelled. The bail of such accused who has been released, because of the default on the part of the investigating officer to complete the investigation, can be cancelled, but not only on the ground that after the release charge-sheet has been submitted against such accused for an offence under TADA. For cancelling the bail, the well-settled principles in respect of cancellation of bail have to be made out. In view of deeming provision under proviso (*a*) to Section 167(2), the order granting bail shall be deemed to be one under Section 437(1) or sub-section (2) or Section 439(1) and that order can be cancelled when a case for cancellation is made out under Sections 437(5) and 439(2) of the Code. But for that, the sole ground should not be that after the release of such accused the charge-sheet has been submitted. *Mohd. Iqbal Madar Sheikh* v. *State of Maharashtra*, (1996) 1 SCC 722: 1996 SCC (Cri) 202.

Bench Strength 3. Coram: *A.M. Ahmadi, C.J.* and *B.P. Jeevan Reddy* and **N.P. Singh**, JJ. [Date of decision: 8-1-1996]

Aslam Babalal Desai v. State of Maharashtra, (1992) 4 SCC 272: 1992 SCC (Cri) 870; Raghubir Singh v. State of Bihar, (1986) 4 SCC 481: 1986 SCC (Cri) 511, followed

[1923] — S. 167(2) r/w S. 49(2)(b) of the Prevention of Terrorism Act, 2002 — Accused's right to bail in POTA case on failure of prosecution to complete investigation within statutory period of 90 days — *Prior to expiry of said period, Special Court in exercise of power under S. 49(2)(b) granting extension of time to complete investigation — Extension of time was proper — Hence, contention that since accused acquired an indefeasible right to be released on bail on the expiry of 90 days from the date of his arrest, the Special Judge was not justified in rejecting the application for grant of bail, held, not sustainable — Prevention of Terrorism Act, 2002 — S. 49(2)(b)* (Paras 17 and 18). *Ateef Nasir Mulla* v. *State of Maharashtra*, (2005) 7 SCC 29: 2005 SCC (Cri) 1587: AIR 2005 SC 3293: 2005 Cri LJ 3748.

Bench Strength 2. Coram: **B.P. Singh** and *S.B. Sinha*, JJ. [Date of decision: 24-8-2005]

Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602: 1994 SCC (Cri) 1087, relied on

(6) Remand to custody before and after charge-sheet/cognizance — Ss. 167 and 309

See also Section 167, '(5) Rights of undertrials/Right to bail under S. 167(2) proviso and Expln. I thereto', above

[1924] — Ss. 167, 309, 173 and 190 — Remand of accused — Relative scope and applicability of Ss. 167(2) and 309(2) — Right to bail under S. 167(2) proviso — Preconditions for availability, and, continuance of — Effect of filing of charge-sheet (police report) while accused was absconding and was yet to be arrested — Effect of taking of cognizance (on such charge-sheet) — Effect of pendency of further investigation under S. 173(8) — Investigating agency whether submitting charge-sheet only to curtail right of accused under S. 167(2) proviso — Determination of — *Held, remand of an accused is contemplated at two stages: pre-cognizance and post-cognizance — Whereas S. 167(2) is attracted where cognizance has not been taken, S. 309(2) is attracted only after cognizance has been taken — The right under S. 167(2) proviso is a conditional one, being conditional on the investigation having remained pending i.e. on the charge-sheet not having been presented — Whether an investigation has in fact remained pending and IO has submitted charge-sheet only with a view to curtail the said right, would essentially be a question of fact — Once a charge-sheet is filed, the right under S. 167(2) proviso ceases and does not revive only because a further investigation remains pending within meaning of S. 173(8) — In the present case, since on the basis of the charge-sheet presented Magistrate took cognizance before appellant-accused had been arrested, and found that a case for trial had been made out, there already being sufficient material available for prosecution of the appellant, it could not be said that the charge-sheet had been filed merely to curtail appellant's right to bail under S. 167(2) proviso — Further, as there was no challenge to validity of charge-sheet or the order taking cognizance, appellant could not have been given benefit of S. 167(2) proviso, as that would have required Magistrate concerned to have declared the charge-sheet illegal and to have recalled his own order taking cognizance, something he could not have done ordinarily*

Dismissing the appeal,

Held :

A charge-sheet is a final report within the meaning of Section 173(2) CrPC. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him may not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, the law does not require that filing of the charge-sheet must await the arrest of the accused. (Para 19)

So long as a charge-sheet is not filed within the meaning of Section 173(2) CrPC, investigation remains pending. Filing of a final police report or charge-sheet however does not preclude an investigating officer to carry on further investigation in terms of Section 173(8). Indisputably, the power of the investigating officer to make a prayer for making further investigation in terms of Section 173(8) is not taken away only because a charge-sheet has been filed under Section 173(2). A further investigation is permissible even if an order of cognizance of offence has been made by the Magistrate. (Paras 20, 38 and 39)

Even in the same case, depending upon the nature of charge-sheet filed by the investigating officer in terms of Section 173 CrPC, cognizance may be taken as against the person against whom an offence is said to have been made out and against whom no such offence has been made out even when investigation is pending. (Para 38)

The investigating agency is required to complete investigation within a reasonable time. The ideal period therefor would be 24 hours, but, in some cases, it may not be practically possible to do so. Parliament, therefore, thought it fit that remand of the accused can be sought for in the event investigation is not completed within 60 or 90 days, as the case may be. But, if the same is not done within the stipulated period, the same would not be detrimental to the accused and, thus, he, on the expiry thereof would be entitled to apply for bail, subject to fulfilling the conditions prescribed therefor. Such a right of bail although is a valuable right but the same is a conditional one; the condition precedent being pendency of the investigation. Whether an investigation in fact has remained pending and the investigating officer has submitted the charge-sheet only with a view to curtail the right of the accused would essentially be a question of fact. (Paras 24 and 25)

Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of Section 167(2) proviso would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of Section 173(8) CrPC. (Para 39)

It is a well-settled principle of interpretation of statute that it is to be read in its entirety. Construction of a statute should be made in a manner so as to give effect to all the provisions thereof. Remand of an accused is contemplated by Parliament at two stages; pre-cognizance and post-cognizance. The power of a court to direct remand of an accused either in terms of Section 167(2) or Section 309(2) CrPC will depend on the stages of the trial. Whereas Section 167(2) would be attracted in a case where cognizance has not been taken, Section 309(2) would be attracted only after cognizance has been taken. (Paras 38 and 29)

In this case CBI took a conscious decision to file charge-sheet against the appellant. His name was shown in Column 1 thereof although he was absconding. It is true that ordinarily all documents accompany the charge-sheet. But, in this case, some documents could not be filed which were not in the possession of CBI as the same were with the Government Examiner of Questioned Documents (GEQD). Whereas the charge-sheet was submitted on 24-10-2005, the appellant was arrested only on 12-2-2006. The additional documents were filed on 20-1-2006. However, the appellant does not contend that he has been prejudiced by not filing of such documents with the charge-sheet. No such plea in fact had been taken. Even if all the documents had not been filed, by reason thereof submission of charge-sheet itself does not become vitiated in law. Validity of the said charge-sheet is also not in question. (Paras 16, 18 and 22)

The question whether CBI had filed the charge-sheet against the appellant merely to curtail the right of the accused under Section 167(2) strictly does not arise in this case inasmuch as, according to CBI, sufficient materials are already available for prosecution of the appellant. According to it, further investigation would be inter alia necessary on certain vital points including end use of the funds involved in the commission of the offences in question. (Para 25)

The court takes cognizance of an offence and not the offender. The Magistrate took cognizance of the offence. The Magistrate noticed the fact, while taking cognizance of the offence, that the appellant had been absconding and a non-bailable warrant of arrest had been issued against him. It was found that a case for trial has been made out. There were five accused against whom allegations were made by the complainant. One of the companies was not sent for trial as nothing was found against it. All the other accused named in the first information report had been sent for trial. The charge-sheet has been acted upon as an order of cognizance had been passed on the basis thereof. The appellant has not questioned the said order taking cognizance of the offence. It was, therefore, not necessary for CBI to file a charge-sheet so as to curtail the right of the accused to obtain bail. It is, therefore, not a case where by reason of such submission of charge-sheet the appellant has been prejudiced in any manner whatsoever. (Paras 25 to 28, 16, 17 and 22)

It is also not a case of the appellant that he had been arrested in course of further investigation. A warrant of arrest had already been issued against him. The Magistrate was conscious of the said fact while taking cognizance of the offence. (Para 27)

In the present case, if it is to be accepted that the appellant-accused was entitled to the protection of Section 167, even after cognizance had been taken the Magistrate was not only required to declare the charge-sheet illegal, he was also required to recall his own order of taking cognizance. Ordinarily, he could not have done so. (Para 30)

Hence, it is held that the High Court was correct in its finding that, in the fact situation obtaining, the appellant had no statutory right to be released on bail. (Para 40). *Dinesh Dalmia* v. *CBI*, (2007) 8 SCC 770: (2007) 59 AIC 145 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

K. Veeraswami v. Union of India, (1991) 3 SCC 655: 1991 SCC (Cri) 734; Anil Saran v. State of Bihar, (1995) 6 SCC 142: 1995 SCC (Cri) 1051; Popular Muthiah v. State, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245; Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927; Subramanium Sethuraman v. State of Maharashtra, (2004) 13 SCC 324: 2005 SCC (Cri) 242; Everest Advertising (P) Ltd. v. State (Govt. of NCT of Delhi), (2007) 5 SCC 54: (2007) 2 SCC (Cri) 444, relied on

CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141: 1992 SCC (Cri) 554, distinguished

[1925] — Ss. 167(2) and 309(1) — Remand to custody — Pre-cognizance and post-cognizance procedures, distinguished

A distinction between a remand of an accused at pre-cognizance stage vis-à-vis the post-cognizance stage is apparent. Whereas the remand to custody at a pre-cognizance stage is to be made in terms of Section 167(2) CrPC, an order of remand of an accused at post-cognizance stage can be effected only in terms of Section 309(2) thereof. (Para 34). *Jeewan Kumar Raut* v. *CBI*, (2009) 7 SCC 526: (2009) 3 SCC (Cri) 475: (2009) 80 AIC 243 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 7-7-2009]

Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047, relied on

(6) Remand to custody before and after charge-sheet/ cognizance — Ss. 167 and 309 *(contd.)*

[1926] — Ss. 167(2), 309(2) and 173 — Relative scope — Remand to custody under S. 167(2) and S. 309(2), distinguished — Fresh remand of accused to custody after charge-sheet is filed — Permissibility — *Held, power of remand is to be exercised when investigation is not complete — Once charge-sheet is filed and cognizance of the offence is taken, court cannot exercise its power to remand an accused to custody for investigation under S. 167(2) — After cognizance of offence is taken, court can remand accused to custody only in terms of S. 309(2) — In present case, appellants were not in custody but released on bail — Hence, held, they could not be remanded unless bail was cancelled*

The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of CrPC. The courts subordinate to the High Court do not even have any inherent power under Section 482 or otherwise. The power of remand in terms of Section 167 is to be exercised when investigation is not complete. Once the charge-sheet is filed and cognizance of the offence is taken, the court cannot exercise its power under Section 167(2) CrPC. Its power of remand can then be exercised in terms of Section 309(2). The appellants had been granted bail. They are not in custody of the court. They could not be taken in custody ordinarily unless their bail was cancelled. The High Court, therefore was not correct in holding that as further investigation was required, Section 167(2) of the Code gives ample power for grant of police remand. (Paras 15 to 18). *Mithabhai Pashabhai Patel* v. *State of Gujarat*, (2009) 6 SCC 332.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Raghubir Singh v. State of Bihar, (1986) 4 SCC 481: 1986 SCC (Cri) 511; CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141: 1992 SCC (Cri) 554; State v. Dawood Ibrahim Kaskar, (2000) 10 SCC 438: 1997 SCC (Cri) 636; Dinesh Dalmia v. CBI, (2007) 8 SCC 770: (2008) 1 SCC (Cri) 36; Rama Chaudhary v. State of Bihar, (2009) 6 SCC 346, followed

[1927] — Ss. 167, 309(2) and 173(8) — Even after taking cognizance of an offence the court can authorise detention in police custody of a person is arrested during further investigation — Words "accused if in custody" in S. 309(2) does not refer to a person who is arrested in course of further investigation — *Remand and custody referred to in first proviso to S. 309 relates to post-cognizance stage and can only be to judicial custody*

In the Bombay Bomb Blast case the police submitted a composite charge-sheet before the Designated Court against 198 persons, showing 45 of them as absconders. After the Designated Court took cognizance of the case the Central Government entrusted further investigation in the case to the CBI. In the course of such investigation the CBI apprehended one of the absconders mentioned in the charge-sheet who, in his confessional statement, disclosed that the respondents had taken active part in the criminal conspiracy which was the subject-matter of the Bombay Bomb Blast case. Thereafter the CBI moved an application before the Designated Court praying for issuance of non-bailable warrants of arrest against the respondents to initiate further proceedings in the matter to apprehend them and/or to take further action to declare them as proclaimed offenders. Two other applications were thereafter moved for publication of written proclamations under Section 8(3)(*a*) of TADA as also for issuance of open dated non-bailable warrants of arrest so that "Red Corner Notices" might be issued against them. The Designated Court rejected the applications and held that after cognizance was taken in respect of an offence process could be issued to the persons accused thereof only to compel them to face the trial but no such process could be issued by the Court in aid of investigation under Section 73 of the Code. According to the Designated Court, though under the Code further investigation was not barred there was no provision therein which entitled the Investigating Agency to seek for and obtain aid from the Court for the same. Allowing the appeal by the State

Held :

Section 309(2) does not stand in the way of a Court, which has taken cognizance of an offence, to authorise the detention of a person, who is subsequently brought before it by the police under arrest during further investigation, in police custody in exercise of its power under Section 167 of the Code. (Para 10)

The remand and the custody referred to in the first proviso to Section 309 are different from detention in custody under Section 167. While remand under the former relates to a stage after cognizance and can only be to judicial custody, detention under the latter relates to the stage of investigation and can initially be either in police custody or judicial custody. Since, however, even after cognizance is taken of an offence the police has a power to investigate into it further, which can be exercised only in accordance with Chapter XII, there is no reason whatsoever why the provisions of Section 167 thereof would not apply to a person who comes to be later arrested by the police in course of such investigation. If Section 309(2) is interpreted to mean that after the Court takes cognizance of an offence it cannot exercise its power of detention in police custody under Section 167, the Investigating Agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it can on production of sufficient materials, convince the Court that his detention in its (police) custody was essential for that purpose. Therefore, the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation. So far as the accused in the first category is concerned he can be remanded to judicial custody only in view of Section 309(2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which had taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfilment of the requirements and the limitation of Section 167. (Para 11). *State* v. *Dawood Ibrahim Kaskar*, (2000) 10 SCC 438: 1997 SCC (Cri) 636: AIR 1997 SC 2494.

Bench Strength 3. Coram: **M.K. Mukherjee**, *G.T. Nanavati* and *B.N. Kirpal*, JJ. [Date of decision: 7-5-1997]

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150; Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479, relied on

Mohd. Ahmed Yasin Mansuri v. State of Maharashtra, 1994 Cri LJ 1854 (Bom), overruled

(7) S. 167(5) as amended in State of West Bengal

[1928] — Ss. 167(5) and (6) (as amended in the State of W.B.) — Application for extending the time for completing the investigation filed by IO after the expiry of the statutory period prescribed by S. 167(5)(iii) — Grant of — Permissibility — *Where the court had still not passed a discharge order, validity of extension of time on such an application, upheld — Further held, there was no conflict between the ratio in* Falguni Dutta case *and that in* Bimal Chandra Saha case — *Penal Code, 1860 — S. 409 — W.B. Criminal Law Amendment (Special Courts) Act, 1949 (21 of 1949)*

The appellant was involved as accused in an offence under Section 409, IPC. During investigation of the case he applied for, and got, a pre-arrest bail order and surrendered himself before the Magistrate on 18-3-1993. As the investigation was not completed within two years therefrom, he moved the said Magistrate on 22-9-1995 for discharging him under Section 167(5), CrPC. The Magistrate dismissed the application pointing out that the case being triable only by a Special Judge under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 the order sought by the appellant could be passed only by the Special Judge. A Single Judge of the High Court while holding the Magistrate to be competent to pass an order under Section 167(5) in the instant case, granted further time to the IO, on an application filed by him, on being satisfied that the IO could not complete the investigation due to sickness. The question was whether time could have been extended without the IO moving for such extension before the expiry of the statutory period. A further question was whether there was conflict between the decisions in *State of W.B.* v. *Falguni Dutta case* and *Durgesh Chandra Saha* v. *Bimal Chandra Saha case*. Upholding the Single Judge's order and answering the second question in the negative,

Held :

On the facts of the instant case the two years' period mentioned in Section 167(5)(*iii*) must be reckoned from 18-3-1993 on which date the appellant surrendered himself in court.

There is no conflict between the decisions in *State of W.B.* v. *Falguni Dutta case* and *Durgesh Chandra Saha* v. *Bimal Chandra Saha case* and the ratio was applied on the factual position in each case. *Nirmal Kanti Roy* v. *State of W.B.*, (1998) 4 SCC 590: 1998 SCC (Cri) 1100: AIR 1998 SC 2322.

Bench Strength 3. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas** and *S. Rajendra Babu*, JJ. [Date of decision: 23-4-1998]

Durgesh Chandra Saha v. Bimal Chandra Saha, (1996) 1 SCC 341: 1996 SCC (Cri) 109, impliedly distinguished

State of W.B. v. Pranab Ranjan Roy, (1998) 3 SCC 209: 1998 SCC (Cri) 730, followed

[1929] — S. 167(5) (as amended by W.B. Act 24 of 1988) — Failure to conclude investigation within the statutory period — Obligation of court to stop further investigation and discharge the accused — *Held, sub-s. (5) as amended in West Bengal does not apply where investigation has been completed and charge-sheet filed — It applies only where investigation is still pending — Object of the amended provision is to ensure speedy investigation. The right against deprivation of personal liberty would be affected if the trial is kept pending after completion of the investigation without just cause — Constitution of India — Art. 21*

(7) S. 167(5) as amended in State of West Bengal *(contd.)*

The language of Section 167(5) of CrPC as amended by the West Bengal Act is quite clear in indicating that the said section is applicable only in a case where the investigation was still pending but not in a case where investigation had been completed and the charge-sheet had been filed. Section 167(5) as amended is intended to ensure speedy completion of investigation within the time frame specified therein otherwise to face an order of discharge of the accused against whom investigation without any just cause to the satisfaction of the court has been kept pending. Where investigation has been completed, a different situation, not contemplated under Section 167(5) CrPC emerges. If a criminal case is kept pending for a very long time without any just cause thereby seriously affecting the guarantee under Article 21 against deprivation of personal liberty, the law is well-settled that the court, in an appropriate case may quash the criminal proceeding. Hence, unnecessary liberal construction of Section 167(5) CrPC with a view to protect the right against deprivation of personal liberty is not called for. *Durgesh Chandra Saha* v. *Bimal Chandra Saha*, (1996) 1 SCC 341: 1996 SCC (Cri) 109: AIR 1996 SC 740.

Bench Strength **2**. Coram: *G.N. Ray* and *G.T. Nanavati*, JJ. [Date of decision: 23-11-1995]

Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93, relied on

[1930] — S. 167(5) (as amended by S. 4 of W.B. Act 24 of 1988) — Provision in, for discharging the accused and stopping further investigation — *Held, not applicable in case the investigation had already been completed and charge-sheet, filed — However, the question whether in the facts of the instant case the said provision was not inapplicable, left open. State of W.B.* v. *Pranab Ranjan Roy*, (1998) 3 SCC 209: 1998 SCC (Cri) 730: AIR 1998 SC 1887.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 6-3-1998]

[1931] — Ss. 167(5) (as amended by S. 4 of W.B. Act 24 of 1988), 436, 437, 204, 205, 206 and 161 — Word "appearance" in S. 167(5)(iii) as in Ss. 436 and 437 — *Held, means physical appearance and not appearance through Advocate — Contextual meaning applied — Hence, claim to benefit of S. 167(5)(iii) on account of failure to file charge-sheet within the statutory time-limit from the date of appearance through Advocate, rejected — Further held, in a different context, as in Ss. 204, 205 and 206 of CrPC or in certain provisions of CPC, that very word may have different connotations or different shades of meaning — Interpretation of Statutes — CPC, 1908, Or. 9 Rr. 6 & 8, Or. 41 R. 17, Or. 3 R. 1 — Prevention of Corruption Act, 1988 — Ss. 13(2) and (1)(e)*

The respondent was an officer of Central Inland Water Transport, Calcutta. He was prosecuted under Section 13(2) of the Prevention of Corruption Act, 1988 on the allegation that he had acquired assets disproportionate to his known sources of income. The case was registered on 27-8-1990. On 29-2-1992 his advocate filed a vakalatnama in the Court and applied for the return of certain documents. On 4-5-1994, the investigating agency submitted charge-sheet for offence under Section 13(2) read with Section 13(1)(*e*) of that Act. On being summoned to appear before the court, the respondent by his application dated 13-7-1996 sought his discharge under Section 167(5)(*iii*) of CrPC (as amended in W.B.) on the premise that he had appeared in the Court on 29-2-1992 through his counsel and that no charge-sheet was filed till the expiry of two years from the said date. Upholding his plea, the Special Judge discharged him and the decision was upheld by the High Court. Before the Supreme Court the appellant-State contended that "appearance" in Section 167(5) of CrPC contemplated the accused's surrender to the process or control of the court while according to the respondent mere appearance through advocate was enough for the purpose of Section 167(5). Allowing the State's appeal,

Held :

When construing the word "appearance" in Section 167(5) of CrPC (as amended in W.B. by Act 24 of 1988) one has to look at the context in which it is used. In other contexts the same word "appearance" may have different connotations or at least different shades of meaning e.g. Order 9 Rules 6 and 8 of the Code of Civil Procedure prescribe the consequence when the plaintiff or defendant in a suit does not "appear". Order 41 Rule 17 of that Code deals with the consequence when the appellant in an appeal does not "appear". In all such instances "appearance" would include appearance by the advocate because it is made so clear in Order 3 Rule 1 of the Code that any appearance required by law to be made in any court may be made "by the party in person, or by his recognised agent or by his pleader on his behalf". Even under the CrPC the word "appear" or "making appearance" can include appearance through the advocate without the accused concerned physically presenting himself in certain situations. Sections 204, 205 and 206 of the CrPC contain instances where appearance made through the pleader can as well be regarded as appearance of the accused. But that principle cannot be carried forward to the situation in Section 167(5) of the Code. The words "made his appearance" in that sub-section cannot be truncated from the particular context in which that expression is used. It is a salutary principle in the sphere of interpretation of statutory clauses that words in a provision must not be understood merely by their ordinary meanings dehors the context in which such words are used.

The words "made his appearance" in Section 167(5) are used along with the preceding words which by themselves form into a composite collocation as thus: "From the date on which the accused was arrested or made his appearance." The purpose of the section is to impose a time schedule for completion of investigation and such time schedule is to commence from either of the said dates and not from the date of registration of the crime or the date of first information. The sublime idea behind this provision is that the investigating agency who gets opportunity to question the accused under Section 161 of the Code cannot be permitted to dodge with or further prolong the investigation without special reasons and in the interest of justice.

The giving of a different interpretation to the words "made his appearance" in Section 167(5) would enable the accused to keep himself away from the court and claim the benefit of discharge from the offence on the ground that investigation was not completed within the prescribed period.

The appearance mentioned in Sections 436 and 437 of CrPC can only mean physical appearance of the accused and not appearance by counsel because the very notion of bail presupposes restraint of the accused and hence the person who wishes to be released on bail is to appear and surrender before the court. The word "appearance" in Section 167(5) cannot be understood different from the same word used in Sections 436 and 437 of the Code.

In the present case, the respondent had not made his physical appearance before the Special Judge at any time before the charge-sheet was laid. Hence there is no question of invoking the bar contemplated in Section 167(5). *State of W.B.* v. *Pranab Ranjan Roy*, (1998) 3 SCC 209: 1998 SCC (Cri) 730: AIR 1998 SC 1887.

Bench Strength 2. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 6-3-1998]

[1932] — S. 167(5) (as amended by S. 4 of W.B. Act of 1988) — Object of — Explained

The purpose of the sub-section is to impose a time schedule for completion of investigation and such time schedule is to commence either "from the date of arrest of the accused or the date when he made his appearance in court". *State of W.B.* v. *Pranab Ranjan Roy*, (1998) 3 SCC 209: 1998 SCC (Cri) 730: AIR 1998 SC 1887.

Bench Strength 2. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 6-3-1998]

[1933] — S. 167(5) (as amended in the State of W.B.) — Provision for passing the order of discharge on the expiry of the prescribed period — *Held, not mandatory — Factors to be considered by the Magistrate before ordering stoppage of investigation, stated*

The order stopping further investigation into the offence and the consequential order of discharge are not intended to be automatic sequel to the failure to complete investigation within the period fixed in the sub-section as is evident from the succeeding words in Section 167(5). Even in a case where the order stopping investigation and the consequent discharge of accused has been made that is not the last word on it because Section 167(6) opens another avenue for moving the Sessions Judge. Therefore, the time schedule shown in Section 167(5) of the Code is not to be treated with rigidity and it is not mandatory that on the expiry of the period indicated therein the Magistrate should necessarily pass the order of discharge of the accused. Before ordering stoppage of investigation the Magistrate shall consider whether, on the facts of that case, further investigation would be necessary to foster interest of criminal justice. The Magistrate at that stage must look into the record of investigation to ascertain the progress of investigation thus far registered. If substantial part of investigation was by then over, the Magistrate should seriously ponder over the question whether it would be conducive to the interest of justice to stop further investigation and discharge the accused. *Nirmal Kanti Roy* v. *State of W.B.*, (1998) 4 SCC 590: 1998 SCC (Cri) 1100: AIR 1998 SC 2322.

Bench Strength 3. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas** and *S. Rajendra Babu*, JJ. [Date of decision: 23-4-1998]

State of W.B. v. Falguni Dutta, (1993) 3 SCC 288: 1993 SCC (Cri) 815, relied on

[1934] — Ss. 167(5) (as substituted for W.B. by W.B. Act 24 of 1988) and 468 — Previous sanction of the State Government under — Necessity to obtain, held, arises only after, and not before, the expiry of the period of six months from the act complained of — *Hence, where the Magistrate extended the statutory time-limit of six months to complete investigation, High Court's order quashing the said proceedings on the ground that sanction for prosecution under S. 92(1), had not been obtained within the first six months, held, bad — Bengal Excise Act, 1909 (5 of 1909) — S. 92(1)*

The officers of the Excise Department of the West Bengal State seized a huge quantity of spirit from the office-cum-godown of a company. Since the spirit was stored without any valid authority, they sent samples of the spirit to the Chemical Examiner for testing. On the same day two persons were arrested and produced before the Magistrate.

The report of the Chemical Examiner was received more than six months after the seizure of the spirit. The officers of the Excise Department thought that the respondents herein, besides the persons initially arrested, were also responsible for the said offence and were liable to be prosecuted under the West Bengal Excise Act, 1909. Therefore, in view of the expiry of the first six months, they sought the order of the Magistrate for continuing the investigation and also sought the State Government's order sanctioning prosecution. The Magistrate granted further time for investigation but at the instance of the respondents the High Court quashed all the proceedings on the ground that the prosecution had failed to apply for sanction before the expiry of the period of six months and that the sanction had not been obtained even by then. Before the Supreme Court, the State contended that when the prosecution report had not been filed there was no scope for quashing the proceedings. On this ground and also on another ground

Allowing the appeal,

Held :

Under Section 92(1) of the Bengal Excise Act, 1909 there is no ban on the Magistrate against taking cognizance of the offence under the Act if one of the two conditions is satisfied. If the prosecution has been instituted within six months of the act alleged there is no question of producing any sanction as the Magistrate would then be free to take cognizance under the Act. But if the aforesaid six months' period is over the court can still take cognizance of the offence under the Act when the prosecution is instituted with the previous sanction of the State Government. After the expiry of the initial period of six months no further period of limitation is prescribed in the Act for instituting the prosecution supported by the sanction. The High Court's view that steps for obtaining sanction should have been adopted before the expiry of the first six months' period has no support in Section 92 or any other provision of the Act. However, even the necessity for obtaining sanction would arise only if the prosecution has not been instituted till the expiry of the said period of six months. Hence, there is no scope for suggesting that the proceedings for securing sanction should have been commenced before the expiry of the said period of six months. (Paras 12 and 13). *State of W.B.* v. *Rashmoy Das*, (2000) 1 SCC 76: 2000 SCC (Cri) 103: AIR 2000 SC 228.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 1-12-1999]

Supdt. and Remembrancer of Legal Affairs v. Mahendra Singh, 1972 Cri LJ 544 (Cal), impliedly approved

(8) Applicability in cases of special statutes

See also under Sections 161-162, above

[1935] — S. 167 — Expanded period of detention under TADA/POTA, for completing investigation — Validity — *In view of execution of terrorist acts in a chillingly efficient manner as a result of high conspiracy linked with anti-national elements both inside and outside the country such a provision, held, reasonable — Constitution of India — Arts. 14 and 21 — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20 — Prevention of Terrorism Act, 2002 — Ss. 49(6) & (7)*

In the instant petitions filed under Article 32, the petitioners challenged the constitutionality of various provisions of the Prevention of Terrorism Act, 2002 (for short "POTA"). They contended that:

In view of the provisions of Section 49(7) there was likelihood of grant of bail only after minimum detention for one year, (*b*) some of the courts had erroneously interpreted the proviso to Section 49(7) to mean that power to grant bail under Section 49(6) could be exercised only after the expiry of the period of one year from the date of detention of the accused.

Dismissing the petitions,

Held :

Section 49 of the Act is similar to Section 20 of TADA, constitutional validity of which has been upheld in *Kartar Singh case*, (1994) 3 SCC 569. Usually the overt and covert acts of terrorism are executed in a chillingly efficient manner as a result of high conspiracy, which is invariably linked with anti-national elements both inside and outside the country. So an expanded period of detention is required to complete the investigation. Such a comparatively long period for solving the case is quite justifiable. Consequently, Sections 49(6) and (7) are not unreasonable. In spite of this, bail could be obtained for an accused booked under POTA if the court is satisfied as postulated in Section 49(7) after hearing the Public Prosecutor. Since such satisfaction has to be arrived at based on the particular facts and after considering the relevant aspects, the unreasonableness attributed to Section 49(7) is not fair. (Para 67). *People's Union for Civil Liberties* v. *Union of India*, (2004) 9 SCC 580: AIR 2004 SC 456.

Bench Strength 2. Coram: **S. Rajendra Babu** and *G.P. Mathur*, JJ. [Date of decision: 16-12-2003]

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899, relied on

[1936] — S. 167 — Bail — Failure to complete investigationp within the statutory period of 180 days — TADA case — *Designated Court not justified in extending the period for completing the investigation without any report of the Public Prosecutor and without the accused being produced and informed by the Designated Court that the question of grant of extension of the period of investigation was under consideration — Validity of order granting extension is to be considered with reference to the facts as existing on the date of the order — Right of the accused to be released on bail on ground of non-filing of challan within the statutory period is enforceable only prior to the filing of the challan and is extinguished on challan being filed — Matter remitted to the Designated Court with a direction to dispose of the bail application pending before it keeping in view the principles laid down in* Hitendra Vishnu Thakur and Sanjay Dutt *cases — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20(4)(bb). Devinderpal Singh* v. *Govt. (NCT of Delhi)*, (1996) 1 SCC 44.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **S.C. Sen**, JJ. [Date of decision: 14-11-1995]

Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602: 1994 SCC (Cri) 1087; Sanjay Dutt v. State, (1994) 5 SCC 410: 1994 SCC (Cri) 1433, followed

[1937] — Ss. 167(2), 57, 437 and 439 — Effect of Amending Act 43 of 1993 whereby S. 20(4)(b), TADA amended and S. 20(4)(bb) inserted — *Modification thereby of S. 167(2), CrPC in relation to TADA matters by substituting "180 days" for "one year" at both places and adding second proviso in S. 167(2) providing for extension of period to one year only on Public Prosecutor showing progress of the investigation and the specific reasons for extension beyond 180 days — Nature of accused's right to get bail under TADA and effect of the 1993 Amendment — Amendment whether to operate retrospectively and apply to cases pending investigation in which charge-sheet or challan not filed till 22-5-1993, the date on which the amendment came into force — Held, S. 167(2) proviso, CrPC r/w S. 20(4)(b), TADA create an indefeasible right in an accused to seek bail on default of investigating agency in completing the investigation within the prescribed period — In such situation Court duty bound to inform the accused of his right to seek bail and enable him to make an application — But release on bail not automatic — Accused must make an application for bail of which notice to be issued to PP to oppose it or secure extension under clause (bb) — Then also, notice of the report submitted by PP for extension under clause (bb), to be issued to the accused for opportunity to oppose the extension on all legitimate and legal grounds — Issuance of notice to both sides and hearing them subserves the ends of justice and fair play — It meets the requirements of natural justice — Further held, the amendment by Act 43 of 1993 being procedural in nature would operate retrospectively and so both clause (b) (as amended) and clause (bb) of S. 20(4) apply to cases pending investigation on 22-5-1993 in which challan/charge-sheet not filed in court — Constitution of India — Art. 22(4) — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20(4) r/w S. 167(2), CrPC. Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 4 SCC 602: 1994 SCC (Cri) 1087: AIR 1994 SC 2623.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 12-7-1994]

[1938] — S. 167(2) proviso — First proviso inserted by S. 49(2), POTA after proviso to S. 167(2) CrPC — Nature of — *Held, the proviso has been inserted in relation to the proviso to S. 167(2) CrPC and not in respect of S. 167(2) — Therefore, what is introduced by way of exception by S. 49(2) POTA is in relation to the proviso to S. 167(2) — Hence contention of the appellant that since in S. 49(2)(a) the period of "15 days" in S. 167(2) CrPC has been substituted with "30 days", therefore S. 49(2)(b) can be resorted to only during the period of 30 days, not acceptable — Prevention of Terrorism Act, 2002 — S. 49(2)(b). Maulavi Hussein Haji Abraham Umarji* v. *State of Gujarat*, (2004) 6 SCC 672: 2004 SCC (Cri) 1815: AIR 2004 SC 3946.

Bench Strength 2. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 29-7-2004]

[1939] — S. 167(2) and its proviso — Provisos inserted by S. 49(2)(b), POTA after proviso to S. 167(2) CrPC — Police remand — Application for, when accused in judicial custody — Time period within which such application has to be made — *Safeguards built therein — Considerations to be kept in mind by Special Judge disposing of such application — Held, there is no restriction that such an application for police remand can be resorted to only during a period of thirty days from the arrest of accused — Acceptance of application for police custody is not as a matter of course — There are inbuilt safeguards, firstly, that the investigation officer must file an affidavit justifying the prayer and secondly, in an appropriate case, the reason for delayed motion — Said prayer is to be considered in its proper perspective, in accordance with law keeping in view the object of POTA and the reasons and/or explanation offered — Prevention of Terrorism Act, 2002 — S. 49(2)(b)*

(8) Applicability in cases of special statutes *(contd.)*

On 27-2-2002 some persons died at Godhra in the State of Gujarat and several persons were injured when allegedly a train was attacked and set ablaze. The first information report was lodged and various persons were arrested in connection with the alleged occurrence. Initially, the case was registered for alleged commission of offences punishable under various provisions of the Penal Code, 1860 and other statutes. Subsequently, an application was filed in the Court of Judicial Magistrate, First Class, Railways seeking addition of offences punishable under Sections 3(1)(*a*), (*b*) and 3(2) of POTA. The appellant was arrested on 6-2-2003. He was remanded to police custody till 11-2-2003 and subsequently the police custody was extended till 13-2-2003. As the application for addition of offences covered by POTA was not pressed earlier, a subsequent application was filed and the Additional Sessions Judge accepted the prayer.

As an application, filed thereafter, for extending the police remand was rejected, a criminal revision was filed before the Sessions Judge. The Special Court was constituted under Section 23 of POTA on 6-3-2003. Sanction order as required under Section 50 of POTA was also passed so far as the appellant was concerned. The revision application which was filed questioning rejection of the prayer for police custody was withdrawn and an application in terms of Section 49(2)(*b*) of POTA was filed on 24-4-2003. The prayer was accepted by the Special Judge, POTA. Questioning the legality of the said order, an appeal under Section 34(1) of POTA was filed before the High Court which came to be dismissed by the impugned judgment, against which the appellant was before the Supreme Court by special leave.

The scope and ambit of Section 49(2) of the Prevention of Terrorism Act, 2002 (in short "POTA") fell for consideration in this appeal.

Dismissing the appeal,

Held :

It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The question is not what may be supposed and has been intended but what has been said. (Paras 16 and 18)

While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (Para 20)

Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself; but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. (Para 21)

Now, the proviso inserted by Section 49(2)(*b*) of POTA is in relation to the proviso to Section 167(2) CrPC and not in respect of Section 167(2). Therefore, what is introduced by way of an exception by Section 49(2)(*b*) of POTA is in relation to the proviso to Section 167(2). That being the position, the interpretation suggested by the appellant that since in Section 49(2)(*a*) the period of "15 days" in Section 167(2) CrPC has been substituted to be "30 days" therefore, Section 49(2)(*b*) can be resorted to only during the period of 30 days, cannot be accepted. Section 49(2)(*b*) of POTA is not controlled by Section 167(2) CrPC. (Paras 25, 6 and 9)

It is to be noted that the acceptance of an application for police custody when an accused is in judicial custody is not as a matter of course. Section 49(2)(*b*) provides inbuilt safeguards against its misuse by mandating the filing of an affidavit by the investigating officer to justify the prayer and in an appropriate case, the reason for delayed motion. The Special Judge before whom such an application is made has to consider the prayer in its proper perspective and in accordance with law keeping in view the purpose for which POTA was enacted, the reasons and/or explanation offered, and pass the necessary order. Therefore, the apprehension of the appellant that there is likelihood of misuse of the provision is without substance. In any event, that cannot be a ground to give an extended meaning to the provision in the manner suggested by the appellant. (Para 25). *Maulavi Hussein Haji Abraham Umarji* v. *State of Gujarat*, (2004) 6 SCC 672: 2004 SCC (Cri) 1815: AIR 2004 SC 3946.

Bench Strength **2**. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 29-7-2004]

Institute of Chartered Accountants of India v. Price Waterhouse, (1997) 6 SCC 312; Crawford v. Spooner, (1846) 6 Moo PC 1: 4 MIA 179; State of Gujarat v. Dilipbhai Nathjibhai Patel, (1998) 3 SCC 234: 1998 SCC (Cri) 737; Stock v. Frank Jones (Tipton) Ltd., (1978) 1 All ER 948: (1978) 1 WLR 231 (HL); Vickers Sons and Maxim Ltd. v. Evans, 1910 AC 444: 79 LJKB 954 (HL); Jumma Masjid v. Kodimaniandra Deviah, AIR 1962 SC 847; Lenigh Valley Coal Co. v. Yensavage, 218 FR 547; Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama, (1990) 1 SCC 277; D.R. Venkatachalam v. Transport Commr., (1977) 2 SCC 273; CST v. Popular Trading Co., (2000) 5 SCC 511, relied on

[1940] — S. 167(2) proviso — Terrorist and Disruptive Activities (Prevention) Act, 1987 — Ss. 20(4) & (8) — Default in submission of charge-sheet within the statutory period — Accused becomes entitled to be released on bail — But if the accused fails to apply for bail when such right accrued, he cannot exercise that right after the charge-sheet has been filed and cognizance has been taken — *Accused's right to be released on bail should not be defeated by keeping the applications pending till the charge-sheet is submitted*

Sub-section (4) of Section 20 of TADA makes the provision of Section 167 of the Code applicable in respect of offences under TADA except that the periods prescribed for the authorised detention in respect of such offences during which the investigation should be completed are different. After the expiry of periods which have been specified in Section 20(4)(*b*) and Section 20(4)(*bb*), the accused for an offence under TADA acquires the right to be released on bail, in terms of proviso (*a*) to Section 167(2) of the Code. This right cannot be defeated by any court if the accused concerned is prepared and does furnish bail bonds to the satisfaction of the court concerned.

This right cannot be exercised after the charge-sheet has been submitted and cognizance has been taken, because in that event the remand of the accused concerned including one who is alleged to have committed an offence under TADA, is not under Section 167(2) but under other provisions of the Code.

If an accused charged with any kind of offence becomes entitled to be released on bail under proviso (*a*) to Section 167(2), that statutory right should not be defeated by keeping the applications pending till the charge-sheets are submitted so that the right which had accrued is extinguished and defeated. *Mohd. Iqbal Madar Sheikh* v. *State of Maharashtra*, (1996) 1 SCC 722: 1996 SCC (Cri) 202.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and *B.P. Jeevan Reddy* and **N.P. Singh**, JJ. [Date of decision: 8-1-1996]

Sanjay Dutt v. State through CBI (II), (1994) 5 SCC 410: 1994 SCC (Cri) 1433, followed

[1941] — S. 167(2) proviso and Ch. XXXIII (Ss. 436 to 450) — Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20(4) — Accused released on bail on ground of default in completion of investigation within the statutory period — He shall be deemed to have been so released under Ch. XXXIII of the Code — *His bail cannot be cancelled on mere filing of charge-sheet — His bail can be cancelled only when a case for cancellation has been made out under S. 437(5) or S. 439(2) of the Code*

Any accused released on bail under proviso (*a*) to Section 167(2) of the Code read with Section 20(4)(*b*) or Section 20(4)(*bb*) TADA, because of the default on the part of the investigating agency to conclude the investigation within the period prescribed, in view of proviso (*a*) to Section 167(2) itself, shall be deemed to have been so released under the provisions of Chapter XXXIII of the Code. It cannot be held that an accused charged of any offence, including offences under TADA, if released on bail because of the default in completion of the investigation, then no sooner the charge-sheet is filed, the order granting bail to such accused is to be cancelled. The bail of such accused who has been released, because of the default on the part of the investigating officer to complete the investigation, can be cancelled, but not only on the ground that after the release charge-sheet has been submitted against such accused for an offence under TADA. For cancelling the bail, the well-settled principles in respect of cancellation of bail have to be made out. In view of deeming provision under proviso (*a*) to Section 167(2), the order granting bail shall be deemed to be one under Section 437(1) or sub-section (2) or Section 439(1) and that order can be cancelled when a case for cancellation is made out under Sections 437(5) and 439(2) of the Code. But for that, the sole ground should not be that after the release of such accused the charge-sheet has been submitted. *Mohd. Iqbal Madar Sheikh* v. *State of Maharashtra*, (1996) 1 SCC 722: 1996 SCC (Cri) 202.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and *B.P. Jeevan Reddy* and **N.P. Singh**, JJ. [Date of decision: 8-1-1996]

Aslam Babalal Desai v. State of Maharashtra, (1992) 4 SCC 272: 1992 SCC (Cri) 870; Raghubir Singh v. State of Bihar, (1986) 4 SCC 481: 1986 SCC (Cri) 511, followed

[1942] — S. 167(2) r/w S. 49(2)(b) of the Prevention of Terrorism Act, 2002 — Accused's right to bail in POTA case on failure of prosecution to complete investigation within statutory period of 90 days — *Prior to expiry of said period, Special Court in exercise of power under S. 49(2)(b) grant-*

(8) Applicability in cases of special statutes *(contd.)*

ing extension of time to complete investigation — Extension of time was proper — Hence, contention that since accused acquired an indefeasible right to be released on bail on the expiry of 90 days from the date of his arrest, the Special Judge was not justified in rejecting the application for grant of bail, held, not sustainable — Prevention of Terrorism Act, 2002 — S. 49(2)(b) (Paras 17 and 18). *Ateef Nasir Mulla* v. *State of Maharashtra*, (2005) 7 SCC 29: 2005 SCC (Cri) 1587: AIR 2005 SC 3293: 2005 Cri LJ 3748.

Bench Strength **2**. Coram: **B.P. Singh** and *S.B. Sinha*, JJ. [Date of decision: 24-8-2005]

Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602: 1994 SCC (Cri) 1087, relied on

[1943] — S. 167 [as amended by S. 43-D(2)(b) of Unlawful Activities (Prevention) Act, 1967] — Extension of time for completion of investigation — Jurisdictional fact — Existence of — *Held, Special Judge had jurisdiction under 1967 Act — Rejection of bail by courts below therefore, proper — Commission of offences under the Act — Relevance of declaration of organisation concerned as "unlawful association" — Held, merely because organisation concerned had not been declared an "unlawful association" when petitioner was arrested, does not mean that the said organisation could not have indulged in terrorist acts or that the petitioner could not have had knowledge of such activities — Hence extension of period of custody under S. 43(2)(b) and denial of bail, justified — National Investigation Agency Act, 2008, S. 21 — Unlawful Activities (Prevention) Act, 1967, Ss. 2(1)(o), 3, 13 and 15 to 24 and S. 43(2)(b) (which amended S. 167 CrPC)*

The petitioner was first arrested for sending money to an extremist organisation. Thereafter during pendency of his bail application before a Single Judge of the High Court, the Government by Notification dated 9-7-2009, in exercise of its powers under Section 3 of the Unlawful Activities (Prevention) Act, 1967, declared the said organisation as an "unlawful association". Therefore, the Single Judge dismissed the petitioner's bail application on the ground of jurisdiction. The petitioner, thereafter filed statutory bail application before the Special Judge, which also was rejected. Thereafter, on an application made by NIA (National Investigation Agency constituted under the National Investigation Agency Act, 2008), the Special Judge extended the period for completion of investigation by a further period of 60 days in terms of Section 43-D(2)(b) of the 1967 Act as amended, read with Section 167 CrPC. The petitioner thereafter, approached the Division Bench of the High Court under Section 21 of the National Investigation Agency Act, 2008 against the orders of the Single Judge and the Special Judge, which by reason of the impugned order was dismissed.

Dismissing both the SLPs,

Held :

The submission that the Unlawful Activities (Prevention) Act, 1967 would not be attracted to the facts of the case is not tenable. On behalf of the petitioners, it was submitted that merely because the organisation concerned had been declared an "unlawful association" when the petitioner was arrested, the said organisation could not have indulged in terrorist acts or that the petitioner could not have had knowledge of such activities. Since the Special Judge had the jurisdiction to extend the time for completion of the investigation, the submissions regarding the grant of statutory bail have to be rejected. (Paras 16 and 17). *Redaul Hussain Khan* v. *National Investigation Agency*, (2010) 1 SCC 521.

Bench Strength **2**. Coram: *Altamas Kabir* and *Cyriac Joseph*, JJ. [Date of decision: 19-11-2009]

[1944] — Ss. 167(1) and 2(h) — 'Investigation' — Scope of — FERA/Customs cases — *Not limited to that made by police officer alone but includes that made by authorised or empowered officer under special Acts such as FERA or Customs Act*

The word 'investigation' cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or empowered or authorised officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation.

It cannot be said that either the Officer of Enforcement or the Customs Officer is not empowered with the power of investigation though not with the power of filing a final report as in the case of a police officer. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

[1945] — S. 167(2) — Entitlement to bail — Delay by Magistrate — Effect — Though complaint under S. 22 TOHO lodged within 90 days, Magistrate delaying in taking of cognizance — Effect — *Even assuming that the complaint under S. 22 TOHO was a police report under S. 173(2)*

CrPC (which it was not), the requirement of filing such report or complaint within 90 days, held, was satisfied on the filing of such report within time — Further held, delay by court in taking cognizance would not mean that a new right to bail under S. 167(2) CrPC has been created — Transplantation of Human Organs Act, 1994, S. 22. Jeewan Kumar Raut v. *CBI*, (2009) 7 SCC 526: (2009) 3 SCC (Cri) 475: (2009) 80 AIC 243 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 7-7-2009]

[1946] — Ss. 167(2) and 173(2) — Applicability to provisions of Transplantation of Human Organs Act, 1994 — Application, scope and implications of S. 22 — Whether a bar to applicability of Ss. 167(2) and 173(2) CrPC — *CBI being an authorised agency under S. 13 TOHO to investigate offences thereunder, registering FIR — S. 22 TOHO prohibiting taking of cognizance except on a complaint made by an appropriate authority — Appellant-accused applying for bail under S. 167(2) CrPC — Held, S. 167(2) CrPC is not attracted for offences under TOHO as police report under S. 173(2) CrPC by necessary implication is forbidden under S. 22 TOHO — Penal Code, 1860, Ss. 120-B r/w 326, 342, 417, 465, 473, 506 and 307 — Transplantation of Human Organs Act, 1994, Ss. 22, 18, 19 and 20*

A case was lodged against the appellants (medical practitioners) in the police station for offences under IPC and Transplantation of Human Organs Act, 1994 (TOHO). The matter was transferred to CBI and it lodged a fresh FIR on 8-2-2008. A-2 was arrested on 10-2-2008 and produced before the Magistrate on 11-2-2008. A-1 surrendered on 17-2-2008 and was produced before the Magistrate on 18-2-2008. Government authorisation was accorded under Section 22 TOHO vide order dated 11-4-2008. A complaint was filed by CBI before the Magistrate for taking cognizance against the appellant medical practitioners for commission of the offences under Section 120-B r/w Sections 326, 342, 417, 465, 473, 506 and 307 IPC and Sections 18, 19 and 20, Transplantation of Human Organs Act, 1994 (TOHO).

Applicability of Section 167(2) CrPC for cognizance taken by the Magistrate under Section 22 TOHO was the question involved in this appeal. A-2 filed a bail application under Section 167(2) CrPC on 9-5-2008. The High Court by the impugned order held that as the complaint was filed within 90 days, even if the Magistrate had delayed in taking cognizance, the petitioners were not entitled to protection under Section 167(2) CrPC.

Dismissing the appeals,

Held :

Section 167(2) CrPC would not apply to provisions under TOHO. Ordinarily although in terms of CrPC, CBI upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded from doing so by reason of the provisions contained in Section 22 TOHO. Section 22 TOHO prohibits taking of cognizance except on a complaint made by an appropriate authority. By reason of Section 22 TOHO, Section 173(2) CrPC by implication is necessarily not applicable. Thus when the question of submitting a report in terms of Section 173(2) would not arise, Section 167(2) CrPC would also not be attracted. (Paras 32 and 25 to 28)

It is one thing to say that the court could take recourse to the procedure laid down in Section 202 CrPC or even reject the complaint but then only because such a course of action could be resorted to by the Magistrate, the same, by itself, would not lead to a conclusion that the complaint petition should have been treated to be a police report; the logical corollary whereof being to invoke the provisions of Section 167(2) CrPC. (Para 29)

Even assuming for the sake of argument that Section 167(2) CrPC requires filing of a report within 90 days and the complaint petition having been filed within the said period, the requirements thereof stood satisfied. Appellant 2 having been arrested on 10-2-2008 and Appellant 1 having surrendered on 17-2-2008 as also the complaint petition having been filed on 29-4-2008, the requirement of Section 167(2) stood satisfied. Only because the court itself took a long time in taking cognizance of the offence i.e. after the expiry of the period of 90 days, the same would not mean that any new right would be created in favour of the appellants thereby. (Paras 32 and 33)

A distinction between a remand of an accused at pre-cognizance stage vis-à-vis the post-cognizance stage is apparent. Whereas the remand to custody at a pre-cognizance stage is to be made in terms of Section 167(2) CrPC, an order of remand of an accused at post-cognizance stage can be effected only in terms of Section 309(2) thereof. (Para 34). *Jeewan Kumar Raut* v. *CBI*, (2009) 7 SCC 526: (2009) 3 SCC (Cri) 475: (2009) 80 AIC 243 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 7-7-2009]

Madhu Bala v. Suresh Kumar, (1997) 8 SCC 476: 1998 SCC (Cri) 111; Dinesh Dalmia v. CBI, (2007) 8 SCC 770: (2008) 1 SCC (Cri) 36; Sanjay Dutt v. State, (1994) 5 SCC 410: 1994 SCC (Cri) 1433; Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047, relied on

Moosakoya v. State of Kerala, 2008 Cri LJ 2388 (Ker), approved

(8) Applicability in cases of special statutes *(contd.)*

[1947] — S. 167 — 'Accused' — Meaning of, in the context — Covers person arrested under FERA or Customs Act — *Different from 'person accused of an offence' under Art. 20(3) — Penal Code, 1860 — S. 11 — General Clauses Act, 1897 — S. 3(42)*

Though the word "person" is defined in the Indian Penal Code (S. 11) and the General Clauses Act [S. 3(42)] which are identical and are not exhaustive but an inclusive one, the words 'accused' or 'accused person' or 'accused of an offence' are not defined either in the Indian Penal Code or in the Indian Evidence Act or in the General Clauses Act, 1897. In the Code of Criminal Procedure also, these words are not defined except an inclusive meaning of the word 'accused' is given in the Explanation to S. 273 of the Code of 1973, of course, confined only to the mode of taking and recording evidence in the course of the trial or other proceedings as envisaged in the said section. Though this explanation of the word 'accused' limited to that S. 273 cannot and should not be strained and stretched to such an extreme extent to make it applicable in all circumstances wherever the word 'accused' appears in the Code, this explanation gives a clue providing or suggesting an answer to the problem.

The prohibitive sweep of Art. 20(3) which imposes the ban on self-accusation reads, "No person accused of any offence shall be compelled to be a witness against himself." To bring a person within the meaning of 'accused of any offence', that person must assimilate the character of an 'accused person' in the sense that he must be accused of any offence.

While referring to a person arrested and detained neither Art. 22 nor S. 167 employs the expression "accused of any offence". Section 24 of the Evidence Act uses the expression 'accused person' whereas in Ss. 25 and 27, the identical expression "person accused of any offence" is used. But in S. 26 neither of these two expressions is used but "any person". It was only while in examining the admissibility or otherwise of a statement of an 'accused person' or "a person accused of any offence", this Court in a series of judgments has dealt with the connotation of these two expressions but not otherwise.

The word 'accused' in the Code denotes different meanings according to the context in which it is deployed; in that sometimes the said word is employed to denote a person arrested, sometimes a person against whom there is an accusation, but who is yet not put on trial and sometimes to denote a person on trial and so on.

An officer-in-charge of a police station who is empowered under S. 156 to investigate on an information received under S. 154 or otherwise takes up the investigation by proceeding to the spot "for the discovery and arrest of the *offender* when he has reason to suspect the commission of an offence" as contemplated under S. 157 of the Code. At that stage, the investigating officer does not suddenly jump to a conclusion that the person against whom the investigation has commenced has committed an offence. But he can arrive at such a conclusion only when the investigation consummates to a finality on the collection of evidence eliminating all suspicion and establishing the commission of the offence. In case the investigating officer arrives at a conclusion that no offence is made out he forwards his final report to that effect.

The view of majority in the impugned judgment that the person arrested under the FERA or Customs Act cannot fall within the meaning of the word 'accused' for invoking S. 167 solely based on the decisions of the Supreme Court, namely *Ramesh Chandra Mehta*, AIR 1970 SC 940: (1969) 2 SCR 461: 1970 Cri LJ 863 as well as *Illias* v. *Collector of Customs, Madras*, AIR 1970 SC 1065: (1969) 2 SCR 613 is not logically concluded for more than one reason.

Firstly, almost all the decisions of the Supreme Court holding that "a person arrested by an Enforcement Officer or Customs Officer, as the case may be, is not a 'person accused of an offence' " have been rendered only in the context of examining the question of admissibility or otherwise of the statement of a person arrested under those special Acts but not with reference to authorising the detention of an arrestee under S. 167 of the Code by a Magistrate and so the dictum laid down in those decisions is clearly distinguishable;

Secondly, in the teeth of the newly introduced explanation to S. 273 of 1973 Code it is made clear that the word 'accused' includes a person against whom any proceeding under Chapter VIII of the Code has been commenced. Thus the explanation gives a clear clue that in given situation the word 'person' can be construed as 'accused' or 'accused person'.

Thirdly, in the Code different expressions are used under various provisions to denote a person involving in a criminal proceeding such as 'offender', 'person', 'accused', 'accused person', "accused of an offence" depending on the nature of the proceeding.

Fourthly, the very legislative change made in S. 436 of the old Code corresponding to S. 398 of the new Code substituting the words "person accused of an offence" in the place of "accused person" as originally stood makes it clear that in the procedural code, these two expressions cannot always denote the same meaning or be construed as synonymous or interchangeable and this legislative change indicates that the Legislature in its wisdom intended to make a clear distinction between these expressions for the reasons mentioned supra.

Fifthly, if the expression 'accused person' and "a person accused of an offence" are to be held denoting the same meaning and interchangeable at all times and situations, it will become fallacious and pernicious in the implementation of the procedural law of the Code.

Sixthly, in interpreting a statute in its true spirit, the right direction should be to give a full and literal meaning to the language aiming ever to show fidelity to the meaningful purpose of the statute and never to make it sterile and impotent by giving a strict literal interpretation putting blinkers for judicial approach; because such interpretation will run counter to the legislative intent.

The word 'accused' in the Code denotes different meanings according to the context in which it is deployed; in that sometimes the said word is employed to denote a person arrested, sometimes a person against whom there is an accusation, but who is yet not put on trial and sometimes to denote a person on trial and so on. The word 'accused' or 'accused person' is used only in a generic sense in S. 167(1) and (2) denoting the 'person' whose liberty is actually restrained on his arrest by a competent authority on well-founded information or formal accusation or indictment. Therefore, the word 'accused' limited to the scope of S. 167(1) and (2) — particularly in the light of Explanation to S. 273 of the Code includes "any person arrested". The inevitable consequence that follows is that "any person is arrested" occurring in the first limb of S. 167(1) of the Code takes within its ambit "every person arrested" under S. 35 of FERA or S. 104 of the Customs Act also as the case may be and the 'person arrested' can be detained by the Magistrate in exercise of his power under S. 167(2) of the Code. In other words, the 'person arrested' under FERA or Customs Act is assimilated with the characteristics of an 'accused' within the range of S. 167(1) and as such liable to be detained under S. 167(2) by a Magistrate when produced before him. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

Supdt. of Customs, C.I.U., Cochin v. P.K. Ummerkutty, 1983 Cri LJ 1860 (Ker); M.K. Ayoob v. Superintendent, C.I.W., Cochin, 1984 Cri LJ 949: 1984 KLT 215 (Ker); N.H. Dave v. Mohmed Akhtar, (1984) 15 ELT 353 (Guj); Senior Intelligence Officer v. M.K.S. Abu Bucker, 1989 LW (Cri) 325, approved

Union of India v. O.P. Gupta, (1990) 2 Del Lawyer 23 (FB), affirmed

Deepak Mahajan v. Directorate of Enforcement, 1991 Cri LJ 1124 (FB) (Del), reversed

[1948] — Ss. 167, 2(h), 4(2), 26(b) and Ch. XII (Ss. 154 to 176) — Authorised or empowered officer under special Acts viz. FERA and Customs Act exercises certain analogous powers of police officers provided under Ch. XII and conducts investigation within the meaning of S. 2(h) *— FERA, 1973 — Ss. 33 to 40, 45 — Customs Act, 1962, Ch. XIII*

Sub-section (1) of S. 167 speaks of the arrest by a police officer and the follow-up investigation by him. Section 35(1) of FERA and S. 104(1) of the Customs Act empower the authorised officer under the relevant provisions to effect arrest of a person against whom there is reason to believe that he has been guilty of an offence under the respective concerned Acts.

Neither the Police Act, 1861 (Act V of 1861) nor any other statute defines the expression 'police officer'. Shortly stated, the main duties of the police are the prevention, detention and investigation of crimes. Though the powers of customs officers and enforcement officers are not identical to those of police officers qua the investigation under Chapter XII of the Code yet the officers under the FERA and Customs Act are vested with certain powers similar to the powers of police officers.

Though an authorised officer of Enforcement or Customs is not undertaking an investigation as contemplated under Chapter XII of the Code, yet those officers are enjoying some analogous powers such as arrest, seizures, interrogation etc. Besides, a statutory duty is enjoined on them to inform the arrestee of the grounds for such arrest as contemplated under Art. 22(1) of the Constitution and S. 50 of the Code. Therefore, they have necessarily to make records of their statutory functions showing the name of the informant, as well as the name of the person who violated any other provision of the Code and who has been guilty of an offence punishable

(8) Applicability in cases of special statutes *(contd.)*

under the Act, nature of information received by them, time of the arrest, seizure of the contraband if any and the statements recorded during the course of the detection of the offence/offences.

The police officer after consummation of the investigation files a report under S. 173 of the Code upon which the Magistrate may take cognizance of any offence disclosed in the report under S. 190(1)(*b*) of the Code whereas the empowered or authorised officer of the special Acts has to file only a complaint of facts constituting any offence under the provisions of the Act on the receipt of which the Magistrate may take cognizance of the said offence under S. 190(1)(*a*) of the Code. After taking cognizance of the offence either upon a police report or upon receiving a complaint of facts, the Magistrate has to proceed with the case as per the procedure prescribed under the Code or under the special procedure, if any, prescribed under the special Acts. Therefore, the word 'investigation' cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or empowered or authorised officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation.

The word 'investigation' though is not shown in any one of the sections of the Customs Act, certain powers enjoyed by the police officer during the investigation are vested on the specified officer of customs. However, in the FERA the word 'investigation' is used in various provisions, namely Ss. 34, 36, 37, 38 and 40 reading, "... any investigation or proceeding under this Act ..." though limited in its scope.

Therefore, it cannot be said that either the Officer of Enforcement or the Customs Officer is not empowered with the power of investigation though not with the power of filing a final report as in the case of a police officer. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

N.H. Dave v. Mohmed Akhtar, (1984) 15 ELT 353 (Guj), approved

[1949] — S. 167(1) — Held, S. 35(2) of FERA or S. 104(2) of Customs Act serve as substitute to S. 167(1)

Neither the Police Act, 1861 (Act V of 1861) nor any other statute defines the expression 'police officer'. Shortly stated, the main duties of the police are the prevention, detention and investigation of crimes. Though the powers of customs officers and enforcement officers are not identical to those of police officers qua the investigation under Chapter XII of the Code yet the officers under the FERA and Customs Act are vested with certain powers similar to the powers of police officers.

No imponderability in construing S. 35(2) of FERA and S. 104(2) of Customs Act that the said provisions replace S. 167(1) and serve as a substitute thereof substantially satisfying all the required basic conditions contained therein and that consequent upon such replacement of sub-section (1) of S. 167, the arrested person under those special Acts would be an accused person to be detained by the Magistrate under sub-section (2) of S. 167. In passing, it may be stated that there is no expression 'police officer' deployed in S. 167(1) nor does it appear in any part of S. 167(2). The authority for detaining a person as contemplated under S. 167(2) is in aid of investigation to be carried on by any prosecuting agency who is invested with the power of investigation. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

Union of India v. O.P. Gupta, (1990) 2 Del Lawyer 23 (FB), affirmed

[1950] — Ss. 167(1), 4(2), 5 and 26(b) — By virtue of S. 4(2) r/w S. 26(b), S. 167 CrPC applicable to special Acts such as FERA or Customs Act to the extent there is no contrary provision therein — *Hence procedure under S. 167 attracted after arrest of a person under S. 35(2) of FERA or S. 104(2) of Customs Act*

The combined operation of Ss. 4(2) and 26(*b*) of the Code is that the offence complained of should be investigated or inquired into or tried according to the provisions of the Code where the enactment which creates the offence indicates no special procedure. Section 4(2) read with S. 26(*b*) CrPC which governs every criminal proceeding as regards the course by which an offence is to be tried and as to the procedure to be followed, renders the provisions of the Code applicable in the field not covered by the provisions of the FERA or Customs Act.

In sum, S. 4 is comprehensive and S. 5 is not in derogation of S. 4(2) and it only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of S. 4(2). In short, the provisions of the Code would be applicable to the extent in the absence of any contrary provision in the special Act or any special provision excluding the jurisdiction or applicability of the Code. The second limb of S. 4(2) itself limits the application of the provisions of the Code.

The submission that as there is no investigation within the terms of the Code in the field of FERA or Customs Act, S. 4(2) of the Code can have no part to play, has to be rejected. The operation of S. 4(2) of the Code is straightaway attracted to the area of investigation, inquiry and trial of the offences under the special laws including the FERA and Customs Act and consequently S. 167 of the Code can be made applicable during the investigation or inquiry of an offence under the special Acts also inasmuch as there is no specific provision contrary to that excluding the operation of S. 167.

It is not necessary to go deep into the question of interpretation of the expression 'otherwise dealt with' except saying that the said expression is very wide and all comprehensive.

Therefore, the conclusion is that a Magistrate before whom a person arrested by the competent authority under the FERA or Customs Act is produced, can authorise detention in exercise of his powers under S. 167. Otherwise the mandatory direction under S. 35(2) of FERA or S. 104(2) of the Customs Act, to take every person arrested before the Magistrate without unnecessary delay when the arrestee was not released on bail under sub-section (3) of those special Acts, will become purposeless and meaningless and to say that the courts even in the event of refusal of bail have no choice but to set the person arrested at liberty by folding their hands as a helpless spectator in the face of what is termed as "legislative casus omissus" or legal flaw or lacuna, it will become utterly illogical and absurd. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

[1951] — Ss. 167(1) and (2) — When a person arrested under a special Act like S. 35(1) of FERA or S. 104(1) of Customs Act is produced before Magistrate under S. 35(2) or S. 104(2) thereof, held, Magistrate has jurisdiction to authorise detention of that person under S. 167(2)

Sub-sections (1) and (2) of S. 167 are squarely applicable with regard to the production and detention of a person arrested under the provisions of S. 35 of FERA and S. 104 of Customs Act. The Magistrate has jurisdiction under S. 167(2) to authorise detention of a person arrested by any authorised officer of the Enforcement under FERA and taken to the Magistrate in compliance of S. 35(2) of FERA. *Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

Union of India v. O.P. Gupta, (1990) 2 Del Lawyer 23 (FB), affirmed

Dalam Chand Baid v. Union of India, 1982 Cri LJ 747: (1982) 21 DLT 144 (Del), overruled

[1952] — S. 167(2) — Applicability of S. 36-A(4) proviso, Narcotic Drugs and Psychotropic Substances Act — Conditions thereunder not having been satisfied, bail granted — *Appellant-accused arrested under Ss. 24, 29, 30 & 38, Narcotic Drugs and Psychotropic Substances Act and remanded to judicial custody for fifteen days, period being extended from time to time — Whether allowing by trial court of two consecutive applications filed by Respondent 1 (Narcotics Control Bureau) on different dates, for extension of detention of appellant beyond 180 days, up to a further period of six months, for completion of investigation and filing of complaint, which would have allegedly brought total custody to 1 year and 2 days, met necessary conditions under S. 36-A(4) proviso — Determination of — Dismissal of appellant's bail application under default clause — Propriety — Applying* Hitendra Thakur case, *(1994) 4 SCC 602, reiterated, for seeking extension of time, Public Prosecutor, after an independent application of his mind to the request of investigating agency, is required to make a report to Designated Court, indicating therein progress of investigation and disclosing justification for keeping accused in further custody to enable investigating agency to complete investigation — His report must disclose, on the face of it, that he applied his mind and was satisfied with progress of investigation and considered grant of further time to complete investigation necessary — Report of Public Prosecutor is not merely a formality but is very vital, because consequence of its acceptance affects liberty of accused — Reiterated further, request of investigating officer for extension of time is no substitute for report of Public Prosecutor —*

(8) Applicability in cases of special statutes *(contd.)*

Herein, applications for extending detention of appellant, filed by investigating officer of Respondent 1, did not indicate, even remotely, any application of mind on part of Public Prosecutor — Further, they did not indicate progress of investigation, nor compelling reasons, which required extension of custody beyond 180 days — These applications were allowed on the day of filing itself, which also reveals that no notice was issued to appellant — Hence, held, extensions granted to investigating department under proviso to S. 36-A(4) did not satisfy conditions laid down therein and also did not even remotely satisfy tests laid down in Hitendra Thakur case, therefore, being contrary to law, struck down accordingly — Hence, orders of courts below set aside and directions for releasing appellant on bail issued — Narcotic Drugs and Psychotropic Substances Act, 1985', S. 36-A(4) & proviso thereto and Ss. 24, 29, 30 & 38 (Paras 13 to 15, 18 to 23 and 25). *Sanjay Kumar Kedia* v. *Narcotics Control Bureau*, (2009) 17 SCC 631: 2010 Cri LJ 2054: (2010) 1 ECrN 862 (SC): (2010) 87 AIC 52 (SC).

Bench Strength **2**. Coram: *H.S. Bedi* and *Dr. B.S. Chauhan*, JJ. [Date of decision: 20-8-2009]

Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602: 1994 SCC (Cri) 1087, applied

Sanjay Kumar Kedia v. Narcotics Control Bureau, (2008) 2 SCC 294: (2008) 1 SCC (Cri) 346; Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453: 2001 SCC (Cri) 760, referred to

[1953] — S. 167(2) — Extension of detention periods stated therein, by special statutes — Stringent preconditions to be strictly followed — Extension of maximum period of detention of accused from 180 days up to one year, if investigation not completed within 180 days — Stringent preconditions therefor, restated — *Constitution of India — Arts. 22 and 21 — Narcotic Drugs and Psychotropic Substances Act, 1985', S. 36-A(4) proviso*

The maximum period of 90 days fixed under Section 167(2) CrPC has been increased to 180 days for several categories of offences under the NDPS Act, 1985, but S. 36-A(4) proviso authorises a yet further period of detention which may in total go up to one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:

(*1*) a report of the Public Prosecutor,

(2) which indicates the progress of the investigation, and

(*3*) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and

(*4*) after notice to the accused. (Paras 12 and 10). *Sanjay Kumar Kedia* v. *Narcotics Control Bureau*, (2009) 17 SCC 631: 2010 Cri LJ 2054: (2010) 1 ECrN 862 (SC): (2010) 87 AIC 52 (SC).

Bench Strength **2**. Coram: *H.S. Bedi* and *Dr. B.S. Chauhan*, JJ. [Date of decision: 20-8-2009]

[1954] — Ss. 167(2) proviso, 437 and 4 — Applicability of — Held, not excluded by any of the provisions of NDPS Act — *Person arrested for commission of an offence under NDPS Act can claim release on bail on the expiry of total period specified in proviso to S. 167 CrPC if the complaint is not filed within that period — S. 37 not inconsistent with S. 167(2) CrPC — S. 37(1)(b) applies only when question of granting bail arises on merits and not when grant of bail is automatic on account of default in filing complaint within the specified period — Limitations on granting of bail specified under S. 37(1) NDPS Act are in addition to limitations provided under S. 437 CrPC and they do not exclude applicability of the proviso to S. 167(2) — Distinction between S. 437(1)(i) CrPC and S. 37(1)(b) NDPS Act — S. 37 NDPS Act is more stringent — Provisions of S. 20 TADA Act and S. 37 NDPS Act compared — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 37, 36-A, 36-C and 51*

The limitations on granting of bail specified in clause (*b*) of sub-section (1) of Section 37 come in only when the question of granting bail arises on merits. By its very nature the provision is not attracted when the grant of bail is automatic on account of the default in filing the complaint within the maximum period of custody permitted during investigation by virtue of sub-section (2) of Section 167 CrPC. The only fact material to attract the proviso to sub-section (2) of Section 167 is the default in filing the complaint within the maximum period specified therein to permit custody during investigation and not the merits of the case which till the filing of the complaint are not before the court to determine the existence of reasonable grounds for forming the belief about the guilt of the accused. It cannot be said that this belief can be formed during investigation by reference to the contents of the case diary even before the charge-sheet has been filed. This is fallacious. Till the complaint is filed the accused is supplied no material from which he can discharge the burden placed on him by Section 37(1)(*b*) of the NDPS Act. (Para 10)

Sub-section (2) of Section 167 CrPC has been expressly applied by Section 36-A of the Act and the scheme of the Act is that the provisions of the Code would apply except where there is any inconsistent provision in this Act in relation to arrests made under this Act. It is this context in which Section 37(1)(*b*) has to be construed wherein are specified the limitations on granting of bail. (Para 11)

The limitation on the power to release on bail in Section 437 CrPC is in the nature of a restriction on that power, if reasonable grounds exist for the belief that the accused is guilty. On the other hand, the limitation on this power in Section 37 of the NDPS Act is in the nature of a condition precedent for the exercise of that power, so that, the accused shall not be released on bail *unless* the court is satisfied that there are reasonable grounds to believe that he is not guilty. Under Section 437 CrPC it is for the prosecution to show the existence of reasonable grounds to support the belief in the guilt of the accused to attract the restriction on the power to grant bail; but under Section 37 NDPS Act it is the accused who must show the existence of grounds for the belief that he is not guilty, to satisfy the condition precedent and lift the embargo on the power to grant bail. This appears to be the distinction between the two provisions which makes Section 37 of the NDPS Act more stringent. (Para 12)

Provision in Section 37 to the extent it is inconsistent with Section 437 of the Code of Criminal Procedure supersedes the corresponding provision in the Code and imposes limitations on granting of bail in addition to the limitations under the Code of Criminal Procedure as expressly provided in sub-section (2) of Section 37. These limitations on granting of bail specified in sub-section (1) of Section 37 are in addition to the limitations under Section 437 of the Code of Criminal Procedure and were enacted only for this purpose; and they do not have the effect of excluding the applicability of the proviso to sub-section (2) of Section 167 CrPC which operates in a different field relating to the total period of custody of the accused permissible during investigation. (Para 13)

Notwithstanding the substitution of Section 37 in the NDPS Act in its present form by Act 2 of 1989 subsequent to the enactment of the TADA Act, there is nothing in Section 37 of the NDPS Act similar to sub-section (4) of Section 20 of the TADA Act even though there is striking similarity of the provision with sub-sections (8) and (9) of Section 20 of the TADA Act. The legislative intent of not excluding the applicability of the proviso to sub-section (2) of Section 167 CrPC in cases of arrest made for commission of offences under the NDPS Act, is quite evident. (Para 15)

It is settled that the court will have no power of remand of an accused to any custody unless the power is conferred by law. The power must, therefore, be traced to some provision of the statute. There is clear mention of Section 167 CrPC in the NDPS Act for the exercise of this power. Ordinarily, there must also be an outer limit prescribed by specification of the total period of permissible remand during investigation. This too is provided in Section 167. To exclude merely this part of Section 167, an express provision in the statute was necessary, assuming there could be conferment of power of remand unlimited in point of time. (Para 16). *Union of India* v. *Thamisharasi*, (1995) 4 SCC 190: 1995 SCC (Cri) 665.

Bench Strength **2**. Coram: **J.S. Verma** and *Sujata V. Manohar*, JJ. [Date of decision: 1-5-1995]

Natabar Parida v. State of Orissa, (1975) 2 SCC 220: 1975 SCC (Cri) 484, relied on

Narcotics Control Bureau v. Kishan Lal, (1991) 1 SCC 705: 1991 SCC (Cri) 265, distinguished

[1955] — S. 167 — Powers of Special Court dealing with NDPS Act cases to pass remand order in EC Act cases — *Whether the Special Court dealing with the EC Act cases as well as the NDPS Act cases had power to remand an accused arrested under the EC Act after the said court ceased to be a Special Court under the EC Act but continued as such under the NDPS Act — Held, the remand orders passed by the Special Court long after it had ceased to exercise jurisdiction in cases under the EC Act were without jurisdiction — Special Court dealing with the NDPS Act cases exclusively has no power to deal with the cases under the EC Act — Essential Commodities (Special Provisions) Act, 1981 — S. 11 — T.N. Essential Trade Articles (Regulation of Trade) Order, 1984, Cls. 4(i) and 19(1) — T.N. Essential Commodities (Regulation of Distribution by Card System) Order, 1982, Cl. 6(4) — Essential Commodities Act, 1955 — Ss. 12-AA & 12-A [as inserted by the Essential Commodities (Special Provisions) Act, 1981 — S. 11] and 7(1)(a)(ii)*

The accused-respondents herein were alleged to have committed offences under the Essential Commodities Act in the year 2000 and were remanded to judicial custody from time to time by the Special Court which had ceased to function as a Special Court in respect of the cases under the EC Act due to the lapse of EC (Special Provisions) Act, 1981 by efflux of time in 1998, but continued to exercise powers relating to cases under the NDPS Act. The appellant State had challenged the order of the High Court which had held the orders of remand passed

(8) Applicability in cases of special statutes *(contd.)*

by the aforesaid Special Court in cases under the EC Act, long after it ceased to be a Special Court, as invalid.

Dismissing the appeals by the State,

Held :

The period during which the EC (Special Provisions) Act was in force the Special Court constituted for trial of offences under the EC Act had exclusive jurisdiction to try such cases. The Special Court had also the power to pass order of remand under Section 167 of the CrPC but the position changed after the EC (Special Provisions) Act lapsed by efflux of time in 1998. Thereafter, the position that used to prevail before the EC (Special Provisions) Act was enforced, stood restored and the Judicial Magistrates who were previously competent to try the EC Act cases got the jurisdiction to deal with such cases. Therefore, the remand orders passed by the Special Court long after it had ceased to exercise jurisdiction in cases under the EC Act are incompetent. (Para 16)

Further, the Special Court constituted for the NDPS Act cases is a court of exclusive jurisdiction for trial of the particular class of cases provided under the NDPS Act and it has not been vested with power of a Judicial Magistrate for the purpose of dealing with the EC Act cases. Hence, the Special Court constituted for trial of cases under the NDPS Act cannot exercise the power of remand of an accused arrested in the EC Act case. (Para 17). *State of T.N.* v. *Paramasiva Pandian*, (2002) 1 SCC 15: 2002 SCC (Cri) 62: AIR 2001 SC 2972: (2002) 1 KLJ 134: (2002) 140 ELT 327.

Bench Strength **2**. Coram: **D.P. Mohapatra** and *K.G. Balakrishnan*, JJ. [Date of decision: 30-10-2001]

[1956] — S. 167(2) proviso — Applicability — Held, applicable even in cases under NDPS Act — *Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 37. Manoj* v. *State of M.P.*, (1999) 3 SCC 715: 1999 SCC (Cri) 478: AIR 1999 SC 1403: 1999 Cri LJ 2095.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 5-4-1999]

[1957] — Ss. 167(5), 173(2), 2(x) and (w) — Special Court constituted under S. 12-A, Essential Commodities Act empowered to exercise powers under S. 167(5), CrPC to order stoppage of investigation in case of non-conclusion of investigation within six months even in an otherwise warrant case under S. 7(1)(a)(ii) — *By virtue of proviso to cl. (f) of S. 12-AA(1), offence under S. 7(1)(a)(ii), though a warrant case within the meaning of S. 2(x) CrPC, would be treated as a summons case within S. 2(w) of the Code — But even after Special Court's order of stoppage of investigation under S. 167(5), officer-in-charge of police station obliged to file the police report under S. 173(2) CrPC and Special Court can entertain such report restricted to six months' investigation and take cognizance on that basis — Essential Commodities Act, 1955 — Ss. 12-AA(1)(b), (c) and (f) proviso, 12-A, 12-AC and 7(1)(a)(ii)*

In the case of the offence punishable under S. 7(1)(*a*)(*ii*) of the Act which is tried by a Special Court constituted under S. 12-A, the provision of sub-section (5) of S. 167 of the Code gets attracted if the investigation has not been completed within the period allowed by that sub-section. After the constitution of Special Courts all offences under the Act have to be tried by the Special Court of that area in a summary way by applying the provisions of Ss. 262 to 265 (both inclusive) of the Code. The proviso to clause (*f*) of S. 12-AA(1) of Essential Commodities Act places a fetter on the power of the court in the matter of passing a sentence on conviction, namely, that notwithstanding the fact that Section 7(1)(*a*)(*ii*) prescribes a punishment extending up to seven years and fine, Special Court shall not pass a sentence of imprisonment for a term exceeding two years. It is this proviso which attracts the definition of a summons case, the trial whereof must be undertaken in accordance with the procedure outlined in Chapter XX of the Code. The power conferred by sub-section (5) of S. 167 can be invoked by the Special Court by virtue of clause (*c*) of S. 12-AA(1) of the Act. A Special Court is expressly empowered by clause (*c*) of S. 12-AA(1) to exercise the same powers which a Magistrate having jurisdiction to try a case may exercise under S. 167 of the Code in relation to an accused person who has been forwarded to him under that provision. Therefore, the Special Court can stop further investigation into the offence if the investigation is not concluded within a period of six months from the day of arrest of the accused person unless for special reasons and in the interest of justice the continuation of the investigation beyond that period is necessary. In the present case the officer making the investigation had not sought the permission of the Special Court to continue with the investigation even after the expiry of six months. The object of this sub-section clearly is to ensure prompt investigation into an offence triable as summons case to avoid hardship and harassment to the accused person.

The police report under S. 173(2) has to be submitted as soon as the investigation is completed. If the investigation has been stopped on the expiry of six months or the extended period, if any, by the Magistrate in exercise of power conferred by sub-section (5) of S. 167 of the Code, the investigation comes to an end and, therefore, on the completion of the investigation Section 173(2) enjoins upon the officer in charge of the police station to forward a report in the prescribed form. There is nothing in sub-section (5) of S. 167 to suggest that if the investigation has not been completed within the period allowed by that sub-section, the officer in charge of the police station will be absolved from the responsibility of filing the police report under S. 173(2) of the Code on the stoppage of the investigation. Therefore, the Special Court was competent to entertain the police report restricted to six months' investigation and take cognizance on the basis thereof. In this case the High Court erred in quashing the order of the Special Court taking cognizance of the offence on the police report i.e. charge-sheet submitted under S. 173(2) of the Code. *State of W.B.* v. *Falguni Dutta*, (1993) 3 SCC 288: 1993 SCC (Cri) 815.

Bench Strength 2. Coram: **A.M. Ahmadi** and *M.M. Punchhi*, JJ. [Date of decision: 5-5-1993]

Kanta Dey v. State of W.B., 1986 Cal CrLR 158: (1986) 1 CHN 267; Babulal Agarwal v. State, (1987) 1 CHN 218, ***overruled***

High Court of A.P. v. Anjaneyulu, 1986 Cri LJ 1456: (1986) 1 Andh LT 301: (1986) 1 APLJ (HC) 357; Jnan Prakash Agarwala v. State of W.B., (1992) 1 CHN 213, approved

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— S. 168 *See* Ss. 154 to 173

See also Ss. 154 to 173 and 482

See also Ss. 157 to 172 and 198

See also Ss. 157 to 173

See also Ss. 157, 160 to 168

See also Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311

See also Ss. 172, 168 and 157

— S. 169 *See also* S. 169, Criminal Procedure Code, 1898, p. 1036 in Vol. 2

— S. 169 *See* Ss. 154 to 173

See also Ss. 154 to 173 and 482

See also Ss. 154, 155, 156, 157, 162, 169, 170 and 173

See also Ss. 156, 157, 169, 173 and 190

See also Ss. 157, 156 and 169

See also Ss. 157, 156, 169, 170, 173 and 190 & 173(8)

See also Ss. 157 to 173

See also Ss. 157 to 172 and 198

See also Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311

See also Ss. 170, 169, 173, 2(h), 24 and 482

See also Ss. 170, 169 and 173(2)

See also Ss. 173(2), 169, 190, 200 and 203

See also Ss. 173(2), 169 and 203 & 190(1)

See also Ss. 190, 173(2), 169, 200, 202 and 204

See also Ss. 190(1), 173(2), 169, 200 and 202

See also Ss. 197, 207, 169 and 170

See also Ss. 482 and 154, 155, 156, 157, 162, 169, 170, 173

See also Ss. 482, 190(1)(b), 204, 173, 169 and 362

[1958] — Ss. 169 and 195 — Stage at which report under S. 169 may be filed — *Appellants filing report under S. 169 CrPC before the Magistrate to discharge the accused persons involved in serious offences — High Court stating (i) that by filing the cancellation report the appellants had shown scant regard to the proceedings before the Sessions Court and the High Court as on two occasions the petitions for anticipatory bail were rejected, (ii) that the appellants tried to interfere with the administration of justice, and (iii) that serious action should be taken against them — Held, if at the stage of grant or refusal of anticipatory bail certain aspects of the case are considered but later if the investigating agency files a report under S. 169 CrPC, then such a step would not amount to interference with the administration of justice — Observations made by High Court, held, neither justified nor called for in the case* (Paras 2 to 4). *Satish Sharma* v. *State of Gujarat*, (2002) 10 SCC 323: 2003 SCC (Cri) 1442: AIR 2003 SC 648.

Bench Strength 2. Coram: *S. Rajendra Babu* and *P. Venkatarama Reddi*, JJ. [Date of decision: 5-12-2002]

[1959] — S. 169 — Police report under, for release of certain other persons because of deficient evidence accepted by Magistrate — *Magistrate's order approving the report, held, not one of acquittal or discharge so as to bar trial of the accused* (Para 11). *Ravikant Bhagoji Dhumal* v. *State of Maharashtra*, 1991 Supp (1) SCC 385: 1991 SCC (Cri) 683.

Bench Strength 2. Coram: **L.M. Sharma** and *K. Ramaswamy*, JJ. [Date of decision: 15-11-1990]

Pradyum Narain Pandey v. State, 1968 All LJ 768, approved

— **S. 170** *See also* S. 170, Criminal Procedure Code, 1898, p. 1036 in Vol. 2

— **S. 170** *See* Ss. 154 to 173

See also Ss. 154 to 173 and 482

See also Ss. 154, 155, 156, 157, 162, 169, 170 and 173

See also Ss. 156, 157, 170, 173(8) and 190

See also Ss. 157, 156, 169, 170, 173 and 190 & 173(8)

See also Ss. 157 to 173

See also Ss. 157 to 172 and 198

See also Ss. 157, 160, 167, 170, 190 and 319

See also Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311

See also Ss. 167 (as stood before 1978 amendment) and 170

See also Ss. 167 proviso (a) (as stood prior to 1978 amendment) 170 and 437

See also Ss. 197, 170 and 173(2)

See also Ss. 197, 207, 169 and 170

See also Ss. 207, 209, 309, 170, 190 and 2(g)

See also Ss. 482 and 154, 155, 156, 157, 162, 169, 170, 173

[1960] — Ss. 170, 169 and 173(2) — Expressions "charge-sheet" and "final report" — Meaning

The expressions "charge-sheet" or "final report" are not used in the Criminal Procedure Code, but it is understood in Police Manuals of several States containing the rules and the regulations to be a report by the police filed under Section 170 of the Code, described as a "charge-sheet". In case of reports sent under Section 169 i.e. where there is no sufficiency of evidence to justify forwarding of a case to a Magistrate, it is termed variously i.e. referred charge, final report or summary. (Para 10). *Gangadhar Janardan Mhatre* v. *State of Maharashtra*, (2004) 7 SCC 768: (2004) 114 DLT 193.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 28-9-2004]

[1961] — Ss. 170, 169 and 173(2) — Expressions "charge-sheet" and "final report" — Meaning

The expressions "charge-sheet" or "final report" are not used in CrPC, but it is understood in Police Manuals of several States containing the rules and the regulations to be a report by the police filed under Section 170 CrPC, described as a "charge-sheet". In case of reports sent under Section 169 i.e. where there is no sufficiency of evidence to justify forwarding of a case to a Magistrate, it is termed variously i.e. referred charge, final report or summary. (Para 13). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404, relied on

[1962] — Ss. 170, 169, 173, 2(h), 24 and 482 — Charge-sheet — Filing of — Court cannot direct investigating officer to take opinion of Public Prosecutor for filing charge-sheet — *Investigation and prosecution are two different aspects of administration of criminal justice — Formation of opinion as to whether on the material collected a case is made out to place the accused for trial is the exclusive function of the officer in charge of the police station and/or his superior officers — Penal Code, 1860 — Ss. 498-A and 304-B*

A young bride committed suicide in her nuptial home within seven months of her marriage. An inquiry under Section 174(3) CrPC was held. The Sub-Divisional Magistrate conducted the inquiry and submitted a report holding that it was conclusively proved that due to mental restlessness she had committed suicide and no one is responsible and hence it was informed that her death was not due to dowry harassment. However, the police continued with the investigation and submitted a challan against the deceased's husband and his mother for the offence under Sections 304-B and 498-A IPC. The deceased's father, the first respondent, was not satisfied with the challan as the deceased's husband's sister, the appellant, and her father were not arraigned as accused. Hence he moved the High Court under Section 482 CrPC. A Single Judge of the High Court disposed of the petition under Section 482 directing that the papers be placed before the Public Prosecutor "as it is without any further investigation and he shall render an impartial opinion on the matter and thereafter an amended charge-sheet shall be filed in the concerned court". The appellant's father filed a petition before the Single Judge for recalling it on the main ground that neither he nor his daughter (appellant) was heard nor were they made parties in the proceedings. But the Single Judge dismissed the petition on the main premise that Section 362 CrPC contains a bar against recalling any order passed under the Code. Hence the appellant filed the present appeal to challenge both the orders.

Allowing the appeals,

Held :

In this case the High Court has committed an illegality in directing the final report to be taken back and to file a fresh report incorporating the opinion of the Public Prosecutor. Such an order cannot stand legal scrutiny. The formation of the opinion, whether or not there is a case to place the accused on trial, should be that of the officer in charge of the police station and none else. There is no stage during which the investigating officer is legally obliged to take the opinion of a Public Prosecutor or any authority, except the superior police officer in the rank as envisaged in Section 36 of the Code. A Public Prosecutor is appointed, as indicated in Section 24 CrPC, for conducting any prosecution, appeal or other proceedings in the court. He has also the power to withdraw any case from the prosecution with the consent of the court. He is the officer of the court. Thus the Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not in the scheme of the Code for supporting or sponsoring any combined operation between the investigating officer and the Public Prosecutor for filing the report in the court. (Paras 19, 11, 10 and 12). *R. Sarala* v. *T.S. Velu*, (2000) 4 SCC 459: 2000 SCC (Cri) 823: AIR 2000 SC 1731: 2000 Cri LJ 2453.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 13-4-2000]

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150: 1955 Cri LJ 526; Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18: 46 Cri LJ 413; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: 1968 Cri LJ 97; R. v. Metropolitan Police Commr., (1968) 1 All ER 763: (1968) 2 QB 118: (1968) 2 WLR 893 (CA); Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307; State v. Raj Kumar Jain, (1998) 6 SCC 551: 1998 SCC (Cri) 1485, relied on

[1963] — Ss. 170 and 173 — Opinion of officer in charge of the police station as to whether accused/case to be sent to Magistrate for trial — Nature of — Word "investigation" in S. 173 — Scope — *Held (per curiam), said word includes the abovesaid opinion, and the said opinion is not legal evidence — Further, at the stage of S. 173(2), question of interpretation of legal evidence does not arise*

The importance of the opinion formed by the officer in charge of the police station is seen from the fact that the opinion of the officer in charge of the police station is the basis of the report based on which the competent Magistrate must determine whether to take cognizance or not. Even a competent Magistrate cannot compel the police officer concerned to form a particular opinion. Although the Magistrate may have certain supervisory powers under CrPC, it cannot be said that when the police submits a report that no case has been made out for sending the accused for trial, it is open to the Magistrate to direct the police to file a charge-sheet. (Para 21)

The term "investigation" under Section 173(2) of the Criminal Procedure Code includes the opinion of the officer in charge of the police station as to whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to the court concerned or not. This opinion is not legal evidence. At the stage of Section 173(2) the question of interpretation of legal evidence does not arise. In any event, that function is that of the courts. (Para 16)

Once the jurisdiction is conferred on CBI to investigate an offence by virtue of a notification under Section 3 the Delhi Special Police Establishment Act, 1946 the powers of investigation are governed by the statutory provisions under the general law applicable to such investigation and they cannot be curtailed by any executive instruction issued under Section 4(1) of the 1946 Act. (Paras 25 and 24)

In Supreme Court monitored CBI cases, the Supreme Court is concerned with ensuring proper and honest performance of its duty by CBI and that the Supreme Court is not concerned with the merits of the accusations in the investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent court, according to the ordinary procedure prescribed by law. (Para 30)

Under the CBI Manual, the officer in charge of the police station is the SP. In this connection clauses 6.1 and 19.15 of the CBI (Crime) Manual, 2005 which though the Manual not being binding on the Supreme Court in Supreme Court monitored CBI cases, nonetheless throws light on the controversy in hand. (Para 31)

As held in *Sushil Kumar Modi case*, (1996) 6 SCC 500, in case of any difference of opinion between officers of CBI in respect of the investigation, the final decision would not be taken by the Director himself or by the Director merely on the opinion of the Legal Department of CBI, but the matter would be decided according to the opinion of the Attorney General for India for the purpose of investigation and filing of the charge-sheet against any individual. In that event, the opinion would be sought from the Attorney General after making available to him the opinions expressed on the subject by the persons associated with the investigation as a part of the materials. (Para 22)

The entire investigating team as well as the law officers of CBI were *ad idem* in their mind. They had recommended prosecution. It was only the Director of Prosecution and the Senior Public Prosecutor who had opined that a closure report should be filed. It may be noted that the Senior Public Prosecutor does not find place in clause 6.1 of the CBI Manual which refers to the administrative hierarchy of CBI. Further, the Director of Prosecution is the only CBI officer who had dissented from the opinion of the investigating team including the SP. It appears that this opinion is also based only on interpretation of legal evidence. Moreover, as can be seen from the status report dated 31-12-2004, the Director, CBI has not given his independent opinion. He has merely relied upon the opinion of the Attorney General. The Director, CBI expressing an opinion and then referring the matter to the Attorney General can be understood. However, under the above circumstances there was no difference of opinion in the matter of investigation between the officers concerned of CBI and, therefore, there was no question of the Director, CBI referring the matter to the Attorney General for India. (Para 32)

It cannot be understood why an opinion of Senior Public Prosecutor had been taken in the present case. He is not a member of the hierarchy. The SP is not legally obliged to take his opinion. In the circumstances, when there was no difference of opinion in the team concerned, the question of seeking opinion of the Attorney General did not arise. Lastly, even under clause 19.15 of the CBI Manual it is expressly stated that the report of the SP should be prepared personally by the SP and that the internal differences of opinion among CBI officers should not find place in the SP's report. (Para 32)

Keeping in mind the scheme of Sections 168 to 170 and 173 CrPC, in the facts and circumstances of this case the entire material collected by CBI along with the report of the SP is directed to be placed before the court/Special Judge concerned in terms of Section 173(2) CrPC. The decision to accept or reject the report of the SP shall be that of the court/Special Judge concerned, who will decide the matter in accordance with law. It is made clear that none of the other opinions/recommendations including that of the Attorney General for India or the CVC shall be forwarded to the court/Special Judge concerned. (Paras 32 and 34)

In an earlier order the Supreme Court had given time to CBI to complete legal scrutiny when the Supreme Court had been told that there was a difference of opinion in the administrative hierarchy of CBI. However, after going through the recommendations of the above officers, as it has been found that there was no difference of opinion of the officers concerned there was no question of reference to the Attorney General. The status report dated 31-12-2004 is rejected as it is a charade of the performance of duty by CBI. Thus, a case for judicial review is made out. (Para 33)

In matters after matters, it is found that the efficacy and ethics of the governmental authorities are progressively coming under challenge before the Supreme Court by way of PIL for failure to perform their statutory duties. If this continues, a day might come when the rule of law will stand reduced to "a rope of sand". (Para 35)

Per Sinha, J. (concurring)

The Delhi Special Police Establishment Act, 1946 indisputably applies in regard to charges of corruption made against public servants. The CBI Manual is subject to the provisions of Criminal Procedure Code. In case of conflict, although none has been pointed out in the present case, evidently, CrPC shall prevail. (Paras 38 and 43)

Subject to the above, the opinion expressed by the learned Brother Kapadia, J. is concurred with. (Para 49). *M.C. Mehta (Taj Corridor scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264: AIR 2007 SC 1087: (2007) 53 AIC 192 (SC).

Bench Strength 3. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150: 1955 Cri LJ 526; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: (1967) 3 SCR 668: 1968 Cri LJ 97; R. Sarala v. T.S. Velu, (2000) 4 SCC 459: 2000 SCC (Cri) 823; K. Veeraswami v. Union of India, (1991) 3 SCC 655: 1991 SCC (Cri) 734; Satya Narain Musadi v. State of Bihar, (1980) 3 SCC 152: 1980 SCC (Cri) 660; Kaptan Singh v. State of M.P., (1997) 6 SCC 185: 1997 SCC (Cri) 870; Vijender v. State of Delhi, (1997) 6 SCC 171: 1997 SCC (Cri) 857; Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307; Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195: 2003 SCC (Cri) 1314; Union of India v. Sushil Kumar Modi, (1996) 6 SCC 500; Union of India v. Sushil Kumar Modi, (1997) 4 SCC 770, followed

Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288: 1987 SCC (Cri) 82; S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; Hemant Dhasmana v. CBI, (2001) 7 SCC 536: 2001 SCC (Cri) 1280, relied on

[1964] — Ss. 170, 173, 36 and 24 — Question whether accused/cases to be sent to Magistrate for trial — Determination of — *Person solely authorised to have discretion in the matter, held (per curiam), is the officer in charge of a police station — Opinion as to whether or not there is a case to place the accused on trial, has to be of the said officer and this function cannot be delegated and cannot be performed by any other authority — S. 36 only entitles superior officers to supervise or participate — Even a competent Magistrate cannot* *compel the officer concerned to form a particular opinion — Lastly, there is no stage during which the investigating officer is legally obliged to take Public Prosecutor's or any other authority's opinion other than that of a superior officer under S. 36 — Public Prosecutor is not involved in investigation — It is not the scheme of CrPC for supporting any combined operation between the IO and Public Prosecutor for filing the report in court*

Under CrPC, investigation consists of proceeding to the spot, ascertainment of the facts and circumstances of the case, discovery and arrest of the suspected offender, collection of evidence and formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge-sheet under Section 173. The scheme of CrPC shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for each one of the above steps is that of the officer in charge of the police station. The final step in the investigation, namely, the formation of the opinion as to whether or not there is a case to place the accused on trial is to be of the officer in charge of the police station and this function cannot be delegated and can be performed by no other authority. The formation of the opinion of the police on the material collected during the investigation as to whether judicial scrutiny is warranted or not is entirely left to the officer in charge of the police station. There is no provision for delegation of the above function regarding formation of the opinion but only a provision entitling the superior officers to supervise or participate under Section 36 CrPC. (Paras 20, 21 and 31)

The importance of the opinion formed by the officer in charge of the police station is seen from the fact that the opinion of the officer in charge of the police station is the basis of the report based on which the competent Magistrate must determine whether to take cognizance or not. Even a competent Magistrate cannot compel the police officer concerned to form a particular opinion. Although the Magistrate may have certain supervisory powers under CrPC, it cannot be said that when the police submits a report that no case has been made out for sending the accused for trial, it is open to the Magistrate to direct the police to file a charge-sheet. (Para 21)

The term "investigation" under Section 173(2) of the Criminal Procedure Code includes the opinion of the officer in charge of the police station as to whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to the court concerned or not. This opinion is not legal evidence. At the stage of Section 173(2) the question of interpretation of legal evidence does not arise. In any event, that function is that of the courts. (Para 16). *M.C. Mehta (Taj Corridor scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264: AIR 2007 SC 1087: (2007) 53 AIC 192 (SC).

Bench Strength **3**. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150: 1955 Cri LJ 526; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: (1967) 3 SCR 668: 1968 Cri LJ 97; K. Veeraswami v. Union of India, (1991) 3 SCC 655: 1991 SCC (Cri) 734; Satya Narain Musadi v. State of Bihar, (1980) 3 SCC 152: 1980 SCC (Cri) 660; Kaptan Singh v. State of M.P., (1997) 6 SCC 185: 1997 SCC (Cri) 870; Vijender v. State of Delhi, (1997) 6 SCC 171: 1997 SCC (Cri) 857, followed

[1965] — Ss. 170 and 173 — Hawala transactions involving public men — Charge-sheet filed in compliance with directions of the Supreme Court — Proper mode of trial in such cases — *Publicity attached to such matters, held, should not affect the essentials of fair trial including the presumption of innocence — Any observation of the Supreme Court made for the purpose of the proceedings pending there, held, should not also influence the trial — Constitution of India — Art. 21*

No occasion should arise for an impression that the publicity attaching to these matters has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial. This requirement, undoubtedly has to be kept in view during the entire trial. Any observation made by the Supreme Court for the purpose of the proceedings pending there in which the directions for filing the charge-sheet were given has no bearing on the merits of the accusation, and should not influence the trial in any manner. Care must be taken to ensure that the credibility of the judicial process is not undermined in any manner. *Anukul Chandra Pradhan* v. *Union of India*, (1996) 6 SCC 354: 1996 SCC (Cri) 1338.

Bench Strength **2**. Coram: *J.S. Verma* and *B.N. Kirpal*, JJ. [Date of decision: 7-10-1996]

[1966] — Ss. 170 and 173 — Hawala transactions involving public men — *Charge-sheet filed in the court in compliance with Supreme Court's direction — Unless prevented by dilatory tactics of the accused, such trials should be concluded most expeditiously — Constitution of India — Art. 21*

The court in which the charge-sheet has been filed has to bear in mind that utmost expedition in the trial and its early conclusion is necessary for the ends of justice and credibility of the judicial process. Unless prevented by any dilatory tactics of the accused, all trials of such kind involving public men should be concluded most expeditiously, preferably within three months of commencement of the trial. This is also the requirement of speedy trial read into Article 21. *Anukul Chandra Pradhan* v. *Union of India*, (1996) 6 SCC 354: 1996 SCC (Cri) 1338.

Bench Strength **2**. Coram: *J.S. Verma* and *B.N. Kirpal*, JJ. [Date of decision: 7-10-1996]

[1967] — Ss. 170 and 156 — Power of police under — Scope — *Illegally exported consignment of narcotic drugs and psychotropic substances from India, seized abroad — Information from the police of the foreign countries concerned that no material had been till then collected to connect the appellant with the contraband consignment, held, could not bar the investigating force in India from arriving at a different conclusion or even the police of those foreign countries from taking a different view subsequently — Evidence Act, 1872 — S. 9. Umar Abdul Sakoor Sorathia* v. *Intelligence Officer, Narcotic Control Bureau*, (2000) 1 SCC 138: 2000 SCC (Cri) 200: AIR 1999 SC 2562: 1999 Cri LJ 3972.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 6-8-1999]

[1968] — Ss. 170 and 173 — Evidentiary value of allegations in charge-sheet, held, is only that such allegations have been made, and no more than that — *Evidence Act, 1872 — S. 35*

Even assuming that a charge-sheet is a public document within the meaning of Section 35 of the Evidence Act, 1872 it does not imply that all that is stated in the charge-sheet as having been proved. All that that can be said is that it is proved that the police had laid a charge-sheet in which such allegations have been made against the accused. (Para 63). *Standard Chartered Bank* v. *Andhra Bank Financial Services Ltd.*, (2006) 6 SCC 94.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *C.J.* and **B.N. Srikrishna** and *P.P. Naolekar*, JJ. [Date of decision: 5-5-2006]

— S. 171 *See* Ss. 154 to 173

See also Ss. 154 to 173 and 482

See also Ss. 157 to 173

See also Ss. 157 to 172 and 198

See also Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311

— S. 172 *See also* S. 172, Criminal Procedure Code, 1898, p. 1036 in Vol. 2

— S. 172 *See* Ss. 41, 151, 157 and 172

See also Ss. 100 and 172

See also Ss. 154 to 173 and 482

See also Ss. 154 and 172

See also Ss. 154 and 173

See also Ss. 157 to 172 and 198

See also Ss. 157, 162, 173(6) and 172

See also Ss. 157, 172 and 173

See also Ss. 157 and 173

See also Ss. 161, 162, 91, 172 and 207

See also Ss. 161, 172, 173(6) and 207

See also Ss. 162 and 172

See also Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311

See also Ss. 231(2) and 246(5), 162(1) proviso, Expln. and Ss. 161 & 172

See also Ss. 438 and 172

[1969] — S. 172 — Applicability — *Question whether an investigation carried out by a superior officer by virtue of a direction given to him by State Government under S. 3 of Indian Police Act, 1861 is an investigation under Chapter XII so as to attract the applicability of S. 172 to a diary maintained by him in the course of such investigation and whether the report made by such officer as a result of the investigation carried out by him forms part of case diary within the meaning of S. 172, not considered. Khatri (IV)* v. *State of Bihar*, (1981) 2 SCC 493: 1981 SCC (Cri) 503: AIR 1981 SC 1068: 1981 Cri LJ 597: 1981 MLJ (Cri) 456: (1981) 29 BLJR 425.

Bench Strength **2**. Coram: *P.N. Bhagwati* and *Baharul Islam*, JJ. [Date of decision: 10-3-1981]

[1970] — S. 172 — Analysis of — Obligations and rights in respect of case diary

The analysis of S. 172 reveals:

(1) That it embodies a complete scheme relating to the matter of maintaining a diary.

(2) Clause (1) imposes the obligation to do so and provides for the contents thereof.

(3) The court is empowered to call for such diaries to aid it in inquiry or trial subject to the rider that it cannot be used as evidence thereat.

(4) Merely because the court calls for the diary, the accused (or his agent) cannot claim the right to peruse it.

(5) The accused can peruse that particular part of the diary in the context of S. 161 of the Evidence Act or S. 145 thereof in case:

(*a*) if it is used by the police officer concerned to refresh his memory

or

(*b*) if the court uses it for contradicting the police official concerned. *Mukund Lal* v. *Union of India*, 1989 Supp (1) SCC 622: 1989 SCC (Cri) 606: AIR 1989 SC 144: 1989 Cri LJ 872.

Bench Strength **2**. Coram: **M.P. Thakkar** and *B.C. Ray*, JJ. [Date of decision: 14-10-1988]

[1971] — S. 172 — Case diary — Use of — *Cannot be used as evidence — Can be perused to find whether investigation properly conducted*

Per K. Ramaswamy, J.

The only duty cast on the investigation is to maintain a diary of his investigation, which is known as "Case Diary" under S. 172 of the Code. The entries in the case diary are not evidence nor can they be used by the accused or the Court unless the case comes under S. 172(3) of the Code. The court is entitled to its perusal to enable it to find out if the investigation has been conducted on the right lines so that appropriate directions, if need be, be given. It may also provide materials showing the necessity to summon witnesses not mentioned in the list supplied by the prosecution or to bring on record other relevant material which in the opinion of the court will help it to arrive at a proper decision in terms of S. 172(3) of the Code. *State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192: AIR 1991 SC 1260.

Bench Strength **2**. Coram: **Kuldip Singh**[1] and **K. Ramaswamy**[2], JJ. [Date of decision: 2-4-1991]

[1972] — Ss. 172 and 157 — Case diary — Purpose and object of — Extent to which accused may cross-examine police officer on case diary entries — *Held, purpose and object of case diary is to maintain fairness in investigation, transparency and a record for ensuring proper investigation — Court has power to summon diary but can use it only as aid in inquiry or trial but not as evidence — Purpose is confined to utilising information therein as foundation for questions put to witnesses, particularly to police witnesses where police officer had used entries to refresh his memory or if court uses them for contradicting such police officer — Right of accused to cross-examine police officer with reference to entries in general diary is limited and even that limited scope arises only when court uses entries for aforestated purposes — IO has right to refresh his memory and can refer to general diary* (Paras 205 and 209 to 215). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

Habeeb Mohammad v. State of Hyderabad, AIR 1954 SC 51: 1954 Cri LJ 338; Khatri (IV) v. State of Bihar, (1981) 2 SCC 493: 1981 SCC (Cri) 503; Malkiat Singh v. State of Punjab, (1991) 4 SCC 341: 1991 SCC (Cri) 976; Mukund Lal v. Union of India, 1989 Supp (1) SCC 622: 1989 SCC (Cri) 606; Shamshul Kanwar v. State of U.P., (1995) 4 SCC 430: 1995 SCC (Cri) 753, considered and relied on

State of Kerala v. Babu, (1999) 4 SCC 621: 1999 SCC (Cri) 611; State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715: 2000 SCC (Cri) 61, relied on

[1973] — S. 172 — Case diary — Use of — Right of accused regarding use of case diary — Extent of — *Held, accused gets right to cross-examine the police officer with reference to entries in case diary when the same is used by the police officer to refresh his memory or when the court uses it for the purpose of contradicting the police officer — Such right of accused is subject to the limitations of Ss. 145 and 161 of the Evidence Act — Police Officer cannot be compelled to look into the case diary for refreshing his memory — Failure of the police officer to keep a diary does not render his evidence inadmissible — Entries of police diary are neither substantive nor corroborating evidence — They cannot be used by or against any other witness — Evidence Act, 1872 — Ss. 145 and 161*

The right of accused to cross-examine the police officer with reference to the entries in the general diary is very much limited in extent and even that limited scope arises only when the court uses the entries to contradict the police officer or when the police officer uses it for refreshing his memory and that again is subject to the limitations of Sections 145 and 161 of the Evidence Act and for that limited purpose only the accused in the discretion of the court may be permitted to peruse the particular entry and in case the court does not use such entries for the purpose of contradicting the police officer or if the police officer does not use the same for refreshing his memory, then the question of accused getting any right to use the entries even to that limited extent does not arise. (Para 10)

The accused person is not entitled to require a police officer to refresh his memory during his examination in court by referring to the diary. At the most the accused can on a reasonable basis seek the court to look into the diary and do the needful within the limits of Section 172 CrPC. However, the court is not bound to compel the police witness to look at the diary in order to refresh his memory nor the accused is entitled to insist that he should do so. If there is such a refusal what inference should be drawn depends on the facts and circumstances of each case. Section 172 does not deal with any recording of statements made by witnesses and what is intended to be recorded is what the police officer did namely the places where he went, the people he visited and what he saw, etc. It is Section 161 CrPC which provides for recording of such statements. Assuming that there is failure to keep a diary as required by Section 172 CrPC, the same cannot have the effect of making the evidence of such police officer inadmissible and what inference should be drawn in such a situation depends upon the facts of each case. (Para 10)

The entries of the police diary are neither substantive nor corroborating evidence and they cannot be used by or against any other witness than the police officer and can only be used to the limited extent indicated above. (Para 10). *Shamshul Kanwar* v. *State of U.P.*, (1995) 4 SCC 430: 1995 SCC (Cri) 753: AIR 1995 SC 1748.

Bench Strength **2**. Coram: *M.M. Punchhi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 4-5-1995]

[1974] — Ss. 172, 161, 162 and 167 — Police Diary maintained under S. 172 — Nature of entries to be made in — *Held, S. 172 does not contemplate recording of statement of witnesses and other relevant material gathered during the investigation — Vagueness and confusion in respect of meaning of the word 'diary' used in S. 172 and other sections — Need to frame appropriate and uniform regulations regarding maintenance of diary by the police for the purpose of S. 172 vis-à-vis other sections, stressed*

There is vagueness as to the nature of the diary contemplated under Section 172. In some States the diary referred to in Section 172 CrPC is known as 'special diary' or 'case diary' and in some other States like Andhra Pradesh, J&K and Kerala there is a provision in the Police Acts that a "general diary" is to be maintained in the police station thereby indicating it to be different from the case diary. In some States there are police standing orders to the effect that the diary contemplated under Section 172 CrPC can be of two parts; the first one relating to the steps taken during the course of investigation by the police officer with particular reference to the time at which the police received the information and the further steps taken during the investigation like visiting the places etc. and the second part contains statement of the circumstances ascertained during the investigation which obviously relate to the statements recorded by the officer in terms of Section 161 CrPC and other relevant materials gathered during the investigation. The copies of the second part which mainly contains the statements of the witnesses as a matter of course are supplied to the accused persons. (Para 18)

Therefore it is clear that the diary referred to in Section 172 and which the court may call for and which can be used to the limited extent mentioned therein obviously refers to the first part and to the copies of which the accused is not entitled to and the entries of which can be used to the limited extent by the court as well as by the accused as contained in Section 172 CrPC. If by virtue of such police standing orders, the second part also forms, compendiously, part of the diary as a whole and if that also is before the court, the use of the entries in such second part which contains the statements of the witnesses recorded, would be of different nature. Some vagueness or confusion is there in respect of the meaning of the word 'diary' used in Section 172 and other sections of CrPC. Therefore, a legislative change is necessary providing for framing of appropriate and uniform regulations regarding the maintenance of the diaries by the police for the purpose contemplated by Section 172 CrPC vis-à-vis the other sections referred to above. (Para 20) . *Shamshul Kanwar* v. *State of U.P.*, (1995) 4 SCC 430: 1995 SCC (Cri) 753: AIR 1995 SC 1748.

Bench Strength **2**. Coram: *M.M. Punchhi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 4-5-1995]

Niranjan Singh v. State of U.P., AIR 1957 SC 142: 1956 SCR 734; Habeeb Mohd. v. State of Hyderabad, 1954 SCR 475: AIR 1954 SC 51; Khatri (IV) v. State of Bihar, (1981) 2 SCC 493: 1981 SCC (Cri) 503; Mukund Lal v. Union of India, AIR 1989 SC 144: 1989 Cri LJ 872; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Malkiat Singh v. State of Punjab, (1991) 4 SCC 341: 1991 SCC (Cri) 976, relied on

Queen-Empress v. Mannu, ILR (1897) 19 All 390: 17 AWN 174; Dal Singh v. King-Emperor, AIR 1917 PC 25; Pulukuri Kottaya v. Emperor, AIR 1947 PC 67: (1947) 1 MLJ 219: 49 Bom LR 508, approved

[1975] — Ss. 172, 162 and 161 — Entries in police diaries — Cannot be used as evidence against accused — *They cannot therefore be used to explain any contradiction in the evidence of a PW which the defence has brought forth by using any portion of a statement of the PW recorded under S. 161 — Evidence Act, 1872 — S. 145*

The legal proposition propounded by the High Court regarding the use of Section 172 of the Code is erroneous. The whole exercise made by the High Court on that aspect was in the wake of what PW 1 said, that he was questioned by the investigating officer on 12-10-1991. That might be so but the defence counsel used the statement as recorded on 14-10-1991 under Section 161 of the Code for the purpose of contradicting PW 1. The omission in the statement recorded under Section 161 CrPC by PW 1 dated 14-10-1991 regarding the role attributed to A-2 to A-4 relates to a very material aspect and hence it amounted to contradiction. When any part of such statement is used for contradicting the witness during cross-examination the Public Prosecutor has the right to use any other part of the statement, during re-examination, for the purpose of explaining it. The said right of the Public Prosecutor is explicitly delineated in the last part of the proviso to Section 162(1) CrPC. (Paras 10 and 11)

If a Public Prosecutor failed to get the contradiction explained as permitted by the last limb of the proviso to Section 162(1) of the Code, it is not permissible for the court to invoke the powers under Section 172 CrPC for explaining such contradiction which deals with the diary of proceedings in investigation. Sub-section (2) of Section 172 CrPC makes it clear that the discretion given to the court to use such diaries is only for aiding the court to decide on a point. The court is forbidden from using the entries of such diaries as evidence. What cannot be used as evidence against the accused cannot be used in any other manner against him. If the court uses the entries in a case diary for contradicting a police officer it should be done only in the manner provided in Section 145 of the Evidence Act i.e. by giving the author of the statement an opportunity to explain the contradiction, after his attention is called to that part of the statement which is intended to be so used for contradiction. In other words, the power conferred on the court for perusal of the diary under Section 172 is not intended for explaining a contradiction which the defence has winched to the fore through the channel permitted by law. The interdict contained in Section 162, debars the court from using the power under Section 172 for the purpose of explaining the contradiction. (Paras 13 and 14). *Mahabir Singh* v. *State of Haryana*, (2001) 7 SCC 148: 2001 SCC (Cri) 1262: AIR 2001 SC 2503.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 26-7-2001]

[1976] — S. 172 read with R. 164 of Bihar Police Manual — Non-observance of provisions of — Effect — *Does not vitiate the trial unless prejudice is shown to have been caused to the accused — Place of occurrence and identity of accused not disputed — Evidence of eyewitnesses found trustworthy — Omission on the part of the IO in not sending the bloodstained earth seized from the place of occurrence for chemical examination or in not entering the time of recording of statements of witnesses in the diary — No prejudice shown to have been caused to the accused — Held, trial not vitiated*

Failure on the part of the Investigating Officer to comply with the provisions of Section 172 CrPC is a serious lapse on his part resulting in diminishing the value and credibility of his investigation. In this case the Investigating Officer neither entered the time of recording of the statements of the witnesses in the diary nor did he send the bloodstained clothes and earth seized from the place of occurrence for examination by a serologist. But the question that arises for consideration is, has any prejudice been caused to the accused in the trial by non-observance of rules by the Investigating Officer? The evidence on record before the Sessions Court and the appellate court does not show that due to the lapses on the part of the Investigating Officer in not sending the bloodstained clothes and earth seized from the place of occurrence for chemical examination and further not noting down the time of recording the statement of the witnesses in the diary has resulted in any prejudice to the defence of the accused. In the present case, the place of occurrence and the identity of the deceased are not disputed. Further, the testimony of the eyewitnesses which is consistent and does not suffer from infirmity, was believed by both the courts below. Once the eyewitnesses are believed and the courts come to the conclusion that the testimony of the eyewitnesses is trustworthy, the lapse on the part of the Investigating Officer in not observing the provisions of Section 172 CrPC unless some prejudice is shown to have been caused to the accused, will not affect the finding of guilt recorded by the Court. Therefore, judgments of the courts below do not suffer on account of omission on the part of the Investigating Officer in not sending the earth seized from the place of occurrence for chemical examination or in not entering the time of recording of the statements of witnesses in the diary. *Baleshwar Mandal* v. *State of Bihar*, (1997) 7 SCC 219: 1997 SCC (Cri) 1042: AIR 1997 SC 3471: 1997 Cri LJ 4084.

Bench Strength **2**. Coram: *M.M. Punchhi* and **V.N. Khare**, JJ. [Date of decision: 8-8-1997]

[1977] — S. 172 — General Diary — Presumption in favour of — *It is ordinarily difficult to fabricate false entries in a general diary. Sadhu Singh* v. *State of U.P.*, (1978) 4 SCC 428: 1979 SCC (Cri) 49: AIR 1978 SC 1506: 1978 ALJ 887.

Bench Strength **3**. Coram: *R.S. Sarkaria*, **O. Chinnappa Reddy** and *A.P. Sen*, JJ. [Date of decision: 4-9-1978]

[1978] — Ss. 172 and 161 — Police diary — Non-production of before the court — Effect — *No attempt made by the defence to call upon the prosecution side to produce the police diary — Non-production of the same before the court is insignificant — That apart in view of the statement of the police officer that details of occurrence were* *not noted in police diary non-production of the same had not resulted into any prejudice to the accused. Uppari Venkataswamy* v. *Public Prosecutor, High Court of A.P.*, (1996) 7 SCC 232: 1996 SCC (Cri) 284.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S.B. Majmudar**, JJ. [Date of decision: 8-12-1995]

[1979] — Ss. 172, 168 and 157 — Investigation — Log book — Practice to keep log book in form of loose sheets stapled together — Effect — *Practice might require improvement — But it is not necessary in the case to say that such sheets produced are not genuine. Ayya* v. *State of U.P.*, (1989) 1 SCC 374: 1989 SCC (Cri) 153: AIR 1989 SC 364: 1989 Cri LJ 991.

Bench Strength 2. Coram: *Ranganath Misra* and **M.N. Venkatachaliah**, JJ. [Date of decision: 25-11-1988]

[1980] — S. 172 — Investigation — Site plan — Preparation of, when place of offence clearly specified — Whether necessary — *Where the accused was found to be in possession of opium while sitting on a bench on a particular public road, preparing of a site plan of the place concerned, held, was not necessary — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 8 and 18. Sayar Puri* v. *State of Rajasthan*, (1998) 7 SCC 441: 1998 SCC (Cri) 1681: AIR 1998 SC 3224.

Bench Strength 2. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 2-9-1998]

[1981] — S. 172 — Police diary — *Entries should be made with promptness, in sufficient detail, mentioning all significant facts, in careful chronological order and with complete objectivity. Bhagwant Singh* v. *Commr. of Police*, (1983) 3 SCC 344: 1983 SCC (Cri) 637: AIR 1983 SC 826: 1983 Cri LJ 1081.

Bench Strength 2. Coram: *P.N. Bhagwati* and **R.S. Pathak**, JJ. [Date of decision: 6-5-1983]

[1982] — Ss. 172 and 154 — Late entries made by the police officials in their registers/records by interpolation — *Held, not permissible — The entry should be made at its appropriate place and under the correct date on which it was actually made and any delay in making the same should be explainable — Evidence Act, 1872 — S. 35*

The explanation of the police official who made the entries in the Maalkhana register was that he forgot to make an entry of the seized material in the said register and made the same after 5 days of the incident. The entry could be made at its appropriate place and under the correct date on which it was actually made and any delay in making the same could be explained. Entries as made by interpolation in the instant case cannot be permitted. (Para 5). *Bahadur Singh* v. *State of M.P.*, (2002) 1 SCC 606: 2002 SCC (Cri) 172: AIR 2002 SC 289: (2002) 142 ELT 281: 2002 Cri LJ 579: (2002) 1 CHN (Supp) 34.

Bench Strength 2. Coram: *U.C. Banerjee* and **Y.K. Sabharwal**, JJ. [Date of decision: 4-12-2001]

[1983] — Ss. 172 and 155 — Daily diary register — *Non-mention of names of witnesses, weapons of offence and place of occurrence therein — But in accordance with S. 155 CrPC the contents of FIR also entered in DDR, which contained names of the witnesses, weapons of offence and place of occurrence — Held, it was not necessary to mention them separately all over again* (Para 15). *Amar Singh* v. *Balwinder Singh*, (2003) 2 SCC 518: 2003 SCC (Cri) 641: AIR 2003 SC 1164: 2003 Cri LJ 1282.

Bench Strength 2. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 31-1-2003]

[1984] — Ss. 172 and 161 — Case diary — Use of, by police and court — Necessary considerations — Right of accused to use case diary — *Held, under S. 172(3), neither the accused nor his agents are entitled to call for or see such diaries — If the entire case diary is made available to the accused it may cause serious prejudice to others and even affect the safety and security of those who may have given statements to the police — But, if the case diaries are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer, the provisions of S. 161 CrPC or S. 145 of the Evidence Act has to be complied with — Court is empowered to call for such diaries not to use it as evidence but to use it as aid to find out anything that happened during the investigation of the crime — In view of the above, the use of entire case diary by the accused during trial in the present case, was not justified — Evidence Act, 1872 — S. 145* (Para 27). *Sidharth* v. *State of Bihar*, (2005) 12 SCC 545: AIR 2005 SC 4352.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 30-9-2005]

[1985] — Ss. 172 and 161(3) — Case diary — Evidentiary value — *Held, can be used as an aid in inquiry or trial but not as evidence — It cannot be used to overcome contradictions pointed out by defence* (Paras 27 to 30). *Mohd. Ankoos* v. *High Court of A.P.*, (2010) 1 SCC 94.

Bench Strength 2. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 6-11-2009]

Mahabir Singh v. State of Haryana, (2001) 7 SCC 148: 2001 SCC (Cri) 1262, relied on

[1986] — S. 172 — Case diary — Reliance on a document, which formed part of case diary, and which was neither proved, nor attention of IO was drawn thereto, held, impermissible (Paras 18 and 19). *Hari Yadav* v. *State of Bihar*, (2007) 15 SCC 266.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 14-12-2007]

[1987] — Ss. 172 and 161 — Entry about police officer directed to accompany funeral party made in general diary kept at police station — *Held, such entry cannot be regarded as entry in a case diary under S. 172 or a statement recorded under S. 161 — It was an entry of a police officer sent on duty. Shamshul Kanwar* v. *State of U.P.*, (1995) 4 SCC 430: 1995 SCC (Cri) 753: AIR 1995 SC 1748.

Bench Strength 2. Coram: *M.M. Punchhi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 4-5-1995]

[1988] — Ss. 172 and 162 — Murder case — Suspicious role of the investigating officer, like manipulation in station house diary, held, not necessarily fatal to the prosecution — *The court, if convinced of truthfulness of the testimony of a witness to the occurrence, held, can act on such testimony irrespective of the suspicious role of the investigating officer — Penal Code, 1860 — S. 302* (Para 19). *State of Karnataka* v. *K. Yarappa Reddy*, (1999) 8 SCC 715: AIR 2000 SC 185.

Bench Strength 2. Coram: **K.T. Thomas** and *A.P. Misra*, JJ. [Date of decision: 5-10-1999]

[1989] — S. 172 — Submission by accused that despite an application having been filed by the accused, the prosecution had failed to produce case diary and general diary relating to the date of occurrence — *However, neither any such application, nor order passed thereon by the trial court produced — Held, question of drawing an adverse inference against the prosecution for non-production of the case diary or the general diary would have arisen had the court passed an order being satisfied that the prosecution intended to suppress some facts which were material for the purposes of arriving at the truth or otherwise of the prosecution case — If no such application had been filed and no order thereupon had been passed by the court, the question of drawing any adverse inference against the prosecution would not arise — Evidence Act, 1872 — S. 114 Ill. (g)* (Para 12). *Ashok Kumar* v. *State of T.N.*, (2006) 10 SCC 157: (2006) 3 SCC (Cri) 497: AIR 2006 SC 2419: 2006 Cri LJ 2931.

Bench Strength 2. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-5-2006]

[1990] — S. 172 — Non-examination of Investigating Officer — Entire case diary should not be allowed to be exhibited. *Behari Prasad* v. *State of Bihar*, (1996) 2 SCC 317: 1996 SCC (Cri) 271: AIR 1996 SC 2905.

Bench Strength 2. Coram: **G.N. Ray** and *G.T. Nanavati*, JJ. [Date of decision: 9-1-1996]

[1991] — S. 172 — Case diary — Evidentiary value — *Held, a criminal court can send for the police diaries of a case under trial in such court, and may use such diaries, not as evidence of the case, but to aid it in such inquiry or trial — Case diary cannot be utilised as evidence to corroborate the statement of the prosecution witness — In the instant case, the IO had migrated to Pakistan and had died there, hence could not be examined by trial court — In such circumstances trial court had looked into the case diary as an additional factor to test the veracity of witnesses — Since the witnesses were confronted with their previous statements, that was not prejudicial to the accused in peculiar facts of the case* (Paras 6, 8 and 9). *Bachan Singh* v. *State of Bihar*, (2008) 12 SCC 23.

Bench Strength 2. Coram: *S.B. Sinha* and **H.S. Bedi**, JJ. [Date of decision: 11-9-2008]

— S. 172(2) *See* Ss. 157 to 161 and 172(2)

See also Ss. 173(5), (6) & (7) and Ss. 172(2) & (3)

[1992] — Ss. 172(2) & (3) and 167 — Case-diary — *Scrutiny of by the trial court if obligatory — Where the prosecution case was based on testimony of three independent natural eyewitnesses and corroborated by the medical evidence, held, the trial court was not obliged to closely scrutinise the case-diary for any tell-tale signs in favour of the defence. Bhai Lal* v. *State of U.P.*, (1998) 9 SCC 66: 1998 SCC (Cri) 982.

Bench Strength 2. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 4-11-1997]

— S. 172(3) *See* Ss. 172(2) & (3) and 167

See also Ss. 173(5), (6) & (7) and Ss. 172(2) & (3)

[1993] — S. 172(3) — Constitutionality of sub-s. (3) — *Held, provision not unreasonable or arbitrary — Unfettered power of court to examine entries in diaries provides sufficient safeguard — Fetter on accused's right to make roving inspection of case diary is in public interest — Further held that sub-ss. (1) and (3) being integral part of scheme of S. 172, sub-s. (3) cannot be struck down in isolation whilst retaining sub-s. (1) — Constitution of India — Article 14*

The provision embodied in sub-section (3) of S. 172 of the CrPC cannot be characterised as unreasonable or arbitrary. Under sub-section (2) of S. 172 CrPC the court itself has the unfettered power to examine the entries in the diaries. This is a very important safeguard. The legislature has reposed complete trust in the court which is conducting the inquiry or the trial. It has empowered the court to call for any such relevant case diary. If there is any inconsistency or contradiction arising in the context of the case diary the court can use the entries for the purpose of contradicting the police officer as provided in sub-section (3) of S. 172, CrPC. The accused cannot claim an unfettered right to make roving inspection of the entries in the case diary regardless of whether these entries are used by the police officer concerned to refresh his memory or regardless of the fact whether the court has used these entries for the purpose of contradicting such police officer. Public interest demands that such an entry is not made available to the accused for it might endanger the safety of the informants and it might deter the informants from giving any information to assist the investigating agency.

There would be no prejudice or failure of justice to the accused person since the court can be trusted to look into the police diary for the purpose of protecting his interest. Therefore, the public interest requirement from the perspective of safeguarding the interest of all persons standing trial, is not compromised. On the other hand the public interest requirement from the perspective of enabling the investigating agency to investigate the crime against the society in order that the interest of the community to ensure that a culprit is traced and brought to book is also safeguarded.

There is also another dimension of the issue. Section 172 embodies a composite scheme. The duty cast under sub-section (1) and the rider added by sub-section (3) thereof from integral part of the scheme. Sub-section (3) cannot be struck down in isolation whilst retaining sub-section (1). The legislature in its wisdom has cast this obligation only subject to the rider. Sub-section (3) cannot be viewed in isolation. *Mukund Lal* v. *Union of India*, 1989 Supp (1) SCC 622: 1989 SCC (Cri) 606: AIR 1989 SC 144: 1989 Cri LJ 872.

Bench Strength **2**. Coram: **M.P. Thakkar** and *B.C. Ray*, JJ. [Date of decision: 14-10-1988]

Mohinder Singh v. Emperor, AIR 1932 Lah 103: 33 Cri LJ 97: 135 IC 209; Mahabirji Birajman Mandir v. Prem Narain Shukla, AIR 1965 All 494: 1964 All LJ 950: (1965) 2 Cri LJ 452, approved

[1994] — S. 172(3) — Entries in case diary — Cannot be used by defence as evidence

Unless the investigating officer or the court uses the entries in the case diary either to refresh the memory or contradicting the investigating officer as previous statement under S. 161, Evidence Act, that too after drawing his attention thereto as is enjoined under S. 145 of the Evidence Act, the entries cannot be used by the accused as evidence. Therefore, the free use thereof for contradicting the prosecution evidence is obviously illegal and it is inadmissible in evidence. Thereby the defence cannot place reliance thereon. (Para 11). *Malkiat Singh* v. *State of Punjab*, (1991) 4 SCC 341: 1991 SCC (Cri) 976.

Bench Strength **3**. Coram: *A.M. Ahmadi, V. Ramaswami* and **K. Ramaswamy**, JJ. [Date of decision: 10-4-1991]

— S. 173 *See also* S. 173, Criminal Procedure Code, 1898, p. 1037 in Vol. 2

— S. 173 *See* Ss. 56 and 173
See also Ss. 154 to 173
See also Ss. 154 to 173 and 482
See also Ss. 154, 155, 156, 157, 162, 169, 170 and 173
See also Ss. 154, 156, 157, 173 and 482
See also Ss. 154, 156 and 173
See also Ss. 154 and 173
See also Ss. 154 & 173 and 401(3)
See also Ss. 154, 173 and 482
See also Ss. 156, 154, 173 and 482
See also Ss. 156, 157, 169, 173 and 190
See also Ss. 156 and 173
See also Ss. 157, 156, 169, 170, 173 and 190 & 173(8)
See also Ss. 157 to 161 and 173
See also Ss. 157 to 173
See also Ss. 157, 161 and 173
See also Ss. 157, 172 and 173
See also Ss. 157 and 173
See also Ss. 157, 173 and 482
See also Ss. 167, 309, 173 and 190
See also Ss. 167(2), 309(2) and 173
See also Ss. 167(2) proviso, 309, 173 and 190
See also Ss. 167(2) proviso, 437(5), 439(2), 57 and 173
See also Ss. 170, 169, 173, 2(h), 24 and 482
See also Ss. 170 and 173
See also Ss. 170, 173, 36 and 24
See also Ss. 177 and 173
See also Ss. 177, 190 and 173
See also Ss. 190, 154, 173 and 200
See also Ss. 190, 154, 173, 200 and 204

See also Ss. 190, 161, 165 and 173
See also Ss. 190 and 173
See also Ss. 190, 173, 200 and 202
See also Ss. 190, 200, 204, 173 and 482
See also Ss. 190(1) and 173
See also Ss. 190(1)(a) & 200 and 173
See also Ss. 190(1)(a), 200, 204, 173 and 482
See also Ss. 190(1)(b) and 173
See also Ss. 193, 190, 156, 157 and 173
See also Ss. 197, 190 and 173
See also Ss. 201, 203 and 173
See also Ss. 202, 190 and 173
See also Ss. 215, 173, 220 and 228
See also Ss. 228, 167, 173, 2(g) & (h), 190 and 309
See also Ss. 228, 240 and 173
See also Ss. 231 & 242 and 173 & 157
See also Ss. 239, 190 and 173
See also Ss. 319, 154, 156, 173, 190, 204, 209
See also Ss. 321, 228, 240 & 173
See also Ss. 437, 439 and 173
See also Ss. 482 and 154, 155, 156, 157, 162, 169, 170, 173
See also Ss. 482, 156 & 173
See also Ss. 482 and 173
See also Ss. 482, 173 and 197
See also Ss. 482, 173 and 240
See also Ss. 482, 190(1)(b), 204, 173, 169 and 362
See also Ss. 482 and 197, 173, 309, 437(6) and 468
See also Ss. 482, 397, 401, 239, 240 and 173

[1995] — S. 173 — Charge-sheet (police report) — What is, requirements for filing of, and stage at which may be filed

A charge-sheet is a final report within the meaning of Section 173(2) CrPC. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him may not zbe complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, the law does not require that filing of the charge-sheet must await the arrest of the accused. (Para 19). *Dinesh Dalmia* v. *CBI*, (2007) 8 SCC 770: (2007) 59 AIC 145 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

[1996] — Ss. 173 and 190 — "Charge-sheet", "final report" — What are — *Held, neither charge-sheet nor final report has been defined in CrPC — Charge-sheet or final report whatever may be the nomenclature, only means a report under S. 173 which has to be filed by police officer on completion of his investigation* (Para 24). *Srinivas Gundluri* v. *SEPCO Electric Power Construction Corpn.*, (2010) 8 SCC 206.

Bench Strength 2. Coram : **P. Sathasivam** and *Anil R. Dave*, JJ. [Date of decision : 30-7-2010]

[1997] — S. 173 — Final report — Matter to be contained in — Scope of — Indicated — *Power of investigating officer to record findings of fact or give a clean chit to accused in said report — Held, not available*

The report contemplated by Section 173 CrPC should contain the information required by the said provision. The investigating officer is neither expected to record findings of fact nor to give clean chit by exercising power of a court or judicial authority. (Para 67)

In the instant case, however, the final report submitted by the Superintendent of Police under Section 173 CrPC is not in consonance with law. The Superintendent of Police not only refers to investigation made by him and the statements recorded in the course of investigation but records a "*finding*" that the statements were "*correct*". The investigating officer was required to submit a report in terms of Section 173 CrPC and nothing more. He should not record a finding nor can he give a clean chit which is a function and power of the Magistrate who will exercise the said power as provided in CrPC. (Paras 63 and 66 to 68). *Hardeep Singh* v. *State of Punjab*, (2009) 16 SCC 785.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 7-11-2008]

[1998] — Ss. 173, 154, 195 and 190 — Application and scope — Charge-sheet clubbing together two FIRs — When valid — *Charge-sheet clubbing together offences in respect of two incidents one being the fallout of the other, held, valid — Though charge under S. 188 IPC was not tenable for absence of S. 195 CrPC complaint, that would not falsify other charges clubbed with it*

— Legislative intent behind S. 195(1)(a)(i) CrPC is to prevent frivolous litigation — Penal Code, 1860, S. 188

There was no wrong in clubbing together of the two crimes. Keeping in view the totality of the circumstances and evidence, the second occurrence was nothing but a fallout of the first occurrence. Merely because two separate complaints had been lodged, did not mean that they could not be clubbed together and one charge-sheet could not be filed. (Paras 37, 8 and 36)

Therefore although the charges under Section 188 are quashed as no complaint in this regard had ever been filed, it would by no means have any bearing on the case of the prosecution, so far as the charges for other offences are concerned. It cannot be accepted that absence of a complaint under Section 195 CrPC falsifies the genesis of the prosecution case and is fatal to the entire prosecution case. (Paras 36 and 35)

The legislative intent behind Section 195(1)(*a*)(*i*) CrPC read with Section 188 is that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 CrPC. (Para 28)

Thus, there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 CrPC are mandatory. Non-compliance with it would vitiate the prosecution and all other consequential orders. The court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction. (Para 33)

The test of whether there is evasion or non-compliance with Section 195 CrPC or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. The provisions of this section cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 CrPC. Thus, cognizance of such an offence cannot be taken by misdescribing it or by putting a wrong label on it. (Para 29). *C. Muniappan* v. *State of T.N.*, (2010) 9 SCC 567: (2010) 5 CTC 794 .

Bench Strength **2**. Coram: *G.S. Singhvi* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 30-8-2010]

T.T. Antony v. State of Kerala, (2001) 6 SCC 181: 2001 SCC (Cri) 1048; Govind Mehta v. State of Bihar, (1971) 3 SCC 329: 1971 SCC (Cri) 608; Patel Laljibhai Somabhai v. State of Gujarat, (1971) 2 SCC 376: 1971 SCC (Cri) 548; Surjit Singh v. Balbir Singh, (1996) 3 SCC 533: 1996 SCC (Cri) 521; State of Punjab v. Raj Singh, (1998) 2 SCC 391: 1998 SCC (Cri) 642; K. Vengadachalam v. K.C. Palanisamy, (2005) 7 SCC 352: 2005 SCC (Cri) 1673; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101; M.S. Ahlawat v. State of Haryana, (2000) 1 SCC 278: 2000 SCC (Cri) 193; Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493: 1998 SCC (Cri) 660; Daulat Ram v. State of Punjab, AIR 1962 SC 1206: (1962) 2 Cri LJ 286; Basir-ul-Haq v. State of W.B., AIR 1953 SC 293: 1953 Cri LJ 1232; Durgacharan Naik v. State of Orissa, AIR 1966 SC 1775: 1966 Cri LJ 1491, relied on

[1999] — Ss. 173, 169, 170, 157, 190 and 482 — Filing of additional charge-sheet (police report) under S. 173 due to intervention by senior officers and MLA in investigation to benefit accused persons — *High Court quashing second supervision note of higher officers and retaining first supervision note of Additional SP — First supervision note being sufficient to frame charge against all accused persons — High Court holding that second supervision note, which was in favour of some of the accused persons was without sanction and had materialised due to intervention of the MLA — Sustainability — Impugned judgment of High Court: (1) quashing second supervision, (2) giving directions for filing of additional charge-sheet on basis of first supervision note, and (3) directing investigating authorities to act in accordance with* Dinesh Dalmia, *(2007) 8 SCC 770, regarding filing of charge-sheet even if the accused persons had not been arrested, not interfered with*

The High Court in exercise of inherent powers under Section 482 CrPC entertained a letter written by the informant wife of the deceased. The wife was aggrieved by the inaction of the police in not arresting all the accused persons who had murdered her husband. The supervisory report of the Additional SP was sufficient for the Magistrate to frame charges against all the accused persons. The polygraph test performed by the Additional SP confirmed the presence of all the accused persons who had participated in the assault with different types of weapons. Even the senior police officers accepted the same. The Additional SP was of the view that investigation of other twelve accused required thorough investigation. But later at the intervention of an MLA, the senior police officers conducted a second test and differed with the original test note of the Additional SP.

The Division Bench of the High Court by its impugned order strongly disapproved the role played by the MLA and senior police officers in interfering with the process of investigation. The Division Bench of the High Court, therefore, directed the appropriate authorities to take action against all the accused persons, according to law, based upon the supervision note issued by the Additional SP and quashed all actions taken on the basis of the test report of the IG of Police. Further directions were given to the investigating authority to act in accordance with the decision in *Dinesh Dalmia case*, (2007) 8 SCC 770, regarding filing of charge-sheet even if the accused persons had not been arrested.

It was submitted on behalf of the appellant-accused that the direction to file additional charge-sheet was contrary to the provisions of law and could not, therefore, be sustained.

Dismissing the appeal of the accused,

Held :

No interference is called for with the impugned order of the High Court. The High Courts in exercise of their inherent and plenary powers are entitled to intervene to set right the illegality and/or mala fide action on the part of the investigating authorities when it notices such illegality and/or mala fide action on the part of the investigating authorities. While the courts should not intervene in matters of investigation, which power, under the scheme of CrPC has been vested in the police authorities, an exception has also been made that in certain circumstances the court could intervene in order to do justice to the parties. The courts and in particular the High Courts, are the guardians of the life and liberty of the citizens and if there is any flavour of deliberate misuse of the authority vested in the investigating authority, the High Court or the Supreme Court may certainly step in to correct such injustice or failure of justice. (Paras 48 to 52)

The High Court, therefore, had power to interfere with the directions given by the Director General of Police to the Inspector General of Police to submit a fresh test note despite the supervisory report which had been submitted by the Additional SP indicating that a case had been made out to go to trial as against all the nineteen accused. Although the supervisory report submitted by the Additional SP had been duly accepted not only by the Inspector General of Police, but also by the Director General of Police, which was sufficient for the Magistrate to frame a charge against all the accused persons, a fresh direction was given to the Inspector General of Police, to submit a test note. Such a direction given after the intervention of an MLA who has gone to the extent of providing an alibi for two of the accused, *J* and *S*, claiming that they were present in his house when the incident had occurred, not only exudes an unpleasant flavour, but raises doubts about the bona fides of the police authorities at the highest level. In fact, it is on account of such intervention that initially charge was filed only against four of the accused and thereafter three more. No steps were taken as far as the remaining twelve accused were concerned and it is only when the action of the said MLA was questioned before the High Court, that charge was also filed against the remaining twelve accused persons. (Paras 49 and 50)

In the peculiar facts and circumstances of this case, it was necessary for such a direction to be given by the High Court in order to prevent an injustice from being done on account of the intervention of influential persons, which not only had the effect of negating the supervisory report of the Additional SP but also resulted in an attempt to shield some of the accused persons. (Para 53). *Kedar Narayan Parida* v. *State of Orissa*, (2009) 9 SCC 538.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 16-9-2009]

Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: (1967) 3 SCR 668; Comptroller and Auditor General of India v. K.S. Jagannathan, (1986) 2 SCC 679: 1986 SCC (L&S) 345: (1986) 1 ATC 1; H.S. Bains v. State (UT, Chandigarh), (1980) 4 SCC 631: 1981 SCC (Cri) 93; Kishan Lal v. Dharmendra Bafna, (2009) 7 SCC 685: (2009) 3 SCC (Cri) 611: 2009 Cri LJ 3721: (2009) 81 AIC 141 (SC), relied on

[2000] — Ss. 173, 170 and 172 — Obligation of prosecution/police to disclose evidence to accused — Extent and scope of — Requirement of fair disclosure — Non-compliance — Effect — *Held, constitutional mandate and statutory rights given to accused place an implied obligation on prosecution to make fair disclosure — Nevertheless, violation of this duty does not necessarily vitiate entire trial — Fair trial takes within its ambit furnishing of documents to accused which prosecution relies upon, whether filed or not — However, accused cannot claim indefeasible right to every document on police file or even portions which are permitted to be excluded from documents annexed to report under S. 173(2) as per orders of court — It is not necessary that entire prosecution evidence should be disclosed to accused — Obligation of disclosure is limited to evidence on which prosecution proposes to rely — Even if an omission to bring an inculpatory material to notice of accused has occurred, that ipso facto does not vitiate proceedings unless non-disclosure amounts to material irregularity and causes irreversible prejudice to accused — In instant case, no prejudice was caused to accused, and non-furnishing of copy of one of the ballistic reports had not hampered ends of justice — Besides, prosecution had also doubted said document and not relied thereon — Moreover, such* *issue was not raised seriously by accused before trial court — Bar Council of India Rules, R. 16 — Constitution of India — Article 21* [Paras 190 to 222, 270 to 273, 303(7) & (8)]. *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

State of Punjab v. Swaran Singh, (2005) 6 SCC 101: 2005 SCC (Cri) 1359; Harendra Nath Chakraborty v. State of W.B., (2009) 2 SCC 758: (2009) 1 SCC (Cri) 865, relied on

[2001] — S. 173 — Charge-sheet (police report) filed without all supporting documents — If vitiated thereby — Effect of no prejudice having been caused to accused on presentation of such charge-sheet — *Held, though ordinarily all documents accompany the charge-sheet, even if all the documents had not been filed, the same would not vitiate filing of the charge-sheet, especially if no plea as to prejudice has been taken by accused*

In this case CBI took a conscious decision to file charge-sheet against the appellant. His name was shown in Column 1 thereof although he was absconding. It is true that ordinarily all documents accompany the charge-sheet. But, in this case, some documents could not be filed which were not in the possession of CBI as the same were with the Government Examiner of Questioned Documents (GEQD). Whereas the charge-sheet was submitted on 24-10-2005, the appellant was arrested only on 12-2-2006. The additional documents were filed on 20-1-2006. However, the appellant does not contend that he has been prejudiced by not filing of such documents with the charge-sheet. No such plea in fact had been taken. Even if all the documents had not been filed, by reason thereof submission of charge-sheet itself does not become vitiated in law. Validity of the said charge-sheet is also not in question. (Paras 16, 18 and 22). *Dinesh Dalmia* v. *CBI*, (2007) 8 SCC 770: (2007) 59 AIC 145 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

[2002] — Ss. 173, 170, 172 and 24 — Role of Public Prosecutor — Disclosure of evidence/ prosecution material to accused — Position under Indian law vis-à-vis English law — *Held, role and obligation of Prosecutor under Indian law cannot be equated to that prevalent under English law — Under English law, subject to exceptions like sensitive information and public interest immunity, prosecution is required to disclose any material which might be exculpatory to defence — Criminal Procedure and Investigation Act, 1996 (English)* (Paras 193 to 196). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

R. v. Ward (Judith), (1993) 1 WLR 619: (1993) 2 All ER 577 (CA); R. v. Preston, (1994) 2 AC 130: (1993) 3 WLR 891: (1993) 4 All ER 638 (HL), distinguished

[2003] — S. 173 — Filing of charge-sheet (police report) against absconding accused during the abscondence — When permissible — Availability of sufficient evidence against absconding accused — *Held, in such a case, the law does not require that filing of charge-sheet must await arrest of the accused*

A charge-sheet is a final report within the meaning of Section 173(2) CrPC. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him may not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, the law does not require that filing of the charge-sheet must await the arrest of the accused. (Para 19). *Dinesh Dalmia* v. *CBI*, (2007) 8 SCC 770: (2007) 59 AIC 145 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

[2004] — S. 173 — Final report — Magistrate must give notice and opportunity of hearing to the informant before accepting the final report and closing the case — *Issuance of notice to the informant by the investigating agency not a substitute for notice required to be given by the Magistrate — Magistrate cannot delegate to investigating agency its function of issuing notice — Matter remitted to the Magistrate for its disposal in accordance with law*

In the present case no notice was issued by the Magistrate to the appellant before accepting the final report submitted by the CBI and deciding not to take cognizance and drop the proceedings. This omission vitiates the order of the court accepting the final report. The issuance of a notice by the Magistrate to the informant at the time of consideration of the final report is a "must".

The issuance of notice by the CBI to the appellant was not a substitute for the notice which was required to be given by the Magistrate. The Magistrate could not in any event "delegate" to the investigating agency its function of issuing notice. Moreover, when law requires a particular thing to be done in a particular manner, it must be done in that manner and in no other manner.

Thus, the Magistrate was not justified in accepting the final report of the CBI and closing the case without any notice to the appellant and behind its back. *Union Public Service Commission* v. *S. Papaiah*, (1997) 7 SCC 614: 1997 SCC (Cri) 1112: AIR 1997 SC 3876.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *K. Venkataswami*, JJ. [Date of decision: 11-9-1997]

Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267, followed

[2005] — S. 173 — Final report submitted by police — Court of competent jurisdiction is obliged to decide on proper application of mind whether to accept or reject the report — *In case of non-application of mind interference by higher court called for — Constitution of India — Article 136*

It is not for a court to keep track of an investigation and watch its day to day progress but, when an investigation culminates into a final report as contemplated under S. 173 of CrPC then the competent court enjoins a duty within its authority sanctioned by law to scrupulously scrutinise the final report and the accompaniments by applying its judicial mind and take a decision either to accept or reject the final report. *Sampat Singh* v. *State of Haryana*, (1993) 1 SCC 561: 1993 SCC (Cri) 376.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 18-12-1992]

[2006] — Ss. 173 and 154 — Interpolation in police report by IO submitted to Magistrate to cover omissions in FIR — On facts, benefit of doubt given. *K. Ashokan* v. *State of Kerala*, (1998) 3 SCC 570: AIR 1998 SC 1974.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 19-2-1998]

[2007] — Ss. 173 and 190 — Police report — Magistrate not bound to accept — *He may direct further inquiry or may take cognizance of the offence on material placed before it. State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192: AIR 1991 SC 1260.

Bench Strength 2. Coram: **Kuldip Singh**[1] and **K. Ramaswamy**[2], JJ. [Date of decision: 2-4-1991]

[2008] — Ss. 173 and 207 — Furnishing of documents to accused by prosecution/police and by court — Comparative scope — *Held, mandate under S. 207 is in contradistinction to S. 173, where legislature has used expression "documents on which prosecution relies", which words are not used in S. 207 — Hence, S. 207 needs to be given liberal and relevant meaning to achieve its object* (Para 219). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength 2. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

R. v. Ward (Judith), (1993) 1 WLR 619: (1993) 2 All ER 577 (CA); R. v. Preston, (1994) 2 AC 130: (1993) 3 WLR 891: (1993) 4 All ER 638 (HL), distinguished

[2009] — S. 173 — Where large number of cases instituted against the petitioner but all resulted in discharge or acquittal, harassment by police cannot be ruled out — *Inquiry directed to be made. Aruna Shankar* v. *State of U.P.*, (1987) 3 SCC 489: 1987 SCC (Cri) 583.

Bench Strength 2. Coram: *O. Chinnappa Reddy* and *V. Khalid*, JJ. [Date of decision: 20-1-1987]

[2010] — Ss. 173, 190(1)(b), 156(3), 200, 203 and 204 — Police report submitted under S. 173 on the basis of investigation ordered by Magistrate under S. 156(3), held, does not bar the Magistrate from proceeding under Ss. 200, 203 and 204 — *Courses open to the Magistrate on receipt of the report — Even if the report suggests that the case against the accused not made out and must be dropped, held, the Magistrate disagreeing with the report can take cognizance of the offence under S. 190(1)(b) and direct issue of process*

The mere fact that the Magistrate had earlier ordered an investigation under S. 156(3) and received a report under S. 173 will not have the effect of total effacement of the complaint and therefore, the Magistrate will not be barred from proceeding under Ss. 200, 203 and 204. The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a complaint. A Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under S. 173(2), may, thereafter, do one of three things: (*i*) he may decide that there is no sufficient ground for proceeding further and drop action; (*ii*) he may take cognizance of the offence under S. 196(1)(*b*) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (*iii*) he may take cognizance of the offence under S. 190(1)(*a*) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under S. 200. If he adopts the third alternative, he may hold or direct an inquiry under S. 202 if he thinks fit. Thereafter, he may dismiss the complaint for issue process, as the case may be.

In the present case, therefore, the Magistrate did not act without jurisdiction in taking cognizance of the offence under S. 190(1)(*b*) and issuing process to the accused notwithstanding the fact that the police report was to the effect that no case had been made out.

[In *Abhinandan Jha v. Dinesh Mishra,* (1967) 3 SCR 668: AIR 1968 SC 117, the court observed that if ultimately the Magistrate was of the opinion that the facts set out in the police report constituted an offence, he could take cognizance of offence under "S. 190(1)(*c*)" of the old Code, in which word "or suspicion" occurred after the word 'knowledge'. It is, however, clear that the reference to S. 190(1)(*c*) was a mistake for S. 190(1)(*b*). Section 190(1)(*c*) was never intended to apply to cases where there was a police report under S. 173(1). It is impossible to say that a Magistrate who takes cognizance of the offence on the basis of the facts disclosed in a police report must be said to have taken cognizance of the offence on suspicion and not upon a police report merely because the Magistrate and the police arrived at different conclusions from the facts.]. *H.S. Bains, Director, Small Saving-cum-Dy. Secy. Finance* v. *State (UT, Chandigarh)*, (1980) 4 SCC 631: 1981 SCC (Cri) 93: AIR 1980 SC 1883: 1980 Cri LJ 1308.

Bench Strength 2. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 10-10-1980]

[2011] — Ss. 173, 200 and 2(d) Expln. — Enquiry report of the officer of the RPF in respect of non-cognizable offence is in the nature of a complaint under S. 200 CrPC and not a report under S. 173 CrPC — *High Court wrongly quashed the proceedings — Railway Property (Unlawful Possession) Act, 1966 — Ss. 7 & 3*

The respondents, who are the employees of the Railways, were caught red-handed while carrying away railway cement unlawfully for sale. After seizure of the railway property and interrogation of the accused a case under Section 3 of the Railway Property (Unlawful Possession) Act was registered. Inspector, RPF inquired the case and submitted report (complaint Annexure P-3) before the Magistrate. The accused persons filed applications before the Magistrate praying for their discharge on the ground that the officer of the RPF was not a police officer within the meaning of Section 173 CrPC and upon his report submitted in the court, the Magistrate had no jurisdiction to take cognizance. Their prayer was rejected by the Magistrate against which they filed petitions in the High Court for quashing the order of the Magistrate. The High Court quashed the proceedings.

Allowing the appeals,

Held :

The order of the Magistrate refusing to discharge the respondents in the complaint pending before him has to be upheld. (Para 11)

Annexure P-3 unambiguously indicates that it was not a report within the meaning of Section 173 of the Code but a complaint filed before the Magistrate, obviously under Section 200 of the Code. The process against the accused appears to have been issued under Section 204 of the Code. Merely because the inquiry was held by a member of the Force having some similar powers as are possessed by an investigating officer, would not make the complaint to be a report within the meaning of Section 173 of the Code. (Para 6)

Section 2(*d*) of the Code encompasses a police report also as a deemed complaint if the matter is investigated by a police officer regarding the case involving commission of a non-cognizable offence. In such a case, the report submitted by a police officer cannot be held to be without jurisdiction merely because proceedings were instituted by the police officer after investigation, when he had no power to investigate. (Para 7)

The main purpose of the Act was to invest powers of investigation and prosecution of an offence relating to railway property in the RPF in the same manner as in a case relating to the offences under the law dealing with excise and customs. The offences under the Act are non-cognizable which cannot be investigated by a police officer under the Code. The result is that initiation of inquiry for an offence inquired into under this Act can be only on the basis of a complaint by an officer of the Force, as was actually done in this case. (Para 8). *State of Bihar* v. *Chandra Bhushan Singh*, (2001) 2 SCC 241: 2001 SCC (Cri) 338: AIR 2001 SC 429.

Bench Strength 2. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 13-12-2000]

Balkishan A. Devidayal v. State of Maharashtra, (1980) 4 SCC 600: 1981 SCC (Cri) 62: (1981) 1 SCR 175; State of Bihar v. Ganesh Choudhary, (2001) 2 SCC 245, relied on

[2012] — Ss. 173, 190 and 2(d) — Even if proceedings instituted before Magistrate after investigation by a police officer having no power to investigate a case involving non-cognizable offence, held, Magistrate cannot be said to have no jurisdiction to take action — *Where SI, Police concerned of Railway Protection Force investigated the cases and submitted charge-sheet, objection that no action could be taken by the Magistrate taking cognizance of offence as the SI of RPF had no power to investigate a case, held, cannot be sustained — Report of the SI should be deemed as a complaint*

The scheme of the Code of Criminal Procedure on the subject reflective from Section 2(*d*) defining "complaint" encompasses a police report also as a "deemed complaint" if the matter has been investigated by a police officer regarding a case involving commission of a non-cognizable offence. It obviously means that the proceedings before the Magistrate could not be viewed as without jurisdiction merely because proceedings were instituted by the police officer after investigation when he had no power to investigate. The police officer here cognizant of his limitations had according to the appellant State undertaken an inquiry and not an investigation and had submitted before the Court not a police report, but a complaint. Thus in either view of the matter, the interference of the High Court was uncalled for. Proceedings had to be allowed to be continued as if on a complaint. (Para 4). *State of Bihar* v. *Ganesh Choudhary*, (2001) 2 SCC 245.

Bench Strength **2**. Coram: *M.M. Punchhi* and *S.B. Majmudar*, JJ. [Date of decision: 2-5-1997]

[2013] — Ss. 173 and 190 — Final report — Magistrate not bound to accept it — *If the Magistrate feels that the evidence and material collected during investigation justify prosecution of the accused, he may not accept the final report and take cognizance of the offence — This does not amounts to interference with the investigation — Magistrate would be doing so in exercise of powers under S. 190* (Para 14). *Union of India* v. *Prakash P. Hinduja*, (2003) 6 SCC 195: 2003 SCC (Cri) 1314: AIR 2003 SC 2612: 2003 Cri LJ 3117.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 7-7-2003]

[2014] — Ss. 173 and 190(1)(b) — Evidence — Result of investigation — *Finding of guilt cannot be based on result of investigation by police — It should be based solely on evidence produced during trial — Evidence Act, 1872 — S. 3*

The reliance of the trial court on the result of investigation to base its findings is patently wrong. If the observations of the trial Judge in this regard is taken to its logical conclusion it would mean that a finding of guilt can be recorded against an accused without a trial, relying solely upon the police report submitted under Section 173, CrPC, which is the outcome of an investigation. The result of investigation under Chapter XXII of the Criminal Procedure Code is a conclusion which an Investigating Officer draws on the basis of materials collected during investigation and such conclusion can only form the basis of a competent court to take cognizance thereupon under Section 190(1)(*b*), CrPC and to proceed with the case for trial, where the materials collected during investigation are to be translated into legal evidence. The trial court is then required to base its conclusion solely on the evidence adduced during the trial and it cannot rely on the investigation or the result thereof. *Vijender* v. *State of Delhi*, (1997) 6 SCC 171: 1997 SCC (Cri) 857.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *B.N. Kirpal*, JJ. [Date of decision: 12-2-1997]

— **S. 173(1)** *See* Ss. 203, 173(1) and 190(1)

— **S. 173(2)** *See* Ch. XII (Ss. 154 to 176) and S. 173(2)

See also Ss. 154, 156, 173(2) & (8) and 211

See also Ss. 154 and 173(2) & (8)

See also Ss. 156(3), 173(2), 154 and 190(1)(a) & (b)

See also Ss. 157 and 173(2)

See also Ss. 167(5), 173(2), 2(x) and (w)

See also Ss. 170, 169 and 173(2)

See also Ss. 173(8) and (2)

See also Ss. 173(8) & (2) and 156(1)

See also Ss. 173(8), (2) and 190

See also Ss. 173(8) & (2) and 190(1)(b)

See also Ss. 173(8) & (2) and 319

See also Ss. 190, 173(2), 169, 200, 202 and 204

See also Ss. 190, 204, 173(2), 154, 162 and 319

See also Ss. 190(1), 173(2), 169, 200 and 202

See also Ss. 190(1)(a) & (b) and 173(2), 200 & 202

See also Ss. 190(1)(b) and 173(2)

See also Ss. 197, 170 and 173(2)

See also Ss. 437, 173(2) and 190(1)(b)

See also Ss. 482 and 173(2)

See also Ss. 482, 173(8) & (2) and 156(1)

[2015] — S. 173(2) — Police report — Charge-sheet — *Details of the offence need not be stated in*

Per Shetty and Venkatachaliah, JJ.

The charge-sheet is nothing but a final report of police officer under S. 173(2) of the CrPC. The statutory requirement of the report under S. 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under S. 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by S. 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence. (Para 76)

In the instant case, the charge-sheet contains all the requirements of S. 173(2). No more is required to be stated in the charge-sheet. It is fully in accordance with the terms of S. 173(2) CrPC and clause (*e*) of S. 5(1) of the Act. (Para 77). *K. Veeraswami* v. *Union of India*, (1991) 3 SCC 655: 1991 SCC (Cri) 734.

Bench Strength 5. Coram: **B.C. Ray**[1], **K. Jagannatha Shetty**[2], **L.M. Sharma**[3], *M.N. Venkatachaliah*[2] and **J.S. Verma**[4], JJ. [Date of decision: 25-7-1991]

[2016] — Ss. 173(2) & (6) — Expression "for which public servant cannot satisfactorily account" in S. 5(1)(e), PC Act, 1947 — *Does not indicate that investigating officer is obliged to afford any opportunity to the public servant to explain the alleged disproportionality of his assets and to furnish his averments in the charge-sheet — Charge-sheet must be in compliance with S. 173(2) CrPC — Prevention of Corruption Act, 1947 — S. 5(1)(e)*

Per Shetty and Venkatachaliah, JJ.

The Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet. (Para 75)

In the instant case, the charge-sheet contains all the requirements of S. 173(2). No more is required to be stated in the charge-sheet. It is fully in accordance with the terms of S. 173(2) CrPC and clause (*e*) of S. 5(1) of the Act. (Para 77)

Per Sharma, J. (concurring)

Section 5(1)(*e*) does not contemplate a notice to be served on the accused. If the prosecuting authority after making a suitable enquiry, by taking into account the relevant documents and questioning relevant persons, forms the opinion that the accused cannot satisfactorily account for the accumulation of disproportionate wealth in his possession the section is attracted. The records clearly indicate that after duly taking all the appropriate steps it was stated that the assets found in the possession of the appellant in his own name and in the name of his wife and two sons, were disproportionate by a sum of over Rs 6 lakhs to his known sources of income during the relevant period and which he "cannot satisfactorily account" for. (Para 94). *K. Veeraswami* v. *Union of India*, (1991) 3 SCC 655: 1991 SCC (Cri) 734.

Bench Strength 5. Coram: **B.C. Ray**[1], **K. Jagannatha Shetty**[2], **L.M. Sharma**[3], *M.N. Venkatachaliah*[2] and **J.S. Verma**[4], JJ. [Date of decision: 25-7-1991]

[2017] — Ss. 173(2) & (5) — Report under should contain all details required in sub-s. (2) and should also be accompanied by the documents and statements required in sub-s. (5)

The report under S. 173(2) purports to be an opinion of the investigating officer that as far as he is concerned he has been able to procure sufficient evidence for the trial of the accused by the Court and when he states in the report not only the names of the accused, but names of the witnesses, the nature of the offence and a request that the case be tried, there is compliance with S. 173(2). The report as envisaged by S. 173(2) has to be accompanied as required by sub-section (5) by all the documents and statements of the witnesses therein mentioned. The whole of it is submitted as a report to the Court. But even if a narrow construction is adopted that the police report can only be what is prescribed in Section 173(2) there would be sufficient compliance if what is required to be mentioned by the statute has been set down in the report. *Satya Narain Musadi* v. *State of Bihar*, (1980) 3 SCC 152: 1980 SCC (Cri) 660: AIR 1980 SC 506: 1980 Cri LJ 227.

Bench Strength 2. Coram: **D.A. Desai** and *O. Chinnappa Reddy*, JJ. [Date of decision: 17-9-1979]

[2018] — S. 173(2) — Reason for communicating action taken by officer-in-charge of police station to the informant

When an informant lodges the First Information Report with the officer-in-charge of a police station, he does not fade away with the lodging of the First Information Report. He is very much concerned with what action is initiated by the officer-in-charge of the police station on the basis of the First Information Report lodged by him. The reason is that the informant who sets the machinery of investigation into motion by filing the First Information Report must know what is the result of the investigation initiated on the basis of the First Information Report. The informant having taken the initiative in lodging the First Information Report with a view to initiating investigation by the police for the purpose of ascertaining whether any offence has been committed and, if so, by whom, is vitally interested in the result of the investigation and hence the law requires that the action taken by the office-in-charge of a police station on the First Information Report should be communicated to him and the report forwarded by such officer to the Magistrate under sub-section (2)(*i*) of S. 173 should also be supplied to him. *Bhagwant Singh* v. *Commr. of Police*, (1985) 2 SCC 537: 1985 SCC (Cri) 267: AIR 1985 SC 1285: 1985 Cri LJ 1521.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *A.N. Sen* and *D.P. Madon*, JJ. [Date of decision: 25-4-1985]

[2019] — Ss. 173(2), (8), 190 and 203 — Acceptance of final report by Magistrate does not debar him from taking cognizance of the offence if on further investigation fresh material comes to light (Para 4). *State of Rajasthan* v. *Aruna Devi*, (1995) 1 SCC 1: 1995 SCC (Cri) 1.

Bench Strength **2**. Coram: *Kuldip Singh* and **B.L. Hansaria**, JJ. [Date of decision: 8-11-1994]

Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar, 1962 Supp (2) SCR 297: AIR 1962 SC 876: (1962) 1 Cri LJ 770, followed

Bindeshwari Prasad Singh v. Kali Singh, (1977) 1 SCC 57: 1977 SCC (Cri) 33, distinguished

[2020] — Ss. 173(2), 169, 190, 200 and 203 — Consideration of police report — Notice and hearing to informant — *When on submission of police report under S. 173(2) Magistrate decides not to take cognizance and to drop proceeding against all or some of the accused, held, informant is entitled to a notice and an opportunity to be heard at the time of consideration of the report — The said right is conferred on the informant and none else — If the informant not aware as to when the matter is to be considered, he cannot be faulted even if protest petition is filed belatedly*

When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Criminal Procedure Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. A writ petition in such cases is not to be entertained. (Para 16). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267, followed

Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404, relied on

[2021] — S. 173(2) — Police report — Right of parties as to disclosure of police report — Stage when such right can be claimed — *Constitution of India, Art. 136*

It is too late in the day to raise a contention as has been done in Writ Petition No. 7230 of 1999, that the State should have disclosed that a final report had been filed in regard to the complaint made by *MA*, for more than one reason; firstly, the same has become academic; secondly, whereas final report had been filed on 29-11-1999, the writ petition was filed on that date itself. What would have been the effect of the said final report that no case has been made out, again is a matter of no significance, as even the High Court while exercising its jurisdiction under Section 482 did not find so. (Para 31). *Manoj Narain Agrawal* v. *Shashi Agrawal*, (2009) 6 SCC 385.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 15-4-2009]

[2022] — Ss. 173(2), (8) and 200 — Complainant's right and options against accused in criminal trial, stated — *Held, the same are (1) the right to be given notice on filing of police report, (2) the right to file a protest petition, which may be* *treated as a complaint by Magistrate, and (3) the right to question the fairness of investigation and demand further investigation*

The investigating officer when an FIR is lodged in respect of a cognizable offence, upon completion of the investigation would file a police report. It is now a well-settled principle of law that when a final form is filed by any investigating officer in exercise of his power under Section 173(2) CrPC, the first informant has to be given notice. He may file a protest petition which in a given case may be treated to be a complaint petition, on the basis whereof after fulfilling the other statutory requirements cognizance may be taken. (Para 11)

The Magistrate can also take cognizance on the basis of the materials placed on record by the investigating agency. It is also permissible for a Magistrate to direct further investigation. The Magistrate has a duty to see that the investigation is carried out in a fair manner (correctness whereof is open to question). An order of further investigation can be made at various stages including the stage of the trial, that is, after taking cognizance of the offence. (Paras 11, 14 and 15)

The question as to admissions made in an application for anticipatory bail were binding on the accused, being a matter of inference, can also be urged during trial. The other and further remedies as pointed out can be resorted to as also invocation of the provisions of Section 319 CrPC at the stage of trial is also permissible in law, if an appropriate case is made out therefor. It is clarified that any observations by higher courts should not prejudice either party and the Magistrate should consider the matter on its own merit if the issue of further investigation again arises in future. (Paras 26 and 27). *Kishan Lal* v. *Dharmendra Bafna*, (2009) 7 SCC 685: (2009) 3 SCC (Cri) 611: 2009 Cri LJ 3721: (2009) 81 AIC 141 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 21-7-2009]

Sakiri Vasu v. State of U.P., (2008) 2 SCC 409: (2008) 1 SCC (Cri) 440; Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047, relied on

[2023] — Ss. 173(2), 169 and 203 & 190(1) — When on submission of police report under S. 173(2) Magistrate decides not to take cognizance and to drop proceeding against all or some of the accused, held, informant is entitled to a notice and an opportunity to be heard at the time of consideration of the report — *The said right is conferred on the informant and none else — If the informant not aware as to when the matter is to be considered, he cannot be faulted, even if protest petition is filed by him belatedly* (Paras 7, 11 and 12). *Gangadhar Janardan Mhatre* v. *State of Maharashtra*, (2004) 7 SCC 768: (2004) 114 DLT 193.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 28-9-2004]

Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267: AIR 1985 SC 1285, followed

[2024] — Ss. 173(2) and 167(2) proviso (a)(i) — Challan — When defective — *Challan filed without relevant documents viz. negatives of certain photographs — But all the relevant documents were placed before the court before expiry of 90 days' period stipulated under proviso (a)(i) to S. 167(2) which was applicable in the instant case — Hence prayer for grant of bail rightly refused — However, it would be appropriate to file the original photographs along with the report under S. 173(2) CrPC, which can be taken back with permission of the court to be produced as and when required — Alternatively, the xerox copies can be filed along with a certificate that they can be compared with the originals, as and when so directed by the court* (Paras 19 and 20). *Bhupinder Singh* v. *Jarnail Singh*, (2006) 6 SCC 277: (2006) 3 SCC (Cri) 101: AIR 2006 SC 2622: (2006) 4 KLT 460.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-7-2006]

Tara Singh v. State, 1951 SCR 729: AIR 1951 SC 441: 1951 Cri LJ 1491; Satya Narain Musadi v. State of Bihar, (1980) 3 SCC 152: 1980 SCC (Cri) 660, relied on

[2025] — Ss. 173(2) and 190 — Report of police officer on completion of investigation — Protest petition against — Locus standi — Direction for proper investigation prayed for — Scope of interference — *Writ petition filed by respondent-petitioner praying for a direction to the investigating agency to proceed with "fair and proper investigation in Case No. 147 of 2006 under S. 307 IPC" — High Court by the impugned judgment directing the petitioner to lodge protest petition with the Magistrate; directing Magistrate to pass an appropriate order in accordance with law, taking into account the statement of the injured and injury report; further directing that final report of police under S. 173(2) CrPC was not to be accepted, and if accepted to be treated as rejected; and keeping the matter pending, indicating its anxiety to know the order passed by the Magistrate — Submission by appellant that such directions were unsustainable; High Court indirectly directed rejection of the final report as would be evident from the fact that the High Court expressed its anxiety to know the order passed by the Magistrate and kept the writ petition pending for report of the Magistrate concerned; and in fact the Magistrate was so* *influenced and had not applied his mind while rejecting the report — Held, High Court could not have directed the writ petitioner to lodge the protest petition — It was for the informant to do so if he intended to do so — Moreover, the impugned order clearly indicated that the High Court wanted the rejection of the final report though it was not specifically spelt out — Hence, impugned order set aside — Magistrate directed to consider protest petition, if filed, uninfluenced by any observation made by the High Court — Constitution of India — Art. 226* (Paras 2, 3, 4, 6, 7 and 8). *Sanjay Bansal* v. *Jawaharlal Vats*, (2007) 13 SCC 71: AIR 2008 SC 207: (2008) 1 All LJ 37: 2008 Cri LJ 428.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 22-10-2007]

Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404, relied on

— S. 173(3) *See* Ss. 36, 173(8) and (3)

— S. 173(5) *See* Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311

See also Ss. 166-B and 173(5)

See also Ss. 173(2) and (5)

[2026] — Ss. 173(5) and 170(2) — Documents submitted under S. 173(5) — Scope — *Held, documents submitted to Magistrate along with report under S. 173(5) would deem to include documents which have been sent to Magistrate during course of investigation as per S. 170(2)* (Para 219). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength 2. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

R. v. Ward (Judith), (1993) 1 WLR 619: (1993) 2 All ER 577 (CA); R. v. Preston, (1994) 2 AC 130: (1993) 3 WLR 891: (1993) 4 All ER 638 (HL), distinguished

[2027] — Ss. 173(5), (6) & (7) and Ss. 172(2) & (3) — Documents to be supplied to accused — *Held, accused entitled to have the entire set of documents which accompanied the final report — However, the case diary can be used only by the court subject to restrictions under Ss. 172(2) and (3) and the accused can have no claim to it* (Para 2). *CBI* v. *Mohinder Singh*, (2004) 13 SCC 578.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *P. Venkatarama Reddi*, JJ. [Date of decision: 5-3-2003]

[2028] — Ss. 173(5), 228, 240, 231, 242, 235 and 248 — Framing of charges — Appreciation of evidence on record — Scope of — Material to be considered — *Held, court cannot confine to material supporting the prosecution and ignore the material favouring accused — S. 173(5) of the Code, held, would otherwise lose its meaning*

The probative value of the material on record, has not been gone into. The materials have been accepted as true at the stage of framing of charges. At this stage even a defence of an accused cannot be considered. But, where the entire materials collected during investigation have been placed before the court as part of the charge-sheet, the court at the time of framing of the charge cannot confine itself to the materials upon which the prosecution intended to rely ignoring the other materials which were in favour of the accused. Whether the materials on record, even when given face value and taken to be correct in their entirety, disclose commission of an offence or not, should be the basis for the court for proceeding further, is a question which must be determined having regard to the entirety of materials brought on record by the prosecution and not on a part of it. If such a construction was made, sub-section (5) of Section 173 of the Code of Criminal Procedure would become meaningless. (Paras 52 and 53). *State of M.P.* v. *Sheetla Sahai*, (2009) 8 SCC 617: (2009) 3 SCC (Cri) 901.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 4-8-2009]

[2029] — Ss. 173(5) and (8) — Police report — Additional evidence gathered during investigation can be produced by police officer even after submission of charge-sheet — *Word "shall" used in sub-s. (5) for requiring the police officer to forward to the Magistrate "all documents" is directory and not mandatory*

From the provisions of Section 173 it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court. Considering the preliminary stage of prosecution and the context in which the police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which the prosecution proposes to rely, the word "shall" used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. In such cases, there cannot be any prejudice to the accused. (Para 7). *CBI* v. *R.S. Pai*, (2002) 5 SCC 82: 2002 SCC (Cri) 950: AIR 2002 SC 1644: 2002 Cri LJ 2029: (2002) 2 KLT 149.

Bench Strength 3. Coram: **M.B. Shah**, *Brijesh Kumar* and *D.M. Dharmadhikari*, JJ. [Date of decision: 3-4-2002]

Narayan Rao v. State of A.P., AIR 1957 SC 737: 1958 SCR 283: 1957 Cri LJ 1320, relied on

— S. 173(6) *See* Ss. 157, 162, 173(6) and 172
See also Ss. 161, 172, 173(6) and 207
See also Ss. 173(2) & (6)
See also Ss. 173(5), (6) & (7) and Ss. 172(2) & (3)

— S. 173(7) *See* Ss. 173(5), (6) & (7) and Ss. 172(2) & (3)

— S. 173(8) *See* Ss. 36, 173(8) and (3)
See also Ss. 154, 156, 173(2) & (8) and 211
See also Ss. 154 and 173(2) & (8)
See also Ss. 156, 157, 170, 173(8) and 190
See also Ss. 156 and 173(8)
See also Ss. 156(3), 173(8), 190, 200 and 204
See also Ss. 157, 156, 169, 170, 173 and 190 & 173(8)
See also Ss. 157, 173(8) and 166-A
See also Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311
See also Ss. 167, 309(2) and 173(8)
See also Ss. 173(2), (8), 190 and 203
See also Ss. 173(5) and (8)
See also Ss. 482 and 173(8)
See also Ss. 482, 173(8) & (2) and 156(1)
See also Ss. 482, 173(8) and 228
See also Ss. 482, 311, 391, 173(8), 216 and 24

[2030] — S. 173(8) — Further investigation — Direction/Permission for — Formal request if mandatory — *Held, there are certain situations where a formal request may not be insisted upon — Constitution of India — Arts. 32 and 226* (Para 12). *Mithabhai Pashabhai Patel* v. *State of Gujarat*, (2009) 6 SCC 332.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

[2031] — Ss. 173(8) and 482 — Further investigation — Nature and scope — Instances when S. 173(8) may be invoked — Interference by courts — When permissible — *Held, S. 173(8) can be invoked (1) when new facts come to light or (2) when superior courts find that the investigation is tainted and/or unfair or (3) when superior courts find that it is required in the ends of justice*

The power of investigation is a statutory one and ordinarily and save and except some exceptional situations, no interference therewith by any court is permissible. The investigating officer may exercise his statutory power of further investigation in several situations as, for example, when new facts come or further materials came to his notice. Apart from the aforementioned grounds, the Magistrate or the superior courts can direct further investigation, if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends of justice. (Paras 12 and 16). *Kishan Lal* v. *Dharmendra Bafna*, (2009) 7 SCC 685: (2009) 3 SCC (Cri) 611: 2009 Cri LJ 3721: (2009) 81 AIC 141 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 21-7-2009]

Naresh Kavarchand Khatri v. State of Gujarat, (2008) 8 SCC 300: (2008) 3 SCC (Cri) 614; Dharmeshbhai Vasudevbhai v. State of Gujarat, (2009) 6 SCC 576: (2009) 3 SCC (Cri) 76, relied on

[2032] — Ss. 173(8), 156 and 157 — Further investigation — Directions that may be given by court — *When power under sub-s. (8) is exercised Court should not ordinarily interfere therewith by directing that investigation be made from a particular angle or by a particular agency* (Para 48). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength 2. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

[2033] — S. 173(8) — Further investigation — Mere fact that it may delay the trial, held, not a relevant consideration — *Police can conduct further investigation in a proper manner even if the court has taken cognisance — Thus, when fresh facts (lapses in earlier investigation in this case) come to light, the police should inform the court and seek permission to make further investigation*

The grievance of the appellant, who had lodged a criminal complaint against the accused persons, was that the investigation in his case was not carried out fairly. According to him, the police had succumbed to the pressure exercised by the local MLA and after a few hours of the registration of the FIR, Sections 395 and 120-B IPC were deleted by the prosecuting agency and because of such deletion the accused persons managed to get bail. The appellant filed a writ petition before the High Court for issuance of appropriate writ for reinvestigation by an independent agency. The High Court declined to entertain the said writ petition by holding that if further investigation was necessary, the said remedy was available in CrPC. It held that the police was not the ultimate authority which could decide about the applicability of sections. Thus, the High Court directed that appropriate steps could be taken by the complainant along with the prosecuting agency before the trial court. The appellant challenged the said judgment by filing the instant appeal before the Supreme Court.

The Supreme Court by an order dated 19-3-2004 directed the Director General of Police, Gujarat to submit a report as to whether the action taken by the investigating officer (IO) was proper and whether there was need for further investigation. In the report submitted by the Director General of Police, it was stated that though the deletion of Section 120-B IPC was not proper, the Sessions Court had framed charge against three of the accused persons under the said section. It was submitted that there were a few lapses in investigation and inquiry was being caused against the IO with a view to initiate suitable departmental action. So far as the desirability of further investigation was concerned, it was stated that the case was fixed for day-to-day hearing and if further investigation would be done, it would prove infructuous and would only delay the process of trial unnecessarily.

Disposing of the appeal,

Held :

The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. Section 173(8) CrPC permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognisance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted. (Paras 13 and 12)

When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permit. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. (Para 13) . *Hasanbhai Valibhai Qureshi* v. *State of Gujarat*, (2004) 5 SCC 347: 2004 SCC (Cri) 1603: AIR 2004 SC 2078: 2004 Cri LJ 2018: (2004) 3 Mah LJ 1074: (2004) 3 MPLJ 593.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-4-2004]

Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479: AIR 1979 SC 1791, relied on

[2034] — S. 173(8) — Further investigation after submission of final report — Permissibility — *Held, permissible in view of S. 173(8) CrPC* (Para 14). *N.P. Jharia* v. *State of M.P.*, (2007) 7 SCC 358: (2007) 3 SCC (Cri) 365: AIR 2007 SC 2677: 2007 Cri LJ 3745: (2007) 57 AIC 80 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 30-7-2007]

[2035] — Ss. 173(8) and (2) — Further investigation by police after a report under S. 173(2) has been forwarded to Magistrate — Held, permissible (Para 12). *Kari Choudhary* v. *Sita Devi*, (2002) 1 SCC 714: 2002 SCC (Cri) 269: AIR 2002 SC 441: 2002 Cri LJ 923: (2002) 1 CHN (Supp) 108.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Phukan*, JJ. [Date of decision: 11-12-2001]

***Impliedly distinguished** in Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441*

[2036] — Ss. 173(8) & (2), 167(2) and 319 — Reinvestigation or further investigation under S. 173(8) at behest of de facto complainant — Permissibility of, after filing of charge-sheet under S. 173(2), and framing of charges against some accused, other accused having been discharged — Proper course to be followed by Magistrate — *Held, having passed a final order framing charges against six accused and discharging remaining ten accused, it was no longer within Magistrate's jurisdiction to direct reinvestigation into the case — Besides, investigating authorities had not applied for further investigation — Not only was Magistrate wrong in directing reinvestigation on application made by de facto complainant, but he also exceeded his jurisdiction in entertaining said application filed by de facto complainant — Since no application had been made by investigating authorities for conducting further investigation under S. 173(8) CrPC, the other course of action open to Magistrate was to take recourse to provisions of S. 319 at stage of trial if any material is disclosed during examination of the witnesses during the trial — Hence, no reason to interfere with order of High Court quashing order of Magistrate*

(Paras 25 to 27). *Reeta Nag* v. *State of W.B.*, (2009) 9 SCC 129: (2009) 3 SCC (Cri) 1051.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 13-8-2009]

Sooraj Devi v. Pyare Lal, (1981) 1 SCC 500: 1981 SCC (Cri) 188; Master Construction Co. (P) Ltd. v. State of Orissa, AIR 1966 SC 1047; Sankatha Singh v. State of U.P., AIR 1962 SC 1208, applied

Dinesh Dalmia v. CBI, (2007) 8 SCC 770: (2008) 1 SCC (Cri) 36, distinguished on facts but relied on in law

Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361; Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927, relied on

K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88, held, overruled

[2037] — Ss. 173(8) & (2) and 190(1)(b) — Power of magistrate to order further investigation subsequent to conclusion of final report submitted by police that no offence was committed — *If the final report submitted by police concludes that no offence was committed, contrary to the allegations made in the complaint, held, it is open to the Magistrate to order further investigation to be made by police, besides other options available to him viz. to accept the report or to disagree with the report and take cognizance of the offence*

The appellant made a complaint to the DIG, CBI complaining that Respondent 4, a son of Respondent 3, Chief Commissioner of Income Tax, demanded Rs 10 lakhs as bribe to be paid to Respondent 3 for settling income tax problems. Accordingly, CBI laid a trap. It supplied a micro-cassette to the appellant with which he recorded his conversation with Respondents 4 and 3. At the pre-arranged time, the money was handed over to Respondent 5, another son of Respondent 3, at the residence of Respondent 3 in the presence of Respondent 4. The signal was then transmitted to the CBI officers who made a swoop and caught Respondent 5. The bag containing the cash was recovered from the house of Respondent 3. Investigation thereupon was commenced by CBI. After conclusion of the investigation, CBI filed its final report before the Special Judge, Anti-Corruption. In the final report, CBI exonerated Respondents 3 to 5 in full measure and wanted the court to initiate prosecution proceedings against the appellant for the offences under Sections 182 and 211 IPC. CBI took the stand that the complaint made by the appellant was not only false but it was aimed at deterring the income tax officials from discharging their functions fearlessly. The Special Judge, on receipt of the final report, issued notice to the appellant and after hearing him, ordered CBI to reinvestigate the matter by a DIG level officer as according to him the investigation was not properly conducted and the final report was submitted without properly going through the provisions of CrPC and the Prevention of Corruption Act. CBI moved the High Court in revision against this order of the Special Judge. A Single Judge of the High Court held that there was no case for any fresh investigation or for any further investigation. According to the Court further investigation could only be ordered when some other evidence was in sight and was not collected or was left over, and could help the merit of the case, but in the instant case, every relevant material was collected and no material was left over, and every such material so collected was made the basis of the final report and thus every material was placed before the Special Judge. The Court also deprecated the direction of the Special Judge for specifying an officer of DIG rank of CBI to conduct the investigation. The Single Judge also observed: "The Special Judge could have either rejected or could have accepted the final report under the circumstances of the case after applying his judicial mind and after recording the basis of his opinion. There was no sense in ordering the fresh investigation in the circumstances of the case in disregard of provisions of Section 173(8) of the Code and making the entire investigation a futile exercise. It was not a case of further investigation. The order is bad in law." Ultimately, the Single Judge after setting aside the order of the Special Judge, directed him to consider the materials before him once again and to pass suitable orders in accordance with law. Allowing the appeal, by the complainant,

Held :

When the report is filed under sub-section (2) of Section 173 the Magistrate (in this case the Special Judge) has to deal with it by bestowing his judicial consideration. If the report is to the effect that the allegations in the original complaint were found true in the investigation, or that some other accused and/or some other offences were also detected, the court has to decide whether cognizance of the offences should be taken or not on the strength of that report. But when the report is against the allegations contained in the complaint and concluded that no offence has been committed by any person, it is open to the court to accept the report after hearing the complainant at whose behest the investigation had commenced. If the court feels on a perusal of such a report that the alleged offences have in fact been committed by some persons the court has the power to ignore the contrary conclusions made by the investigating officer in the final report. Then it is open to the court to independently apply its mind to the facts emerging therefrom and it can even take cognizance of the offences which appear to it to have been committed, in exercise of its power under

Section 190(1)(*b*) of the Code. The third option is the one adumbrated in Section 173(8) of the Code. (Para 15)

Although sub-section (8) does not, in specific terms, mention about the powers of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by a court which has the jurisdiction to do so, it would not be a proper exercise of revisional powers to interfere therewith because the further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation, the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back on that track. If they come to the same conclusion, it is of added advantage to the persons against whom the allegations were made, and if the allegations are found false again the complainant would be in trouble. So from any point of view the Special Judge's direction would be of advantage for the ends of justice. It is too premature for the High Court to predict that the investigating officer would not be able to collect any further material at all. That is an area which should have been left to the investigating officer to survey and recheck. When the Special Judge has opted to order for a further investigation the High Court should have stated to CBI to comply with that direction. (Paras 16 and 20). *Hemant Dhasmana* v. *CBI*, (2001) 7 SCC 536: 2001 SCC (Cri) 1280: AIR 2001 SC 2721.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 17-8-2001]

Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267; India Carat (P) Ltd. v. State of Karnataka, (1989) 2 SCC 132: 1989 SCC (Cri) 306; Union Public Service Commission v. S. Papaiah, (1997) 7 SCC 614: 1997 SCC (Cri) 1112, relied on

[2038] — S. 173(8) — Further investigation — Long after submission of final form — *Held, valid — Order for further investigation cannot be interfered with by High Court in exercise of its revisional power on ground that examining the witnesses who were examined at the time of the earlier investigation, recording their statements 5½ years after submission of the final form and further investigation on the basis of such statement would amount to abuse of process of court — Power under sub-section (8) is of widest amplitude and is not of such restrictive nature*

The High Court observed "that reopening the investigation by examining those witnesses who were examined or available to be examined at the time of earlier investigation and recording their statements almost five-and-a-half years after the final form was submitted do not appear to be bona fide and further investigation on the basis of statements of witnesses available to be examined during earlier investigation amounts to abuse of process of court and exercise of power not intended to be exercised under Section 173(8) CrPC. The scope of Section 173(8) CrPC cannot be stretched to that extent". Accordingly, the High Court quashed the further investigation but further observed "it shall be open for the investigating agency to make further investigation in terms of Section 173(8) CrPC on the basis of such materials which were not available at the time of earlier investigation or not within the knowledge of the investigating agency".

Allowing the appeal,

Held :

The language of the statute is clear enough to indicate that it is not a restrictive one but it has the widest possible sanctity. The statute has provided the said provision for the sake of the concept of justice and in the event, the interest of justice so requires, this further power of investigation has been conferred on the police under Section 173(8) of the Code. (Para 8)

The High Court in exercise of the power under criminal revisional jurisdiction ought not to have interpreted Section 173(8) CrPC with a restriction. The last two lines of the observation of the High Court viz. "which were not available at the time of earlier investigation or not within the knowledge of the investigating agency" cannot be said to be a proper expression of law in terms of Section 173(8) CrPC. The impugned judgment is erroneous on a reading of Section 173(8) CrPC and as such cannot be concurred with. (Para 9). *State of Orissa* v. *Mahima*, (2007) 15 SCC 580.

Bench Strength **2**. Coram: *U.C. Banerjee* and *B.N. Agrawal*, JJ. [Date of decision: 16-9-2002]

Hemant Dhasmana v. CBI, (2001) 7 SCC 536: 2001 SCC (Cri) 1280, relied on

[2039] — Ss. 173(8), 156(3), 202 and 391 — Magistrate's power and duties under, discussed and stated

The investigating officer when an FIR is lodged in respect of a cognizable offence, upon completion of the investigation would file a police report. It is now a well-settled principle of law that when a final form is filed by any investigating officer in exercise of his power under Section 173(2) CrPC, the first informant has to be given notice. He may file a protest petition which in a given case may be treated to be a complaint petition, on the basis whereof after fulfilling the other statutory requirements cognizance may be taken. (Para 11)

The Magistrate can also take cognizance on the basis of the materials placed on record by the investigating agency. It is also permissible for a Magistrate to direct further investigation. The Magistrate has a duty to see that the investigation is carried out in a fair manner (correctness whereof is open to question). An order of further investigation can be made at various stages including the stage of the trial, that is, after taking cognizance of the offence. (Paras 11, 14 and 15)

The question as to admissions made in an application for anticipatory bail were binding on the accused, being a matter of inference, can also be urged during trial. The other and further remedies as pointed out can be resorted to as also invocation of the provisions of Section 319 CrPC at the stage of trial is also permissible in law, if an appropriate case is made out therefor. It is clarified that any observations by higher courts should not prejudice either party and the Magistrate should consider the matter on its own merit if the issue of further investigation again arises in future. (Paras 26 and 27). *Kishan Lal* v. *Dharmendra Bafna*, (2009) 7 SCC 685: (2009) 3 SCC (Cri) 611: 2009 Cri LJ 3721: (2009) 81 AIC 141 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 21-7-2009]

Sakiri Vasu v. State of U.P., (2008) 2 SCC 409: (2008) 1 SCC (Cri) 440; Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047, relied on

[2040] — Ss. 173(8) and 156 — Investigation by local police in progress — Direction issued by High Court in writ petition for a fresh and further investigation by an agency other than local police — Propriety of — *In the circumstances, held, High Court overstepped its jurisdiction in issuing the impugned direction — However, power of the investigating agency to have any further investigation under S. 173(8) CrPC not affected thereby* (Para 2). *Rajesh* v. *Ramdeo*, (2001) 10 SCC 759.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 15-9-2000]

***Doubted** in Sasi Thomas v. State, (2006) 12 SCC 421*

[2041] — Ss. 173(8) and 156 — Police inaction/atrocities — Fake encounter — Transfer of case to CBI — Stages at which permissible — Need to ensure that justice is also seen to be done — *Sohrabuddin Fake Encounter case — Transfer of case to CBI at stage when State Police had completed investigation and charge-sheet had been submitted — Held, case could be transferred to CBI even at this stage — Delhi Special Police Establishment Act, 1946 (25 of 1946), Ss. 5 and 6 — Constitution of India, Arts. 32 and 226*

The writ petitioner is the brother of one Sohrabuddin (*S*) who was alleged to have been killed by officials of Gujarat Police in a fake encounter. *S*'s wife also disappeared under mysterious circumstances. Investigation was conducted by Gujarat Police but writ petitioner's apprehension was that fair and impartial investigation was not conducted because high officials of Gujarat Police were involved in this case. Some of the accused persons had already been arrested and charge-sheet had been filed in court. Writ petitioner's contention was that the case should be transferred to Central Bureau of Investigation (CBI). Respondent State submitted eight action taken reports which were reviewed by the Supreme Court.

Two issues were involved in this case. First, whether investigation could be transferred to CBI Authorities after charge-sheet had been submitted and trial was going on. Second, whether facts and circumstances of this case warrant transfer of the case to CBI because investigation had not been conducted properly by State police authorities.

Answering both the issues affirmatively,

Held :

It is not possible to accept that investigation at this stage cannot be handed over to CBI Authorities or any other independent agency. The accusations are directed against local police personnel in which high police officials of the State of Gujarat have been made the accused. It is proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding, and if investigation is allowed to be carried out by local police authorities, all concerned including relatives of the deceased may feel that investigation was not proper, and in those circumstances it would be fit and proper that the writ petitioner and relatives of the deceased should be assured that an independent agency should look into the matter, and that would lend the final outcome of the investigation credibility, however faithfully the local police may carry out the investigation, particularly when gross allegations have been made against high police officials of the State of Gujarat, and for which some high police officials have already been taken into custody. In an appropriate case when the Court feels that investigation by police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the Court to hand over investigation to independent agency like CBI. In an appropriate case, the court is empowered to hand over investigation to an independent agency like CBI even when charge-sheet has been submitted. (Paras 51 to 54, 60 and 61)

The investigation in the present case cannot be said to have run in a proper direction. After considering factual discrepancies appearing in eight action taken reports and the charge-sheet, the Supreme Court feels that Police Authorities of State of Gujarat have failed to carry out fair and impartial investigation which the Court wanted them to do. Offences committed by high police officials are of grave nature which need to be strictly dealt with. Besides, the State Police Authorities of Gujarat have to take help from other police officials of States of Andhra Pradesh and Rajasthan. Although the charge-sheet has been submitted, yet considering the nature of crime that has been allegedly committed not by any third party but by police personnel of State of Gujarat, the investigation concluded in the present case cannot be said to be satisfactorily held. If the investigation is transferred to CBI Authorities, it would be fair and proper that other State police officials should also help CBI Authorities in coming to a final conclusion on the allegations made by the writ petitioner and also on the offences alleged to have been committed by some of them. (Paras 62, 68, 73 and 79)

The scope of this order is not to deal with the power of the Supreme Court to monitor investigation but to make sure that justice is not only done but is also seen to be done. Considering involvement of State police authorities and particularly eight officials of State of Gujarat, the Supreme Court is compelled to direct CBI Authorities to investigate into the matter even after the charge-sheet has been filed. Since high officials of the State are involved and some of them are already in custody, it would not be sufficient to instil confidence in the minds of victims as well as public that still the State police authorities would be allowed to continue with investigation when allegations and offences are mostly against them. (Para 80)

The Court cannot shut its eyes and allow State police authorities to continue with the investigation and charge-sheet. For proper and fair investigation, CBI is directed to take up investigation and submit a report to the Supreme Court within six months. Police Authorities of State of Gujarat are therefore directed to hand over records of present case to CBI Authorities. The CBI Authorities would investigate all aspects of the case relating to killing of *S* and his wife *K* including alleged possibility of a larger conspiracy. The Supreme Court expects that the Police Authorities of Gujarat, Andhra Pradesh and Rajasthan would cooperate with the CBI Authorities in conducting investigation properly and in an appropriate manner. (Para 82). *Rubabbuddin Sheikh* v. *State of Gujarat*, (2010) 2 SCC 200.

Bench Strength **2**. Coram: **Tarun Chatterjee** and *Aftab Alam*, JJ. [Date of decision: 12-1-2010]

Kashmeri Devi v. Delhi Admn., 1988 Supp SCC 482: 1988 SCC (Cri) 864; Inder Singh v. State of Punjab, (1994) 6 SCC 275: 1994 SCC (Cri) 1653; Gudalure M.J. Cherian v. Union of India, (1992) 1 SCC 397; Punjab & Haryana High Court Bar Assn. v. State of Punjab, (1994) 1 SCC 616: 1994 SCC (Cri) 455; R.S. Sodhi v. State of U.P., 1994 Supp (1) SCC 143: 1994 SCC (Cri) 248; Ramesh Kumari v. State (NCT of Delhi), (2006) 2 SCC 677: (2006) 1 SCC (Cri) 678; Sk. Hasib v. State of Bihar, (1972) 4 SCC 773; Babu Lodhi v. State of U.P., (1987) 2 SCC 352: 1987 SCC (Cri) 371; Prem Kumar v. State of Bihar, (1995) 3 SCC 228: 1995 SCC (Cri) 445, relied on

Vineet Narain v. Union of India, (1996) 2 SCC 199: 1996 SCC (Cri) 264; Union of India v. Sushil Kumar Modi, (1998) 8 SCC 661: 1999 SCC (Cri) 84; Rajiv Ranjan Singh 'Lalan' (VIII) v. Union of India, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125, distinguished

[2042] — S. 173(8) — Investigation into separate offence — Further investigation into same offence — What are — *Investigation regarding allegations against investigating officer and the mode and manner of investigation into a particular offence, held, is not an investigation in relation to a separate offence*

It was not a case where investigation was carried out in relation to a separate conspiracy. As allegations had been made against the officer of a local police station in regard to the mode and manner in which investigation was carried out, a further investigation was directed. (Para 17). *State of A.P.* v. *A.S. Peter*, (2008) 2 SCC 383: (2008) 1 SCC (Cri) 427: AIR 2008 SC 1052.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-12-2007]

[2043] — S. 173(8) — Power of court to direct the police to conduct further investigation or re-investigation — Court not obliged to hear the accused before making such direction

Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) CrPC. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. (Para 10)

In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it the Magistrate cannot be burdened with such obligation. (Para 11). *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj* v. *State of A.P.*, (1999) 5 SCC 740: 1999 SCC (Cri) 1047: AIR 1999 SC 2332: 1999 Cri LJ 3661.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 15-7-1999]

Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479, relied on

[2044] — S. 173(8) — Power of investigating officer to make further investigation — Necessity of express permission of Magistrate — *Though Magistrate may have supervisory jurisdiction to ensure a fair investigation, held, that does not mean that investigating officer will have no jurisdiction to make any further investigation without the express permission of Magistrate*

Only when cognizance of an offence is taken, may the Magistrate have some say. But, the restriction imposed by judicial legislation is merely for the purpose of upholding the independence and impartiality of the judiciary. It is one thing to say that the court will have supervisory jurisdiction to ensure a fair investigation, as has been observed by a Bench of the Supreme Court in *Sakiri Vasu case*, (2008) 2 SCC 409 correctness whereof is open to question, but it is another thing to say that the investigating officer will have no jurisdiction whatsoever to make any further investigation without the express permission of the Magistrate. (Para 68). *Nirmal Singh Kahlon* v. *State of Punjab*, (2009) 1 SCC 441.

Bench Strength 2. Coram: **S.B. Sinha** and *Aftab Alam*, JJ. [Date of decision: 22-10-2008]

Sakiri Vasu v. State of U.P., (2008) 2 SCC 409: (2008) 1 SCC (Cri) 440, doubted

[2045] — S. 173(8) — Reinvestigation — Permissibility — Further investigation and reinvestigation, distinguished — *Held, both stand on different footing — A distinction exists between a reinvestigation and further investigation — Supreme Court or High Court can direct State to get an offence investigated and/or further investigated — However, reinvestigation being forbidden in law, no superior court would ordinarily issue direction of reinvestigation — Constitution of India — Arts. 32 and 226*

The Supreme Court while passing the order in exercise of its jurisdiction under Article 32 of the Constitution of India in *NHRC case*, (2009) 6 SCC 342 and the order dated 22-9-2008 did not direct reinvestigation. "Further investigation" and "reinvestigation" stand on different footing. A distinction exists between a reinvestigation and further investigation. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State"to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. If the investigating authority, in terms of the provisions of CrPC, could not ask for reinvestigation, the court would have to proceed on the basis that Supreme Court in its order in *NHRC case*, (2009) 6 SCC 342 and the order dated 22-9-2008 only directed further investigation. Furthermore, in this case the Special Investigating Team has already submitted its report to the Supreme Court. Nothing has been pointed out as to why even the bail granted to the appellants should be cancelled so as to consider that question independently. No sufficient or cogent material has been placed on record by the State or the Special Investigating Team in this behalf. (Paras 12 to 14 and 24). *Mithabhai Pashabhai Patel* v. *State of Gujarat*, (2009) 6 SCC 332.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631, followed

National Human Rights Commission v. State of Gujarat, (2009) 6 SCC 342, clarified

Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441: (2009) 1 SCC (Cri) 523, referred to

Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307, cited

[2046] — Ss. 173(8) & (2) and 319 — "Further investigation"— Scope of — "Further investigation"distinguished from "fresh investigation"or "reinvestigation"— Summoning of witnesses named in supplementary charge-sheet — Permissibility — *Held, even after submission of the police report under S. 173(2) on completion of the investigation, the police has a right to "further" investigation under S. 173(8) but not "fresh investigation"or "reinvestigation"— Meaning of "further"is additional, more, or supplemental — It is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether — Further held, S. 178(8) clearly envisages that on completion of further investigation, the* *investigating agency has to forward to the Magistrate a "further" report regarding the "further" evidence obtained during such investigation — Hence, order of trial court summoning the witnesses named in the supplementary charge-sheet cannot be faulted with — Further, law does not mandate taking prior permission from the Magistrate for further investigation and carrying out further investigation even after filing of the charge-sheet which is a statutory right of the police — Furthermore, material collected in further investigation cannot be rejected only because it has been filed at the stage of the trial — Hence, impugned judgment rejecting revision application filed against order of trial court summoning the witnesses based on supplementary charge-sheet calls for no interference* (Paras 15 to 22). *Rama Chaudhary* v. *State of Bihar*, (2009) 6 SCC 346.

Bench Strength **2**. Coram: *S.B. Sinha* and **P. Sathasivam**, JJ. [Date of decision: 2-4-2009]

Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347: 2004 SCC (Cri) 1603; K. Chandrasekhar v. State of Kerala, (1998) 5 SCC 223: 1998 SCC (Cri) 1291, relied on

[2047] — S. 173(8) — "Further investigation" and "reinvestigation" — Difference — Plea for reinvestigation or fresh investigation by different investigating agency — Tenability — Authority competent to decide — *Reiterated, direction for reinvestigation is not envisaged by law — Held, accused had failed to justify abovesaid plea — In such circumstances it was for court alone to decide whether investigation was required to be done by any other agency and no opinion from DGP-level officer could have been sought therefor — Words and Phrases — "Further investigation" and "reinvestigation"* (Paras 34 to 38). *Virender Prasad Singh* v. *Rajesh Bhardwaj*, (2010) 9 SCC 171: (2010) 3 SCC (Cri) 1169: 2010 Cri LJ 4275: (2010) 95 AIC 182 .

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 16-8-2010]

Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047; Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631, relied on

Rubabbuddin Sheikh v. State of Gujarat, (2010) 2 SCC 200: (2010) 2 SCC (Cri) 1006, distinguished on facts

[2048] — Ss. 173(8) and 319 — High Court and Supreme Court setting aside Magistrate's direction for further investigation and concurrently holding that further investigation by Magistrate under S. 173(8) was not warranted in respect of accused persons A-3 to A-10 — Effect — *Said direction, held, neither closes the future options of further investigation under S. 173(8) nor closes application of S. 319 to proceed against additional offenders*

The investigating officer when an FIR is lodged in respect of a cognizable offence, upon completion of the investigation would file a police report. It is now a well-settled principle of law that when a final form is filed by any investigating officer in exercise of his power under Section 173(2) CrPC, the first informant has to be given notice. He may file a protest petition which in a given case may be treated to be a complaint petition, on the basis whereof after fulfilling the other statutory requirements cognizance may be taken. (Para 11)

The Magistrate can also take cognizance on the basis of the materials placed on record by the investigating agency. It is also permissible for a Magistrate to direct further investigation. The Magistrate has a duty to see that the investigation is carried out in a fair manner (correctness whereof is open to question). An order of further investigation can be made at various stages including the stage of the trial, that is, after taking cognizance of the offence. (Paras 11, 14 and 15)

The question as to admissions made in an application for anticipatory bail were binding on the accused, being a matter of inference, can also be urged during trial. The other and further remedies as pointed out can be resorted to as also invocation of the provisions of Section 319 CrPC at the stage of trial is also permissible in law, if an appropriate case is made out therefor. It is clarified that any observations by higher courts should not prejudice either party and the Magistrate should consider the matter on its own merit if the issue of further investigation again arises in future. (Paras 26 and 27). *Kishan Lal* v. *Dharmendra Bafna*, (2009) 7 SCC 685: (2009) 3 SCC (Cri) 611: 2009 Cri LJ 3721: (2009) 81 AIC 141 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 21-7-2009]

Sakiri Vasu v. State of U.P., (2008) 2 SCC 409: (2008) 1 SCC (Cri) 440; Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047, relied on

[2049] — Ss. 173(8) and 482 — Fresh investigation — When can be directed by court — Ordinarily further investigation, not reinvestigation, permissible — "Ordinary" excludes extraordinary — *Court's interference with investigation warranted only in extraordinary or exceptional cases of gross abuse of power and failure of justice — Court would direct de novo investigation to prevent miscarriage of justice, if investigation is tainted and biased, suffers from irregularities and conducted in mala fide exercise of power by police causing serious prejudice and harassment to any party — Charge-sheet filed and any other order issued by investigating agency pur-*

suant to such vitiated investigation also liable to be quashed — Constitution of India — Arts. 136 and 14

Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer "is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth". (Paras 45 and 32)

Where the court comes to the conclusion that there was a serious irregularity in the investigation that had taken place, the court may direct a further investigation under Section 173(8) CrPC, even transferring the investigation to an independent agency, rather than directing a reinvestigation. Scheme of investigation, particularly, Section 173(8) CrPC provides for further investigation and not reinvestigation. Therefore, if the court comes to the conclusion that the investigation has been done in a manner with an object of helping a party, the court may direct for further investigation and *ordinarily* not for reinvestigation. The expression "*ordinarily*" means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. "Ordinarily" excludes "extraordinary" or "special circumstances". Therefore, unless an extraordinary case of gross abuse of power is made out by those in charge of the investigation, the court should be quite loathe to interfere with the investigation, a field of activity reserved for the police and the executive. In exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary, may direct for investigation de novo wherein the case presents exceptional circumstances. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation. Thus, in case of a mala fide exercise of power by a police officer the court may interfere. (Paras 37, 40, 41, 38, 42 and 45)

In the instant case, admittedly, the High Court has given detailed reasons for coming to the conclusion that the investigation has been totally one-sided, biased and mala fide. One party has been favoured by the investigating agency. The natural corollary to this finding is that the other party has been harassed in an unwarranted manner. Thus, the cause of the other party has been prejudiced. Even before the High Court conduct of the party and investigating agency was found to have not been fair. (Paras 43 and 29)

The charge-sheets filed by the investigating agency in both the cases are against the same set of accused. A charge-sheet is the outcome of an investigation. If the investigation has not been conducted fairly, such investigation would ultimately prove to be a precursor of miscarriage of criminal justice. In such a case the court would simply try to decipher the truth only on the basis of guess or conjectures as the whole truth would not come before it. It will be difficult for the court to determine how the incident took place wherein three persons died and so many persons including the complainant and the accused got injured. (Para 44)

Thus, the order of the High Court requires modification to the extent that the charge-sheets in both the cases and any order consequent thereto stand quashed. In case any of the accused could not get bail because of the pendency of these appeals before the Supreme Court, it shall be open to him to apply for bail or any other relief before the appropriate forum. (Para 46). *Babubhai* v. *State of Gujarat*, (2010) 12 SCC 254.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 26-8-2010]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; Jamuna Chaudhary v. State of Bihar, (1974) 3 SCC 774: 1974 SCC (Cri) 250; Mahmood v. State of U.P., (1976) 1 SCC 542: 1976 SCC (Cri) 72; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Navinchandra N. Majithia v. State of Meghalaya, (2000) 8 SCC 323: 2000 SCC (Cri) 1510; K. Chandrasekhar v. State of Kerala, (1998) 5 SCC 223: 1998 SCC (Cri) 1291; Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631; Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047; Kishan Lal v. Dharmendra Bafna, (2009) 7 SCC 685: (2009) 3 SCC (Cri) 611; S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; Kashmeri Devi v. Delhi Admn., 1988 Supp SCC 482: 1988 SCC (Cri) 864; Kailash Chandra v. Union of India, AIR 1961 SC 1346; Eicher Tractors Ltd. v. Commr. of Customs, (2001) 1 SCC 315; State of A.P. v. V. Sarma Rao, (2007) 2 SCC 159: (2007) 1 SCC (Cri) 535; Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441: (2009) 1 SCC (Cri) 523; Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1: (2010) 2 SCC (Cri) 1385, relied on

[2050] — Ss. 173(8) and 482 — Further investigation — Scope of — Non-investigation of vital aspects in a counter FIR even after submission of two final reports — Further investigation whether permissible — *First final report in an allegation of forgery of mutation records and grievous hurt by gunshot injury submitting that no case made out — IO reinstituting investigation by seeking advice from Public Prosecutor when a writ order directed fair and impartial investigation — An SLP order (in between the submission of first and second final report) directing completion of investigation — IO seeking further investigation with regard to embezzlement of Rs 13.5 lakhs — IO seeking such further investigation after submission of second final report/charge-sheet — Magistrate granting permission for such further investigation — Legality — In terms of direction of Supreme Court, fact that Magistrate had given permission for further investigation and vital aspect of investigation not having been made, held, it was obligatory on the part of IO to complete the investigation and submit an appropriate report — Penal Code, 1860, Ss. 452, 232, 427, 506 and 147 to 149 — Constitution of India, Art. 136*

A son *MA* was involved in a dispute with his sister *ME* and mother *S* over a farmhouse. The first FIR for alleged offences under Sections 147, 148, 149, 452, 232, 427 and 506 IPC was lodged by *ME* for alleged raiding of the farmhouse by *MA* and 40 others and attacking *S*. The accused were allegedly arrested on the spot. SLPs (Crl.) Nos. 6061-62 of 2008 arose out of the first FIR (FIR No. 960 of 1999). The second FIR (FIR No. 960-A of 1999) was lodged by *MA* against *ME* and her farm employees alleging grievous hurt by a gunshot injury. *MA* also alleged forgery of documents whereof mutation records of the farmhouse were altered. SLP (Crl.) No. 5419 of 2008 arose out of the second FIR.

Charge-sheet was filed on the first FIR. On the second FIR, a final report was made stating that no case was made out. When a writ order (in WP No. 7230 of 1999) was passed by the High Court directed impartial inquiry, the DSP concerned, after seeking opinion of the Public Prosecutor, reopened the second FIR. Apprehending arrest, *ME* and *S* also moved the writ jurisdiction, whereupon, the High Court disposed off the matter directing fair, honest investigation without coercive steps against parties. An SLP in this regard was also disposed off directing transfer of investigation to CB CID and continuation of protection to *ME*.

On the first FIR, *MA*'s trial was concluded and he was convicted. Thereafter, during pendency of appeal in the High Court, he was released on bail and his sentence was suspended. On the second FIR, charge-sheet was filed against *S* & *ME* and cognizance was taken. A petition under Section 482 CrPC (CMA No. 620 of 2006) to quash proceedings against them was dismissed but the High Court directed the trial court to consider exemption of personal attendance of *S* in terms of Section 205 CrPC and observed that they deserved protection. This was the impugned order in SLP (Crl.) No. 5419 of 2008.

SLPs (Crl.) Nos. 6061-62 of 2008 related to the issue of further investigation against *ME* and others with regard to embezzlement of Rs 13,50,000. The said further investigation was requested by CB CID after charge-sheet had been filed and Section 482 petition was disposed off. The said further investigation was allowed by the Magistrate and not interfered with by the High Court while exercising jurisdiction under Section 482 CrPC (CMA No. 518 of 2008).

Disposing of the appeals,

Held :

So far as the criminal appeals arising out of Special Leave Petitions (Crl.) Nos. 6061-62 of 2008 and Special Leave Petitions (Crl.) Nos. 6136-37 of 2008 are concerned, there cannot be any doubt whatsoever that the jurisdiction of the High Court under Section 482 is limited. (Para 42)

In Crime Case No. 960-A of 1999, the Supreme Court had directed CB CID to complete the investigation. It was, thus, obligatory on its part to complete the investigation and submit an appropriate report to the Court. Even otherwise the Magistrate has granted such permission. It is, however, not the case of *S* that the Magistrate had accepted the final report. Even in such a case, the Magistrate was bound to give notice to the complainant who could have objected thereto. A protest petition was also maintainable. (Paras 28, 25 and 27)

The investigation in Crime No. 960-A of 1999 runs from one extreme end to the other. Final reports were prepared twice. However, the Deputy Superintendent of Police, CB CID on the second final report so prepared sought to obtain the legal opinion of the Public Prosecutor. Such a course adopted may be irregular but it is not denied or disputed that a vital aspect of the matter of the investigation had not been carried out. It is not the case of the appellants i.e. *S* and *ME* that the opinion given by the Public Prosecutor was incorrect. (Para 25). *Manoj Narain Agrawal* v. *Shashi Agrawal*, (2009) 6 SCC 385.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 15-4-2009]

Kamlapati Trivedi v. State of W.B., (1980) 2 SCC 91: 1980 SCC (Cri) 347; Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479; State of A.P. v. A.S. Peter, (2008) 2 SCC 383: (2008) 1 SCC (Cri) 427; Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P., (1999) 5 SCC 740: 1999 SCC (Cri) 1047, relied on

Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: (1967) 3 SCR 668, cited

[2051] — Ss. 173(8), 157, 190 and 482 — Investigation whether fair — Proper forum for, and mode of redressal — Cognizance already taken — Matter pending before Sessions Judge — *In such circumstances, held, proper procedure was to move Sessions Judge under S. 173(8) and not High Court under S. 482* (Para 30). *Virender Prasad Singh* v. *Rajesh Bhardwaj*, (2010) 9 SCC 171: (2010) 3 SCC (Cri) 1169: 2010 Cri LJ 4275: (2010) 95 AIC 182 .

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 16-8-2010]

Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047; Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631, relied on

Rubabbuddin Sheikh v. State of Gujarat, (2010) 2 SCC 200: (2010) 2 SCC (Cri) 1006, distinguished on facts

[2052] — Ss. 173(8) and 36 — Power to initiate further investigation/reinvestigation — Power of investigating officer acting of his *own* accord under S. 173(8) and on directions of State Government under S. 36 r/w S. 3, Police Act, 1861, distinguished — *Police Act, 1861, S. 3*

An order of further investigation in terms of Section 173(8) CrPC by the State in exercise of its jurisdiction under Section 36 CrPC stands on a different footing. The power of the investigating officer to make further investigation in exercise of its statutory jurisdiction under Section 173(8) CrPC and at the instance of the State having regard to Section 36 thereof read with Section 3 of the Police Act, 1861 should be considered in different contexts. Section 173(8) CrPC is an enabling provision. (Para 68). *Nirmal Singh Kahlon* v. *State of Punjab*, (2009) 1 SCC 441.

Bench Strength **2**. Coram: **S.B. Sinha** and *Aftab Alam*, JJ. [Date of decision: 22-10-2008]

Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479; State of A.P. v. A.S. Peter, (2008) 2 SCC 383: (2008) 1 SCC (Cri) 427; H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150; Upkar Singh v. Ved Prakash, (2004) 13 SCC 292: 2005 SCC (Cri) 211, relied on

[2053] — S. 173(8) — Limiting relief until filing of additional charge-sheet — Investigation by SIT in post-Godhra riot cases — *Interim directions issued for summoning appellants for investigation but without taking them into custody — In the peculiar facts and circumstances, in exercise of jurisdiction under Art. 142, Supreme Court making interim directions absolute till additional charge-sheet, if any, filed by SIT before Sessions Judge* (Para 26). *Mithabhai Pashabhai Patel* v. *State of Gujarat*, (2009) 6 SCC 332.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

[2054] — S. 173(8) — Communal riots in the State of Gujarat — Petition seeking investigation by Special Investigation Team (SIT) in post-Godhra riot cases — *Need for creation of SIT agreed upon by parties — In view of sensitive nature of cases involved, held, appointment of SIT warranted — Time-bound directions given to State Government to issue notification creating SIT with named officers within 10 days and to SIT to submit report to Supreme Court directly in a sealed cover within 3 months — Free hand given to SIT to work out the modalities for and to make enquiries/investigation including further investigation* (Paras 1, 4 to 7 and 10). *National Human Rights Commission* v. *State of Gujarat*, (2009) 6 SCC 342.

Bench Strength **3**. Coram: *Dr. Arijit Pasayat, P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 26-3-2008]

[2055] — Ss. 173(8) and 167 — Communal riots in the State of Gujarat — Appellants charge-sheeted in post-Godhra riot cases — Cognizance of offence taken and appellants released on bail — Remand sought for — *Meanwhile, Special Investigation Team (SIT) created on direction of Supreme Court for investigation in those cases — As part of investigation, remand of appellants sought for — High Court directing remand of appellants on ground that S. 167(2) gives power for grant of police remand without cancellation of bail — Sustainability — Clarifying that SIT was directed only to further investigate but not to reinvestigate, held, High Court was not correct because once charge-sheet is filed, S. 167(2) is inapplicable — Moreover, nothing pointed out in SIT's report as to necessity of cancellation of bail — Neither the State nor SIT had placed any cogent material on record — Order of High Court, held unsustainable and hence set aside*

The Supreme Court while passing the order in exercise of its jurisdiction under Article 32 of the Constitution of India in *NHRC case*, (2009) 6 SCC 342 and the order dated 22-9-2008 did not direct reinvestigation. "Further investigation"and "reinvestigation"stand on different footing. A distinction exists between a reinvestigation and further investigation. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the

Constitution of India could direct a "State" to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. If the investigating authority, in terms of the provisions of CrPC, could not ask for reinvestigation, the court would have to proceed on the basis that Supreme Court in its order in *NHRC case*, (2009) 6 SCC 342 and the order dated 22-9-2008 only directed further investigation. Furthermore, in this case the Special Investigating Team has already submitted its report to the Supreme Court. Nothing has been pointed out as to why even the bail granted to the appellants should be cancelled so as to consider that question independently. No sufficient or cogent material has been placed on record by the State or the Special Investigating Team in this behalf. (Paras 12 to 14 and 24). *Mithabhai Pashabhai Patel* v. *State of Gujarat*, (2009) 6 SCC 332.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631, followed

National Human Rights Commission v. State of Gujarat, (2009) 6 SCC 342, clarified

Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441: (2009) 1 SCC (Cri) 523, referred to

Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307, cited

[2056] — Ss. 173(8) & (2) and 167(2) — Power to direct further investigation or reinvestigation — Jurisdictional competency of Magistrate — Effect of bar under S. 167(2) — *Held, once charge-sheet is filed under S. 173(2), Magistrate may on basis of protest petition, take cognizance of offence complained of, or, on application made by investigating authorities permit further investigation under S. 173(8) — But, Magistrate cannot suo motu direct further investigation or reinvestigation on account of bar under S. 167(2)* (Para 25). *Reeta Nag* v. *State of W.B.*, (2009) 9 SCC 129: (2009) 3 SCC (Cri) 1051.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 13-8-2009]

[2057] — S. 173(8) and S. 167 [as amended by S. 43-D(2)(b) of Unlawful Activities (Prevention) Act, 1967] — Further investigation — Requirement of — Determination of — *Allegation that petitioner was supplying money to unlawful organisation — Recovery of Rs 4 lakhs from petitioner's custody — On facts, held, further investigation required — Therefore, extension of time for investigation justified* (Paras 18 and 19). *Redaul Hussain Khan* v. *National Investigation Agency*, (2010) 1 SCC 521.

Bench Strength **2**. Coram: *Altamas Kabir* and *Cyriac Joseph*, JJ. [Date of decision: 19-11-2009]

[2058] — Ss. 173(8) and 154 — Second FIR and further investigation — Permissibility and scope of, in a case handed over to CBI — CBI detecting larger conspiracy not detected by local police — Scope of preliminary inquiry and power of CBI under — Second FIR, lodging of — Further investigation after first FIR — Consideration of nature/extent/seriousness of crime — CBI detecting larger conspiracy not detected by local police — *Held, lodging of second FIR by CBI would not be a bar — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946) — S. 6*

If the State has the ultimate supervisory jurisdiction over an investigation for an offence and if it intends to hand over a further investigation even after filing of the charge-sheet, it may do so. The State as in terms of the provisions of CrPC and the Act exercises two different and distinct jurisdictions. The power of supervision over investigation vested in the State in terms of Section 3 of the Police Act, 1861 is absolute. The said power of the State is wholly unrestricted by Section 36 of the Act or otherwise. As a logical corollary if while making preliminary inquiry pursuant to the notification issued by the State in terms of Section 6 of the Act, CBI comes to know of commission of other and further offence involving a larger conspiracy which required prosecution against a large number of persons who had not been proceeded against at all by the local police officers, even lodging of second FIR would not be a bar. (Paras 62 and 71)

As the investigations are complete, CBI is allowed to file charge-sheet before a court having appropriate jurisdiction. (Para 76). *Nirmal Singh Kahlon* v. *State of Punjab*, (2009) 1 SCC 441.

Bench Strength **2**. Coram: **S.B. Sinha** and *Aftab Alam*, JJ. [Date of decision: 22-10-2008]

[2059] — Ss. 173(8) and 154 — Second FIR and further investigation (by CBI) in case of distinct and separate offences on a wider scale — Permissibility of — Power of High Court and State Government regarding — *High Court, as proposed by State Government, directing State Government to refer matter to CBI — CBI during preliminary investigation detecting material for lodging second FIR when charge-sheet had already been filed in the first FIR — No fair investigation by the State police on the first FIR — CBI after preliminary inquiry discovering new factual materials —*

CBI detecting conspiracy neither detected by State police nor alleged in the first FIR — CBI detecting involvement of large number of persons on a wider canvas — Held, it was open to the State and/or High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged — It is one thing to say that an accused acted in his individual capacity and it is another thing to say that he conspired with a large number of persons to facilitate commission of crime by him as a result whereof all of them had made unlawful gains — Constitution of India — Art. 226 — IPC, 1860, Ss. 420, 467, 468 and 120-B — Prevention of Corruption Act, 1988, Ss. 13(1)(d), (e) and 13(2) — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), Ss. 4 and 6

On 14-6-2002, an FIR was lodged by the State Vigilance Department against several persons including Appellant 1 (ex-Minister, Rural Development and Panchayats), for alleged commission of offences under Sections 420, 467, 468, 120-B IPC and Sections 13(1)(*d*), (*e*) and 13(2) of the Prevention of Corruption Act in terms of recommendations of the Financial Commissioner, Rural Development and Panchayat Department giving an enquiry report to set aside the selection of panchayat secretaries due to involvement of favouritism and corruption in the selection process. In a writ petition filed with regard to the selection process the High Court changed the writ from private interest litigation to public interest litigation. A charge-sheet was filed against Appellant 1. Appellants 2 and 3 were shown as the witnesses in the said report. Despite the same a statement was made before the High Court on behalf of the State on 1-11-2002 that the investigation was proposed to be handed over to CBI. Initially, CBI was reluctant to take up investigation on the ground of lack of manpower and infrastructure and the State Government delayed in issuing a notification under Section 6 of the Delhi Special Police Establishment Act, 1946 (the Act). However, with the intervention of the High Court (by order dated 30-4-2003), the State Government, on 2-5-2003, issued the Section 6 notification. In view of the said notification the High Court (by order dated 7-5-2003) directed the Director, CBI to take up the investigation by requesting the Central Government for more funds and manpower as per requirement. CBI, thereafter, informed the High Court on 13-8-2003 that a special team had been sent for a meaningful investigation in respect of the allegations, and the same had proceeded to a considerable length. CBI thereafter registered a second FIR on 26-6-2003. The appellants filed applications for recalling of the orders dated 30-4-2003 and 7-5-2003 of the High Court. By reason of the impugned judgment dated 4-10-2005, the said applications were dismissed.

The appellants inter alia submitted that the notification issued by the State permitting investigation by the Central Bureau of Investigation into the offence pursuant to the order of the High Court must be held to be illegal as the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India could not have issued such a direction. That the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India in a public interest litigation or otherwise cannot issue such a direction particularly when the jurisdiction to monitor an investigation comes to an end when a charge-sheet is filed.

It was also submitted that as per the records the High Court was not made aware of the fact that the charge-sheet had already been submitted before a court of competent jurisdiction and cognizance in the matter had been taken and thus the High Court acted illegally and without any jurisdiction in directing fresh investigation by the Central Bureau of Investigation. That in any event the Magistrate before whom the charge-sheet had been filed did not form an opinion that the investigation was faulty and/or did not satisfy the requirements of law, no reinvestigation could have been directed by the High Court in exercise of its power under Article 226 of the Constitution of India or otherwise. Even such an order of reinvestigation or further investigation is not contemplated under Section 173(8) of the Code of Criminal Procedure.

Lastly, it was submitted that the DSPE Act, 1946 does not envisage a State Government to give consent for investigation by the Central Bureau of Investigation in respect of an offence which had already been investigated and charge-sheet submitted. Section 173(8) of the Code does not envisage any investigation by a Central agency created under the Act after filing of a charge-sheet, in which event, the Court of Magistrate alone has the jurisdiction to issue any further direction regarding investigation.

Held :

If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged. The second FIR would be maintainable not only because there were different versions and new discovery was made on factual foundations but also because the second FIR lodged by CBI was on a wider canvas involving conspiracy of a large number of persons. It was lodged after holding a detailed preliminary inquiry. CBI collected a large number of materials, recorded a large number of statements, enumerates as many as fifteen categories of irregularities involving as many as fourteen accused persons. An offence committed would not be judged by mere mentioning of the sections but the mode and manner in which the same was committed as also the nature thereof. The first FIR pointed out offences under Sections 420, 467, 468, 120-B IPC and Sections 13(1)(*d*), (*e*) and 13(2) of the Prevention of Corruption Act but no allegation of conspiracy was made. It is one thing to say that an accused acted in his individual capacity and it is another thing to say that he conspired with a large number of persons to facilitate commission of crime by him as a result whereof all of them had made unlawful gains. (Paras 44 to 53 and 57, 58 and 67)

If, in a situation of this nature, lodging of the second FIR was not impermissible in law, the main plank of submission [that in terms of Section 173(8) CrPC further investigation is permissible, reinvestigation is not] takes a back seat. The High Court in this case was not monitoring any investigation. It only desired that the investigation should be carried out by an independent agency. Its anxiety, as is evident from the order dated 3-4-2002, was to see that the officers of the State do not get away. If that be so, the submission that the monitoring of an investigation comes to an end after the charge-sheet is filed, as has been held by the Supreme Court in *Vineet Narain case*, (1998) 1 SCC 226 and *M.C. Mehta (Taj Corridor Scam) case*, (2007) 1 SCC 110 loses all significance. Moreover, it was not a case where the High Court had assumed a jurisdiction in regard to the same offence in respect whereof the Special Judge had taken cognizance pursuant to the charge-sheet having been filed. The charge-sheet was not filed in the FIR which was lodged on the intervention of the High Court. As the offences were distinct and different, the High Court never assumed the jurisdiction of the Special Judge to direct reinvestigation as was urged or otherwise. (Paras 61 to 65)

As the investigations are complete, CBI is allowed to file charge-sheet before a court having appropriate jurisdiction. (Para 76). *Nirmal Singh Kahlon* v. *State of Punjab*, (2009) 1 SCC 441.

Bench Strength 2. Coram: **S.B. Sinha** and *Aftab Alam*, JJ. [Date of decision: 22-10-2008]

Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479; State of A.P. v. A.S. Peter, (2008) 2 SCC 383: (2008) 1 SCC (Cri) 427; H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150; Upkar Singh v. Ved Prakash, (2004) 13 SCC 292: 2005 SCC (Cri) 211, relied on

T.T. Antony v. State of Kerala, (2001) 6 SCC 181: 2001 SCC (Cri) 1048; Kari Choudhary v. Sita Devi, (2002) 1 SCC 714: 2002 SCC (Cri) 269, impliedly distinguished

Advanced Law Lexicon, 3rd Edn., 2005, p. 4237, relied on

Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307; M.C. Mehta (Taj Corridor Scam) v. Union of India, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264, distinguished

[2060] — S. 173(8) — Reinvestigation in case of distinct and different offence, held, permissible — But as second FIR lodged was permissible, the issue of reinvestigation had lost significance. *Nirmal Singh Kahlon* v. *State of Punjab*, (2009) 1 SCC 441.

Bench Strength 2. Coram: **S.B. Sinha** and *Aftab Alam*, JJ. [Date of decision: 22-10-2008]

[2061] — S. 173(8) — Power of Magistrate to direct further investigation after acceptance of final report and closure of the case — *Shortcomings necessitating reinvestigation brought to the notice of the Magistrate by the informant but he refused to direct reinvestigation holding that he had no power to review the earlier order — Held, the Magistrate failed to exercise jurisdiction vested in him by law — He was not required to review the order but to order further investigation into the case which he was competent to do under S. 173(8). Union Public Service Commission* v. *S. Papaiah*, (1997) 7 SCC 614: 1997 SCC (Cri) 1112: AIR 1997 SC 3876.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *K. Venkataswami*, JJ. [Date of decision: 11-9-1997]

[2062] — S. 173(8) — Final report submitted by the investigating agency after reinvestigation of the case — *Shortcomings necessitating reinvestigation pointed to the investigating agency by the informant (UPSC) not brought to the notice of the court while resubmitting the final report — Held, acceptance of the final report and closure of the case by Magistrate bad — Withholding of such vital information creates a doubt about the fairness of the investigation. Union Public Service Commission* v. *S. Papaiah*, (1997) 7 SCC 614: 1997 SCC (Cri) 1112: AIR 1997 SC 3876.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *K. Venkataswami*, JJ. [Date of decision: 11-9-1997]

[2063] — S. 173(8) — Further investigation in terms of — Power to make prayer for — Effect of filing of charge-sheet (police report) or taking of cognizance of offence — *Held, in neither case is the said power taken away, and further investigation is permissible*

So long as a charge-sheet is not filed within the meaning of Section 173(2) CrPC, investigation remains pending. Filing of a final police report or charge-sheet however does not preclude an investigating officer to carry on further investigation in terms of Section 173(8). Indisputably, the power of the investigating officer to make a prayer for making further investigation in terms of Section 173(8) is not taken away only because a charge-sheet has been filed under Section 173(2). A further investigation is permissible even if an order of cognizance of offence has been made by the Magistrate. (Paras 20, 38 and 39). *Dinesh Dalmia* v. *CBI*, (2007) 8 SCC 770: (2007) 59 AIC 145 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

K. Veeraswami v. Union of India, (1991) 3 SCC 655: 1991 SCC (Cri) 734; Anil Saran v. State of Bihar, (1995) 6 SCC 142: 1995 SCC (Cri) 1051; Popular Muthiah v. State, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245; Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927; Subramanium Sethuraman v. State of Maharashtra, (2004) 13 SCC 324: 2005 SCC (Cri) 242; Everest Advertising (P) Ltd. v. State, Govt. (NCT of Delhi), (2007) 5 SCC 54: (2007) 2 SCC (Cri) 444, relied on

CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141: 1992 SCC (Cri) 554, distinguished

[2064] — S. 173(8) — Power under S. 3 of Police Act, 1861 includes power to direct further investigation under S. 173(8), CrPC. *State of Bihar* v. *J.A.C. Saldanha*, (1980) 1 SCC 554: 1980 SCC (Cri) 272: AIR 1980 SC 326: 1980 Cri LJ 98: 1980 MLJ (Cri) 382: (1980) 17 ACC 279: (1980) 28 BLJR 18.

Bench Strength **3**. Coram: *R.S. Sarkaria*, **D.A. Desai** and *O. Chinnappa Reddy*, JJ. [Date of decision: 13-11-1979]

[2065] — S. 173(8) — Reinvestigation — Scope for — *On facts, since there was unanimity on part of both parties that investigation was tainted, biased and not fair, though for different reasons, investigating agency directed to act in terms of S. 173(8) — Director General of Police directed to monitor such reinvestigation*

Section 173(8) CrPC permits further investigation, and even dehors any direction from the court as such it is open to the police to conduct proper investigation even after the court has taken cognizance of any offence on the strength of a police report submitted earlier. (Para 79)

The role of the investigating agency is perceived differently by the parties, but there is unanimity in their stand that it was tainted, biased and not fair. While the accused persons accuse it for alleged false implication, the victims' relatives like the appellant, allege its efforts to be merely to protect the accused. It would be desirable for the investigating agency or those supervising the investigation, to act in terms of Section 173(8) CrPC, as the circumstances seem to or may so warrant. The Director General of Police, Gujarat is directed to monitor the reinvestigation, if any, to be taken up with the urgency and utmost sincerity, as the circumstances warrant. (Paras 2, 78 and 60). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

[2066] — Ss. 173(8), 156 and 158 — Fairness of investigation — Re-examination of completed investigation — Proper authority for — *High Court inviting suggestions from parties to propose three names of DGP rank officers to undertake said re-examination — Held, highly improper — It was for court to decide question of fairness of investigation and not police officers as envisaged by High Court* (Para 24). *Virender Prasad Singh* v. *Rajesh Bhardwaj*, (2010) 9 SCC 171: (2010) 3 SCC (Cri) 1169: 2010 Cri LJ 4275: (2010) 95 AIC 182 .

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 16-8-2010]

Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047; Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631, relied on

Rubabbuddin Sheikh v. State of Gujarat, (2010) 2 SCC 200: (2010) 2 SCC (Cri) 1006, distinguished on facts

[2067] — S. 173(8) — Reinvestigation — Whether the police officer got reinvestigation done with any oblique motive — *Deceased gunned down by gangsters in broad daylight — Nexus between gangsters and police found — Delay of two days in sending copy of FIR to Magistrate showing influence of gangs over police — Attempt made by previous investigating officers to show that the revolver seized by them was used in the crime when from the facts it was clear that the fatal shots were fired from a pistol — False statement made in application for taking accused on remand — No serious attempt made by police for long to secure presence of accused before court and to see that trial proceeded against them — Held, these circumstances create a doubt regarding the honesty of the first investigation — From the mere fact that in the application, made to the court for permission to reinvestigate, it was not stated that the previous investigation was not honest, no inference of oblique motive could be drawn — Without further investigation no charge of dishonesty could have been levelled against the police officers associated with the earlier investigation at that stage — On facts held, the subsequent investigation was not* *done with any oblique motive* (Paras 9 to 17). *S.N. Dube* v. *N.B. Bhoir*, (2000) 2 SCC 254: 2000 SCC (Cri) 343: AIR 2000 SC 776: 2000 Cri LJ 830.

Bench Strength 2. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 12-1-2000]

[2068] — S. 173(8) — Supplementary charge-sheet — Court has no power to reject it outright without taking it on file

What all S. 173(8) lays down is that the investigating agency can carry on further investigation in respect of the offence after a report under sub-section (2) has been filed. The further investigation may also disclose some fresh offences but connected with the transaction which is the subject-matter of the earlier report. At the stage of filing supplementary report itself the trial court which took cognizance cannot reject the same outright since it is only a supplementary report in support of the earlier report. The purpose of sub-section (8) of S. 173 CrPC is to enable the investigation agency to gather further evidence and that cannot be frustrated. If the materials incorporated in the supplementary charge-sheet do not make out any offence, the question of framing any other charge on the basis of that may not arise but in case the court frames a charge it is open to the accused persons to seek discharge in respect of that offence also. The rejection of the report outright at that stage is not correct. *State of W.B.* v. *Salap Service Station*, 1994 Supp (3) SCC 318: 1994 SCC (Cri) 1713.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 5-1-1994]

[2069] — Ss. 173(8) and 156 — Order for further investigation — Power of Magistrate to direct a particular police officer in this regard — *Magistrate, in exercise of power under, to order further investigation to be made by police, cannot direct that a particular police officer or even an officer of a particular rank should conduct such further investigation*

It is not within the province of the Magistrate while exercising the power under Section 173(8) to specify any particular officer to conduct such investigation, not even to suggest the rank of the officer who should conduct such investigation. Therefore, the direction made by the Special Judge that further investigation shall be conducted by an officer of DIG rank of CBI, will stand deleted. (Paras 20 and 21). *Hemant Dhasmana* v. *CBI*, (2001) 7 SCC 536: 2001 SCC (Cri) 1280: AIR 2001 SC 2721.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 17-8-2001]

[2070] — Ss. 173(8), (2) and 190 — Police investigation subsequent to submission of charge-sheet under S. 173(2) — Prior/formal permission of Magistrate — When needed — *Requirement of permission, held, depends on whether it is reinvestigation or further investigation — Law does not mandate taking of prior permission of Magistrate for further investigation, and Magistrate has discretion to direct further investigation — However, reinvestigation, without prior permission is necessarily forbidden — Distinction and implications of reinvestigation and further investigation, restated*

Allowing the appeal,

Held :

Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge-sheet is a statutory right of the police. The police can exercise such right as often as necessary when fresh information came to light. The Magistrate also has a discretion in the matter to direct further investigation, even if he had taken cognizance of the offence. A distinction exists between further investigation and reinvestigation. Whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not. The dictionary meaning of "further" (when used as an adjective) is "additional; more; supplemental". "Further" investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. (Paras 9, 14, 16 and 18)

Section 36 of the Criminal Procedure Code, 1973 empowers a police officer, superior in rank to an officer in charge of a police station, to exercise the same powers throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his police station. It is not correct to contend that the investigation was taken up by a different agency. CID is a part of the investigating authorities of the State. It was, therefore, permissible for the higher authority to carry out or direct further investigation in the matter. (Paras 11, 12 and 18)

It was not a case where investigation was carried out in relation to a separate conspiracy. As allegations had been made against the officer of a local police station in regard to the mode and manner in which investigation was carried out, a further investigation was directed. (Para 17)

It is also not a case where two charge-sheets were filed before two different courts. The court designated to deal with the matters wherein investigation had been carried out by CID, is located at Chittoor. It was in the aforementioned situation that the Sessions Judge transferred the case pending in the Tirupati Court to the Designated Court at Chittoor. Cognizance of further offence had also been taken by the Chittoor Court. (Para 17). *State of A.P.* v. *A.S. Peter*, (2008) 2 SCC 383: (2008) 1 SCC (Cri) 427: AIR 2008 SC 1052.

Bench Strength 2. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-12-2007]

Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; Upkar Singh v. Ved Prakash, (2004) 13 SCC 292: 2005 SCC (Cri) 211; R.P. Kapur v. Sardar Pratap Singh Kairon, AIR 1961 SC 1117: (1961) 2 SCR 143, relied on

K. Chandrasekhar v. State of Kerala, (1998) 5 SCC 223: 1998 SCC (Cri) 1291, clarified

Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479, distinguished

K. Chandrasekhar v. State of Kerala, (1998) 5 SCC 223: 1998 SCC (Cri) 1291, explained and distinguished

[2071] — Ss. 173(8), 36 and 156 — IG, Vigilance, having jurisdiction over the whole State, if employed as a police officer, held, would be superior in rank to an officer in charge of a police station within the contemplation of S. 36 and would be competent to take up further investigation under S. 173(8) of a cognizable offence — *State Government's power of superintendence under S. 3 of Police Act, 1861 includes giving directions to such a superior officer for further investigation under S. 173(8) in a case beyond the jurisdiction in bribery or corruption matters even after submission of report by the previous investigating agency under Ss. 173(2) — Power under S. 173(8), held, not affected by Magistrate's power to order investigation under S. 156(3) — Entrustment of the case by the State Government to IG Vigilance for further investigation, held, warranted by the facts and circumstances of the case and not peculiar and unconventional — Hence the Magistrate, held, justified in postponing consideration of the report submitted to him upon a request made by A.P.P. till report on completion of further investigation — Police Act, 1861 — Ss. 3, 12 and 22 . State of Bihar* v. *J.A.C. Saldanha*, (1980) 1 SCC 554: 1980 SCC (Cri) 272: AIR 1980 SC 326: 1980 Cri LJ 98: 1980 MLJ (Cri) 382: (1980) 17 ACC 279: (1980) 28 BLJR 18.

Bench Strength 3. Coram: *R.S. Sarkaria*, **D.A. Desai** and *O. Chinnappa Reddy*, JJ. [Date of decision: 13-11-1979]

[2072] — Ss. 173(8) and (2) — Scope and applicability of S. 173(8) — Held, although S. 173(8) refers to the term "further investigation", however, the term has not been defined in CrPC — It must therefore depend on the facts of each case as culled from record — *Nevertheless, reiterated, further investigation and not a re-investigation can be made — Nature of investigation whether amounts to a further investigation or a re-investigation has to be seen from nature of investigation conducted — On facts, investigation conducted by PW 27 (SP, CB CID), on directions of High Court, was in the nature of further investigation — Hence, conviction of appellant-accused, by looking into evidence collected by PW 27 based on such investigation, held, proper — Penal Code, 1860, Ss. 302, 148 and 341* (Paras 15 and 18). *Sivanmoorthy* v. *State*, (2010) 12 SCC 29.

Bench Strength 2. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 11-11-2009]

K. Chandrasekhar v. State of Kerala, (1998) 5 SCC 223: 1998 SCC (Cri) 1291; Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631; Mithabhai Pashabh Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047; Rama Chaudhary v. State of Bihar, (2009) 6 SCC 346: (2009) 2 SCC (Cri) 1059, relied on

[2073] — Ss. 173(8) & (2) and 156(1) — Scope and applicability of S. 173(8) — Fresh investigation — Impermissibility of, reiterated — *Held, instead of fresh investigation or reinvestigation there can be further investigation — Penal Code, 1860 — Ss. 147, 148, 324, 302 and 307*

A Single Judge vide the impugned order in a miscellaneous petition under Section 482 CrPC, finding the need, directed the Inspector of Police nominated by the Deputy Superintendent of Police, CB CID to investigate a case under Sections 147, 148, 324, 302 and 307 IPC afresh and thereafter file the final report.

Partly allowing the appeal,

Held :

Instead of fresh investigation there can be further investigation if required under Section 173(8) CrPC. The same can be done by CB CID as directed by the High Court. From a plain reading of Section 173 CrPC it is evident that even after completion of investigation under Section 173(2) CrPC, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation. (Paras 8 and 7). *Ramachandran* v. *R. Udhayakumar*, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 13-5-2008]

K. Chandrasekhar v. State of Kerala, (1998) 5 SCC 223: 1998 SCC (Cri) 1291, relied on

[2074] — Ss. 173(8) and 401 — Power of Magistrate to order further investigation — When exercised it would not be proper for High Court to interfere in exercise of revisional powers — *Further investigation, in either result, would be for ends of justice*

Although sub-section (8) does not, in specific terms, mention about the powers of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by a court which has the jurisdiction to do so, it would not be a proper exercise of revisional powers to interfere therewith because the further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation, the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back on that track. If they come to the same conclusion, it is of added advantage to the persons against whom the allegations were made, and if the allegations are found false again the complainant would be in trouble. So from any point of view the Special Judge's direction would be of advantage for the ends of justice. It is too premature for the High Court to predict that the investigating officer would not be able to collect any further material at all. That is an area which should have been left to the investigating officer to survey and recheck. When the Special Judge has opted to order for a further investigation the High Court should have stated to CBI to comply with that direction. (Paras 16 and 20). *Hemant Dhasmana* v. *CBI*, (2001) 7 SCC 536: 2001 SCC (Cri) 1280: AIR 2001 SC 2721.

Bench Strength 2. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 17-8-2001]

Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267; India Carat (P) Ltd. v. State of Karnataka, (1989) 2 SCC 132: 1989 SCC (Cri) 306; Union Public Service Commission v. S. Papaiah, (1997) 7 SCC 614: 1997 SCC (Cri) 1112, relied on

— **S. 174** *See also* S. 174, Criminal Procedure Code, 1898, pp. 1040 et seq. in Vol. 2

— **S. 174** *See* Ch. XII (Ss. 154 to 176) and Ss. 162 and 174

See also Ss. 154, 157 and 174
See also Ss. 154, 158, 157 and 174
See also Ss. 154, 161 and 174
See also Ss. 154 and 174
See also Ss. 162 and 174
See also Ss. 162, 174 and 175
See also Ss. 311 and 174
See also Ss. 482, 154(3) and 174

[2075] — S. 174 — Inquest is concerned with establishing the cause of death only. *Shakila Khader* v. *Nausheer Cama*, (1975) 4 SCC 122: 1975 SCC (Cri) 379: AIR 1975 SC 1324: 1975 Cri LJ 1105.

Bench Strength 2. Coram: **A. Alagiriswami** and *N.L. Untwalia*, JJ. [Date of decision: 10-3-1975]

Followed in Amar Singh v. Balwinder Singh, (2003) 2 SCC 518

[2076] — S. 174 — Inquest report — All the witnesses need not be examined for the inquest — *Omission of name in the inquest report not fatal to the stand of a person being eyewitness — CrPC, 1898 — S. 174. Shakila Khader* v. *Nausheer Cama*, (1975) 4 SCC 122: 1975 SCC (Cri) 379: AIR 1975 SC 1324: 1975 Cri LJ 1105.

Bench Strength 2. Coram: **A. Alagiriswami** and *N.L. Untwalia*, JJ. [Date of decision: 10-3-1975]

[2077] — S. 174 — Inquest report — Held, not an evidence by itself — *Penal Code, 1860 — Ss. 300 & 302. Babu Poojari* v. *State of Karnataka*, 1993 Supp (3) SCC 304: 1993 SCC (Cri) 997.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 11-8-1992]

[2078] — S. 174 — Investigation under — Scope of — Necessary contents of inquest report — *Held, said investigation is limited in scope and is confined to ascertainment of apparent cause of death — It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal, and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted — Details of overt acts need not be recorded in inquest report — Question regarding details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who were the witnesses of the assault is foreign to the ambit and scope of proceedings under S. 174 — No requirement in law to mention details of FIR, names of accused or the names of eyewitnesses or the gist of their statements in inquest report, nor is the said report required to be signed by any eyewitness* (Paras 14 and 15). *Radha Mohan Singh* v. *State of U.P.*, (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661: AIR 2006 SC 951: (2006) 1 KLJ 535: (2006) 2 All LJ 242: 2006 Cri LJ 1121.

Bench Strength 3. Coram: *K.G. Balakrishnan, Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 20-1-2006]

Pedda Narayana v. State of A.P., (1975) 4 SCC 153: 1975 SCC (Cri) 427; Shakila Khader v. Nausheer Cama, (1975) 4 SCC 122: 1975 SCC (Cri) 379; Eqbal Baig v. State of A.P., (1986) 2 SCC 476: 1986 SCC (Cri) 232; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641; Khujji v. State of M.P., (1991) 3 SCC 627: 1991 SCC (Cri) 916, followed

Meharaj Singh v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391, overruled on this point

[2079] — S. 174 — Inquest report — Requirements of — It need not contain the name of the accused — *Absence of the name of the accused in panchnamas does not lead to the inference that the name of the accused was not disclosed till they were completed*

There is no requirement of law or any rule that an inquest panchnama should contain name of the accused. An inquest panchnama is a report required to be made by the Investigating Officer with respect to the apparent cause of death. It is to be prepared in the presence of two or more respectable inhabitants of the neighbourhood and has to describe the wounds, fractures, bruises and other marks of injuries as are found on the dead body and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted. Therefore, from the absence of the name of accused in the Panchnamas it cannot be inferred that his name was not disclosed as the murderer till they were completed. *Sk. Ayub* v. *State of Maharashtra*, (1998) 9 SCC 521: 1998 SCC (Cri) 1055: AIR 1998 SC 1285.

Bench Strength 2. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 26-2-1998]

[2080] — S. 174 — Inquest report — Facts about the incident i.e. manner in which the incident took place or names of accused need not be stated

The High Court held that the details about the occurrence were not mentioned in the inquest report which showed that the investigating officer was not sure of the facts when the inquest report was prepared and this feature of the case carried weight in favour of the accused.

Held :

The requirement of Section 174 is that the police officer shall record the apparent cause of death describing the wounds as may be found on the body and also the weapon or instrument by which they appear to have been inflicted and this has to be done in the presence of two or more respectable inhabitants of the neighbourhood. The section does not contemplate that the manner in which the incident took place or the names of the accused should be mentioned in the inquest report. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or by some other machinery etc. The High Court was, therefore, clearly in error in holding that as the facts about the occurrence were not mentioned in the inquest report, it would show that at least by the time the report was prepared the investigating officer was not sure of the facts of the case. (Paras 12 and 13) . *Amar Singh* v. *Balwinder Singh*, (2003) 2 SCC 518: 2003 SCC (Cri) 641: AIR 2003 SC 1164: 2003 Cri LJ 1282.

Bench Strength 2. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 31-1-2003]

Pedda Narayana v. State of A.P., (1975) 4 SCC 153: 1975 SCC (Cri) 427; Khujji v. State of M.P., (1991) 3 SCC 627: 1991 SCC (Cri) 916; Shakila Khader v. Nausheer Cama, (1975) 4 SCC 122: 1975 SCC (Cri) 379, relied on

[2081] — S. 174 — Scope of — *Inquest to be held on the spot where dead body found — Exercise of discretion in not sending body for post-mortem*

Section 174, CrPC, peremptorily requires that the officer holding an inquest on a dead body should do so at the spot. This mandate is conveyed by the word 'there' occurring in S. 174(1). Sub-section (3) of the section further requires the officer holding the inquest to forward the body with a view to its being examined by the medical man appointed by the State Government in this behalf, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless. The sub-section gives a discretion to the police officer not to send the body for post-mortem examination by the medical officer only in one case, namely, where there can be no doubt as to the cause of the death. This discretion however is to be exercised prudently and honestly. *Kodali Purnachandra Rao* v. *Public Prosecutor*, (1975) 2 SCC 570: 1975 SCC (Cri) 678: AIR 1975 SC 1925: 1975 Cri LJ 1671.

Bench Strength 3. Coram: *Y.V. Chandrachud*, *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 2-9-1975]

[2082] — S. 174 — Inquest report — Object, scope, ambit and necessary contents, stated

Submission that FIR loses its authenticity if it is lodged after the inquest report is recorded is a general proposition and cannot be universally applied. No doubt the inquest report was prepared by PW 8 at 9.30 p.m. and the formal FIR was lodged by PW 1 at 11.30 p.m. But it is also relevant that the investigation was started by PW 8 after receipt of telephonic information from PW 3 at 6:30 pm that the deceased was lying in a serious condition. And thereafter inquest report was prepared. (Paras 21 and 20)

The principle of law in Sections 2(*h*) and 157 CrPC is that when information regarding a cognizable offence is furnished to the police that information will be regarded as the FIR and all enquiries held by the police subsequent thereto would be treated as investigation, even though the formal registration of the FIR takes place only later. (Paras 26 to 31)

Neither FIR, nor inquest report nor post-mortem can be regarded as substantive pieces of evidence. FIR or inquest report may only be used to contradict or corroborate the maker thereof. Therefore, there is no merit in the submission of the counsel for the appellants. Any discrepancy occurring in the inquest report can neither be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. Assuming that some report was made on telephone and that was the real first information report, this by itself would not affect the appreciation of evidence made by the Sessions Judge and the conclusions of fact drawn by him. (Paras 31, 23 and 25)

The object of the inquest proceedings under Section 174 CrPC is to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what the cause of death is. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is foreign to the ambit and scope of the proceedings under Section 174 CrPC. Mention of the name of the accused and eyewitness in the inquest report is not necessary. Due to non-mentioning of the name of the accused in the inquest report, it cannot be inferred that FIR was not in existence at the time of inquest proceedings. (Paras 22 and 24). *Sambhu Das* v. *State of Assam*, (2010) 10 SCC 374: AIR 2010 SC 3300.

Bench Strength 2. Coram: *Dr. M.K. Sharma* and **H.L. Dattu**, JJ. [Date of decision: 15-9-2010]

Maha Singh v. State (Delhi Admn.), (1976) 1 SCC 644: 1976 SCC (Cri) 135; State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 SC 221: (1964) 1 Cri LJ 140; Pedda Narayana v. State of A.P., (1975) 4 SCC 153: 1975 SCC (Cri) 427; George v. State of Kerala, (1998) 4 SCC 605: 1998 SCC (Cri) 1232; Suresh Rai v. State of Bihar, (2000) 4 SCC 84: 2000 SCC (Cri) 764, relied on

Balaka Singh v. State of Punjab, (1975) 4 SCC 511: 1975 SCC (Cri) 601; Ramesh Baburao Devaskar v. State of Maharashtra, (2007) 13 SCC 501: (2009) 1 SCC (Cri) 212, considered

[2083] — S. 174 — Inquest report — *Object of preparing, restated — Neither necessary nor obligatory under S. 174 for the IO to investigate or find the murderer*

The whole purpose of preparing an inquest report under Section 174(1) CrPC is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating in what manner, or by what weapon or instrument, if any, such wounds appear to have been inflicted. In other words, for the purpose of holding the inquest it is neither necessary nor obligatory on the part of the IO to investigate into or ascertain who were the persons responsible for the death. *George* v. *State of Kerala*, (1998) 4 SCC 605: AIR 1998 SC 1376: 1998 Cri LJ 2034.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 18-3-1998]

[2084] — S. 174 — Inquest report — Purpose of — *Held, is only to notice as to whether the murder committed was homicidal in nature or not and not for making a note in regard to identification marks of the accused* (Para 25). *Ravi* v. *State*, (2007) 15 SCC 372.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 27-4-2007]

[2085] — S. 174 — Inquest Report — Purpose of preparation — Details necessary — *Absence of names of accused and details of weapons possessed by each accused participating in assault, in inquest report — No explanation as to why PW 1 (first informant and eyewitness who was also one of witnesses to inquest report) did not disclose names of all accused at time of preparation of inquest — Effect — Held, purpose of preparation of inquest report is to ascertain whether a person has died in some suspicious circumstances or an unnatural death and as to apparent cause of death — Inquest report need not contain details as to how deceased were assaulted or who assaulted them — Omission of names of accused and minute details of assault in inquest report itself is not enough to disbelieve prosecution case — Mere fact that PW 1 did not repeat names of all accused so as to be incorporated in inquest report, is of no consequence* (Paras 17 to 17.3). *Surendra Pal* v. *State of U.P.*, (2010) 9 SCC 399.

Bench Strength 2. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 16-9-2010]

Suresh Rai v. State of Bihar, (2000) 4 SCC 84: 2000 SCC (Cri) 764; Eqbal Baig v. State of A.P., (1986) 2 SCC 476: 1986 SCC (Cri) 232, relied on

[2086] — Ss. 174 and 161 — Inquest — Purpose — Facts disclosed/recorded in inquest report and facts disclosed in S. 161 statement — Evidentiary value — *Held, purpose of inquest is to ascertain prima facie nature of death, and to find out whether there are injuries on dead body — Inquest panchnama cannot be treated as statement of witness recorded under S. 161 CrPC wherein he is supposed to narrate facts seen by him — Hence, non-disclosure of fact by PW 3 to IO that he had seen appellant running away from place where* *dead body was lying, not unnatural, or in any way affecting veracity of his deposition* (Para 31). *Aftab Ahmad Anasari* v. *State of Uttaranchal*, (2010) 2 SCC 583.

Bench Strength 2. Coram: **J.M. Panchal** and *T.S. Thakur*, JJ. [Date of decision: 12-1-2010]

Pulukuri Kotayya v. King Emperor, (1946-47) 74 IA 65: AIR 1947 PC 67, followed

[2087] — S. 174 — Inquest/ Panchnama — Purpose of — Details expected

The site plan or panchnama of the place of incident is prepared to indicate the state of things found at the place of incident. In the site plan, the investigating officer is not supposed to note whether electric line had been taken in an unauthorised manner or not. That is not the purpose for which the site plan is prepared in a criminal case. (Para 61). *State of U.P.* v. *Krishna Master*, (2010) 12 SCC 324: AIR 2010 SC 3071: 2010 Cri LJ 3889: (2010) 94 AIC 257: (2010) 5 All LJ 423.

Bench Strength 2. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 3-8-2010]

[2088] — Ss. 174 and 162 — Inquest report/ Panchnama — Evidentiary value — Previous statement of witness in panchnama — Use of — *Contents of panchnama — Held, are not substantive evidence — What is substantive evidence is what has been stated by the panchas or the person concerned in the witness box — On facts held, even if the extreme proposition that anything and everything stated in the panchnama can be read as substantive evidence, is accepted, but still the fact remains that PW 1, who had identified A-3 as A-2 was not given an opportunity to explain the same — There was no cross-examination or no question put to him regarding the same — Said statement amounts to his previous statement and unless he was confronted with the statement specifically and asked to explain, such statement cannot be used — It is trite law that a previous statement of the witness, even if admissible in evidence, cannot be used against the witness unless the witness is confronted with the same and his attention is invited thereto — In his substantive evidence, the witness, PW 1 has never made a statement that he had identified A-3 as A-2 — His admitted case was that he knew A-2 even before the occurrence — Evidence Act, 1872, Ss. 3 and 145* (Paras 33 to 35). *Murli* v. *State of Rajasthan*, (2009) 9 SCC 417: (2009) 81 AIC 43 (SC).

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 18-8-2009]

[2089] — S. 174 — Object — Inquest report — Details of overt acts of accused to be recorded in — *Whether any reflection can be cast on the credibility of eyewitnesses from such omission — CrPC, 1898 — S. 174*

The object of the proceedings under S. 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under S. 174. In these circumstances, therefore, neither in practice nor in law is it necessary for the police to mention these details in the inquest report.

From the mere fact that these were not noted in the inquest report it cannot be concluded that the statements given by the witnesses and read over at the inquest did not contain those overt acts and the statements produced at the trial are those of the witnesses which were taken later.

Hence the omissions in the inquest report are not sufficient to put the prosecution out of court. *Pedda Narayana* v. *State of A.P.*, (1975) 4 SCC 153: 1975 SCC (Cri) 427: AIR 1975 SC 1252: 1975 Cri LJ 1062: (1975) 12 ACC 201: 1975 Cr LR (SC) 335.

Bench Strength 2. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 8-4-1975]

[2090] — S. 174 — Eyewitness — Presence of, at the scene of occurrence — Cannot be doubted merely because of non-mention of his name in the statement made by a witness during inquest — *Names of others who were present at scene of occurrence need not be stated by the witness during the inquest. Desaji Wadia Samkaiah* v. *State of A.P.*, 1988 Supp SCC 531: 1988 SCC (Cri) 879: 1988 BLJR 382.

Bench Strength 2. Coram: *M.M. Dutt* and *K. Jagannatha Shetty*, JJ. [Date of decision: 4-2-1988]

[2091] — Ss. 174 and 161 — Absence of PW 20 in site plan — *Held, does not negate her presence or establish her having not witnessed the incident, specifically when she had given her statement to the police under S. 161 CrPC on day of occurrence itself* (Para 73). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength 2. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

Mehr Vajsi Deva v. State of Gujarat, AIR 1965 Guj 143; Zahiruddin v. Emperor, AIR 1947 PC 75; Supdt. and Remembrancer of Legal Affairs v. Ram Ajudhya Singh, AIR 1965 Cal 348, referred to

Ranbir Yadav v. State of Bihar, (1995) 4 SCC 392: 1995 SCC (Cri) 728, considered

[2092] — S. 174 — Discrepancy, overwriting, omission or contradiction in inquest report — Contention as to — When could be entertained — *Held, such contention could not be entertained unless the attention of the author thereof is drawn to the said fact and he is given an opportunity to explain the same when examined in court* (Para 11). *Radha Mohan Singh* v. *State of U.P.*, (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661: AIR 2006 SC 951: (2006) 1 KLJ 535: (2006) 2 All LJ 242: 2006 Cri LJ 1121.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 20-1-2006]

[2093] — S. 174 — Failure to hold inquest or post-mortem examination — When inconsequential — *Death of 12 persons on account of indiscriminate firing by accused persons established — Dead bodies recovered from the spot itself and necessary death certificate issued by the medical authority — Held, in the circumstances, non-holding of inquest or post-mortem examination immaterial. Banwari Ram* v. *State of U.P.*, (1998) 9 SCC 3: 1998 SCC (Cri) 835: AIR 1998 SC 674: 1998 Cri LJ 869.

Bench Strength **2**. Coram: *G.T. Nanavati* and **G.B. Pattanaik**, JJ. [Date of decision: 10-12-1997]

[2094] — S. 174 — In inquest report, gist of FIR or cause of death as narrated by the witnesses is usually noted (Para 12). *Thanedar Singh* v. *State of M.P.*, (2002) 1 SCC 487: 2002 SCC (Cri) 153: AIR 2002 SC 175: 2002 Cri LJ 254.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and **P. Venkatarama Reddi**, JJ. [Date of decision: 30-10-2001]

Meharaj Singh v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391, relied on

But see Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450

[2095] — S. 174 — Inquest — Witnesses to also alleged to be eyewitness — Their failure to state name of assailants — Makes their alleged presence when incident occurred doubtful. *Suresh Rai* v. *State of Bihar*, (2000) 4 SCC 84: 2000 SCC (Cri) 764: AIR 2000 SC 2207: 2000 Cri LJ 3457.

Bench Strength **3**. Coram: **S. Saghir Ahmad**, *A.P. Misra* and *Y.K. Sabharwal*, JJ. [Date of decision: 30-3-2000]

[2096] — S. 174 — Inquest report — *Absence of column about the names of the assailants and there being no occasion for anyone to mention the names of the assailants — Non-mention of names of the assailants in the inquest report therefore not fatal. Ram Sanjiwan Singh* v. *State of Bihar*, (1996) 8 SCC 552: 1996 SCC (Cri) 701: AIR 1996 SC 3265.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 26-4-1996]

[2097] — S. 174 — Inquest report — *Evidence of eyewitnesses, who were also witnesses to inquest report, cannot be rejected merely on the ground of discrepancy in their evidence regarding the time of preparation of inquest report and the absence of the names of the assailants in the same — S. 174(1) does not require mention of the names of the assailants in the inquest report*

Section 174, CrPC contemplates the preparation of an inquest report by the police officer in the presence of two or more responsible inhabitants of the neighbourhood and draw up a report of apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body stating in what manner or by what weapon or instrument (if any) such marks appeared to have been inflicted. A perusal of the section would go to show that it does not require anywhere to mention the names of the assailants. It was, therefore, neither incumbent on the police officer who prepared the inquest report, to mention the names of the assailants, nor was it necessary for the eyewitnesses, PWs 7 and 8, who are witnesses to the said inquest, to insist upon the mention of names of the assailants in the said inquest report. As regards the time of preparation of the inquest report, it is hardly of any consequence in the present case. It is just possible that the witnesses did not remember the exact time of preparation of the inquest after a long lapse of time. Their testimony, therefore, cannot be rejected on this ground alone. *Mahendra Rai* v. *Mithilesh Rai*, (1997) 10 SCC 605: 1997 SCC (Cri) 899.

Bench Strength **2**. Coram: *M.M. Punchhi* and **Faizan Uddin**, JJ. [Date of decision: 13-12-1996]

[2098] — S. 174 — Inquest report — *In language of witness — Contents of inquest report cannot be treated as evidence but can be looked into to test veracity of DW who attested the same as Panch witness. Kuldip Singh* v. *State of Punjab*, 1992 Supp (3) SCC 1: 1992 SCC (Cri) 946: AIR 1992 SC 1944: 1992 Cri LJ 3592.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 19-8-1992]

[2099] — S. 174 — Inquest report — Correction of name of informant in — *Justified and did not render the name doubtful — Penal Code, 1860 — Ss. 302/149, 307/149 and 148. State of U.P.* v. *Ram Swarup*, 1988 Supp SCC 262: 1988 SCC (Cri) 552: AIR 1988 SC 1028: 1988 ALJ 555: (1988) 1 Crimes 994.

Bench Strength **3**. Coram: *G.L. Oza*, *B.C. Ray* and **K. Jagannatha Shetty**, JJ. [Date of decision: 26-2-1988]

[2100] — S. 174 — Inquest report — Non-mention of name of accused in — Effect — *No column in inquest report requiring the IO to mention the names of the accused — Plea that fardbayan which gave names of the accused was drawn up after preparing inquest report not maintainable specially when no such plea was raised during the trial or before the High Court. Baleshwar Mandal* v. *State of Bihar,* (1997) 7 SCC 219: 1997 SCC (Cri) 1042: AIR 1997 SC 3471: 1997 Cri LJ 4084.

Bench Strength **2**. Coram: *M.M. Punchhi* and **V.N. Khare**, JJ. [Date of decision: 8-8-1997]

[2101] — S. 174 — Inquest report — Not necessary to record details of the incident — *FIR mentioning that the deceased was also assaulted by banka but the inquest report not making any reference to banka — High Court disbelieving the FIR and the evidence of the eyewitness on ground that they were inconsistent with the recitals in inquest report — Held, the approach of the High Court is erroneous and not sustainable. State of U.P.* v. *Abdul,* (1997) 10 SCC 135: 1997 SCC (Cri) 804: AIR 1997 SC 2512: 1997 All LJ 1432: 1997 Cri LJ 2997.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 5-5-1997]

Pedda Narayana v. State of A.P., (1975) 4 SCC 153: 1975 SCC (Cri) 427, followed

[2102] — S. 174 — Inquest report — Omission to mention crime number in — *Merely because the Investigating Officer had not been diligent enough it would not be proper to discard reliable and clinching evidences adduced by the eyewitnesses. Krishna Pal (Dr.)* v. *State of U.P.,* (1996) 7 SCC 194: 1996 SCC (Cri) 249: AIR 1996 SC 733.

Bench Strength **2**. Coram: *G.N. Ray* and *G.T. Nanavati*, JJ. [Date of decision: 30-11-1995]

Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977, relied on

[2103] — S. 174 — Inquest report — Extent of detail required — *Held, there is no requirement in law that IO making inquest or conducting of post-mortem should describe in detail as to the nature of the injuries sustained by the deceased and/or by the type of weapons used — Failure to do so no reason to discard prosecution version. Bur Singh* v. *State of Punjab*, (2008) 16 SCC 65: AIR 2009 SC 157.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 13-10-2008]

[2104] — S. 174 — Inquest report — Names of accused, held, need not be mentioned therein — Inquest report is prepared for purposes mentioned in S. 174 and not for corroborating prosecution case (Paras 36 to 38). *Satbir Singh* v. *State of U.P.,* (2009) 13 SCC 790: AIR 2009 SC 2163: (2009) 3 All LJ 786: (2009) 76 AIC 120 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-2-2009]

Pedda Narayana v. State of A.P., (1975) 4 SCC 153: 1975 SCC (Cri) 427; George v. State of Kerala, (1998) 4 SCC 605: 1998 SCC (Cri) 1232, considered and relied on

[2105] — Ss. 174 and 162 — Inquest report — Absence of names of all witnesses in — Validity of — *Held, inquest report need not contain names of all witnesses* (Para 17). *State* v. *Rajendran,* (2008) 15 SCC 425: (2009) 3 SCC (Cri) 957: AIR 2009 SC 925: (2008) 72 AIC 75 (SC): (2009) 2 ECrN 530 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-11-2008]

[2106] — S. 174 — Inquest report and post-mortem report — Not basic or substantive evidence — *Discrepancy occurring therein, not fatal to the prosecution case, nor a suspicious circumstance so as to benefit the accused*

The post-mortem report is a document which by itself is not a substantive evidence but it is the doctor's statement in court, which has the credibility of a substantive evidence and not the report, which in normal circumstances ought to be used only for refreshing the memory of the doctor witness or to contradict whatever he might say from the witness box. In a similar vein the inquest report also cannot be termed to be a basic or substantive evidence being prepared by the police personnel being a non-medical man and at the earliest stage of the proceeding. In the wake of the aforesaid, a mere omission of a particular injury or indication therein of an additional one cannot, invalidate the prosecution case. Discrepancy occurring between the inquest report and the post-mortem report can neither be termed to be fatal nor even a suspicious circumstance, which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. (Para 6). *Munshi Prasad* v. *State of Bihar,* (2002) 1 SCC 351: 2002 SCC (Cri) 175: AIR 2001 SC 3031.

Bench Strength **2**. Coram: **U.C. Banerjee** and *K.G. Balakrishnan*, JJ. [Date of decision: 10-10-2001]

Ramaswami, In re, AIR 1938 Mad 336: 1938 MWN 36, approved

[2107] — S. 174 — Non-compliance with — *Appellant Sub-Inspector of Police on receiving information about recovery of dead bodies, purporting to investigate and succeeding in having the body buried with undue hurry, feigning ignorance, though he knew the deceased, preparing false records and falsifying the available data*

On facts, the appellant Sub-Inspector of Police flouted all the salutary requirements of S. 174, CrPC. His conduct in distorting and suppressing material evidence and in preparing false records as to the identity of the dead body, the cause of the death and the falsification of the data bearing on that cause, could not be explained on any reasonable hypothesis save that of his guilt. The circumstances established in this case unmistakably and irresistibly point to the conclusion that within all human probability, the appellant knew or had reasons to believe that the deceased had been done to death by some person or persons. All the elements of the charge under S. 201 had thus been proved to the hilt against him. *Kodali Purnachandra Rao* v. *Public Prosecutor*, (1975) 2 SCC 570: 1975 SCC (Cri) 678: AIR 1975 SC 1925: 1975 Cri LJ 1671.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 2-9-1975]

[2108] — S. 174 — Non-mention of names of eyewitnesses in inquest report — *Held, would not render their testimony unreliable* (Para 8). *Khujji* v. *State of M.P.*, (1991) 3 SCC 627: 1991 SCC (Cri) 916: AIR 1991 SC 1853: 1991 Cri LJ 2653.

Bench Strength **3**. Coram: **A.M. Ahmadi**, *V. Ramaswami* and *K. Ramaswamy*, JJ. [Date of decision: 16-7-1991]

Pedda Narayana v. State of A.P., (1975) 4 SCC 153: 1975 SCC (Cri) 427, followed

[2109] — S. 174 — Inquest report — Truthfulness of — When doubtful

It is then noticed by the High Court that even the inquest report has been specially prepared to show the presence of PW 1 at the place of occurrence, when the investigating officer visited the spot. But PW 1, in his cross-examination, stated that after handing over the written report to the Head Constable at the police station, he went to sleep and did not know what happened after that. This report was handed over to the Head Constable at 5.20 p.m. He woke up only at about 9-10 p.m. By that time, the investigating officer had returned to the police station. He did not know whether the investigating officer had gone to the spot on the night of the occurrence. He did not know when or where documents were prepared regarding the dead body. However, he admitted his signature on the inquest report of the deceased *R*. He also stated that his signature was obtained at the police station. Thus, according to PW 1, he never went to the spot during the night after reporting the crime. On the other hand, the investigating officer stated that he was present at the spot between 9-10 p.m. Thus, according to the High Court, the investigating officer has been over enthusiastic to ensure the presence of PW 1, which was, to say the least, doubtful. (Para 29). *State of U.P.* v. *Guru Charan*, (2010) 3 SCC 721.

Bench Strength **2**. Coram : *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision : 23-2-2010]

[2110] — S. 174 — Rape and murder of a minor girl — *Accused only admitting to have gone the house of the victim and denying the prosecution case of taking the girl away with him — Inquest report not mentioning the circumstance of the deceased having been last seen in the company of the accused — Held on facts circumstance not proved. Jaharlal Das* v. *State of Orissa*, (1991) 3 SCC 27: 1991 SCC (Cri) 527: AIR 1991 SC 1388: (1991) 2 Crimes 268: (1991) 72 CLT 298.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 12-4-1991]

[2111] — S. 174 — Recovery of dead body at the instance of the accused — Circumstance not mentioned in inquest report — *No panchnama prepared for the recovery made under S. 27, Evidence Act — No evidence showing that accused was present near the place where dead body was found — Though father of the victim and the investigating officer deposing about the circumstance of the recovery, their testimony contradictory and unacceptable — Held on facts, the circumstance not established. Jaharlal Das* v. *State of Orissa*, (1991) 3 SCC 27: 1991 SCC (Cri) 527: AIR 1991 SC 1388: (1991) 2 Crimes 268: (1991) 72 CLT 298.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 12-4-1991]

[2112] — Ss. 174 and 162 — Inquest report — Non-mention of name of eyewitness in — Effect — *Practice in Punjab to record brief facts of the case in the inquest report — Verbatim quoting of the FIR which did not mention the names of the witnesses — Hence question of inclusion of name of any witness in the inquest report did not arise — That apart statement made to the IO while conducting the inquest is hit by S. 162 — Such a statement can only be utilised for contradicting the witness in the manner provided under S. 145 Evidence Act — Evidence Act, 1872 — S. 145. Babu Singh* v. *State of Punjab*, (1996) 8 SCC 699: 1996 SCC (Cri) 730: AIR 1996 SC 3250.

Bench Strength **2**. Coram: *Faizan Uddin* and **G.B. Pattanaik**, JJ. [Date of decision: 24-4-1996]

[2113] — S. 174 — Non-examination of investigating officer (IO) — Effect — But IO had only conducted the inquest — *Inquest report was exhibited without any objection and there was no* *challenge to correctness of the report — Held, non-examination of IO did not corrode credibility of prosecution version* (Para 15). *Bihari Rai* v. *State of Bihar*, (2008) 15 SCC 778: (2009) 3 SCC (Cri) 1209: AIR 2009 SC 18: 2009 Cri LJ 340: (2008) 71 AIC 156 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 26-9-2008]

Raj Pal v. State of Haryana, (2006) 9 SCC 678: (2006) 3 SCC (Cri) 361, relied on

[2114] — Ss. 174 and 162 — Inquest report — *Held, could not be used to contradict the prosecution witnesses to whom the dying declaration was made by the deceased — Evidence Act, 1872 — Ss. 145 & 157 and 32. George* v. *State of Kerala*, (1998) 4 SCC 605: AIR 1998 SC 1376: 1998 Cri LJ 2034.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 18-3-1998]

[2115] — Ss. 174(1) and 162 — Statements in inquest report as to what the IO saw and found admissible — *But statements therein on the basis of what IO heard from others, held, would be hit by S. 162*

Statements contained in an inquest report, to the extent they relate to what the IO saw and found are admissible but any statement made therein on the basis of what he heard from others, would be hit by Section 162 CrPC. *George* v. *State of Kerala*, (1998) 4 SCC 605: AIR 1998 SC 1376: 1998 Cri LJ 2034.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 18-3-1998]

— S. 175 *See* Ss. 162, 174 and 175

> **— S. 176** *See also* S. 176, Criminal Procedure Code, 1898, p. 1041 in Vol. 2

[2116] — S. 176 — Inquiry into cause of death under, to be made independently by Magistrate and not jointly with the police — *More so when the conduct of the police is the matter of enquiry — Joint inquiry by Executive Magistrate and Circle Inspector of Police was impermissible under S. 176*

Per Verma and Venkatachala, JJ.

An inquiry under S. 176 CrPC is contemplated independently by a Magistrate and not jointly with a police officer when the role of the police officers itself is a matter of inquiry. Therefore, the joint inquiry report in this case cannot be said to have been made under S. 176 CrPC and cannot be relied on as a statutory report relating to the cause of death. *Nilabati Behera* v. *State of Orissa*, (1993) 2 SCC 746: 1993 SCC (Cri) 527: AIR 1993 SC 1960: 1993 Cri LJ 2899: (1993) 76 CLT 98: 1993 ACJ 787.

Bench Strength **3**. Coram: **J.S. Verma**[1], **Dr. A.S. Anand**[2] and *N. Venkatachala*, JJ. [Date of decision: 24-3-1993]

[2117] — S. 176 — Custodial violence — Requirements to be followed in all cases of arrest or detention laid down in *D.K. Basu case* — Assessment of extent of compliance with, sought by learned Amicus — *Almost all the States and Union Territories filing affidavits indicating implementation of those requirements — Learned Amicus submitting to suggest for further monitoring of the case by some other agencies to save the time of the Supreme Court — Time granted for filing suggestions — In the meanwhile, direction issued to States and Union Territories to issue instructions to agencies concerned for completing the inquiry by Magistrates into causes of custodial death within 4 months — Constitution of India — Arts. 21 and 22* (Paras 1 and 2). *Dilip K. Basu* v. *State of W.B.*, (2003) 11 SCC 725.

Bench Strength **3**. Coram: *Dr. A.S. Anand*, *C.J.* and *R.C. Lahoti* and *P. Venkatarama Reddi*, JJ. [Date of decision: 12-10-2001]

D.K. Basu v. State of W.B., (1997) 1 SCC 416: 1997 SCC (Cri) 92, followed

[2118] — S. 176 — Custodial death — High Court monitoring investigation — High Court taking strong exception to a parallel enquiry and report by Magistrate under S. 176 CrPC — *By impugned order High Court staying further action on said report under S. 176 during pendency of writ petition filed by appellant mother of alleged victim — High Court also making observations on Magistrate's report prior to conclusion of its own probe and also directing an enquiry into causes of said parallel inquiry by Magistrate — Interference with stay on parallel inquiry and report, held, unwarranted — But said observations and directions for enquiry against report of Magistrate set aside and expeditious disposal directed — Constitution of India — Arts. 136 and 21*

No interference is warranted in exercise of jurisdiction under Article 136. Notwithstanding the various observations made in the impugned order of the Single Judge of the High Court, the fact remains that the impugned order is ad interim in its nature. It stayed the report dated 7-9-2009 submitted by the Magistrate. The effect of the order passed by the Single Judge is that the operation of the report is kept in abeyance and therefore no further action based on the said report could be initiated in whatsoever manner. (Paras 12 and 11)

However, the observations made in the impugned order with regard to the report of the Magistrate are set aside which are totally unnecessary. The direction issued to the Registrar General to make a detailed inquiry into the matter which led to holding of inquiry by the Magistrate under Section 176 CrPC is also set aside. The observations so made if allowed to remain may result in far-reaching consequences. The Single Judge should not have made such observations while the very application filed by the State is kept pending for its adjudication. (Paras 12 and 13)

In the circumstances it would be appropriate to request the Chief Justice of the High Court to place Special Miscellaneous Application No. 822 of 2004 along with criminal miscellaneous applications including Criminal Miscellaneous Application No. 10625 of 2009 filed by the State of Gujarat for their disposal in accordance with law as expeditiously as possible preferably within six months. The Division Bench shall consider the very maintainability of the criminal miscellaneous application filed by the State of Gujarat without being influenced by the observations made. (Para 13)

In view of the final orders passed in the criminal appeals no further order is required to be passed in the impleadment application in criminal appeal arising out of SLP (Crl.) No. 7305 of 2009. The application shall accordingly stand dismissed with liberty granted to the applicant to avail such remedies as may be available in law. (Para 14). *Shamima Kauser* v. *Union of India*, (2010) 6 SCC 662.

Bench Strength **2**. Coram : **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision : 19-4-2010]

[2119] — S. 176 — Assault on prisoners and undertrials, by Munshi Kedis (criminals allegedly authorised to supervise the movement of prisoners) — Interim3 order — *Prisoner dying due to injuries received during beating by "Munshi Kedis" in the jail — No legal sanction for appointment of such Munshi Kedis shown by the Government — Magistrate, holding inquest, recommending the system of Munshi Kedis to be reviewed — Neither the report of the Magistrate nor the directions of the Government given pursuant to that report, filed before Supreme Court — In such circumstances, IG (Prisons) directed to file an affidavit personally indicating as to under what authority "Munshi Kedis" were working in the jail and the action taken to prevent such events — Constitution of India — Art. 21. Watchdogs International* v. *Union of India*, (1998) 8 SCC 338: 1998 SCC (Cri) 1525.

Bench Strength **2**. Coram: *G.N. Ray* and *G.B. Pattanaik*, JJ. [Date of decision: 3-9-1997]

[2120] — S. 176 — Custodial death/violence — Expeditious disposal directed — *Custodial violence — Constitution of India — Arts. 226 and 21* (Paras 11 to 13)

No interference is warranted in exercise of jurisdiction under Article 136. Notwithstanding the various observations made in the impugned order of the Single Judge of the High Court, the fact remains that the impugned order is ad interim in its nature. It stayed the report dated 7-9-2009 submitted by the Magistrate. The effect of the order passed by the Single Judge is that the operation of the report is kept in abeyance and therefore no further action based on the said report could be initiated in whatsoever manner. (Paras 12 and 11)

However, the observations made in the impugned order with regard to the report of the Magistrate are set aside which are totally unnecessary. The direction issued to the Registrar General to make a detailed inquiry into the matter which led to holding of inquiry by the Magistrate under Section 176 CrPC is also set aside. The observations so made if allowed to remain may result in far-reaching consequences. The Single Judge should not have made such observations while the very application filed by the State is kept pending for its adjudication. (Paras 12 and 13)

In the circumstances it would be appropriate to request the Chief Justice of the High Court to place Special Miscellaneous Application No. 822 of 2004 along with criminal miscellaneous applications including Criminal Miscellaneous Application No. 10625 of 2009 filed by the State of Gujarat for their disposal in accordance with law as expeditiously as possible preferably within six months. The Division Bench shall consider the very maintainability of the criminal miscellaneous application filed by the State of Gujarat without being influenced by the observations made. (Para 13). *Shamima Kauser* v. *Union of India*, (2010) 6 SCC 662.

Bench Strength **2**. Coram : **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision : 19-4-2010]

[2121] — S. 176 — Appreciation of evidence — Dowry death — Causing death of a housewife by strangulation in her in-laws' house — *Prosecution case against A-1 and A-3 (father-in-law and mother-in-law of deceased) fully established by evidence of PW 4 — Non-mentioning name of A-3 by PW 3 in his statement made to Tahsildar while he was holding inquiry under S. 176 CrPC, held, cannot be the sole basis for discarding the evidence of*

PW 3 in toto — Conviction of A-1 and A-3 under Ss. 302/34 upheld — Penal Code, 1860 — Ss. 302/34 and 498-A (Para 6). *Asokan* v. *State*, (2000) 4 SCC 68: 2000 SCC (Cri) 749: AIR 2000 SC 3444: 2000 Cri LJ 2988.

Bench Strength 2. Coram: **G.B. Pattanaik** and *Shivaraj V. Patil*, JJ. [Date of decision: 5-4-2000]

[2122] — S. 176 — Contents of certified copy of statement recorded under — *Held, not admissible in evidence — It has to be proved like any other previous statement — Evidence Act, 1872 — Ss. 145, 157 and 80*

The contents of a certified copy of the statement recorded under S. 176 of the Code would not be admissible in evidence unless the contradiction is proved by putting it to the witness in cross-examination and the maker has had an opportunity to admit or deny it. It has to be proved like any other previous statement. *Gauri Shanker Sharma* v. *State of U.P.*, 1990 Supp SCC 656: AIR 1990 SC 709: (1990) 1 Crimes 196.

Bench Strength 2. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 12-1-1990]

— S. 176(1-A) *See* Ss. 154 and 176(1-A)

[2123] — S. 176(3) — Shifting of graves — *Muslim graves coming up unauthorisedly and illegally on others' land can be shifted in the larger interest of society for maintaining public order — Such an action would not be un-Islamic and violative of Arts. 25 and 26 — Constitution of India — Arts. 25 and 26. Abdul Jalil* v. *State of U.P.*, (1984) 2 SCC 138: 1984 SCC (Cri) 169: AIR 1984 SC 882.

Bench Strength 3. Coram: **V.D. Tulzapurkar**, *D.A. Desai* and *A.P. Sen*, JJ. [Date of decision: 14-2-1984]

Gulam Abbas v. State of U.P., (1982) 1 SCC 71: 1982 SCC (Cri) 82 and Gulam Abbas v. State of U.P., (1984) 1 SCC 81: 1984 SCC (Cri) 35, affirmed

[2124] — Ss. 176(3) and 144 — Directions for physical changes to properties connected with religion pursuant to recommendations of a committee to avoid perennial problem of clashes between two religious communities or sects, held, would not offend their religious rights being in the interest of public order — *Shifting of graves where necessary to maintain public order would be constitutional and not an irreligious action — Constitution of India — Arts. 25 and 26*

The exercise of fundamental rights under Arts. 25 and 26 is not absolute but must yield or give way to maintenance of public order and the impugned suggestion was mooted by the Court and has now been found to be feasible by the Chairman of the Committee in the larger interest of the society for the purpose of maintaining public order on every occasion of the performance of religious ceremonies and function by members of both the sects. If the Court finds the implementation of the suggestion to be eminently fit in the interest of maintenance of public order consent of either party would be immaterial.

Though the Shariat Law is against the shifting of graves but the religious rights of every person and every religious denomination are subject to "public order", the maintenance whereof is paramount in the larger interest of the society. The exigencies of public order provide the requisite justification for the order for shifting of the graves. The ecclesiastical edict or right not to disturb an interred corpse is not absolute as shown by S. 176(3), Cr PC which permits its exhumation for the purpose of crime detection, a provision applicable to all irrespective of the personal law governing the dead. *Gulam Abbas* v. *State of U.P.*, (1984) 1 SCC 81: 1984 SCC (Cri) 35: AIR 1983 SC 1268.

Bench Strength 3. Coram: *V.D. Tulzapurkar*, *D.A. Desai* and *A.P. Sen*, JJ. [Date of decision: 23-9-1983]

— Ch. XIII (Ss. 177 to 189) *See* S. 4 and Chapters VII, XIII & XXXIV

— S. 177 *See also* S. 177, Criminal Procedure Code, 1898, pp. 1041 et seq. in Vol. 2

— S. 177 *See* Ss. 11, 13, 14, 18, 177 to 181, 190 and Ch. XXXI

See also Ss. 154, 156 and 162, 177, 178
See also Ss. 154, 156, 177 and 178
See also S. 156 and Ss. 177, 178 & 181
See also Ss. 176, 177, 166-B, 188 and 190
See also Ss. 178(c) and 177, 162
See also Ss. 178(c) & 177 and 406
See also S. 178(d), 177 and 179
See also Ss. 178(d), 177, 179 and 482
See also Ss. 190, 193, 179 and 177
See also Ss. 228, 197 and 177
See also Ss. 406 and 177
See also Ss. 406, 177, 178 and 156
See also Ss. 406, 407 and 177
See also Ss. 407 and 177
See also Ss. 482, 177 and 178

[2125] — S. 177 — Ordinary place of enquiry and trial — *Complaint filed in Sri Ganganagar (State of Rajasthan) against appellants; challan filed in Court of ACJM, Sri Ganganagar, and charges framed for offences under Ss. 498-A and 406 IPC — Complaint disclosing that complainant had left the place where she was residing with her* *husband and in-laws and was now residing in Sri Ganganagar and that all the alleged acts as per the complaint had taken place in the State of Punjab — Held, on the basis of the factual scenario disclosed by the complainant in the complaint, the inevitable conclusion is that no part of cause of action arose in Rajasthan and, therefore, the Magistrate concerned has no jurisdiction to deal with the matter — Hence, proceedings before ACJM, Sri Ganganagar quashed and complaint returned to complainant granting her liberty to file the same in appropriate court to deal with in accordance with law* (Paras 2, 5 and 6). *Bhura Ram* v. *State of Rajasthan*, (2008) 11 SCC 103: AIR 2008 SC 2666: 2008 Cri LJ 3494.

Bench Strength 2. Coram: **P.P. Naolekar** and *V.S. Sirpurkar*, JJ. [Date of decision: 2-4-2008]

Y. Abraham Ajith v. Inspector of Police, (2004) 8 SCC 100: 2004 SCC (Cri) 2134, relied on

[2126] — S. 177 — Place of enquiry and trial — "Ordinarily" — Meaning and import of the word

The use of the word "ordinarily" indicates that the provision is a general one and must be read subject to the special provisions contained in the Criminal Procedure Code. That apart, the exceptions implied by the word "ordinarily" need not be limited to those specially provided for by the law and exceptions may be provided by law on considerations of convenience or may be implied from other provisions of law permitting joint trial of offences by the same court. (Para 4). *Mohan Baitha* v. *State of Bihar*, (2001) 4 SCC 350: 2001 SCC (Cri) 710: AIR 2001 SC 1490.

Bench Strength 2. Coram: **G.B. Pattanaik** and *B.N. Agrawal*, JJ. [Date of decision: 21-3-2001]

Purushottamdas Dalmia v. State of W.B., AIR 1961 SC 1589: (1961) 2 Cri LJ 728: (1962) 2 SCR 101; L.N. Mukherjee v. State of Madras, AIR 1961 SC 1601: (1961) 2 Cri LJ 736: (1962) 2 SCR 116; Banwarilal Jhunjhunwala v. Union of India, AIR 1963 SC 1620: (1963) 2 Cri LJ 529: 1963 Supp (2) SCR 338, relied on

[2127] — Ss. 177 and 178 — Place of inquiry and trial — "Ordinarily" — Meaning and import of — *Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed, held, is the general rule — However, the said rule is subject to several exceptions — No such exception applicable to the case at hand — Held, the Magistrate concerned had no jurisdiction to deal with the matter as no part of cause of action for initiation of proceedings against accused arose within his local jurisdiction*

Section 177 CrPC reiterates the well-established common-law rule referred to in *Halsbury's Laws of England* that the proper and ordinary venue for the trial of a crime is the area of jurisdiction in which, on the evidence, the facts occur and which are alleged to constitute the crime. There are several exceptions to this general rule and some of them are, so far as the present case is concerned, indicated in Section 178 CrPC. A significant word used in Section 177 is "ordinarily". Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in CrPC. No such exception is applicable to the case at hand. (Paras 8 and 9)

In the instant case, the complainant herself left the house of the husband on 15-4-1997 on account of alleged dowry demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at place *C*. That being so, the logic of Section 178(*c*) CrPC relating to continuance of the offences cannot be applied. (Para 11)

The crucial question is whether any part of the cause of action arose within the jurisdiction of the court concerned. In terms of Section 177 CrPC, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused. (Para 12). *Y. Abraham Ajith* v. *Inspector of Police*, (2004) 8 SCC 100: 2004 SCC (Cri) 2134: AIR 2004 SC 4286.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 17-8-2004]

State of Bihar v. Deokaran Nenshi, (1972) 2 SCC 890: 1973 SCC (Cri) 114, relied on

Sujata Mukherjee v. Prashant Kumar Mukherjee, (1997) 5 SCC 30: 1997 SCC (Cri) 673, distinguished on facts

[2128] — Ss. 177, 178, 156 and 190 — Territorial jurisdiction — Determination of — Investigation to elicit the facts necessary for — Permissibility of

The appellant had taken a loan from a cooperative Bank which had its business operations in the States of Gujarat, Maharashtra and other States. The Bank filed criminal complaints against the appellant in Ahmedabad in the State of Gujarat. The Magistrate issued a direction under Section 156(3) CrPC to the Economic Offences Wing, CID (Crime), Ahmedabad to conduct an investigation against the appellant. The police however filed a report that the alleged offences were committed in the State of Maharashtra inasmuch as the loan was taken by the appellant from a branch of the cooperative Bank which was situated and registered in Maharashtra, and therefore the Gujarat police did not have territorial jurisdiction to conduct investigation. It was further prayed that the competent agency to conduct the investigation was Maharashtra police. It was however on record that the appellant had applied for a loan to the Head Office of the cooperative Bank in Gujarat and loan was sanctioned by the Head Office.

The High Court held that police in Ahmedabad could not refuse to conduct investigation on the ground that it did not have territorial jurisdiction contending that the cause of action had arisen in Maharashtra.

Affirming the judgment of the High Court and dismissing the appeal,

Held :

It was not within the jurisdiction of investigating agency to refrain itself from holding a proper and complete investigation merely upon arriving at a conclusion that the offences had been committed beyond its territorial jurisdiction. The material before the Magistrate indicates that a major part of loan transaction had, in fact, taken place in the State of Gujarat and that having regard to provisions of Section 156(2) CrPC, proceedings of investigation could not be questioned on the ground of jurisdiction of the officer to conduct such investigation. It was open to the Magistrate to direct an investigation under Section 156(3) CrPC without taking cognizance on complaint and where an investigation is undertaken at the instance of the Magistrate, a police officer empowered under Section 156(1) is bound, except in specific and especially exceptional cases, to conduct such an investigation even if he was of the view that he did not have jurisdiction to investigate the matter. (Paras 27 and 28)

A complaint made in a criminal case follows the place where the cause arises, but the distinguishing feature in the instant case is that the stage of taking cognizance was yet to arrive. The investigating agency was required to place facts elicited during investigation before the court in order to enable the court to come to a conclusion as to whether it had jurisdiction to entertain the complaint or not. Without conducting such an investigation, it was improper on the part of investigating agency to forward its report with the observation that since the entire cause of action for the alleged offence had purportedly arisen in the city of Mumbai within the State of Maharashtra, the investigation should be transferred to the police station concerned in Mumbai. (Para 30)

Section 156(3) contemplates a stage where the Magistrate is not convinced as to whether process should issue on the facts disclosed in the complaint. Once the facts are received, it is for the Magistrate to decide his next course of action. In this case, there are materials to show that the appellant had filed his application for a loan with the Head Office of the Bank at Ahmedabad and that processing and sanction of loan was also done in Ahmedabad, which clearly indicates that a major part of the cause of action for complaints arose within the jurisdiction of the Chief Metropolitan Magistrate, Ahmedabad. It was not, therefore, desirable on the part of the investigating agency to make an observation that it did not have territorial jurisdiction to proceed with the investigation, and which was required to be transferred to the police station having jurisdiction to do so. (Paras 31 and 33). *Rasiklal Dalpatram Thakkar* v. *State of Gujarat*, (2010) 1 SCC 1.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 6-11-2009]

Agencia Commercial International Ltd. v. Custodian of the Branches of Banco Nacional Ultramarino, (1982) 2 SCC 482; Satvinder Kaur v. State (NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503; Naresh Kavarchand Khatri v. State of Gujarat, (2008) 8 SCC 300: (2008) 3 SCC (Cri) 614; Asit Bhattacharjee v. Hanuman Prasad Ojha, (2007) 5 SCC 786: (2007) 3 SCC (Cri) 31, distinguished on facts

[2129] — Ss. 177 and 178 — Place of inquiry and trial — Factors required for consideration thereof — Dependence on fact situation in each case — Relevance of penal provisions under which accused charged — S. 178, when attracted — *Held, word "ordinarily" occurring in S. 177 must be given its natural meaning — Provisions contained in S. 178 and other provisions would be attracted when S. 177 cannot be given effect to — These provisions in CrPC governing the field emanate from the doctrine that all crimes are local — Investigation into a crime, witnesses who are required to be examined for the purpose of proving commission thereof and other relevant factors which are required to be taken for consideration thereof lead to aforementioned inference — For the purpose of finding out the place, where inquiry or trial should be conducted, would be that the offence has taken place wholly or partly in the jurisdiction of one police station or wholly or partly in the jurisdiction of another police station and thus, would depend upon the fact situation obtaining in each case — Provisions of Penal Code, 1860 under which accused is charged will also play an important role* (Paras 11 and 12). *Premkumar* v. *State of Kerala*, (2008) 17 SCC 264: (2009) 75 AIC 12 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 19-12-2008]

Y. Abraham Ajith v. Inspector of Police, (2004) 8 SCC 100: 2004 SCC (Cri) 2134; Asit Bhattacharjee v. Hanuman Prasad Ojha, (2007) 5 SCC 786: (2007) 3 SCC (Cri) 31; Naresh Kavarchand Khatri v. State of Gujarat, (2008) 8 SCC 300: (2008) 3 SCC (Cri) 614, relied on

Vidhya Devi v. State of Haryana, (2004) 9 SCC 476: 2004 SCC (Cri) 1473, considered

[2130] — Ss. 177 and 178 — Territorial jurisdiction of a court regarding criminal offence — Determination of — *Held, the same would be decided on the basis of place of occurrence of the incident and not on the basis of where complaint was filed — Mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another court — Venue of enquiry or trial is primarily to be determined by the averments contained in complaint or charge-sheet* (Para 19). *Rajendra Ramchandra Kavalekar* v. *State of Maharashtra*, (2009) 11 SCC 286: (2009) 3 SCC (Cri) 1330: AIR 2009 SC 1792: (2009) 2 ECrN 1277 (SC): 2009 Cri LJ 1592.

Bench Strength **2**. Coram: *Tarun Chatterjee* and *H.L. Dattu*, JJ. [Date of decision: 23-1-2009]

Navinchandra N. Majithia v. State of Maharashtra, (2000) 7 SCC 640: 2001 SCC (Cri) 215; Asit Bhattacharjee v. Hanuman Prasad Ojha, (2007) 5 SCC 786: (2007) 3 SCC (Cri) 31, relied on

[2131] — Ss. 177 & 178 and 482 — Proper place of inquiry and trial — Ascertainment of — Plea for quashing criminal proceeding — Tenability of — *In present case, appellant securing job through fake/forged degree certificates — Allegation on appellant for obtaining such certificates by entering into criminal conspiracy — Criminal proceedings against appellant pending in State* ***J*** *— Part of cause of action allegedly arising in another State* ***M*** *— High Court of State* ***M*** *rejecting appellant's writ for quashing the proceedings on the ground that court of* ***J*** *was seized of the matter with all papers and documents pertaining to the case in custody and possession of the said court — Sustainability — Held, bare perusal of complaint filed clearly showed that cause of action arose within the jurisdiction of court at* ***R*** *in State* ***J****, investigation was completed in* ***R****, all the records and the documents pertaining to the complaint and charge-sheet were before court at* ***R*** *— Therefore, High Court was perfectly justified in declining to entertain the writ filed by appellant — Penal Code, 1860, Ss. 120-B, 420, 467, 468 and 471 — Prevention of Corruption Act, 1988, S. 13(2) r/w S. 13(1)(d)* (Paras 2, 3, 16 and 22 to 26). *Rajendra Ramchandra Kavalekar* v. *State of Maharashtra*, (2009) 11 SCC 286: (2009) 3 SCC (Cri) 1330: AIR 2009 SC 1792: (2009) 2 ECrN 1277 (SC): 2009 Cri LJ 1592.

Bench Strength **2**. Coram: *Tarun Chatterjee* and *H.L. Dattu*, JJ. [Date of decision: 23-1-2009]

Banwarilal Jhunjhunwala v. Union of India, AIR 1963 SC 1620, relied on

[2132] — Ss. 177 to 186 — "Cause of action" — Meaning of — Use of the said expression in civil and criminal cases — Difference between, if any — *CPC, 1908, Or. 7 R. 1(e)*

While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 CrPC, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. (Para 13)

The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. Thus, it consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously, the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action". (Paras 17, 14 and 15). *Y. Abraham Ajith* v. *Inspector of Police*, (2004) 8 SCC 100: 2004 SCC (Cri) 2134: AIR 2004 SC 4286.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 17-8-2004]

Black's Law Dictionary; Halsbury's Laws of England (4th Edn.); Words and Phrases, (4th Edn.), referred to

[2133] — Ss. 177, 178, 482, 156, 162 and 154 — Quashing of FIR on ground of lack of territorial jurisdiction of police to investigate the offence improper — Police Officer competent to investigate any cognizable offence — *However, the IO can forward the case to the police station having territorial jurisdiction if he comes to the conclusion that the crime was committed beyond his territorial jurisdiction — But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it*

The appellant wife was married to the respondent on 9-12-1990. Her parents were residents of

Delhi and the marriage was performed at Delhi. A daughter was born on 19-12-1991. It is her contention that on 19-1-1992, she was thrown out from the matrimonial home in Patiala within 4 weeks of the birth of baby girl and that at that time, she had only wearing apparel. On the same day complaint was lodged by her at PS Kotwali, Patiala making various allegations of torture and dowry demand against her husband and parents-in-law. Thereafter, she came to Delhi to live with her parents. Within that time also, threats by her husband continued. On 30-4-1992, a complaint was lodged against her husband in the Women's Cell, Delhi. Subsequently, on 23-1-1993 the impugned FIR under Sections 406 and 498-A IPC for the alleged occurrence at Patiala was lodged at Police Station Paschim Vihar, New Delhi. Thereafter, the Respondent filed petition in the Delhi High Court under Section 482 CrPC for quashing the FIR. The High Court arrived at the conclusion by appreciating the allegations made by the parties that the SHO, Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction to entertain and investigate the FIR lodged by the appellant because the alleged dowry items were entrusted to the respondent at Patiala and that the alleged cause of action for the offence punishable under Section 498-A Indian Penal Code arose at Patiala. Reversing the judgment of the High Court

Held :

The findings given by the High Court are, on the face of it, illegal and erroneous because:

(*1*) The SHO has statutory authority under Section 156 CrPC to investigate any cognizable case for which an FIR is lodged.

(*2*) At the stage of investigation, there is no question of interference under Section 482 CrPC on the ground that the investigating officer has no territorial jurisdiction.

(*3*) After investigation is over, if the investigating officer arrives at the conclusion that the cause of action for lodging the FIR has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly under Section 170 CrPC and to forward the case to the Magistrate empowered to take cognizance of the offence. (Para 8)

It is true that territorial jurisdiction also is prescribed under sub-section (1) of Section 156 to the extent that the officer can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such police station would have power to enquire into or try under the provisions of Chapter XIII. However, sub-section (2) of Section 156 makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168, 169 and 170. Section 170 specifically provides that if, upon an investigation, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the investigating officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then FIR can be forwarded to the police station having jurisdiction over the area in which the crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it. (Para 10)

A reading of Sections 177 and 178 CrPC would make it clear that Section 177 provides for "ordinary" place of enquiry or trial. Section 178, inter alia, provides for place of enquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in one local area and partly in another and where it consisted of several acts done in different local areas, it could be enquired into or tried by a court having jurisdiction over any of such local areas. Hence, at the stage of investigation, it cannot be held that the SHO does not have territorial jurisdiction to investigate the crime. (Para 12)

In the present case, the High Court committed a grave error in accepting the contention of the respondent that the investigating officer had no jurisdiction to investigate the matters on the alleged ground that no part of the offence was committed within the territorial jurisdiction of the police station at Delhi. The appreciation of the evidence is the function of the courts when seized of the matter. At the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion that the police station officer of a particular police station would not have territorial jurisdiction. In any case, it has to be stated that in view of Section 178(*c*) CrPC, when it is uncertain in which of the several local areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that the SHO, Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction, is on the face of it, illegal and erroneous. That apart, Section 156(2) contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate. The High Court has completely overlooked the said embargo when it entertained the petition of Respondent 2 on the ground of want of territorial jurisdiction. (Para 15). *Satvinder Kaur* v. *State (Govt. of NCT of Delhi)*, (1999) 8 SCC 728: 1999 SCC (Cri) 1503: AIR 1999 SC 3596.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 5-10-1999]

State of W.B. v. S.N. Basak, AIR 1963 SC 447: (1963) 2 SCR 52; State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370, 395: 1985 SCC (Cri) 180; State of Kerala v. O.C. Kuttan, (1999) 2 SCC 651: 1999 SCC (Cri) 304, followed

Rajinder Singh v. State, (1999) 1 Crimes 271 (Del), reversed

[2134] — Ss. 177 to 187 — Jurisdiction — Criminal proceedings relating to same offence cannot be continued in parallel in more than one criminal court

In view of the facts and circumstances of the case, the criminal case instituted in the Court of ACJM, Karnal should not continue since the case relating to the same incident is pending in the Sessions Court at Delhi and the same will continue in accordance with law. (Para 6). *Sukhjinder Singh* v. *State (NCT of Delhi)*, (2001) 8 SCC 630: 2002 SCC (Cri) 11: AIR 2001 SC 2941.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 18-10-2001]

[2135] — Ss. 177, 178, 181 and 156 — Jurisdiction of criminal courts in inquiries and trials — Power to transfer investigation — *Held, whether an officer in charge of a police station has the requisite jurisdiction to make investigation or not will depend upon a large number of factors including those contained in Ss. 177, 178 and 181 CrPC — In a case where a trial can be held in any of the places falling within the purview of the aforementioned provisions, investigation can be conducted by the officer in charge of the police station concerned which has jurisdiction to investigate in relation thereto* (Para 8). *Naresh Kavarchand Khatri* v. *State of Gujarat*, (2008) 8 SCC 300: (2008) 3 SCC (Cri) 614: AIR 2008 SC 2180: (2008) 2 KLT 747.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 8-5-2008]

[2136] — Ss. 177, 190 and 173 — Monitoring of case by Supreme Court — Scope — Fodder Scam cases — *Per Lakshmanan, J., once a charge-sheet is filed in the competent court after completion of the investigation, process of monitoring by Supreme Court comes to an end thereafter — It is only the court in which charge-sheet is filed which is to deal with all matters relating to the trial of the accused — Constitution of India — Art. 32*

Per Lakshmanan, J.

Once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by the Supreme Court for the purpose of making CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of Section 173(8). Monitoring of the pending trial is subversion of criminal law as it stands to mean that the court behind the back of the accused is entering into a dialogue with the investigating agency. Therefore, there can be no monitoring, after the charge-sheet is filed. (Paras 37 and 38). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength **3**. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

Union of India v. Sushil Kumar Modi, (1998) 8 SCC 661: 1999 SCC (Cri) 84, followed

[2137] — Ss. 177 and 173 — Officer (Legal Remembrancer) who had given opinion to submit a police report in favour of the accused, later on becoming CJM should not entertain report submitted by police recommending discharge of the accused (Para 26). *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*, (1995) 6 SCC 194: 1995 SCC (Cri) 1059: AIR 1996 SC 309.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 12-10-1995]

[2138] — Ss. 177, 166-B, 188 and 190 — Magisterial inquiry under Extradition Act, 1962 — *Central Govt. can direct any magistrate having jurisdiction to inquire into the offence and not bound to direct only the magistrate in whose territorial jurisdiction the fugitive was arrested — S. 5 overrides Ss. 177, 188 and 190 CrPC — Magistrate directed to record evidence and send his report to Govt. of India — Extradition Act, 1962 — Ss. 5 and 2(d)*

George Kutty Kuncheria, an Indian national, was wanted in the United States of America to stand trial for violation of Federal Fraud Statutes and related offences. He was alleged to have defrauded and embezzled from the Chase Manhattan Bank in New York more than one million dollars which he transferred to United Arab Emirates. The Embassy of the United States of America in New Delhi sent a letter of request dated September 20, 1988 to the Ministry of External Affairs, Government of India, for the extradition of George to the United States. The Ministry of External Affairs, Government of India, in exercise of its powers under S. 5 of the Extradition Act, 1962 passed an order dated December 5, 1988 requesting the Additional Chief Metropolitan Magistrate, Patiala House, New Delhi, to conduct an inquiry into the matter under the Act. Rosiline, wife of George, challenged the extradition proceedings by way of a writ petition before the Delhi High Court. The writ petition was dismissed by a Division Bench of the High Court by its judgment dated December 14, 1990. The two appeals by way of special leave were filed by Rosiline and George, against the judgment of the Delhi High Court. The writ petition under Art. 32 of the Constitution of India was filed by George challenging the extradition proceedings on various grounds.

Dismissing the appeals and writ petition,

Held :

Under S. 5 of the Extradition Act, 1962 the Central Government can direct any Magistrate to hold inquiry provided the said Magistrate would have had jurisdiction to inquire into the offence if it had been an offence committed within the local limits of his jurisdiction. In the present case the offence alleged in the letter of request by the United States of America to have been committed by the fugitive would, if committed in the local limits of the Magistrate, have given the Magistrate jurisdiction to inquire into the same. The Act, being a special provision dealing with the extradition of fugitive criminals, shall exclude from application the general provisions of the Code of Criminal Procedure, 1973. In any case, S. 5 of the said code gives overriding effect to the special jurisdiction created under any special or local laws. Sections 177, 188 and 190 of the Code have no application to the proceedings under the Extradition Act. *Rosiline George* v. *Union of India*, (1994) 2 SCC 80: 1994 SCC (Cri) 304: (1993) 2 ALT (Cri) 672: (1994) 1 KLT 36.

Bench Strength 2. Coram: **Kuldip Singh** and *S.P. Bharucha*, JJ. [Date of decision: 11-10-1993]

[2139] — Ss. 177 to 184 and 186 to 188 — Expression "cause of action" — Meaning — Question whether the cause of action in the subsequent case is identical with that in the first case — Mode of determination

The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person. (Para 14)

"Cause of action" consists of a bundle of facts, which give cause to enforce the legal inquiry for redressal in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. (Para 11)

The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, the aforesaid expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". (Para 12)

The rule is directed to securing the exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action or different causes of action, even though they arise from the same transaction. One great criterion, when the question arises as to whether the cause of action in the subsequent suit is identical with that in the first suit is, whether the same evidence will maintain both actions. (Para 16). *Om Prakash Srivastava* v. *Union of India*, (2006) 6 SCC 207: (2006) 3 SCC (Cri) 24: (2006) 131 DLT 557.

Bench Strength 2. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 24-7-2006]

Black's Law Dictionary; Stroud's Judicial Dictionary; Words and Phrases (4th Edn.); Halsbury's Laws of England (4th Edn.), referred to

Navinchandra N. Majithia v. State of Maharashtra, (2000) 7 SCC 640: 2001 SCC (Cri) 215; South East Asia Shipping Co.

Ltd. v. Nav Bharat Enterprises (P) Ltd., (1996) 3 SCC 443; Bloom Dekor Ltd. v. Subhash Himatlal Desai, (1994) 6 SCC 322; Sadanandan Bhadran v. Madhavan Sunil Kumar, (1998) 6 SCC 514: 1998 SCC (Cri) 1471; Rajasthan High Court Advocates' Assn. v. Union of India, (2001) 2 SCC 294; Gurdit Singh v. Munsha Singh, (1977) 1 SCC 791; Payana Reena Saminathan v. Pana Lana Palaniappa, (1913-14) 41 IA 142; Mohd. Khalil Khan v. Mahbub Ali Mian, (1947-48) 75 IA 121: AIR 1949 PC 78, relied on

***Applied in** Sandeep Polymers (P) Ltd. v. Bajaj Auto Ltd., (2007) 7 SCC 148*

[2140] — S. 177 — "Cause of action" — Meaning of — Existence thereof in a suit — Necessity of, for maintainability of suit — *CPC, 1908 — S. 20(c) & Or. 7 Rr. 1(e) & 11(a) and Or. 6 Rr. 2 & 4 — Constitution of India — Art. 226(2)*

The expression "cause of action" has neither been defined in the Constitution nor in CPC. It may, however, be described as a bundle of *essential* facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit. If there is no cause of action, the plaint or petition has to be dismissed. (Paras 20 and 22)

For the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such facts constitute a *material*, *essential*, or *integral* part of the cause of action. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action. In determining the said question, the substance of the matter and not the form thereof has to be considered. Even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that. (Paras 37 and 25). *Alchemist Ltd.* v. *State Bank of Sikkim*, (2007) 11 SCC 335: AIR 2007 SC 1812: (2007) 3 MPLJ 284: (2007) 136 Comp Cas 665: (2007) 4 Mah LJ 586.

Bench Strength 2. Coram: **C.K. Thakker** and *L.S. Panta*, JJ. [Date of decision: 16-3-2007]

Cooke v. Gill, (1873) 8 CP 107: 42 LJCP 98; Union of India v. Oswal Woollen Mills Ltd., (1984) 2 SCC 646: 1984 SCC (Cri) 348; State of Rajasthan v. Swaika Properties, (1985) 3 SCC 217; ONGC v. Utpal Kumar Basu, (1994) 4 SCC 711; CBI, Anti-Corruption Branch v. Narayan Diwakar, (1999) 4 SCC 656: 1999 SCC (Cri) 619; Union of India v. Adani Exports Ltd., (2002) 1 SCC 567; Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254; National Textile Corpn. Ltd. v. Haribox Swalram, (2004) 9 SCC 786, relied on

[2141] — S. 177 — "Cause of action" — Meaning of — *CPC, 1908 — S. 20*

In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) "cause of action" means every fact which it is necessary to establish to support a right or obtain a judgment. (Para 10). *Prem Chand Vijay Kumar* v. *Yashpal Singh*, (2005) 4 SCC 417: 2005 SCC (Cri) 1153: (2005) 4 Mah LJ 100: (2005) 125 Comp Cas 338.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 2-5-2005]

[2142] — Ss. 177, 178, Ch. 13 and S. 482 — Place of inquiry and trial — Challenge to — Procedure — *Said issue, held, depends upon the facts of each case — Instead of rushing to higher courts, party aggrieved should approach trial court with suitable applications — Constitution of India, Art. 136 (Para 4). Krishna Kumar Variar* v. *Share Shoppe*, (2010) 12 SCC 485: 2010 Cri LJ 3848.

Bench Strength 2. Coram: *Markandey Katju* and *A.K. Patnaik*, JJ. [Date of decision: 3-5-2010]

— S. 178 *See* Ss. 11, 13, 14, 18, 177 to 181, 190 and Ch. XXXI

See also Ss. 154, 156 and 162, 177, 178
See also Ss. 154, 156, 177 and 178
See also S. 156 and Ss. 177, 178 & 181
See also Ss. 177 and 178
See also Ss. 177 to 187
See also Ss. 177 to 184 and 186 to 188
See also Ss. 177, 178, 181 and 156
See also Ss. 177, 178, 482, 156, 162 and 154
See also Ss. 181(2), 178 and 179 & 2(j)
See also Ss. 204, 190(1)(a) and 178
See also Ss. 406, 177, 178 and 156
See also Ss. 482, 177 and 178

[2143] — S. 178 — Interpretation of — Mode of — Liberal construction emphasised (Para 15). *Vishwanath Gupta* v. *State of Uttaranchal*, (2007) 11 SCC 633: (2007) 55 AIC 173 (SC).

Bench Strength 2. Coram: *A.K. Mathur* and *L.S. Panta*, JJ. [Date of decision: 21-3-2007]

[2144] — Ss. 178, 181(4) and 156(3) — Territorial jurisdiction of a court/Judicial Magistrate to entertain criminal matter — Determination of — Offences of cheating and criminal misappropriation — *Considering S. 178 CrPC, held, commission of even a part of offence within the jurisdiction of the court/Magistrate concerned, is sufficient for exercise of jurisdiction by the said court/Magistrate in relation to the offence committed — Fraudulent representation being one of the essential ingredients of the offence of cheating, the person accused of cheating could be prosecuted at the place where such fraudulent representation was* *made — As regards the offence of criminal misappropriation, the court within whose jurisdiction the property had been entrusted or was to be accounted for could take the cognizance — Appellant Company, having its place of business at place* **C** *(i.e. Calcutta), filing a criminal complaint under S. 156(3) CrPC before Judicial Magistrate at* **C** *seeking direction for investigation in several offences of cheating, criminal misappropriation, etc. committed by its agents in another State i.e. State of U.P. — Agents admitting that reconciliation of accounts took place at* **C** *— Held, if there was a fraudulent representation by accused at* **C** *and a conspiracy was hatched there to commit the offences, a part of cause of action arose within the jurisdiction of Magistrate at* **C** *— On facts, the said Magistrate directing the police concerned to investigate the said offences had jurisdiction in relation to those offences in terms of S. 178 r/w S. 181(4) CrPC — High Court (functioning in State of U.P.) erred in interfering with the said order by transferring the investigation to State of U.P. where major part of offences took place — Since order of High Court had been complied with, certain necessary directions issued by Supreme Court in the matter — Constitution of India — Art. 142 — Penal Code, 1860 — Ss. 420 and 406*

The appellant was awarded contracts for exporting wheat, rice, etc. upon purchasing the same from Food Corporation of India and certain other State Corporations. Respondents 1 and 2 allegedly approached him for appointment as its agent to arrange and supply foodgrains of Food Corporation of India on commission basis. Pursuant to the said agreement, Respondent 1 under the direction of Respondent 2 used to make arrangement of railway rakes at different railway stations in various States for export of rice and wheat from Food Corporation of India to Bangladesh for and on behalf of the appellant. Allegedly, in the course of rendition of such services, the respondents committed various acts of breach of trust, cheating, forgery, etc. Hence, a complaint petition was filed under Section 156(3) CrPC by the appellant Company before the Chief Metropolitan Magistrate, Calcutta. In that complaint it was alleged that the accused entered into a criminal conspiracy with a view to cheat the complainant Company and/or dishonestly misappropriate a huge amount by making forged and false documents. The accused fraudulently prepared the letterheads and seals of the appellant and used the same. They, thus, committed breach of trust and withdrew an amount of about Rs 1.5 crores.

The said purported acts were committed outside the State of West Bengal and principally in the State of U.P. Various other criminal misconducts were also said to have been committed by the accused in the State of U.P.

The Chief Metropolitan Magistrate, Calcutta upon consideration of the said complaint directed the officer in charge of the police station concerned to make an investigation into the allegations contained in the complaint. Pursuant to the said direction, investigation was carried out. As the respondents did not appear before the court, warrants of arrest were issued by the said Magistrate. Thereafter, the respondents filed a criminal writ petition before the High Court of Judicature at Allahabad. The High Court allowed the said writ petition in part. While declining to quash the FIR, the High Court directed that the FIR lodged at the Calcutta police station be transmitted to the appropriate police station of U.P. Further direction was made that the investigating officer concerned would make all efforts to conclude the investigation preferably within a period of three months from the date of receipt of transmitted FIR. That apart, the arrest of the accused was stayed till the submission of charge-sheet/final report, if any. Hence, the present appeal.

Before the Supreme Court, the appellant complainant submitted that the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration the effect and purport of Section 181(4) CrPC which categorically provides that a court within whose local jurisdiction the property was to be accounted for by the accused persons will also have jurisdiction to try the case. Further, the respondents having made false representations at Calcutta, a part of the offence must be held to have been committed within the jurisdiction of the Metropolitan Magistrate, Calcutta. It was contended that the Chief Metropolitan Magistrate, Calcutta having exercised its judicial power not only by issuing a direction in terms of Section 156(3) CrPC but also issuing a non-bailable warrant of arrest, the Allahabad High Court had no territorial jurisdiction to interfere therewith, as the said Court was not under its supervisory jurisdiction. It was further argued that only because a part of cause of action had arisen within the State of U.P., the same by itself would not entitle the respondents to pray for transfer of investigation from one State to the other. The High Court had no jurisdiction to transfer the investigation of a criminal case from one statutory authority to another in exercise of its jurisdiction under Article 226 of the Constitution of India or otherwise.

Disposing of the appeal,

Held :

The necessary ingredients for proving a criminal offence must exist in a complaint petition. Such ingredients of offence must be referable to the places where the cause of action in regard to commission of offence has arisen. A cause of action as understood in its ordinary parlance may be relevant for exercise of jurisdiction under clause (2) of Article 226 of the Constitution of India but its definition stricto sensu may not be applicable for the purpose of bringing home a charge of criminal offence. (Para 23)

Section 178 CrPC clearly suggest that even if a part of cause of action has arisen, the police station concerned situate within the jurisdiction of the Magistrate empowered to take cognizance under Section 190(1) CrPC will have the jurisdiction to make investigation. (Paras 20 and 22)

Further, as regards commission of offence of criminal misappropriation and criminal breach of trust, Section 181(4) CrPC provides that such an offence may be inquired into or tried by the court within whose jurisdiction the accused was bound by law or by contract to render accounts or return the entrusted property, but failed to discharge that obligation. (Para 21)

Fraudulent representation being one of the essential ingredients in respect of commission of an offence under Section 420 IPC, a place where such fraudulent misrepresentation has been made would, thus, give rise to a cause of action for prosecuting the accused. Similarly, having regard to the ingredients of an offence under Section 406 IPC where the entrustments were made as also the situs where the offence was completed in the sense that the amount entrusted had not been accounted for by the agent to the principal will also have a nexus so as to enable the court concerned to exercise its jurisdiction of taking cognizance. (Para 29)

The application filed by the appellant under Section 156(3) CrPC disclosed commission of a large number of offences. The fact that major part of the offences took place outside the jurisdiction of the Chief Metropolitan Magistrate, Calcutta is not in dispute. But, even if a part of the offence committed by the respondents related to the appellant Company was committed within the jurisdiction of the said court, the High Court of Allahabad should not have interfered in the matter. A major part of the cause of action might have arisen in the State of U.P., but the same by itself would not mean that the Calcutta Court had no jurisdiction whatsoever. If there had been a fraudulent misrepresentation by some of the respondents at Calcutta and a conspiracy was hatched to commit offences of cheating or misappropriation, indisputably a part of cause of action arose within the jurisdiction of the Metropolitan Magistrate, Calcutta. (Paras 23, 33 and 25)

Thus, the Chief Metropolitan Magistrate, Calcutta had jurisdiction in the matter in terms of Section 178 read with Section 181(4) CrPC. (Para 29)

However, the order passed by the Allahabad High Court has been complied with. Some offences at various places situated within the State of U.P. had been committed. The High Court had not issued any direction as to which investigating officer attached to which police station of U.P. will have jurisdiction in the matter. The direction of the High Court, in that way is vague and indefinite. Investigating officer attached to one police station may feel handicapped in carrying out the investigation within the entire State. In this case, it may be necessary for the investigating officer to make investigation even in other States for the aforementioned purpose. (Para 36)

Therefore, by exercising extraordinary jurisdiction under Article 142 of the Constitution to subserve the interest of justice, the appeal is disposed of with directions that (*i*) further investigation must be carried out by CB CID of the State of U.P., (*ii*) the accused must surrender before the Chief Judicial Magistrate, Allahabad and their applications for grant of bail, if any, may be considered by the said court on its own merits, (*iii*) investigation must be carried out inter alia on the premise that the jurisdiction to make investigation would be subject to the ultimate decision of the Court of the Chief Metropolitan Magistrate, Calcutta as if investigations are being carried out by CB CID of the State of U.P. in continuation of the investigation made by the police officer of Calcutta, and (*iv*) the report on completion of the investigation must be forwarded to the Chief Metropolitan Magistrate, Calcutta who would determine the question of his own jurisdiction at an appropriate stage. (Para 38). *Asit Bhattacharjee* v. *Hanuman Prasad Ojha*, (2007) 5 SCC 786: (2007) 3 SCC (Cri) 31: AIR 2007 SC 1925: 2007 Cri LJ 3181: (2007) 104 Cut LT 488: (2007) 4 All LJ 567: (2007) 54 AIC 38 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *C.K. Thakker*, JJ. [Date of decision: 15-5-2007]

Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd., (2006) 3 SCC 658: (2006) 2 SCC (Cri) 98, relied on

Navinchandra N. Majithia v. State of Maharashtra, (2000) 7 SCC 640: 2001 SCC (Cri) 215, held distinguished

[2145] — S. 178 — Acquisition of assets disproportionate to known sources of income — Territorial jurisdiction of Special Court — Determination of — *Accused having a part of his known sources of income at place D — Applying S. 178 CrPC, held, the said fact conferred jurisdiction upon the courts at D — Contention that since the accused was never posted at D during the check period in question, the court at D had no jurisdiction, not sustainable — Further, the question of finding out the place where the offence was completed did not arise in the present case — What is material is commission of the misconduct during the period the accused held office and not the places where he held offices — So each court, where a part of the offence was committed, can try the accused — Offence under S. 13(1)(e), PC Act distinguished from offences under Ss. 13(1)(c) & (d) of the said Act — Prevention of Corruption Act, 1947 — S. 5(1)(e) — Prevention of Corruption Act, 1988 — Ss. 13(1)(e) & 4*

What would be the territorial jurisdiction of a Special Court within the meaning of the provisions of the Prevention of Corruption Act, 1988 was the question involved in the present appeal.

The appellant was an officer working in the Customs Department. A case was registered against him under Section 13(2) read with Section 13(1)(*e*) of the Prevention of Corruption Act, 1988 ("the 1988 Act") for acquisition of assets disproportionate to his known sources of income in relation to the check period in question. The appellant contended that since he had never been posted in Delhi during the said period, the Delhi Court had no jurisdiction to try his case. The Special Judge as also the High Court rejected the said contention. Hence, the present appeal.

Before the Supreme Court, the appellant contended that the ingredients of an offence involving Section 13(1)(*e*) of the 1988 Act vis-à-vis the other provisions thereof read with Sections 177 and 178 CrPC would clearly go to show that the situs of the properties which were said to have been acquired out of the income of the employee would not confer jurisdiction upon the court. It was submitted that the only fact relevant therefor would be as to where the public servant concerned committed acts of misconduct or abused his official position, which would be the places where he had held his offices. It was urged that the principal place of commission of offence would have to be judged having regard to the area where the offence was said to have been completed.

On the other hand, the respondent CBI submitted that as by reason of Section 5(3) of the 1988 Act, the provisions of the Code of Criminal Procedure have been made applicable in relation to the proceedings initiated under the 1988 Act, in a case where the offence was committed at more than one place, any of the courts concerned could try the offence.

Dismissing the appeal,

Held :

For the purpose of proving the offence under Section 13(1)(*e*) of the PC Act, 1988, on the one hand, known sources of income must be ascertained vis-à-vis the possession of property or resources which were disproportionate to the known sources of income of public servant and the inability of the public servant to account for it, on the other. One of the ingredients of the said offence is known sources of income. What is material therefor is that the criminal misconduct had been committed during the period the accused held office and not the places where he had held offices. (Paras 16 and 15)

Each court, where a part of the offence has been committed, would be entitled to try an accused. The 1988 Act does not bar application of Section 178 CrPC. If application of Section 178 CrPC is not barred, the fact that the appellant has a part of his known sources of income at Delhi, would confer jurisdiction upon the Delhi Courts. (Para 21)

In a case involving Section 13(1)(*e*) of the 1988 Act, what is necessary is as to whether keeping in view the period in question, commonly known as check period, the public servant has acquired wealth which is disproportionate to his known sources of income. It has nothing to do with individual case of bribery. It has nothing to do with a series of acts culminated into an offence. In a case of this nature, the question of completion of any offence does not arise. A distinction exists between a case filed under Sections 13(1)(*c*) and 13(1)(*d*) of the 1988 Act, on the one hand, and Section 13(1)(*e*) thereof, on the other. The appellant is not accused of commission of offences under Sections 13(1)(*c*) and 13(1)(*d*). No other person has been charged with the offence of abetment and conspiracy. The question of finding out the place where the offence was completed, thus, does not arise in this case. (Paras 20, 19, 12 and 17) . *V.K. Puri* v. *CBI*, (2007) 6 SCC 91: (2007) 3 SCC (Cri) 57: 2007 Cri LJ 2929.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 27-4-2007]

CBI v. Braj Bhushan Prasad, (2001) 9 SCC 432: 2002 SCC (Cri) 576; Banwarilal Jhunjhunwalla v. Union of India, AIR 1959 Ker 311, distinguished

[2146] — Ss. 178 and 408 — Place of trial — Carrying of smuggled goods — *Court of place through which goods carried will have jurisdiction to try the offence — Appellant can move the appropriate forum for transfer of the case if holding the trial at such place is likely to cause any undue inconvenience or prejudice to him — Such application will have to be decided on its own merits. Harbans Lal* v. *State of Haryana*, (1998) 8 SCC 319: AIR 1999 SC 326.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S. Rajendra Babu*, JJ. [Date of decision: 11-11-1998]

[2147] — Ss. 178 and 200 — Place of trial — Private complaint — Cognizance by Magistrate — If justified — *Private complaint alleging commission of the offences by respondents under Ss. 406 and 420 r/w S. 120-B IPC — Appointment of appellant's company as C&F agent of respondent's company for another State was agreed upon and letter of appointment delivered within jurisdictional area of the Magistrate — Appellant made several payments for supply of raw materials to different suppliers of respondents but respondents had not made any payment of the same till date — Appellant though had made repeated requests to respondents to return money paid, respondents had not acceded thereto — Held, court on basis of averments made in complaint, if prima facie is of the opinion that whole or a part of cause of action has arisen in its jurisdiction, can certainly take cognizance of complaint — There is no need to ascertain that the allegations made are true in fact — Since in present case part of the cause of action prima facie appears to have arisen in jurisdictional area of the Magistrate, he was justified in taking cognizance and issuing process to respondents* (Paras 30, 32 and 35). *Rajiv Modi* v. *Sanjay Jain*, (2009) 13 SCC 241: (2009) 80 AIC 65 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **H.L. Dattu**, JJ. [Date of decision: 14-7-2009]

Union of India v. Adani Exports Ltd., (2002) 1 SCC 567; Satvinder Kaur v. State (NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503; V.C. Shukla v. State, 1980 Supp SCC 92: 1980 SCC (Cri) 695; Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512; Vijai Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941: 1962 Supp (2) SCR 675, followed

[2148] — S. 178(c) — Territorial jurisdiction — *Continuing offence committed in more local areas than one — Complaint under Ss. 498-A, 506 and 323 IPC by wife against her husband, parents-in-law and two sisters-in-law — Allegation of dowry demand, maltreatment and humiliation at the house of her in-laws — Specific allegation against the husband that he had gone to the house of her parents and had assaulted her — Held, cl. (c) of S. 178 is attracted and the Magistrate at her parents' place also has jurisdiction to entertain the complaint — Penal Code, 1860 — Ss. 498-A, 506 and 323*

In the instant case the complaint reveals a continuing offence of maltreatment and humiliation meted out to the appellant in the hands of all the accused respondents and in such continuing offence, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part. Therefore, clause (*c*) of Section 178 of the Code of Criminal Procedure is clearly attracted. *Sujata Mukherjee* v. *Prashant Kumar Mukherjee*, (1997) 5 SCC 30: 1997 SCC (Cri) 673: AIR 1997 SC 2465: 1997 Cri LJ 2985.

Bench Strength **2**. Coram: *G.N. Ray* and *G.T. Nanavati*, JJ. [Date of decision: 30-4-1997]

[2149] — Ss. 178(c) and 177, 162 — Uncertain in which of the several local areas the offence was committed or where several acts done in different local areas — *Held, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas. Satvinder Kaur* v. *State (Govt. of NCT of Delhi)*, (1999) 8 SCC 728: 1999 SCC (Cri) 1503: AIR 1999 SC 3596.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 5-10-1999]

[2150] — Ss. 178(c) & 177 and 406 — Place of inquiry and trial — Continuing offence — Territorial jurisdiction of court — *Appellant 1 married with Respondent 2 and living in matrimonial home at Jabalpur (MP) — Appellant 1's father-in-law lodged a complaint with police at Jabalpur alleging ill-treatment to Respondent 2 and demand of dowry from her by Appellant 1 and his family members (appellants) — Respondent 2 also lodged FIR alleging that her husband and in-laws ill treated her so much that she had to leave the matrimonial home and to live with her parents at Datia (MP) — Whether the offence was a continuing one such that CJM at Datia had jurisdiction to take cognizance of the offence — Held, offence cannot be said to be continuing one only because complainant Respondent 2 was forced to leave her matrimonial home and stayed with her parents at Datia — High Court erred in taking the view that Respondent 2 having been forced to leave her matrimonial home on account of torture by her in-laws, it amounted to mental cruelty and harassment which continued even at the place of her father at Datia and therefore, the offence may be inquired into and tried also at Datia court — In view of S. 177, which ordains that offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it* *was committed, the offence in question must be inquired into and tried by court at Jabalpur and not by court at Datia where no part of cause of action arose — Therefore, interest of justice would be subserved, while setting aside the order of the High Court, if in exercise of Supreme Court's jurisdiction under Art. 142 of the Constitution transfer of the criminal case pending in the Court of Chief Judicial Magistrate, Datia to the Court of Chief Judicial Magistrate, Jabalpur is directed — Constitution of India — Art. 142. Manish Ratan* v. *State of M.P.*, (2007) 1 SCC 262: (2007) 1 SCC (Cri) 336: (2006) 48 AIC 93 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 1-11-2006]

Sujata Mukherjee v. Prashant Kumar Mukherjee, (1997) 5 SCC 30: 1997 SCC (Cri) 673, distinguished

State of Bihar v. Deokaran Nenshi, (1972) 2 SCC 890: 1973 SCC (Cri) 114; Y. Abraham Ajith v. Inspector of Police, (2004) 8 SCC 100: 2004 SCC (Cri) 2134; Ramesh v. State of T.N., (2005) 3 SCC 507: 2005 SCC (Cri) 735, relied on

[2151] — Ss. 178(d), 177, 179 and 482 — Territorial jurisdiction of court for trying an offence under S. 138, NI Act — *Held, it is not necessary that concatenation of five acts constituting an offence under S. 138, NI Act, 1881, "should have been perpetrated at the same locality — It is possible that each of those five acts could be done at five different localities" — Agreement between parties entered into at Bangalore and cheque was also returned at Bangalore — However, respondent issuing notice of dishonour of cheque from Mangalore and appellant giving reply to him at Mangalore address — Complaint filed at Mangalore — Appellant's plea rejected that Mangalore Court did not have jurisdiction to try offence under S. 138 — Negotiable Instruments Act, 1881 — S. 138* (Paras 3, 4 and 9). *Shamshad Begum* v. *B. Mohammed*, (2008) 13 SCC 77.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 3-11-2008]

K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510: 1999 SCC (Cri) 1284, applied

[2152] — S. 178(d), 177 and 179 — Territorial jurisdiction of courts relating to offence under S. 138 Negotiable Instruments Act — *Held is clear from S. 178(d) CrPC that complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of the following five acts, the components of the offence, took place: (i) drawing of the cheque; (ii) presentation of the cheque to the bank; (iii) returning of the cheque unpaid by the drawee bank; (iv) giving of notice in writing to the drawer of the cheque demanding payment of the cheque amount; (v) failure of the drawer to make payment within 15 days of the receipt of the notice — It may therefore be an idle exercise to question jurisdiction relating to this offence — High Court in appeal rightly set aside the finding of the trial court that it had no territorial jurisdiction because the cheque had been dishonoured in a different district, outside its jurisdiction — Further on facts, High Court rightly held that trial court had jurisdiction as the cheque had been issued at a shop within its jurisdiction — Negotiable Instruments Act, 1881 — S. 138*

This case was the result of a dispute between two brothers, the appellant and the respondent, and the issuing by one of them, the appellant, of a cheque that bounced. On 29-1-1993, the respondent, *S*, presented a cheque for the amount of Rs 1 lakh, bearing the signature of the appellant, *B*, at the Kayamkulam (Kerala) Branch of the Syndicate Bank for encashment. The cheque was returned by the bank unpaid, because of the insufficiency of funds in the account of *B*. *S* issued a notice by registered post on 2-2-1993. The notice was returned to *S* on 15-2-1993 with the endorsements "Addressee absent" for three dates and "Intimation served on addressee's house" for 6-2-1993. The postal article remained unclaimed till 15-2-1993 and was then returned to the sender, *S*, with the endorsement "unclaimed".

S, filed a complaint on 4-3-1993 before the court of the Judicial Magistrate, First Class, Adoor (District Pathanamthitta) against *B* under Section 138 of the Negotiable Instruments Act, 1881. *B* denied that the court had territorial jurisdiction on the basis that the cheque had been dishonoured in Kayamkulam District. *B* also denied having issued the cheque, though he did not deny his signature on it. He contended that *S* had snatched away some signed blank cheque leaves from him and used one for the present case. *B* also claimed that he did not receive notice from *S* about the dishonour of the cheque.

The trial court did not believe the allegation about the theft of the cheque leaves and found that *B* had issued the cheque to *S*. However, it acquitted *B* holding that it had no territorial jurisdiction in the case, and also that the accused had not received notice and so no cause of action had arisen.

In appeal, the High Court set aside the acquittal and convicted *B*, sentencing him to 6 months imprisonment and imposing a fine of Rs 1 lakh.

Upholding the conviction, but remanding the case to the trial court on the question of sentence, *Held* :

Under Section 177 of the Criminal Procedure Code, "every offence shall ordinarily be enquired into and tried in a court within whose jurisdiction it was committed". The locality where the Bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. It must be remembered that offence under Section 138 would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (*c*) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. (Para 11)

Section 178 of the Criminal Procedure Code suggests that if there is uncertainty as to where, among different localities, the offence would have been committed the trial can be had in a court having jurisdiction over any of those localities. The provision has further widened the scope by stating that in case where the offence was committed partly in one local area and partly in another local area the court in either of the localities can exercise jurisdiction to try the case. Further again, Section 179 of the Code stretches its scope to a still wider horizon. (Para 12)

The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (*1*) drawing of the cheque, (2) presentation of the cheque to the bank, (*3*) returning the cheque unpaid by the drawee bank, (*4*) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (*5*) failure of the drawer to make payment within 15 days of the receipt of the notice. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. (Paras 14 and 15)

If the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act. (Para 16). *K. Bhaskaran* v. *Sankaran Vaidhyan Balan*, (1999) 7 SCC 510: 1999 SCC (Cri) 1284: AIR 1999 SC 3762.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 29-9-1999]

Applied in Shamshad Begum v. B. Mohammed, (2008) 13 SCC 77

— S. 179 *See also* S. 179, Criminal Procedure Code, 1898, pp. 1042 et seq. in Vol. 2

— S. 179 *See* Ss. 11, 13, 14, 18, 177 to 181, 190 and Ch. XXXI

See also Ss. 177 to 187
See also Ss. 177 to 184 and 186 to 188
See also S. 178(d), 177 and 179
See also Ss. 178(d), 177, 179 and 482
See also Ss. 181(2), 178 and 178 & 2(j)
See also Ss. 188 proviso, 179 and 2(n)
See also Ss. 190, 193, 179, 177

[2153] — S. 179 — Territorial jurisdiction of Court for trial of offence where consequence ensues — *Criminal case registered at the instance of respondent-complainant against her husband and husband's sister for offences under Ss. 313 and 498-A r/w S. 34 IPC — Most of the acts alleged against the accused including physical torture to complainant when she was in the family way took place in the nuptial home at Indore where the couple resided after marriage, but later she had been taken back to her parental house at Jabalpur — Miscarriage took place while she was at Jabalpur — Hence, Court of Session at Jabalpur had jurisdiction to try the case*

Section 179 CrPC contemplates two courts having jurisdiction and the trial is permitted to take place in any one of those two courts. One is the court within whose local jurisdiction the act has been done and the other is the court within whose local jurisdiction the consequence has ensued. When the allegation is that the miscarriage took place at Jabalpur it cannot be contended that the court at Jabalpur could not have acquired jurisdiction as the acts alleged against the accused took place at Indore. (Para 6). *State of M.P.* v. *Suresh Kaushal*, (2003) 11 SCC 126.

Bench Strength 2. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 1-5-2001]

[2154] — Ss. 179 and 180 — Court having jurisdiction to try manufacturers for offence of manufacturing sub-standard article will have jurisdiction to try distributors for selling those articles even though the places of sale and manufacture are different. *State of Rajasthan* v. *Rajesh Medical Agencies*, 1987 Supp SCC 242: 1988 SCC (Cri) 58.

Bench Strength **2**. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 20-2-1987]

State of Punjab v. Nohar Chand, (1984) 3 SCC 512: 1984 SCC (Cri) 432, followed

[2155] — Ss. 179 and 180 — Where offence of manufacturing substandard article (fertiliser) carried on at a place different from the place of its marketing, held, court having jurisdiction to try the marketing agent will have jurisdiction to try the manufacturer also along with the agent *— Essential Commodities Act, 1955 — Ss. 11 & 13-A — Fertilizer (Control) Order, 1957 — S. 13(1)(a) — Prevention of Food Adulteration Act, 1954 — Ss. 7, 16, 20*

If manufacturing substandard fertiliser is by itself an offence and marketing the substandard fertiliser is itself a distinct offence but they are so interconnected as cause and effect, both can be tried at one or the other place. If one manufactures the substandard fertiliser, wherever it is marketed the interrelation or causal connection is of cause and effect. The situation will be adequately covered by Ss. 179 and 180 of the Code of Criminal Procedure, and as such where the marketing agent of the manufacturer of fertiliser which is found to the substandard is being prosecuted for marketing substandard fertiliser, the manufacturer can be tried with him and the court at the place where the substandard fertiliser was marketed will have jurisdiction try them both. *State of Punjab* v. *Nohar Chand*, (1984) 3 SCC 512: 1984 SCC (Cri) 432: AIR 1984 SC 1492: 1984 Cri LJ 1153: (1984) 76 PLR 694.

Bench Strength **2**. Coram: **D.A. Desai** and *A.N. Sen*, JJ. [Date of decision: 17-5-1984]

Incharge Production, Haryana State Coop. Supply and Marketing Federation Ltd. (HAFED) Fertilizer v. State of Punjab, Criminal Misc. No. 6763-M of 1982, dated March 9, 1983, approved

State of Gujarat v. Agro Chemical and Animal, 1980 Cri LJ 516: 1979 Cri LR (Guj) 413 and Satinder Singh v. State of Punjab, Criminal Miscellaneous Application No. 1158-M of 1981, dated February 24, 1982, ***overruled***

Bhagwan Dass Jagdish Chander v. Delhi Administration, (1975) 1 SCC 866: 1975 SCC (Cri) 410, distinguished and limited

[2156] — S. 179 — Default in delivery of share certificates within prescribed period in compliance with S. 113(1) Companies Act, 1956 — Complaint for offence regarding, under S. 113(2), Companies Act, 1956 held, can be filed only where registered office of the company is situated as the cause of action would arise there and not where complainant is residing *— Companies Act, 1956 — Ss. 113(2) and 53*

Reading Sections 113 and 53 Companies Act, 1956 together, it is clear that share certificates are to be delivered in accordance with the procedure laid down in Section 53. A document is to be served either personally or by sending it by post at a registered address within India. Sub-section (2) specifically mentions that where a document is sent by post, such service thereof shall be deemed to be effected by properly addressing, prepaying and posting the letter containing the document. Hence, once there is a statutory mode of delivering the document by post and deeming provision of such delivery, the place where such posting is done is the place of performance of statutory duty and the same stands discharged as soon as the document is posted. Hence the cause of action for default of not sending the share certificates within the stipulated time would arise at the place where the registered office of the company is situated as from that place the share certificates can be posted and are usually posted. If the addressee is available at the same locality where the registered office of the company is situated, it is reasonable to think that service of documents may be effected by personally delivering to him. But if the addressee is residing at a distant place it is unreasonable to expect the company to depute somebody to travel up to that distance to personally deliver it to him. The only usual mode which any company would then adopt is to send it to him by post. For such default, as contemplated under Section 113(1), there is no question of any cause of action arising at the place where the complainant was to receive postal delivery. Cause of action for failure to deliver the share certificates or documents within the prescribed time would arise where the registered office of the company is situated. What is punishable under subsection (2) of Section 113 is non- delivery, in accordance with the provision laid down under Section 53, of the certificates of shares within the prescribed time. So, if the documents are posted within the stipulated time, there would be compliance with Section 113 and that there would not be any offence. (Paras 7 and 9). *H.V. Jayaram* v. *Industrial Credit & Investment Corpn. of India Ltd.*, (2000) 2 SCC 202: AIR 2000 SC 579: 2000 Cri LJ 736.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 15-12-1999]

H.P. Gupta v. Hiralal, (1970) 1 SCC 437: 1970 SCC (Cri) 190, relied on

Upendra Kumar Joshi v. Manik Lal Chatterjee, (1982) 52 Comp Cas 177 (Pat), approved

Ranbaxy Laboratories Ltd. v. Indra Kala, (1997) 24 CLA 203: (1997) 88 Com Cas 348 (Raj), distinguished

— S. 180 *See* Ss. 11, 13, 14, 18, 177 to 181, 190 and Ch. XXXI

See also Ss. 177 to 187

See also Ss. 177 to 184 and 186 to 188

See also Ss. 179 and 180

— S. 181 *See also* S. 181, Criminal Procedure Code, 1898, p. 1043 in Vol. 2

— S. 181 *See* Ss. 11, 13, 14, 18, 177 to 181, 190 and Ch. XXXI

See also S. 156 and Ss. 177, 178 & 181

See also Ss. 177 to 187

See also Ss. 177 to 184 and 186 to 188

See also Ss. 177, 178, 181 and 156

[2157] — Ss. 181(2), 178 and 179 & 2(j) — Offence under S. 364-A IPC — Territorial jurisdiction in relation to — Determination of — Applicability of S. 181(2) CrPC — *Offence under S. 364-A IPC, held, not covered under S. 181(2) CrPC — Distinguishing the said offence from ordinary case of abduction or kidnapping, the three ingredients of offence under S. 364-A IPC stated — Held, the offence under S. 364-A IPC could be tried by the court within whose jurisdiction any of the said ingredients had taken place — Victims abducted at place **L** in State of U.P. — Demand for ransom made by phone call at the house of victims situated at place **N** in another State — Victims put to death at place **U** in State of U.P. — Held, the trial courts at all the three places i.e. **L, N** and **U** had jurisdiction to try the offence in question — Since the offence was registered at place **N**, the trial court at **N** could try the offence — Penal Code, 1860 — S. 364-A*

The present matter involved the question as to which court had jurisdiction to try the instant criminal case which was lodged under Section 364-A IPC.

One *R*, who was resident of the State of Uttaranchal, had gone to the State of U.P. along with a contractor *S*. Both *R* and *S* were abducted at place *L* in the State of U.P. The accused made phone calls to the family members of *R* at their house, which was situated at place *N* in the State of Uttaranchal, and by threatening them demanded ransom money. When the said demand was not met, *R* and *S* were murdered. The dead bodies of *R* and *S* were recovered at place *U* in the State of U.P. A first information report in relation to the said case was lodged at the police station concerned in the State of Uttaranchal. An application was filed before the Sessions Court at *N* that the said court had no jurisdiction to frame the charges as the offence had been committed in another State i.e. State of U.P. The court at *N* held that merely because the telephone calls relating to demand for ransom were received at *N*, it would not confer jurisdiction on it to try the case. The said court held that in view of the provisions of Section 181(2) CrPC, the case should be tried in the court located at place *U* or place *L* in the State of U.P. Thereafter, the matter was taken up before the High Court. The High Court set aside the above order on the basis of the order passed by the Supreme Court on 24-4-2006. Hence, the present SLP was preferred.

Dismissing the SLP,

Held :

Offence under Section 364-A IPC is not covered under Section 181(2) CrPC. It is not simply abduction or kidnapping. In the case of Section 364-A IPC something more is there. There are three stages in Section 364-A IPC, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and lastly when the demand is not met, then causing death. If the three ingredients are available, that will constitute the offence under Section 364-A IPC. Any of the three ingredients can take place at one place or at different places. (Paras 17 and 9)

As per Section 178 CrPC, in case an offence has been committed in two local areas then it can be tried by any of them. Further, as per Section 179 CrPC, when an act is an offence by reason of anything which has been done and consequence which has ensued in another area, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued. (Para 15)

In the present case, all the ingredients of offence under Section 364-A IPC have not taken place at one place. It is a case wherein the offence has taken place at three places i.e. at place *N* where the threat to the life of the deceased was given and demand of money was raised, at place *L* from where the deceased were abducted and at place *U* where they were ultimately put to death. (Para 17)

Therefore, all the three courts i.e. the trial court at *N* in the State of Uttaranchal and the trial courts at *L* and *U* in the State of U.P. will have territorial jurisdiction to try the matter. The trial could be conducted in any of the said courts. (Paras 10 and 17)

The present case was registered at place *N* and the investigation started in that district. The trial court at *N* erred in taking view that it had no jurisdiction to try the matter. (Para 17). *Vishwanath Gupta* v. *State of Uttaranchal*, (2007) 11 SCC 633: (2007) 55 AIC 173 (SC).

Bench Strength 2. Coram: *A.K. Mathur* and *L.S. Panta*, JJ. [Date of decision: 21-3-2007]

— **S. 181(4)** *See* Ss. 4 and 181(4)

See also Ss. 178, 181(4) and 156(3)

[2158] — S. 181(4) — Proceedings under Prevention of Corruption Act (relating to Bihar Fodder Scam cases) pending immediately before the appointed day — Special Court created under PC Act to deal with such cases prior to creation of Jharkhand out of State of Bihar — Territorial jurisdiction of the Special Court after the appointed day — *S. 4(2) of PC Act requiring that the offence shall be tried by the Special Judge "for the area within which it was committed" — When charge contains main offence under S. 13 of PC Act as well as allied offence of conspiracy or attempt to commit or abetment of the main offence as envisaged in S. 3(1) of PC Act, held, jurisdiction of the Special Court would be determined on the basis of the area within which the main offence and not where any of the said allied offence was committed — Distinction between S. 4(2) of PC Act and S. 181(4) CrPC in this regard pointed out — Prevention of Corruption Act, 1988 — Ss. 3, 4, 13(1)(c) & (d) — Bihar Reorganisation Act, 2000 — S. 89*

On the appointed day i.e. 15-11-2000 under the Bihar Reorganisation Act, 2000 the erstwhile State of Bihar was bifurcated into two States. One region of it became a new State called Jharkhand while the remaining region became the present State of Bihar. Long before the division of the State of Bihar courts were established for the trial of offences under the Prevention of Corruption Act, 1988. As per the notification issued by the Government of Bihar on 19-4-1994, three Courts of Special Judges were created, one at Dhanbad, the second at Ranchi and the third at Patna. The court so created at Dhanbad was conferred with the jurisdiction over "all areas under the division of North Chhotanagpur". The court so created at Ranchi was given jurisdiction over "all areas under the division of South Chhotanagpur". The court so created at Patna was given the jurisdiction over the remaining regions. Another Court of Special Judge was established at Patna by notification issued by the Government on 22-5-1996, as per which jurisdiction was given over all Patna areas barring north and south of Chhotanagpur. This means, there were two courts at Patna having territorial jurisdiction over the same areas. Yet another Court of Special Judge was established at Patna itself by notification issued on 5-6-1996. This court was conferred with the territorial jurisdiction over the "entire area of the State of Bihar". CBI had investigated several cases relating to Bihar Fodder Scam and filed charge-sheets before the appointed day in 36 cases before the Special Court situated at Patna. The Registrar of the High Court sent a letter to the District and Sessions Judge, Patna on 13-6-1996 directing him to inform the Special Judge appointed as per the notification of 5-6-1996 "to deal with all the cases pertaining to the Animal Husbandry Scam (same as Fodder Scam) without any restrictions of the area". The legal validity of the said letter of the Registrar was doubted by the Full Bench of the High Court in the impugned judgment. That letter was assailed before the Supreme Court also on the premise that only the Central Government has the power to specify, which out of the two courts, can try any particular class of cases. This is so provided in Section 4(2) of the PC Act.

Disposing of the appeals,

Held :

Section 89 of the Act deals with what should have happened on the appointed day i.e. 15-11-2000 in respect of every proceeding "relating exclusively to the territory" of Jharkhand State. Every such proceedings "shall stand transferred to the corresponding court, tribunal, authority or officer" of Jharkhand State. (Para 20)

Transfer of criminal cases is not the only subject covered by Section 89. The provision seeks to allocate the files or records relating to all proceedings, after the bifurcation if they were to be instituted after the appointed day. Any interpretation should be one which achieves that object and not that which might create confusion or perplexity or even bewilderment to the officers of the respective States. In other words, the interpretation should be made with pragmatism, not pedantically or in a stilted manner. For the purpose of criminal cases, we should bear in mind the subject-matter of the case to be transferred. When so considering, Court has to take into account further that all the 36 cases are primarily for the offences under the PC Act and hence they are all triable before the Courts of Special Judges. Hence, the present question can be determined by reference to the provisions of the PC Act. (Para 29)

By virtue of Section 4(2) of the PC Act the only court which has jurisdiction to try the offences under the PC Act is the Court of Special Judge appointed for the areas within which such offences were committed. When such an offence is being tried sub-section (3) enables the same Special Judge to try any other offence which could as well be charged against that accused in the same trial. So the pivot of the matter is to determine the area within which the offence was committed. Section 3(1) of that Act empowers the Government to appoint a Special Judge to try two categories of offences. The first is, "any offence punishable under this Act" and the second is, "any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified" in the first category. So when a court has jurisdiction to try the offence punishable under the PC Act on the basis of the place where such offence was committed, the allied offences such as conspiracy, attempt or abetment to commit that offence are only to be linked with the main offence. When the main offence is committed and is required to be tried, it is rather inconceivable that jurisdiction of the court will be determined on the basis of where the conspiracy or attempt or abetment of such main offence was committed. It is only when the main offence was not committed, but only the conspiracy to commit that offence or the attempt or the abetment of it alone was committed, then the question would arise whether the Court of the Special Judge within whose area such conspiracy etc. was committed could try the case. For the present purpose it is unnecessary to consider that aspect because the charges proceed on the assumption that the main offence was committed. (Para 33)

The main offence in all the 36 cases was under Sections 13(1)(*c*) and 13(1)(*d*) of the PC Act. The hub of the act envisaged in the first of those two offences is "dishonestly or fraudulently misappropriates". Similarly the hinge of the act envisaged in the second section is "obtains" for himself or for any other person, any valuable thing or pecuniary advantage by corrupt or illegal means. The above acts were completed in the present cases when the money has gone out of the public treasuries and reached the hands of any one of the persons involved. Hence, so far as the offences under Sections 13(1)(*c*) and 13(1)(*d*) are concerned the place where the offences were committed could easily be identified as the place where the treasury concerned was situated. It is an undisputed fact that in all these cases the treasuries were situated within the territories of Jharkhand State. Thus, when it is certain where exactly the offence under Section 13 of the PC Act was committed it is an unnecessary exercise to ponder over the other areas wherein certain allied activities, such as conspiracy or preparation, or even the prefatory or incidental acts were done, including the consequences that ensued. (Paras 35 to 37)

Section 181 CrPC pertains to "place of trial in case of certain offences". By sub-section (4) thereof at least four different courts have been envisaged having jurisdiction for trial of the said offence any one of which can be chosen. However, there is distinction between Section 181(4) of the Code and Section 4(2) of the PC Act. When the former provision envisaged at least four courts having jurisdiction to try a case involving misappropriation the latter provision of the PC Act has restricted it to one court i.e. the Court of the Special Judge for the area "within which the offence was committed". No other court is envisaged for trial of that offence. When the charge contains the offence or offences punishable under the PC Act as well as the offence of conspiracy to commit or attempt to commit or any abetment of any such offence, the court within whose local jurisdiction the main offence was committed alone has jurisdiction. (Paras 38 and 39)

It must, therefore, be held that all the 36 cases involved in these appeals stood transferred to the corresponding courts situated within the territories of Jharkhand State on the appointed day (i.e. 15-11-2000) by the operation of Section 89 of the Act. Therefore, the Registrar of the High Court of Patna is directed to instruct the officers concerned for dispatching the records of all these 36 cases, to the corresponding courts at Jharkhand State forthwith. The Registrar of the High Court of Jharkhand is also directed to do whatever is needed for reaching such records in the appropriate courts. (Para 49)

The evidence already recorded in any of the 36 cases will be treated as evidence recorded by the proper court having jurisdiction. In other words, the Special Judge need not call the witnesses already examined over again for repetition of what has already come on record. (Para 50). *CBI* v. *Braj Bhushan Prasad*, (2001) 9 SCC 432: AIR 2001 SC 4014.

Bench Strength **3**. Coram: **K.T. Thomas**, *S.S.M. Quadri* and *U.C. Banerjee*, JJ. [Date of decision: 5-10-2001]

— **S. 182** *See* Ss. 177 to 184

See also Ss. 177 to 184 and 186 to 188

— **S. 183** *See* Ss. 177 to 187

See also Ss. 177 to 184 and 186 to 188

— **S. 184** *See* Ss. 177 to 184

See also Ss. 177 to 184 and 186 to 188

— **S. 185** *See* Ss. 177 to 187

— **S. 186** *See* 177 to 187

See also Ss. Ss. 177 to 184 and 186 to 188

— **S. 187** *See* Ss. 177 to 187
See also Ss. 177 to 184 and 186 to 188

— **S. 188** *See also* S. 188, Criminal Procedure Code, 1898, pp. 1044 et seq. in Vol. 2

— **S. 188** *See* Ss. 4 and 188
See also Ss. 176, 177, 166-B, 188 and 190
See also Ss. 177 to 184 and 186 to 188

[2159] — S. 188 — Extra-territorial offence — Commission of, by a person not an Indian citizen and outside India — Applicability of CrPC and IPC — *Held, the Penal Code and CrPC not applicable — Penal Code, 1860 — S. 4*

The appellant's daughter-in-law filed a complaint against the appellant that she instigated the complainant's husband to commit atrocities against the complainant. The complaint was filed in Gujarat, and cognizance of offence was taken by the Chief Judicial Magistrate. However, it turned out that appellant was a citizen of Mauritius and the alleged offence took place when the complainant and her husband were residing in Kuwait.

The question was whether the appellant could be tried in India for an offence under the Penal Code.

Allowing the appeal with costs,

Held :

In the constitutional scheme of India, all laws made by Parliament primarily are applicable only within the country. Ordinarily, therefore, all persons who commit a crime in India can be tried at any place where the offence is committed. Section 4 IPC, however, extends scope of applicability of territorial jurisdiction of the court of India to try a case, the cause of action of which took place outside the geographical limits. Parliament can enact a legislation having extra-territorial application but the same must be applied subject to fulfilment of the requirements contained therein. (Para 13)

If the appellant is not a citizen of India, having regard to provisions contained in Section 4 IPC and Section 188 CrPC, the order taking cognizance must be held to be illegal. In terms of Section 4 IPC, the Indian courts will have jurisdiction to try an accused only if the accused is a citizen of India even if the offence was committed outside India or by any person on any ship or aircraft registered in India wherever it may be. Neither of the aforementioned contingencies is attracted in the instant case. Section 188 CrPC also deals with offences committed outside India. Clause (*a*) brings within its sweep a citizen of India, whether on the high seas or elsewhere, or by a person, although not citizen of India when the offence is committed on any ship or aircraft registered in India. In view of the fact that the offence is said to have been committed in Kuwait, the provisions of the Penal Code or the Code of Criminal Procedure cannot be said to have any application in the present case. (Paras 14 to 16). *Fatma Bibi Ahmed Patel* v. *State of Gujarat*, (2008) 6 SCC 789: (2008) 3 SCC (Cri) 151: AIR 2008 SC 2392: (2008) 2 KLT 907: 2008 Cri LJ 3065.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-5-2008]

Central Bank of India Ltd. v. Ram Narain, AIR 1955 SC 36, relied on

Ajay Aggarwal v. Union of India, (1993) 3 SCC 609: 1993 SCC (Cri) 961, discussed

[2160] — S. 188 — Offence committed abroad by an Indian — Jurisdiction of courts within India to take cognizance of — Place where victim can file complaint — *Held, victim can complain about the said offence to any competent court in India which he may find convenient — Expression "at which he may be found" as used in S. 188 interpreted by holding that the "finding" of the accused under S. 188 has to be by the court and not by the police or the complainant — Penal Code, 1860 — S. 4*

Respondent 2, a Dubai-based bank, filed a complaint against one *O* in the court at *G* in India. It was alleged in the complaint that *O* cheated and defrauded the bank in obtaining loan facilities knowing fully well that he had no intention to pay it back and fled from UAE. The Magistrate took cognizance of the offence and issued processes and non-bailable warrants against *O*. *O* challenged the said order and sought quashing of the complaint case by filing a petition under Section 482 CrPC before the High Court. *O* submitted that he was residing in city *M* in India and doing business there. It was contended that no cause of action or part thereof had occurred within the territorial jurisdiction of the court at *G*; *O* was not residing within the jurisdiction of that court nor the complainant had any office at *G* and, thus, the court at *G* had no jurisdiction to take cognizance of the offence. The High Court rejected the said contention. Aggrieved, *O* filed the present special leave petition.

The sole question for determination was about the interpretation of the expression "at which he may be found" in Section 188 CrPC. On whom, under Section 188, does the responsibility to find the accused lie — the complainant, the police or the court?

Dismissing the special leave petition,

Held :

The scheme underlying Section 188 is to dispel any objection or plea of want of jurisdiction at the behest of a fugitive who has committed an offence in any other country. If such a person is found anywhere in India, the offence can be inquired into and tried by any court that may be approached by the victim. The victim who has suffered at the hands of the accused on a foreign land can complain about the offence to a court, otherwise competent, which he may find convenient. The convenience is of the victim and not that of the accused. It is not the requirement of Section 188 that the victim shall state in the complaint as to which place the accused may be found. It is enough to allege that the accused may be found in India. (Para 15)

From the scheme of Chapter XIII CrPC, it is clear that neither the place of business nor place of residence of the accused and for that matter of even the complainant is of any relevance. The relevant factor is the place of commission of offence. By legal fiction, Section 188 which deals with offence committed outside India, makes the place at which the offender may be found, to be a place of commission of offence. Section 188 proceeds on the basis that a fugitive from justice may be found anywhere in India. The finding of the accused has to be by the court where the accused appears. From the plain and clear language of the section, it is evident that the finding of the accused cannot be by the complainant or the police. Thus, the court where the complaint may be filed and the accused either appears voluntarily pursuant to issue of process or is brought before it involuntarily in execution of warrants, would be the competent court within the meaning of Section 188 as that court would find the accused before him when he appears. (Paras 9 and 15)

Regarding the abuse of such wide option to the victim, there are enough provisions in the Code for redressal of any particular abuse. Whether a particular case is an abuse or not would depend on its own facts. (Para 16). *Om Hemrajani* v. *State of U.P.*, (2005) 1 SCC 617: 2005 SCC (Cri) 443: AIR 2005 SC 392: (2005) 2 Mah LJ 442: (2005) 123 Comp Cas 234: 2005 Cri LJ 665: (2005) 2 KLJ 364.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *D.M. Dharmadhikari*, JJ. [Date of decision: 25-11-2004]

R. v. Benito Lopez, (1858) 7 Cox CC 431: (1843-60) All ER Rep 1029: 169 ER 1105, relied on

Empress v. Maganlal, ILR (1882) 6 Bom 622; Emperor v. Vinayak Damodar Savarkar, ILR (1911) 35 Bom 225: 12 Cri LJ 356; Sahebrao Bajirao v. Suryabhan Ziblaji, AIR 1948 Nag 251: 49 Cri LJ 376, approved

[2161] — S. 188 — Offence committed outside India — Place of commission of offence — *Held, is the place at which the offender may be found*

By legal fiction, Section 188 which deals with offence committed outside India, makes the place at which the offender may be found, to be a place of commission of offence. Section 188 proceeds on the basis that a fugitive from justice may be found anywhere in India. The finding of the accused has to be by the court where the accused appears. From the plain and clear language of the section, it is evident that the finding of the accused cannot be by the complainant or the police. Thus, the court where the complaint may be filed and the accused either appears voluntarily pursuant to issue of process or is brought before it involuntarily in execution of warrants, would be the competent court within the meaning of Section 188 as that court would find the accused before him when he appears. (Paras 9 and 15). *Om Hemrajani* v. *State of U.P.*, (2005) 1 SCC 617: 2005 SCC (Cri) 443: AIR 2005 SC 392: (2005) 2 Mah LJ 442: (2005) 123 Comp Cas 234: 2005 Cri LJ 665: (2005) 2 KLJ 364.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *D.M. Dharmadhikari*, JJ. [Date of decision: 25-11-2004]

R. v. Benito Lopez, (1858) 7 Cox CC 431: (1843-60) All ER Rep 1029: 169 ER 1105, relied on

[2162] — S. 188 proviso — Previous sanction of Central Govt. — *Not a condition precedent to taking cognizance of offence — Sanction can be obtained before commencement of trial. Ajay Aggarwal* v. *Union of India*, (1993) 3 SCC 609: 1993 SCC (Cri) 961: AIR 1993 SC 1637: 1993 Cri LJ 2516: (1993) 2 ALT (Cri) 396.

Bench Strength **2**. Coram: **K. Ramaswamy** and *R.M. Sahai*, JJ. [Date of decision: 5-5-1993]

[2163] — Ss. 188 proviso, 179 and 2(n) — Applicability of the proviso to S. 188 requiring previous sanction of Central Government where offence committed outside India — 'Offence' — Meaning of — *Appellant, an NRI carrying on business in Dubai, charged under Ss. 120-B, 420, 468 and 471 IPC for conspiring with others residing in India to cheat a bank in India and in furtherance thereof committing offences of cheating and forgery partly in India and partly in Dubai — Criminal conspiracy under Ss. 120-A and 120-B IPC itself is a substantive and continuing offence — Its essential ingredient is agreement between two or more persons and not residence of such persons — Even if part of the acts in pursuance of the conspiracy done in India, cognizance of the offences can be taken in India without prior sanction of Central Govt. — Penal Code, 1860 — Ss. 120-A, 120-B, 468, 471 and 4*

According to the prosecution, the appellant, a non-resident Indian running a concern at Dubai and four others residing in India hatched a conspiracy at Chandigarh to cheat Punjab National Bank. In pursuance thereof they acted and succeeded in cheating the bank of an amount of Rs 40,30,329. It was found that foreign letters of credit were fabricated on the basis of false and forged shipping documents submitted by the appellant to a Dubai bank. Accordingly charge- sheet was laid against the appellant and others for offences under Ss. 120-B, 420, 468 and 471. The CJM, Chandigarh discharged all the accused of the offences on the ground that conspiracy and the acts done in furtherance thereof had taken place outside India and, therefore the sanction under S. 188 CrPC, 1973 was mandatory, and no such sanction having been produced the prosecution was not maintainable. On revision, the High Court set aside the order of discharge taking the view that no prior sanction of Central Govt. was required. Two submissions were advanced by the accused appellant, one — that even though criminal conspiracy was itself an offence but if another offence was committed in pursuance of it outside India then sanction was necessary; second — an offence is constituted of a number of ingredients and even if one of them was committed outside the country S. 188 of the CrPC was attracted.

Dismissing the appeal,

Held :

Per K. Ramaswamy, J.

Conspiracy was initially hatched at Chandigarh. It itself is a completed offence. It being a continuing offence, even accepting appellant's case that he was at Dubai and part of conspiracy and overt acts in furtherance thereof had taken place at Dubai and partly at Chandigarh; and in consequence thereof other offences had been ensued, since the offences have been committed during the continuing course of transaction culminated in cheating PNB at Chandigarh, the need to obtain sanction for various offences under proviso to S. 188 is obviated. Therefore, there is no need to obtain sanction from Central Government. The case may be different if the offences were committed outside India and are completed in themselves without conspiracy, for which no opinion is expressed.

Section 188 by fiction dealt with offences committed by a citizen of India or a foreigner outside India or on high seas or elsewhere or on any ship or aircraft registered in India. Such person was directed to be dealt with, in respect of such offences, as if he had committed them at any place within India at which he may be found. But the proviso thereto puts an embargo that notwithstanding anything in any of the preceding sections of this Chapter such offences shall not be inquired into or tried in India except with the previous sanction of the Central Government. The provisions in Chapter VIII are elastic and not peremptory. The procedure is handmaid to substantive justice, namely, to bring the offenders to justice to mete out punishment under IPC or special law as the case may be, in accordance with the procedure prescribed under the Code or special procedure under that Act constituting the offence. Sanction under S. 188 is not a condition precedent to take cognizance of the offence. If need be it could be obtained before trial begins.

Conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence to which individual offenders are liable to punishment, independent of the conspiracy.

A conspiracy is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. The conspiracy designed or agreed abroad will have the same effect as in India, when part of the acts, pursuant to the agreement are agreed to be finalised or done, attempted or even frustrated and vice versa. Being a continuing offence, if any acts or omissions which constitute an offence are done in India or outside its territory the conspirators continuing to be parties to the conspiracy and since part of the acts were done in India, they would obviate the need to obtain sanction of the Central Government. All of them need not be present in India nor continue to remain in India.

Conspiracy may be considered to be a march under a banner and a person may join or drop out in the march without the necessity of the change in the text on the banner. In the comity of International Law, in these days, committing offences on international scale is a common feature. The offence of conspiracy would be a useful weapon and there would exist no conflict in municipal laws and the doctrine of autrefois convict or acquit would extend to such offences. Under the comity of nations countries are duty-bound to apprehend the conspirators as soon as they set their feet on the country's territorial limits and nip the offence in the bud. Judicial power of a State extends to the punishment of all offences against the municipal laws of the State by whomsoever committed within the territory. It also has the power to punish all such offences wherever committed by its citizen. The general principle of international law is that every person be it a citizen or foreigner who is found within a foreign State is subjected to, and is punishable by, its law. Otherwise the criminal law could not be administered according to any civilised system of jurisprudence.

Per Sahai, J. (concurring)

Section 188 operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one — commission of an offence; second — by an Indian citizen; and third — that it should have been committed outside the country. Since the proviso to S. 188 requiring previous sanction of the Central Govt. begins with a non obstante clause its observance is mandatory. But it would come into play only if the principal clause is applicable, namely, it is established that an offence as defined in clause (*n*) of S. 2 of the CrPC has been committed and it has been committed outside the country. The effect of S. 4 IPC and S. 188 CrPC is that an offence committed by an Indian citizen outside the country is deemed to have been committed in India.

An offence is defined in the CrPC to mean an act or omission made punishable by any law for the time being in force. None of the offences for which the appellant has been charged has residence as one of its ingredients. It is thus the commission of offence and not the residence of the accused which is decisive of jurisdiction. When two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means such agreement is designated a criminal conspiracy under S. 120-A of the IPC. The ingredients of the offence are agreement and not the residence. Meeting of minds of more than two persons is the primary requirement. Even if it is assumed that the appellant was at Dubai and he entered into an agreement with his counterpart sitting in India to do an illegal act in India the offence of conspiracy came into being when agreement was reached between the two. The two minds met when talks, oral or in writing, took place in India. Therefore, the offence of conspiracy cannot be said to have been committed outside the country.

Preparation of bill of lading at Dubai or payment at Dubai were not isolated acts. They were part of chain activities between the appellant and his associates with whom he entered into agreement to cheat the bank at Chandigarh. Any isolated act or omission committed at Dubai was insufficient to constitute an offence. The illegal act of dishonestly inducing the bank at Chandigarh was committed not by preparation of bill at Dubai but its presentation in pursuance of agreement to cheat. The submissions thus founded on residence or on preparation of bills of lading or encashment at Dubai are of no consequence.

Nor is there any merit in the submission that even part of the offence would attract S. 188 as the section operates when offence is committed outside India. An offence is committed when all the ingredients are satisfied. The section having used the woprd offence it cannot be understood as part of the offence. Section 179 CrPC empowers a court to try an offence either at a place where the offence is committed or the consequences ensue. On the allegations in the complaint the act or omissions were committed in India. In any case the consequence of conspiracy, cheating and forgery having taken place at Chandigarh the offence was not committed outside the country. Therefore the provisions of S. 188 CrPC were not attracted. *Ajay Aggarwal* v. *Union of India*, (1993) 3 SCC 609: 1993 SCC (Cri) 961: AIR 1993 SC 1637: 1993 Cri LJ 2516: (1993) 2 ALT (Cri) 396.

Bench Strength 2. Coram: **K. Ramaswamy** and *R.M. Sahai*, JJ. [Date of decision: 5-5-1993]

— S. 190 *See* Ss. 11, 12, 13, 190, 129 and 151
See also Ss. 11, 13, 14, 18, 177 to 181, 190 and Ch. XXXI
See also Ss. 154, 159, 190 and 482
See also Ss. 154, 190, 156 and 157
See also Ss. 154, 190, 195, 196, 197 and 200
See also Ss. 154, 190 and 200
See also S. 156, 154, 157 and 190
See also Ss. 156, 157, 154, 190 and Ch. XII
See also Ss. 156, 157, 169, 173 and 190
See also Ss. 156, 157, 170, 173(8) and 190
See also Ss. 156, 157 and 190
See also Ss. 156 & 157 and 190 & 200 to 203
See also Ss. 156 and 190
See also Ss. 156, 190 and 200
See also Ss. 156(3), 157(1) proviso (b) & (2), 190, 200 and 154
See also Ss. 156(3), 173(8), 190, 200 and 204
See also Ss. 156(3) and 190
See also Ss. 156(3), 190 and 200
See also Ss. 157 & 155 and 190
See also Ss. 157, 156, 154 and 190
See also Ss. 157, 156, 169, 170, 173 and 190 & 173(8)
See also Ss. 157, 160, 167, 170, 190 and 319
See also Ss. 167, 309, 173 and 190
See also Ss. 167(2) proviso, 309, 173 and 190

See also Ss. 173 and 190
See also Ss. 173, 190 and 2(d)
See also Ss. 173(2), 169, 190, 200 and 203
See also Ss. 173(2) and 190
See also Ss. 173(2), (8), 190 and 203
See also Ss. 173(8), (2) and 190
See also Ss. 176, 177, 166-B, 188 and 190
See also Ss. 177, 190 and 173
See also Ss. 192 and 190
See also Ss. 193, 190, 156, 157 and 173
See also Ss. 195 and 190
See also Ss. 195, 190 and 340
See also Ss. 196, 190, 193 and 209
See also Ss. 197 and 190
See also Ss. 197, 190 and 173
See also Ss. 200, 204 and 190
See also Ss. 200 proviso (a) and 190
See also Ss. 202, 190 and 173
See also Ss. 202, 190 and 204
See also Ss. 204, 200, 190
See also Ss. 204, 203, 227, 228 and 190
See also Ss. 207, 209, 309, 170, 190 and 2(g)
See also Ss. 228, 167, 173, 2(g) & (h), 190 and 309
See also Ss. 239, 190 and 173
See also Ss. 319, 154, 156, 173, 190, 204, 209
See also Ss. 319 and 190
See also Ss. 319 and 190, 193 & 209
See also Ss. 397(2), 190 and 204
See also Ss. 468, 473 and 190
See also Ss. 475, 190, 200 to 204
See also Ss. 482 and 2(d), 154, 155 and 190, 200
See also Ss. 482 and 190
See also Ss. 482, 190 and 200
See also Ss. 482, 190, 203, 211, 227, 239 and 245
See also Ss. 482, 190 & 204
See also Ss. 482, 190, 228, 240 & 246
See also Ss. 482, 190, 301, 302 & 225
See also Ss. 482, 190, 468(2) and 473
See also Ss. 482 and 193, 190, 156 & 157
See also Ss. 482, 227 and 190

[2164] — Ss. 190, 200, 204, 173 and 482 — Power to take cognizance — Procedural safeguards like notice to complainant and application of mind to issues involved — Compliance with

Dismissing the appeal,

Held :

It is not explained as to how the order of the High Court is prejudicial to the appellant. The High Court has directed all procedural safeguards to be followed. The High Court observed that the order of taking cognizance deserved to be set aside. The Magistrate was directed to consider the relevant materials as well as the earlier charge-sheet. It was directed that while taking note of the matter for fresh consideration a notice was required to be sent to the de facto complainant and giving the de facto complainant an opportunity of hearing which was to be done before the order was passed. The High Court also referred to applicability of Section 319 CrPC in appropriate cases. There is no infirmity in the High Court's order. (Paras 12 and 7 to 9). *Chittaranjan Mirdha* v. *Dulal Ghosh*, (2009) 6 SCC 661.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision: 8-5-2009]

Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404, relied on

Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117; India Carat (P) Ltd. v. State of Karnataka, (1989) 2 SCC 132: 1989 SCC (Cri) 306, cited

[2165] — Ss. 190, 156(3) and 173(2) — "Taking cognizance" — Connotation of — Held, being an expression of indefinite import, it is neither practicable nor desirable to precisely define as to what is meant by "taking cognizance" — *Whether the Magistrate has or has not taken cognizance of the offence will depend upon the circumstances of the particular case, including the mode in which the case is sought to be instituted and the nature of the preliminary action — Nevertheless before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith — It is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence — Further held, cognizance is in regard to the offence and not the offender — In the instant case, after perusing the complaint made by complainant (Respondent 2) against appellant alleging commission of offences punishable under Ss. 420, 467, 468 and 478 IPC, Magistrate had ordered investigation* *under S. 156(3) CrPC — At this initial stage Magistrate could not be said to have taken cognizance — It was only after the police had finally submitted the police report that the Magistrate had taken cognizance* (Paras 13 to 17). *Fakhruddin Ahmad* v. *State of Uttaranchal*, (2008) 17 SCC 157: (2008) 6 All LJ 249: (2009) 1 ECrN 455 (SC): 2008 Cri LJ 4377: (2008) 3 APLJ 163 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 5-9-2008]

Ajit Kumar Palit v. State of W.B., AIR 1963 SC 765: 1963 Supp (1) SCR 953; R.R. Chari v. State of U.P., AIR 1951 SC 207, considered and relied on

Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492: (2008) 1 SCC (Cri) 471, relied on

Emperor v. Sourindra Mohan Chuckerbutty, ILR (1910) 37 Cal 412; Supdt. & Remembrancer of Legal Affairs v. Abani Kumar Banerjee, AIR 1950 Cal 437, approved

[2166] — S. 190 — Court's jurisdiction to take cognizance — Foundation of — *Though police report is material on which cognizance is taken, held (per curiam), from that it cannot be said that a valid and legal police report is the foundation of the court's jurisdiction to take cognizance*

Though a police report which results from an investigation as provided for in Section 190 CrPC is the material on which cognizance is taken, from that it cannot be said that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. (Para 20). *M.C. Mehta (Taj Corridor scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264: AIR 2007 SC 1087: (2007) 53 AIC 192 (SC).

Bench Strength **3**. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

[2167] — Ss. 190, 202 and 482 — Morally provocative statement not making out any offence — Role of criminal law — Abuse of process of court — Proper course for Magistrate at cognizance stage — *Where numerous complaints under provisions of IPC and Indecent Representation of Women (Prohibition) Act for statement made by accused did not make out a prima facie case for any offence, held, Magistrate ought to have directed investigation into the allegations before taking cognizance — Striking caveat against lightly interfering with constitutional right to freedom of speech and expression, held, there is a presumption in favour of accused in such cases — Appellant's call for social acceptance of premarital sex, held, could not be subjected to interference under criminal law — Further, held, morality and criminality cannot be treated to be coextensive — Penal Code, 1860, Ss. 153-A, 499, 500, 509, 292 — Indecent Representation of Women (Prohibition) Act, 1986, Ss. 4 and 6 — Constitution of India — Arts. 19(1)(a) & (2)*

I, a news magazine conducted a survey on the subject of sexual habits of people residing in the bigger cities of India. One of the issues discussed therein was the increasing incidence of premarital sex. Thereafter, the magazine published the views expressed by various persons, including the appellant, a well-known actress. Expressing her personal opinion, she noted the increasing incidence of premarital sex, especially in the context of live-in relationships and called for societal acceptance of the same. Subsequently, *D*, a Tamil daily reproduced the appellant's statement published in the said magazine. It added that in a conversation with its correspondent, the appellant had defended her views and stated: "The persons who are protesting against my interview, are talking about which culture? Is there anyone who does not know about sex in Tamil Nadu? Is there anyone who does not know about AIDS? How many men and women do not have sex before marriage?" The appellant, however, in a legal notice to the editor of the said daily denied the said statement.

Several persons and organisations, particularly functionaries of a political party PMK filed as many as 23 criminal complaints against the appellant for the offences contemplated under Sections 499, 500, 509, 153-A and 292 IPC read with Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986. Most of the complaints were filed in various districts of T.N. State while one was filed in M.P.

The appellant then approached Madras High Court under Section 482 CrPC seeking quashment of said proceedings. Taking the view that the questions involved in the complaints required consideration by a trial Judge, the High Court rejected the plea of the appellant. However, the High Court directed all the complaints to be consolidated and tried by *CJM* at *E*. Aggrieved thereby, the appellant filed the present batch of appeals by special leave.

Before the Supreme Court, the appellant contended that: (*i*) the respondent complainants were not "persons aggrieved" within the meaning of Section 199(1) CrPC and could not therefore maintain the complaints; (*ii*) the opinion expressed by the appellant was protected by Article 19(1)(*a*) of the Constitution; (*iii*) the allegations made in the complaints, even if taken on their face value, did not disclose any offence under the provisions specified therein; and (*iv*) the criminal proceedings were instituted in a mala fide manner by workers of a particular political party to vilify the appellant and gain undue political mileage.

The respondents supported the order of the High Court.

Allowing the appeals,

Held :

The Framers of the Constitution recognised the importance of safeguarding the freedom of speech and expression since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a precondition for meaningful governance in the political sense, a culture of open dialogue must also be promoted when it comes to societal attitudes. (Para 45)

No doubt, in India, marriage is an important social institution, that there are certain individuals or groups who do not hold the same view. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and criminality are not coextensive. (Paras 46 and 50)

If the complainants vehemently disagreed with the appellant's views, then they should have contested her views through the news media or any other public platform. The law should not be used in a manner that has chilling effects on the freedom of speech and expression. Dissemination of news and views for popular consumption is permissible under our constitutional scheme. An expression of opinion in favour of non-dogmatic and non-conventional morality has to be tolerated as the same cannot be a ground to penalise the author. (Paras 47, 50 and 45)

In order to establish the offence under Section 509 IPC it is necessary to show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or physical act. Clearly this offence cannot be made out when the complainants' grievance is with the publication of what the appellant had stated in a written form. (Para 23)

Likewise Section 153-A IPC has no application to the present case since the appellant was not speaking on behalf of one group and the content of her statement was not directed against any particular group either. (Para 23)

References to sex cannot be considered obscene in the legal sense without examining the context of the reference. (Paras 25 and 32)

There are numerous decisions, both from India and foreign countries which mandate that "obscenity" should be gauged with respect to contemporary community standards that reflect the sensibilities as well as the tolerance levels of an average reasonable person. (Para 27)

In the present case, the appellant has merely referred to the increasing incidence of premarital sex and called for its societal acceptance. At no point of time the appellant described the sexual act or said anything that could arouse sexual desires in the mind of a reasonable and prudent reader. Furthermore, the statement has been made in the context of a survey which has touched on numerous aspects relating to the sexual habits of people in big cities. It was published in a news magazine thereby serving the purpose of communicating certain ideas and opinions on the abovementioned subject. In the long run, such communication prompts a dialogue within society wherein people can choose to either defend or question the existing social mores. It is not possible to hold that the statements published as part of the survey were in the nature of obscene communications. (Paras 28 and 24)

The respondents' claim that the appellant's remarks could have the effect of misguiding young people by encouraging them to indulge in premarital sex is a little far-fetched since the appellant had not directed her remarks towards any individual or group in particular. For the sake of argument, even if it were to be assumed that the appellant's statements could encourage some people to engage in premarital sex, no legal injury has been shown since the latter is not an offence. (Para 29)

"Offence" means "an act or instance of offending"; "commit an illegal act" and "illegal" means, "contrary to or forbidden by law". "Offence" has to be read and understood in the context as it has been prescribed under the provisions of Sections 40, 41 and 42 IPC which cover the offences punishable under IPC or under special or local law or as defined under Section 2(*n*) CrPC or Section 3(38) of the General Clauses Act, 1897. (Para 30)

There is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of "adultery" as defined under Section 497 IPC. (Para 31)

Moreover, it is necessary to fully understand the context and the purpose for which references to sex have been made in any given setting. (Paras 32 and 25)

There is no prima facie case of defamation in the present case. There was neither any intent on the part of the appellant to cause harm to the reputation of the complainants as contemplated by Section 499 IPC nor can one discern any actual harm done to their reputation. In short, both the elements i.e. mens rea and actus reus are missing. The appellant's statement published in *I* is a rather general endorsement of premarital sex and her remarks are not directed at any individual or even at a "company or an association or collection of persons". Even in the remarks published in *D* which have been categorically denied by the appellant, there is no direct attack on the reputation of anyone in particular. Instead, the purported remarks are in the nature of rhetorical questions wherein it was asked if people in Tamil Nadu were not aware of the incidence of sex. Even if those remarks are considered in their entirety, nowhere has it been suggested that all women in Tamil Nadu have engaged in premarital sex. (Paras 34 and 35)

The fact that most of the complainants are associated with PMK, a political party does add weight to the suggestion that the impugned complaints had been filed with the intention of gaining undue political mileage. (Para 36)

In respect of the offence of defamation, Section 199 CrPC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrates' Courts. In the given facts of the present case, the complainants cannot be properly described as "persons aggrieved" within the meaning of Section 199(1) CrPC as there was no specific legal injury caused to any of them. (Para 37)

In the present case, the complainants have alleged defamation in respect of imputations against the character of Tamil-speaking women, which could perhaps be viewed as a class of persons. However, the appellant's remarks did not suggest that all women in Tamil Nadu have engaged in premarital sex. Even if it were assumed that the news item carried in *D* caused mental agony to some sections of women in Tamil Nadu, there is no prima facie case for any offence. (Para 43)

Thus, it has to be held that the institution of the numerous criminal complaints against the appellant was done in a mala fide manner. In order to prevent the abuse of the criminal law machinery, it would be appropriate to grant the relief sought by the appellant. In such cases, the proper course for Magistrates is to use their statutory powers to direct an investigation into the allegations before taking cognizance of the offences alleged. It is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the freedom of speech and expression is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. (Para 44)

In conclusion, it is held that the various complaints filed against the appellant do not support or even draw a prima facie case for any of the statutory offences as alleged. Therefore, the impugned judgment and order of the High Court is set aside. (Para 54). *S. Khushboo* v. *Kanniammal*, (2010) 5 SCC 600.

Bench Strength 3. Coram : K.G. Balakrishnan, C.J. and Deepak Verma and **Dr. B.S. Chauhan**, JJ. [Date of decision : 28-4-2010]

S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574; Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881: (1965) 2 Cri LJ 8; Samaresh Bose v. Amal Mitra, (1985) 4 SCC 289: 1985 SCC (Cri) 523; Gillick v. West Norfolk and Wisbech Area Health Authority, 1986 AC 112: (1985) 3 WLR 830: (1985) 3 All ER 402 (HL); M.S. Jayaraj v. Commr. of Excise, (2000) 7 SCC 552, followed

Proprietary Articles Trade Assn. v. Attorney General of Canada, AIR 1931 PC 94; Thomas Dana v. State of Punjab, AIR 1959 SC 375: 1959 Cri LJ 392; Jawala Ram v. State of Pepsu, AIR 1962 SC 1246: (1962) 2 Cri LJ 303; Standard Chartered Bank v. Directorate of Enforcement, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221; Lata Singh v. State of U.P., (2006) 5 SCC 475: (2006) 2 SCC (Cri) 478, relied on

G. Narasimhan v. T.V. Chokkappa, (1972) 2 SCC 680: 1972 SCC (Cri) 777; Knupffer v. London Express Newspaper Ltd., 1944 AC 116: (1944) 1 All ER 495 (HL), considered

[2168] — S. 190 — Cognizance of offence — When can be taken — At least some material indicating guilt of accused necessary, reiterated — *Accused wife having illicit relations alleged to have poisoned husband — Medical report not showing poisoning as the cause — Only that in-laws did not participate in cremation of deceased — Cognizance based on suspicion, not sustainable — Penal Code, 1860 — Ss. 302, 201, 328 and 120-B*

It is well settled by a series of decisions of the Supreme Court that cognizance cannot be taken unless there is at least some material indicating the guilt of the accused. In the present case, there is not even an iota of material indicating the guilt of the accused persons. It is true that at the stage of taking cognizance, adequacy of evidence will not be seen by the court, but there has to be at least some material implicating the accused, and cognizance cannot be taken merely on the basis of suspicion, as it appears to have been done in the present case. To take a contrary view would only lead to harassment of people. (Paras 12 and 13)

Since there is no material on the basis of which cognizance was taken, the order taking cognizance of the offence is quashed. Resultantly, the impugned judgment of the High Court is set aside. (Para 15). *Harishchandra Prasad Mani* v. *State of Jharkhand*, (2007) 15 SCC 494.

Bench Strength 2. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 31-1-2007]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960) 3 SCR 388: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1: (1964) 2 SCR 336: (1964) 1 Cri LJ 1; State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283, relied on

[2169] — S. 190 — Filing of a complaint in court will not amount to taking cognizance of offence — *Where a special statute bars taking cognizance beyond a specified period, held, magistrate is incompetent to take cognizance after expiry of that period. Krishna Pillai* v. *T.A. Rajendran*, 1990 Supp SCC 121: 1990 SCC (Cri) 646.

Bench Strength 3. Coram: *Ranganath Misra, P.B. Sawant* and *K. Ramaswamy*, JJ. [Date of decision: 16-11-1989]

A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500: 1984 SCC (Cri) 277, relied on

[2170] — Ss. 190, 156(3), 159 and 173 — Cognizance of offence by Magistrate — Directions that may be issued — Discretion as to filing of charge-sheet — *Final report by police under S. 173 found no case against accused — Reiterated, Magistrate cannot direct filing of charge-sheet — However, he has power either to take cognizance of offence or direct further investigation. Ram Naresh Prasad* v. *State of Jharkhand*, (2009) 11 SCC 299: (2009) 3 SCC (Cri) 1336: (2009) 77 AIC 221 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-2-2009]

Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117, impliedly followed

[2171] — Ss. 190, 200, 227, 228, 239, 240 and 319 — Standards of proof required to be applied at different stages of trial — *Held, different standards are required to be applied at different stages — Whereas test of prima facie case may be sufficient for taking cognizance of an offence at stage of framing of charge, court must be satisfied that there exists a strong suspicion at stage of S. 319 CrPC* (Para 22). *Sarabjit Singh* v. *State of Punjab*, (2009) 16 SCC 46.

Bench Strength 2. Coram: **S.B. Sinha** and *P. Sathasivam*, JJ. [Date of decision: 12-5-2009]

[2172] — Ss. 190, 202 and 482 — Audi alteram partem — Show-cause notice before issue of adverse directions by Court — *Directions issued by High Court for initiating prosecution against a police official (appellant) — High Court while considering case of another police official regarding proportionality of sentence imposed on him, taking the view that appellant too should have been prosecuted at least for the offences for which the other police official had been prosecuted because appellant was considered to be the main offender — Home Secretary of the State and Director General of Police directed to look into the matter and take steps to prosecute appellant — Notice to appellant not issued by High Court before giving such directions — Held, High Court directions not sustainable in law for want of show-cause notice to appellant* (Paras 5, 6 and 8). *Gurmej Singh* v. *State of Punjab*, (2009) 12 SCC 440: AIR 2009 SC 2699.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 28-4-2009]

Canara Bank v. V.K. Awasthy, (2005) 6 SCC 321: 2005 SCC (L&S) 833, relied on

[2173] — Ss. 190, 204 and 173 — Passing order taking cognizance of offence — Obligation of Judicial Magistrate to apply his mind to contents of charge-sheet — Need of application of mind to be reflected in said order

In a case of this nature where no case has been made out for taking cognizance of an offence under Section 420 of the Penal Code, it was obligatory on the part of the Chief Judicial Magistrate to apply his mind to the contents of the charge-sheet. Such application of mind on his part should have been reflected from the order. (Para 28). *Devendra* v. *State of U.P.*, (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

State of Karnataka v. Pastor P. Raju, (2006) 6 SCC 728: (2006) 3 SCC (Cri) 179; Pawan Kumar Sharma v. State of Uttaranchal, Criminal Appeal No. 1692 of 2007 decided on 10-12-2007, relied on

[2174] — S. 190 — High Courts must also keep in mind the doctrine of forum non conveniens — Power of High Court to interfere with order of Magistrate taking cognizance under S. 190 CrPC — Scope — *High Court should not ordinarily interfere with the order passed by a competent court except in a proper case — Only such High Court within whose jurisdiction the subordinate court passed the order has jurisdiction to entertain application under Art. 227 — Constitution of India, Arts. 226 and 227*

In a criminal matter also the High Court may exercise its extraordinary writ jurisdiction but interference with an order of the Magistrate taking cognizance under Section 190 CrPC will stand somewhat on a different footing as an order taking cognizance can be the subject-matter of a revisional jurisdiction as well as of an application invoking the inherent jurisdiction of the High Court. A writ of certiorari ordinarily would not be issued by a writ court under Article 226 of the Constitution against a judicial officer. The High Court under Article 226 should not ordinarily interfere with an order taking cognizance passed by a competent court of law except in a proper case. Furthermore only such High Court within whose jurisdiction the order of the subordinate court has been passed, would have the jurisdiction to entertain an application under Article 227 of the Constitution unless it is established that the earlier cause of action arose within the jurisdiction thereof. The High Courts, however, must remind themselves about the doctrine of *forum non conveniens* also. (Paras 25, 28 and 29). *Mosaraf Hossain Khan* v. *Bhagheeratha Engg. Ltd.*, (2006) 3 SCC 658: (2006) 2 SCC (Cri) 98: AIR 2006 SC 1288: 2006 Cri LJ 1683: (2006) 2 KLT 525.

Bench Strength 2. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-2-2006]

Naresh Shridhar Mirajkar v. State of Maharashtra, (1966) 3 SCR 744: AIR 1967 SC 1; Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675; Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388; Ranjeet Singh v. Ravi Prakash, (2004) 3 SCC 682; State of U.P. v. Surendra Kumar, (2005) 9 SCC 161; Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254; Union of India v. Adani Exports Ltd., (2002) 1 SCC 567; Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express, (2006) 3 SCC 100, relied on

[2175] — S. 190 — Magistrate — Meaning of

Section 190 CrPC confers power on the Magistrate to take cognizance of an offence in one of the manners therein prescribed. The expression 'Magistrate' in S. 190 is a compendious term which includes Judicial Magistrate of the first class, Metropolitan Magistrate, Judicial Magistrate of the second class and Executive Magistrate. All the three are comprehended in S. 190. *A.R. Antulay* v. *Ramdas Sriniwas Nayak*, (1984) 2 SCC 500: 1984 SCC (Cri) 277: AIR 1984 SC 718: 1984 Cri LJ 647: 1984 Bom LR 228.

Bench Strength 5. Coram: **D.A. Desai**, *R.S. Pathak*, *O. Chinnappa Reddy*, *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

[2176] — S. 190 — Object — 'Take cognizance of offence' — Meaning of — *The object of S. 190 is to ensure the safety of a citizen against the vagaries of the police by giving him the right to approach the Magistrate directly if the police does not take action or he has reason to believe that no such action will be taken by the police — Even though the expression 'take cognizance' is not defined, it is well settled by a catena of decisions of this Court that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence decides to initiate judicial proceedings against the alleged offender he is said to have taken cognizance of the offence — Cognizance is in regard to the offence, not the offender.* *Kishun Singh* v. *State of Bihar*, (1993) 2 SCC 16: 1993 SCC (Cri) 470: 1993 Cri LJ 1700: (1993) 1 Crimes 494: (1993) 1 BLJR 309.

Bench Strength 2. Coram: **A.M. Ahmadi** and *N.P. Singh*, JJ. [Date of decision: 11-1-1993]

[2177] — S. 190 — Pari materia provision — S. 190 CrPC, 1898, held was in pari materia with S. 190 CrPC, 1973 — *CrPC, 1898, S. 190* (Para 26). *Chief Enforcement Officer* v. *Videocon International Ltd.*, (2008) 2 SCC 492: (2008) 1 SCC (Cri) 471: AIR 2008 SC 1213: 2008 Cri LJ 1636.

Bench Strength 2. Coram: **C.K. Thakker** and *P.P. Naolekar*, JJ. [Date of decision: 25-1-2008]

[2178] — S. 190 — Private complainant indulging in vexatious litigation based on half-baked knowledge of law wasting time of court — *Held, should be retrained in the interests of administration of justice from filing similar applications — If still he persists, such application/complaint should be dismissed in limine and appropriate proceedings be initiated against him* (Para 16). *N. Natarajan* v. *B.K. Subba Rao*, (2003) 2 SCC 76: 2003 SCC (Cri) 437: AIR 2003 SC 541: 2003 Cri LJ 820.

Bench Strength 2. Coram: **S. Rajendra Babu** and *Arun Kumar*, JJ. [Date of decision: 3-12-2002]

[2179] — S. 190 — "Taking cognizance" — Meaning of

The expression "taking cognizance" in S. 190 of the Code of Criminal Procedure, 1973 merely means judicial application of mind of the Magistrate to the facts mentioned in the complaint with a view to taking further action. Thus what S. 190 contemplates is that the Magistrate takes cognizance once he makes himself fully aware of the allegations made in the complaint and decides to examine or test the validity of the said allegations. *Tula Ram* v. *Kishore Singh*, (1977) 4 SCC 459: 1977 SCC (Cri) 621: AIR 1977 SC 2401: 1978 Cri LJ 8.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.S. Kailasam*, JJ. [Date of decision: 5-10-1977]

[2180] — S. 190 — 'Taking cognizance' — Meaning of — Different from initiation of proceedings — Cognizance is taken of cases and not of persons

Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather than it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. It has, thus, reference to the hearing and determination of the case in connection with an offence. (Paras 43 and 44). *State of W.B.* v. *Mohd. Khalid*, (1995) 1 SCC 684: 1995 SCC (Cri) 266: AIR 1995 SC 785: (1995) 1 Crimes 397.

Bench Strength 2. Coram: **S. Mohan** and *M.K. Mukherjee*, JJ. [Date of decision: 24-11-1994]

[2181] — S. 190 — Taking cognizance of complaint filed before cause of action matured — Complaint — If pre-mature — Minimum time-limit for filing, if any — *Held, there is no minimum time-limit — Where the complaint was filed before the arising of cause of action in terms of S. 138 proviso (c) NI Act, 1881, held, instead of dismissing the complaint, taking of cognizance could be postponed till the arising of cause of action — In the instant case although complaint was filed before the expiry of the statutory period prescribed in proviso (c) to S. 138, trial court had taken cognizance after the expiry of that period — Hence, conviction by the trial and appellate courts upheld — High Court erred in reversing the said decisions on the ground that the complaint was premature — Negotiable Instruments Act, 1881, Ss. 142(b) and 138 proviso (c)*

The respondent borrowed Rs 2,30,000 from the appellant and issued a post-dated cheque in his favour. On 6-10-1994, the cheque was dishonoured by the bank due to "insufficient funds". The appellant served a notice upon the respondent on 26-10-1994 intimating him of the bouncing of the cheque and demanding repayment of the amount. The respondent did not respond. Therefore, the appellant filed a complaint under the Negotiable Instruments Act on 8-11-1994. The complaint was returned due to some defects therein. After the same was refiled the Court took cognizance on 17-11-1994. The trial court found the respondent to be guilty and sentenced him to simple imprisonment for six months. The appellate court upheld the decision but the High Court set aside the conviction on the ground that the complaint, having been filed within less than 15 days from the date of the notice, was premature. Allowing the appeal,

Held :

The compliance of proviso (*c*) to Section 138 enables the court to entertain a complaint. Section 142(*b*) prescribes a period within which the complaint can be filed from the date of the cause of action arising under proviso (*c*) to Section 138. No period is prescribed before which the complaint could not be filed, and if filed without disclosing the cause of action in terms of proviso (*c*) to Section 138, the court may not take cognizance till the time the cause of action arises to the complainant. (Para 7)

"Taking cognizance of an offence" by the court has to be distinguished from the filing of the complaint by the complainant. Taking cognizance would mean the action taken by the court for initiating judicial proceedings against the offender in respect of the offence regarding which the complaint is filed. Before it can be said that any Magistrate or court has taken cognizance of an offence, it must be shown that he has applied his mind to the facts for the purpose of proceeding further in the matter at the instance of the complainant. If the Magistrate or the court is shown to have applied his mind not for the purpose of taking action upon the complaint but for taking some other kind of action contemplated under CrPC such as ordering investigation under Section 156(3) or issuing a search warrant, he cannot be said to have taken cognizance of the offence. (Para 8)

Mere presentation of the complaint in the court cannot be held to mean that its cognizance had been taken by the Magistrate. If the complaint is found to be premature, it can await maturity or be returned to the complainant for filing later and its mere presentation at an earlier date need not necessarily render the complaint liable to be dismissed or confer any right upon the accused to absolve himself from the criminal liability for the offence committed. (Para 10)

In the instant case mere presentation of the complaint on 8-11-1994 when it was returned to the appellant-complainant on the ground that the verification was not signed by the counsel, could not be termed to be an action of the Magistrate taking cognizance within the meaning of Section 142 of the Act. No cognizance was taken on 8-11-1994, but the Magistrate applied his mind and took cognizance only on 17-11-1994. The High Court erred in holding the complaint to be premature and dismissing the same on that ground. (Paras 10 and 11)

Therefore, the impugned order of the High Court is set aside and the conviction of the respondent is upheld. (Para 12)

However, the respondent has admittedly paid the appellant a sum of Rs 3,94,243.33 which includes the cheque amount and the interest payable thereon. Therefore, no useful purpose would be served by sending the respondent back to jail as the interests of justice would be served by imposing a penalty of fine alone. Hence, the sentence of imprisonment awarded to the respondent is substituted with the imposition of fine of Rs 5000 provided that the same is deposited within two months. (Para 14). *Narsingh Das Tapadia* v. *Goverdhan Das Partani*, (2000) 7 SCC 183: AIR 2000 SC 2946: (2000) 3 KLT 605.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 6-9-2000]

Narayandas Bhagwandas Madhavdas v. State of W.B., AIR 1959 SC 1118: 1959 Cri LJ 1368; Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986: (1961) 2 Cri LJ 39; Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521; Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380, relied on

[2182] — S. 190 — Taking cognizance of offence — Court not required to pass a reasoned order *— It can take into consideration not only police report but also other materials on record* (Paras 78 and 81). *State of W.B.* v. *Mohd. Khalid*, (1995) 1 SCC 684: 1995 SCC (Cri) 266: AIR 1995 SC 785: (1995) 1 Crimes 397.

Bench Strength **2**. Coram: **S. Mohan** and *M.K. Mukherjee*, JJ. [Date of decision: 24-11-1994]

[2183] — S. 190 — That offenders have to be put on trial is a social need — Criminal jurisprudence — Pursuit, apprehension, and punishment of an offender, held, subserve a critical social need *— Society cannot afford to allow a criminal to escape his liability as the result of doing so would be social pollution*

To pursue an offender in the event of commission of an offence is to subserve a social need — society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted and this is irrespective of the concept of locus — the doctrine of locus standi is totally foreign to criminal jurisprudence. (Para 5). *Manohar Lal* v. *Vinesh Anand*, (2001) 5 SCC 407: 2001 SCC (Cri) 1322: AIR 2001 SC 1820: 2001 Cri LJ 2044.

Bench Strength **2**. Coram: *A.P. Misra* and **U.C. Banerjee**, JJ. [Date of decision: 9-4-2001]

A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500: 1984 SCC (Cri) 277, relied on

[2184] — Ss. 190, 154, 173, 200 and 204 — Filing of complaint or initiation of criminal proceedings distinguished from taking of cognizance of offence or issuing of process

The two things, namely, (*1*) filing of complaint or initiation of criminal proceedings; and (2) taking cognizance or issuing process are totally different, distinct and independent. So far as the complainant is concerned, as soon as he files a complaint in a competent court of law, he has done everything which is required to be done by him at that stage. Thereafter, it is for the Magistrate to consider the matter, to apply his mind and to take an appropriate decision of taking cognizance, issuing process or any other action which the law contemplates. The complainant has no control over those proceedings. Because of several reasons it may not be possible for the court or the Magistrate to issue process or take cognizance. But a complainant cannot be penalised for such delay on the part of the court nor can he be non-suited because of failure or omission by the Magistrate in taking appropriate action under CrPC. No criminal proceeding can be abruptly terminated when a complainant approaches the court well within the time prescribed by law. In such cases, the doctrine *actus curiae neminem gravabit* (an act of court shall prejudice none) would indeed apply. One of the first and highest duties of all courts is to take care that an act of court does no harm to suitors. (Paras 47 to 49). *Japani Sahoo* v. *Chandra Sekhar Mohanty*, (2007) 7 SCC 394: (2007) 3 SCC (Cri) 388: AIR 2007 SC 2762: (2007) 3 KLT 760: 2007 Cri LJ 4068.

Bench Strength **2**. Coram: **C.K. Thakker** and *Tarun Chatterjee*, JJ. [Date of decision: 27-7-2007]

[2185] — Ss. 190, 309, 320 and 482 — Concurrent civil and criminal liability — Maintainability of criminal action — Effect of judgment in civil proceedings — Loan obtained by fraud — Continuance of criminal proceedings after settlement and repayment of loan *— Appellant and co-accused persons prosecuted for commission of offences under Ss. 120-B, 420, 467, 468 and 471 IPC — Allegation on appellant for taking part in conspiracy in defrauding the Bank for taking loan — Suit for recovery thereof filed by Bank before DRT in which settlement arrived at between Bank and appellant and loan repayed by appellant — Effect, if any, on maintainability of criminal action — Held, civil and criminal proceedings can proceed simultaneously — Bank is entitled to recover the amount of loan given to debtor — If in connection with obtaining loan, criminal offences were committed by persons accused thereof, including* *officers of Bank, criminal proceedings would also indisputably be maintainable — When a settlement is arrived at by and between creditor (Bank) and debtor (appellant), the offence committed as such does not come to an end — Judgment of Tribunal in civil proceeding and that too when it is rendered on the basis of settlement entered into between parties, would not be of much relevance in a criminal proceeding having regard to provisions contained in S. 43, Evidence Act — Judgment in civil proceedings will be admissible in evidence only for a limited purpose — Herein, prima facie case found out against appellant — There was no error apparent on face of the record warranting interference therewith — High Court rightly refused to quash the criminal proceedings — Penal Code, 1860, Ss. 120-B, 420, 467, 468 and 471 — Evidence Act, 1872, S. 43 — CPC, 1908, S. 9 — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 18 and 19*

It is not a case where the parties have entered into a compromise in relation to the criminal charges. In fact, the offence alleged against the accused being an offence against society and the allegations contained in the FIR having been investigated by CBI, the Bank could not have entered into any settlement at all. CBI has not filed any application for withdrawal of the case. Not only a charge-sheet has been filed, charges have also been framed. (Paras 2, 3, 10, 13 to 16 and 20). *Rumi Dhar* v. *State of W.B.*, (2009) 6 SCC 364.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sinha*, JJ. [Date of decision: 8-4-2009]

Nikhil Merchant v. CBI, (2008) 9 SCC 677: (2008) 3 SCC (Cri) 858, referred to

CBI v. Duncans Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045, distinguished

[**Ed.**: *See also* (2009) 5 SCC 528 on the question of concurrent civil and criminal proceedings.]

[2186] — Ss. 190, 154, 200 and 482 — Principles as to res judicata — Not applicable in criminal proceeding — *CPC, 1908, S. 11*

The principle of res judicata has no application in a criminal proceeding. The principles of res judicata as adumbrated in Section 11 CPC or the general principles thereof will have no application in a case of this nature. (Para 25). *Devendra* v. *State of U.P.*, (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

[2187] — Ss. 190, 154 and 200 — Simultaneous civil and criminal proceedings in a given case — Reiterated, permissible — But result in one proceeding not binding in another — *CPC, 1908, Ss. 9, 15 & 33 and Or. 4 R. 1 and Or. 20 — Evidence Act, 1872, S. 43*

In a given case, a civil suit as also a criminal proceeding would be maintainable. They can run simultaneously. Result in one proceeding would not be binding on the court determining the issue before it in another proceeding. (Para 13). *Devendra* v. *State of U.P.*, (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

P. Swaroopa Rani v. M. Hari Narayana, (2008) 5 SCC 765: (2008) 3 SCC (Cri) 79; Seth Ramdayal Jat v. Laxmi Prasad, (2009) 11 SCC 545, relied on

[2188] — Ss. 190 & 200 — Simultaneous proceedings of civil and criminal nature by creditor against debtor i.e. civil suit for recovery of alleged loan amount and criminal proceedings under NI Act for dishonour of cheque allegedly issued for repayment of said loan — Permissibility — Subsequent acquittal in criminal proceedings — Effect — *Rejection of plaint in civil suit, under Or. 7 R. 11(d) CPC on basis of said acquittal — Tenability of — Applicability of principles of res judicata — Continuance of civil proceedings after said acquittal if abuse of process of court — (1) Reiterating right of creditor to maintain both civil and criminal proceedings simultaneously; (2) distinguishing standard of proof required in civil proceedings from that in criminal proceedings, particularly where relevant statutory provisions impose reverse burden on accused [as under S. 139 of NI Act involved herein]; and (3) considering that civil suit was not barred on day it was filed, held, acquittal in the criminal proceedings would not make continuation of the civil proceedings abuse of process of court — Principle of res judicata as contained in S. 11 CPC or even general principles thereof not attracted in present case — Thus impugned judgment of High Court rejecting plaint under Or. 7 R. 11(d) CPC on ground of acquittal, by applying principles of res judicata, not sustainable — Evidence Act, 1872, S. 115 — CPC, 1908, Ss. 9, 11 and 12 & Or. 7 R. 11(d)*

Allowing the appeal,

Held :

In the present case, the cause of action for institution of the civil suit was grant of loan whereas that of the criminal case (under Section 138, NI Act) was return of a cheque inter alia on the premise that the account of the accused was insufficient to honour it or that it exceeded the amount arranged to be paid from that account by an agreement with the Bank. (Para 10)

Section 138 of the NI Act contains a non obstante clause. In terms of Section 139 of the NI Act, a presumption in favour of the holder of the cheque may be raised that he had received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. (Para 11)

There is no doubt or dispute that a creditor can maintain a civil and criminal proceeding at the same time. Both the proceedings, thus, can run parallelly. The fact required to be proved for obtaining a decree in the civil suit and a judgment of conviction in the criminal proceedings may be overlapping but the standard of proof in a criminal case vis-à-vis a civil suit is different. Whereas in a criminal case the prosecution is bound to prove the commission of the offence on the part of the accused beyond any reasonable doubt, in a civil suit "preponderance of probability" would serve the purpose for obtaining a decree. (Para 8)

Further, in a criminal proceeding, although upon discharge of initial burden by the complainant, the burden of proof may shift on an accused, the court must apply the principles of "presumption of innocence as a human right". The statutory provisions containing the doctrine of reverse burden must therefore be construed strictly. Whereas a provision containing reverse burden on an accused would be construed strictly and subject to the strict proof of the foundational fact by the complainant, in a civil proceeding no such restriction can be imposed. In a civil suit such strict compliance may not be insisted upon. If that be so, it may not be correct to contend that a judgment rendered in a criminal proceeding would make continuation of a civil proceeding an abuse of the process of court. (Paras 13 and 19)

Any person may as of right have access to the courts of justice. Section 9 CPC enables him to file a suit of civil nature excepting those, the cognizance whereof is expressly or by necessary implication barred. Order 7 Rule 11(*d*) CPC is one of such provisions which provides for rejection of plaint, if it is barred by any law. Order 7 Rule 11(*d*) CPC being one of the exceptions, thus, must be strictly construed. The embargo thereunder against the maintainability of the suit must be apparent from the averments made in the plaint. (Paras 20 and 7)

The civil suit was not barred on the day on which it was filed. If as on the date of institution of the suit, the plaint could not be rejected in terms of Order 7 Rule 11(*d*) CPC, its continuation would not attract the principles of abuse of processes of court only because the accused was acquitted in the criminal proceeding. (Para 21)

The principle of res judicata as contained in Section 11 CPC is not attracted in this case. Even general principle of res judicata would also not be attracted. A suit cannot be held to be barred only because the principle of estoppel subject to requisite pleading and proof may be applied. The said principle may not be held to be applicable only at a later stage of the suit. (Paras 22 and 31)

Hence, the impugned judgment cannot be sustained. It is set aside accordingly. (Para 32). *Vishnu Dutt Sharma* v. *Daya Sapra*, (2009) 13 SCC 729.
Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54: (2008) 2 SCC (Cri) 166; Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal, (1999) 3 SCC 35; Noor Aga v. State of Punjab, (2008) 16 SCC 417, relied on

[2189] — S. 190 — Criminal action also maintainable along with civil suit if the act constituted both a civil wrong and a criminal wrong. *CBI* v. *Duncans Agro Industries Ltd.*, (1996) 5 SCC 591: 1996 SCC (Cri) 1045: AIR 1996 SC 2452.
Bench Strength **2**. Coram: **G.N. Ray** and *G.B. Pattanaik*, JJ. [Date of decision: 9-7-1996]

***Distinguished** in State, CBI v. Sashi Balasubra- manian, (2006) 13 SCC 252: (2007) 3 SCC (Cri) 337*

[2190] — S. 190 — Prosecution of ex-employee of company — Competency to file complaint — *Divisional Sales Manager of company, held, competent to file complaint on behalf of company as per instructions given to him from head office — High Court's views affirmed — Companies Act, 1956 — Ss. 621 and 630. Atul Mathur* v. *Atul Kalra*, (1989) 4 SCC 514: 1989 SCC (Cri) 761.
Bench Strength **2**. Coram: **S. Natarajan** and *S. Ratnavel Pandian*, JJ. [Date of decision: 8-8-1989]

[2191] — S. 190 — Complaint under, for wrongful withholding of company's property — *Merely because a civil suit filed by accused prior to institution of complaint criminal court not debarred from proceeding with complaint — Companies Act, 1956 — S. 630*

Merely because the accused had schemingly filed a suit in civil court it can never be said that the civil court was in seisin of a bona fide dispute between the parties and as such the criminal court should have stayed its hands when the company filed a complaint under S. 630 of the Act. If such a view is taken it would not only lead to miscarriage of justice but also render ineffective the salutary provision of S. 630. *Atul Mathur* v. *Atul Kalra*, (1989) 4 SCC 514: 1989 SCC (Cri) 761.
Bench Strength **2**. Coram: **S. Natarajan** and *S. Ratnavel Pandian*, JJ. [Date of decision: 8-8-1989]

[2192] — S. 190 — Allegation that accused persons transferred shares on the basis of forged and fabricated signatures — *Mere filing of a claim before the Consumer Forum would not make the dispute a civil dispute — Penal Code, 1860 — Ss. 406, 420, 467, 468 and 120-B. Ashok Chaturvedi* v. *Shitul H. Chanchani*, (1998) 7 SCC 698: AIR 1998 SC 2796.

Bench Strength **2**. Coram: *Sujata V. Manohar* and **G.B. Pattanaik**, JJ. [Date of decision: 13-8-1998]

[2193] — Ss. 190, 156(3) and 482 — Cognizance of offence taken by the Magistrate without referring the matter to the police under S. 156(3) — Propriety — *Held, the Magistrate was justified in doing so where after examining the complainant on oath he was satisfied that prima facie the alleged offence was made out — Penal Code, 1860, Ss. 499 and 503* (Para 3). *Ram Swarup* v. *Mohd. Javed Razack*, (2005) 10 SCC 393: 2005 SCC (Cri) 1549: AIR 2005 SC 2005: 2005 Cri LJ 1725.

Bench Strength **2**. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 23-2-2005]

[2194] — Ss. 190, 173, 200 and 202 — At the stage of taking cognizance of offence the court should consider only averments made in the complaint or charge-sheet — *Court is not required to sift and appreciate evidence at that stage*

At the time of taking cognizance of the offence, the Court has to consider only the averments made in the complaint or in the charge-sheet filed under Section 173, as the case may be. It is not open for the Court to sift or appreciate the evidence at that stage with reference to the material and come to the conclusion that no prima facie case is made out for proceeding further in the matter. It is equally settled law that it is open to the Court, before issuing the process, to record the evidence and on consideration of the averments made in the complaint and the evidence thus adduced, it is required to find out whether an offence has been made out. On finding that such an offence has been made out and after taking cognizance thereof, process would be issued to the respondent to take further steps in the matters. If it is a charge-sheet filed under Section 173 of the Code, the facts stated by the prosecution in the charge-sheet, on the basis of the evidence collected during investigation, would disclose the offence for which cognizance would be taken by the court to proceed further in the matter. Thus it is not the province of the court at that stage to embark upon and sift the evidence to come to the conclusion whether offence has been made out or not. *Rashmi Kumar* v. *Mahesh Kumar Bhada*, (1997) 2 SCC 397: 1997 SCC (Cri) 415.

Bench Strength 3. Coram: **K. Ramaswamy**, *S.B. Majmudar* and *G.T. Nanavati*, JJ. [Date of decision: 18-12-1996]

[2195] — Ss. 190, 173(2), 169, 200, 202 and 204 — Jurisdiction of Magistrate in respect of issuance of process or taking cognizance of offence — Conditions precedent to exercise of

The jurisdiction of the learned Magistrate in the matter of issuance of process or taking of cognizance depends upon existence of conditions precedent therefor. The Magistrate has jurisdiction in the event a final form is filed (*i*) to accept the final form; (*ii*) in the event a protest petition is filed to treat the same as a complaint petition and if a prima facie case is made out, to issue processes; (*iii*) to take cognizance of the offences against a person, although a final form has been filed by the police, in the event he comes to the opinion that sufficient materials exist in the case diary itself therefor; and (*iv*) to direct reinvestigation into the matter. (Para 54). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

Abhinandan Jha v. Dinesh Mishra, (1967) 3 SCR 668: AIR 1968 SC 117: 1968 Cri LJ 97; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310, relied on

[2196] — Ss. 190 and 193 — New Code provides for cognizance of an offence and committal of a case, as contradistinguished from cognizance of an offender or committal of an accused to Court of Session as was in the old Code — *CrPC, 1898, Ss. 190, 193 and 206* (Para 23). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

[2197] — Ss. 190 and 193 — Mere application of mind does not amount to taking cognizance unless the Magistrate does so for proceeding under Ss. 200/204. *Kishun Singh* v. *State of Bihar*, (1993) 2 SCC 16: 1993 SCC (Cri) 470: 1993 Cri LJ 1700: (1993) 1 Crimes 494: (1993) 1 BLJR 309.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *N.P. Singh*, JJ. [Date of decision: 11-1-1993]

[2198] — Ss. 190, 193, 179 and 177 — Magistrate taking cognizance of offence need not have territorial jurisdiction to try the case as well — Any Judicial Magistrate of First Class has power to take cognizance of any offence, whether committed within his jurisdiction or not — *Quashment by High Court of complaint on the ground that Magis-*

trate who took cognizance had no territorial jurisdiction to try that case, held, was improper and premature — Power of Judicial Magistrate of the First Class to take cognizance is not impaired by territorial restrictions

The Chairman of the appellant Company filed a complaint before the Judicial Magistrate of the First Class alleging that the directors of another company offered to supply "toasted soyabean extractions" for a price higher than the market price. The appellant had to pay the price in advance as demanded by the accused. So the same was paid through cheques. But the accused sent the commodity which was of the most inferior and sub-standard quality, thereby the complainant suffered a loss of Rs 17 lakhs. According to the appellant he was induced to pay the price on the representation that the best quality commodity would be supplied and the price was paid on such representation. But by supplying the most inferior quality the accused deceived the complainant. The Magistrate forwarded the complaint of the appellant for investigation as per his order passed under Section 156(3) CrPC. The accused Directors thereupon moved the High Court of Gujarat under Section 482 CrPC for quashing the complaint. The respondent's counsel in the High Court put forward mainly two contentions. The first was that the dispute was purely of a civil nature and hence no prosecution should have been permitted, and the second was that the Judicial Magistrate of the First Class had no jurisdiction to entertain the complaint. On the first count the Single Judge pointed out that there was a specific clause in the memorandum of understanding arrived at between the parties that disputes, if any, arising between them in respect of any transaction could be resolved through arbitration. The High Court took the view that the question whether the complainant Company did suffer the loss as alleged by it are matters to be adjudicated by the civil court and cannot be the subject-matter of criminal prosecution. The Single Judge also accepted the alternative contention regarding want of jurisdiction of the Magistrate.

Allowing the appeal,

Held :

It is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. The provisions of Sections 177 and 179 CrPC do not trammel the powers of any court to take cognizance of the offence. The only restriction contained in Section 190 is that the power to take cognizance is "subject to the provisions of this chapter". Section 193 imposes a restriction on the Court of Session to take cognizance of any offence as a court of original jurisdiction. But "any" Magistrate of the First Class has the power to take cognizance of any offence, no matter that the offence was committed within his jurisdiction or not. There is nothing in Chapter XIV of the Code to impair the power of a Judicial Magistrate of the First Class taking cognizance of the offence on the strength of any territorial reason. It is, therefore, impermissible to deprive such a Magistrate of the power to take cognizance of an offence — of course, in certain special enactments special provisions are incorporated for restricting the power of taking cognizance of offences falling under such acts. (Paras 11 and 13)

The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a Magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post-cognizance stage and not earlier. (Para 14)

The High Court, without considering any of the aforesaid legal aspects, rushed to the erroneous conclusion that the "Judicial Magistrate of the First Class, Gandhidham has no power to take cognizance of the offences alleged" merely because such offences could have been committed outside the territorial limits of the State of Gujarat. Even otherwise, without being apprised of the fuller conspectus a decision on the question of jurisdiction should not have been taken by the High Court at a grossly premature stage as this. (Para 15). *Trisuns Chemical Industry* v. *Rajesh Agarwal*, (1999) 8 SCC 686: AIR 1999 SC 3499: 1999 Cri LJ 4325.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 17-9-1999]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rajesh Bajaj v. State (NCT of Delhi), (1999) 3 SCC 259, relied on

[2199] — Ss. 190, 193 and 195 to 199 & 204 — Word "cognizance" — Meaning of — Explained *— Distinguished from "issuance of process" — Order remanding accused to judicial custody does not amount to taking cognizance of the offence*

Several provisions in Chapter XIV of the Criminal Procedure Code use the word "cognizance". However, the word "cognizance" has not been defined in the Criminal Procedure Code. The dictionary meaning of the word "cognizance" is — "judicial hearing of a matter". Taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out. (Paras 10 and 13). *State of Karnataka* v. *Pastor P. Raju*, (2006) 6 SCC 728: (2006) 3 SCC (Cri) 179: AIR 2006 SC 2825: (2006) 102 Cut LT 612: (2006) 3 KLT 830.

Bench Strength 2. Coram: **G.P. Mathur** and *Dalveer Bhandari*, JJ. [Date of decision: 4-8-2006]

[2200] — Ss. 190, 198-A, 209, 239, 240, 242 and 323 — Appreciation of prosecution evidence by Magistrate — *Pursuant to a complaint filed by petitioner wife, investigation conducted and charge-sheet filed by police against her husband and others — CJM taking cognizance of offences under Ss. 498-A and 313 IPC and Ss. 3 and 4 of Dowry Prohibition Act — But subsequently CJM deleting the charge under S. 313 IPC by an order allowing accused's application in that behalf — That order not challenged but later application made by petitioner before CJM to proceed for trial of accused under S. 313 IPC — That application dismissed by CJM — Revision petition filed against CJM's order dismissed by High Court with the observation that previous order of CJM discharging the accused persons of offence under S. 313 IPC would be no bar to committal of case in accordance with S. 323 CrPC and that if on examination of the remaining witnesses and on looking to the relevant documents the Magistrate finds that the accused persons were shown to have committed offence under S. 313 IPC, he may commit the case to Sessions Court — Revisional order of High Court not challenged by petitioner — Accordingly, Magistrate continuing the trial, recording evidence of remaining PWs and passing a detailed order holding that it was not necessary to commit the case to Sessions Court and posting the case for recording the statement of the accused persons — Revision petition against that order dismissed by High Court — Held, no fault can be found with the order of Magistrate who had acted in compliance with the direction of the High Court*

It was contended on behalf of the petitioner that the Magistrate committed a manifest error in appreciating the evidence produced by the prosecution as required for final disposal of the case either to convict or acquit the accused instead of considering only as to whether there was prima facie material to constitute a charge for offence under Section 313 IPC.

Dismissing the SLP,

Held :

The Magistrate was bound to follow the directions given by the High Court in the earlier revision petition. When the petitioner did not challenge the order of the High Court, she cannot now say that the Magistrate should not have taken into account the evidence of the witnesses examined in passing the order. (Para 5). *Harijinder Kaur* v. *State of Jharkhand*, (2001) 8 SCC 394: 2002 SCC (Cri) 88: AIR 2001 SC 3716.

Bench Strength 2. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 28-8-2001]

[2201] — Ss. 190, 200, 202 and 482 — Taking cognizance — Material relevant for — *Where the statement made in the complaint and statements made under S. 202 taken on face value made out the offence, taking of cognizance, held, justified — At this stage other materials could not be considered by High Court to quash the cognizance — However, at the stage of framing of charge, the accused could argue as to whether the materials permitted the framing of the charge — Penal Code, 1860, Ss. 406 and 420*

On the basis of a complaint under Sections 406 and 420 IPC, the Magistrate issued process but subsequently recalled the same in respect of Section 420. The High Court refused relief to the accused under Section 482 and directed the Magistrate to reconsider the framing of charge under Section 420. The Supreme Court on facts found that the accused could not be required to face trial under Section 420.

In respect of the offence under Section 406 IPC, the accused contended that while framing of charge the court was duty-bound to look into the prima facie materials.

Rejecting this contention,

Held :

But that stage has not reached in the present case. The Magistrate has merely taken cognizance of the offence and has issued process and therefore at this stage the question of consideration of other materials does not arise and the court will have to take a view taking into account the fact that all the statements made in the complaint as well as the statement made under Section 202, if taken on their face value, an offence can be said to have been made out. Applying that standard, it is held that there was no error in taking cognizance of the offence. However, it would be open to the accused while framing charge to argue as to whether the materials do permit framing of a charge. (Para 4). *Ajay Mehra* v. *Durgesh Babu*, (2002) 9 SCC 709.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 16-2-2001]

[2202] — Ss. 190, 200, 204 and 156(3) — A Magistrate on receiving complaint under S. 190 may not take cognizance and order investigation under S. 156(3) (even if offence charged is exclusively triable by Court of Session) — *Having done so he is not debarred on receiving final report of police from taking cognizance and proceeding with the complaint according to Ss. 200 and 204*

While Chapter 14 (under which S. 190 falls) deals with post-cognizance stage, Chapter 12 (under which S. 156 falls), so far as the Magistrate is concerned, deals with pre-cognizance stage. Sections 190 and 156(3) are mutually exclusive and work in totally different spheres. A Magistrate can order investigation under S. 156(3) only at the pre-cognizance, stage that is to say before taking cognizance under Ss. 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under S. 156(3) though in cases not falling within the proviso to S. 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by S. 207 of the Code.

Where a Magistrate orders investigation by the police under S. 156(3) before taking cognizance and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under S. 190.

In the instant case, there is nothing to show that the Magistrate had taken cognizance of the complaint. Even though the complaint was filed before the Magistrate, he did not pass any order indicating that he had applied his judicial mind to the facts of the case for the purpose of proceeding with the complaint. What he had done was to keep the complaint aside and order investigation even before deciding to take cognizance on the basis of the complaint. After the final report was received the Magistrate decided to take cognizance of the case on the basis of complaint and accordingly issued notice to the complainant. As the allegation made against the accused made out a case exclusively triable by the Court of Session the Magistrate was clearly debarred from ordering any investigation, but he was not debarred from making any enquiry himself into the truth of the complaint. This is what exactly the Magistrate purported to have done in the instant case. Thus, the action taken by the Magistrate was fully supportable in law and he did not commit any error in recording the statement of the complainant and the witnesses and thereafter issuing process against the appellants. *Tula Ram* v. *Kishore Singh*, (1977) 4 SCC 459: 1977 SCC (Cri) 621: AIR 1977 SC 2401: 1978 Cri LJ 8.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.S. Kailasam*, JJ. [Date of decision: 5-10-1977]

[2203] — Ss. 190, 161, 165 and 173 — Criminal proceedings commence only on taking cognizance of offence — Magistrate is not empowered to interfere with the police investigation

Per K. Ramaswamy, J.

It is only when Magistrate takes cognizance of the offence upon consideration of the material placed before him that proceedings in a criminal case stand commenced. Taking cognizance of the offence is coterminus with the power of the police to investigate in the crime. Until then there is no power to the Magistrate except on a private complaint in a cognizable/non-cognizable offence to direct the police to investigate into the offence. The Magistrate is not empowered to interfere with the investigation by the police. *State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192: AIR 1991 SC 1260.

Bench Strength 2. Coram: **Kuldip Singh**[1] and **K. Ramaswamy**[2], JJ. [Date of decision: 2-4-1991]

[2204] — Ss. 190, 200 and 157 — Refusal of police to register FIR — Refusal by High Court to direct police to file FIR — Filing of criminal complaint before competent court as permitted by High Court — Effect of — *Held, if a criminal complaint is filed, the same shall be considered on its own merit without being prejudiced by any observation made either in impugned order of High Court refusing to direct police to register FIR or in report submitted by the District Judge. Ravinder Kaur* v. *State of Punjab*, (2006) 9 SCC 188: (2006) 2 SCC (Cri) 617.

Bench Strength 2. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 30-11-2005]

[2205] — Ss. 190 & 200 to 203 and 156 & 157 — Information to police regarding commission of cognizable offence — No action taken by police — Course open to complainant — *Held, in such a case, complainant is given power under S. 190 read with S. 200 CrPC to lay down the complaint before the Magistrate concerned — Then the Magistrate is required to enquire into the complaint as provided in Ch. XV CrPC — Writ petition in such a case, held, not maintainable*

When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Criminal Procedure Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. A writ petition in such cases is not to be entertained. (Para 16). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India, (1996) 11 SCC 582: 1997 SCC (Cri) 303; Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404, relied on

[2206] — Ss. 190, 154, 156 & 157 — Direction by High Court to register case and conduct investigation in offence which took place about 18 years ago — Challenge to, by aggrieved appellant — Sustainability — *Writ petition filed in 2004 by Respondent 3 seeking direction for registration of case against appellant in respect of case relating to year 1986 in which Respondent 3 was attacked and had suffered injuries — Impugned direction based on enquiry report of Dy. Inspector General, CID who conducted enquiry at the instance of High Court — Considering the peculiar facts and circumstances of the case, held, judgment of High Court not liable to be interfered with — Hence, upheld — Constitution of India, Art. 226*

A writ petition was filed by Respondent 3 before the High Court alleging inaction on the part of the police authorities in not registering his complaint and taking action against the persons who had caused injuries to him and his sons in an incident occurring on 8-11-1986. The Single Judge of the High Court directed the Director General of Police (DGP) to appoint a senior police officer to conduct an enquiry into the matter. Pursuant to that order, the Dy. Inspector General, CID conducted the enquiry and submitted a report. The Single Judge held that once it was established that Respondent 3 had sustained injuries in the incident and injuries on his person were confirmed in the medical examination, the police authorities ought to have registered a case and taken appropriate steps in accordance with law. On the basis of the final report of the inquiry, the Single Judge directed the Superintendent of Police to register a case in the police station of competent jurisdiction and take action in accordance with law. The application filed by the appellant for recalling the said order was dismissed. Hence, the present appeal.

As per the appellant, he was tenant in the house of Respondent 3. Respondent 3 attempted to illegally evict the appellant from his rented house with the help of antisocial elements who came to his house armed with weapons on 8-11-1986. Respondent 3 along with his men started dismantling the house of the appellant without prior permission and/or notice to him. The appellant was seriously injured when he tried to obstruct them from dismantling the house. The appellant lodged a first information report under Sections 147/307 IPC against Respondent 3 and his men. Later, the said criminal case was withdrawn by the Public Prosecutor. The revision filed before the High Court against the said withdrawal was dismissed.

Before the Supreme Court the appellant contended that the High Court ought not to have passed any direction in the writ petition filed by Respondent 3 because it was filed after undue delay. The appellant was also aggrieved by the order of withdrawal of the prosecution against Respondent 3.

Dismissing the appeal,

Held :

The order of the High Court was primarily based on the report of the DIG, CID, Gwalior who had conducted the inquiry at the instance of the Court and submitted the report. On the basis of the inquiry report, the High Court directed the Superintendent of Police, Gwalior to take action for registration of the case and conduct the investigation and inquiry in accordance with law. (Para 21)

The impugned judgment of the High Court has been carefully examined. There is no infirmity therein. In the backdrop of the peculiar facts and circumstances of the case, no interference is called for. (Paras 22 and 23). *Ghanshyam* v. *State of M.P.*, (2006) 10 SCC 473: (2006) 3 SCC (Cri) 602.

Bench Strength 2. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[2207] — Ss. 190, 200, 203 and 156 & 157 — CBI enquiry — Writ petition seeking Court's direction to conduct enquiry by CBI into murder of petitioner's son, no action having been taken by police on FIR lodged by him — *Held, cannot be entertained in view of relevant provisions of CrPC — Constitution of India, Art. 32*

When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. A writ petition in such cases is not to be entertained. It is the case of the petitioner that he is under constant threat by some persons and his life and property are in danger. If he seeks any protection, it is the duty of the police officials concerned to provide such security as is warranted in the circumstances in accordance with law. (Paras 4 to 6). *Hari Singh* v. *State of U.P.*, (2006) 5 SCC 733: (2006) 3 SCC (Cri) 63: AIR 2006 SC 2464: (2006) 130 DLT 591: (2006) 3 KLT 269: (2006) 5 All LJ 345: 2006 Cri LJ 3283.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 16-6-2006]

All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India, (1996) 11 SCC 582: 1997 SCC (Cri) 303; Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310, relied on

Applied in Aleque Padamsee v. Union of India, (2007) 6 SCC 171

[2208] — Ss. 190, 204, 173(2), 154, 162 and 319 — Person not included as accused in charge-sheet — If could be summoned after the cognizance of offence is taken — *Held, such person can also be summoned by Magistrate after taking cognizance of offence, if some material is found against him having regard to the FIR, his statement recorded by police and other documents — S. 319 does not operate in such a situation — Penal Code, 1860, Ss. 420, 406 and 120-B*

The appellant Company lodged an FIR against another concern MCIP and its partners. During investigation, it was revealed that Respondent 2 was the Managing Director of another sister Company PIC and two letters of credit given by the appellant were transferred by one of the accused *S* to PIC. On this discovery, notice under Section 160 CrPC was issued to Respondent 2 by the police. Because of stay order issued by the High Court, it was not possible for the police to interrogate Respondent 2 and to ascertain whether he was involved in the conspiracy. He was, therefore, not joined as accused in the charge-sheet submitted by the police, but his name was shown in column 2, which is meant for the accused who are not sent for the trial. It was also stated that the accused had cheated, misappropriated and caused wrongful loss to the appellant to the tune of Rs 2,10,60,000. On the basis of the said charge-sheet, the Metropolitan Magistrate issued summons against all the accused shown in the FIR for the offence under Sections 420/406/120-B IPC. On the next date of posting, he also issued the summons to Respondent 2. That part of the order was challenged by Respondent 2 by filing a criminal miscellaneous petition before the High Court. The High Court held that "the court was totally unjustified in summoning the petitioner when the petitioner was not shown in the column of accused persons in the charge-sheet". Relying on Section 319 CrPC, the High Court held that such persons could be summoned by the court under Section 319 only after the evidence has been recorded. Allowing the appeal,

Held :

At the stage of taking cognizance of the offence, provisions of Section 190 CrPC would be applicable. As per this provision, the Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence, the Magistrate under Section 204 CrPC is empowered to issue process to the accused. At the stage of issuing process, it is for the Magistrate to decide whether process should be issued against particular person/persons named in the charge-sheet and also not named therein. For that purpose, he is required to consider the FIR and the statements recorded by the police officer and other documents tendered along with charge- sheet. Further, upon receipt of police report under Section 173(2) CrPC, the Magistrate is entitled to take cognizance of an offence under Section 190(1)(*b*) even if the police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the investigating officer and independently applying his mind to the facts emerging from the investigation by taking into account the statement of the witnesses examined by the police. At this stage, there is no question of application of Section 319 CrPC. That provision would come into operation in the course of any enquiry into or trial of an offence. In the present case, neither the Magistrate was holding enquiry as contemplated under Section 2(*g*) CrPC nor had the trial started. He was exercising his jurisdiction under Section 190 by taking cognizance of an offence and issuing process. There is no bar under Section 190 CrPC that once the process is issued against some accused, on the next date, the Magistrate cannot issue process to some other person against whom there is some material on record, but his name is not included as accused in the charge-sheet. (Paras 6 and 7). *SWIL Ltd.* v. *State of Delhi*, (2001) 6 SCC 670: 2001 SCC (Cri) 1205: AIR 2001 SC 2747.

Bench Strength 2. Coram: **M.B. Shah** and *S.N. Phukan*, JJ. [Date of decision: 14-8-2001]

Raghubans Dubey v. State of Bihar, AIR 1967 SC 1167: 1967 Cri LJ 1081: (1967) 2 SCR 423, relied on

[2209] — Ss. 190, 211 and 228 — Offences for which accused should be tried — Proper stage for considering — *Offences indicated in police report — Relevance — Held, Magistrate is not bound to take cognizance of offences indicated in the police report — Proper stage for considering the offences for which the accused should be tried is the stage of framing of charge(s) — Magistrate taking cognizance of offence under Ss. 498-A, 323, 504 IPC r/w Ss. 3 and 4 of Dowry Prohibition Act, 1961 — Informant filing an application before the Magistrate concerned to the effect that on the basis of evidence collected by the investigating officer, cognizance ought to have been taken for offence punishable under Ss. 406 and 307 IPC — Magistrate of the view that after evidence was adduced, if commission of the offence punishable under Ss. 406 and 307 IPC was made out, then the prayer of the informant could be considered — Respondent filing a petition before the High Court stating that the materials collected by the investigating officer and contained in the case diary itself justified trial under Ss. 307 and 406 IPC and hence the case should be tried by the Court of Session — High Court on that basis opined that in such cases the Magistrate should at the time of framing charges consider and decide points so that unnecessary proceedings are not taken up if the case is to ultimately go before the Sessions Judge — Consequently it issued direction to consider and decide the matter afresh — Having opined that the proper stage for consideration was stage of framing charge, held, there was no necessity for further observations and/or directions (Paras 3 and 5). Anurag Rastogi* v. *State of U.P.*, (2007) 4 SCC 771: (2007) 2 SCC (Cri) 410: (2007) 51 AIC 4 (SC): 2007 Cri LJ 1454: (2007) 2 All LJ 742.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 7-2-2007]

[2210] — Ss. 190 and 173 — Complaint — Police report filed thereupon — But complaint accompanied by a false affidavit — Effect — *Held, on facts, cognizance was taken on the police report and not on the complaint* (Paras 2, 3, 6 and 8). *Har Prasad* v. *Ranveer Singh*, (2008) 11 SCC 431: AIR 2008 SC 1265: 2008 Cri LJ 1655: (2008) 2 All LJ 792.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 12-2-2008]

Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117, relied on

[2211] — Ss. 190 and 173 — Magistrate's power to take cognizance — Investigation pending against person and offence not made out as per charge-sheet — Effect — *Held, depending on the nature of the charge-sheet (police report), cognizance may be taken as against such a person as well*

Even in the same case, depending upon the nature of charge-sheet filed by the investigating officer in terms of Section 173 CrPC, cognizance may be taken as against the person against whom an offence is said to have been made out and against whom no such offence has been made out even when investigation is pending. (Para 38). *Dinesh Dalmia* v. *CBI*, (2007) 8 SCC 770: (2007) 59 AIC 145 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

[**Ed.:** *See also* (2006) 4 SCC 359, (2004) 7 SCC 768, (2003) 12 SCC 129 and (1989) 2 SCC 132.]

[2212] — Ss. 190 and 357 — Cognizance without adjudication, held, not sufficient to award compensation — *Compensation for custodial death — Entitlement to relief, prior to adjudication of question of custodial death — Petitioner's son allegedly committing suicide inside police lock-up — FIR lodged, police officials concerned arrested, charge-sheet for offences under Ss. 330, 342 and 306 IPC filed, cognizance taken by court and bail applications rejected — Held, no compensation can be granted in the absence of any adjudication on the issue as to whether there was custodial death — Universal Declaration of Human Rights, 1948, Art. 5 — Penal Code, 1860, Ss. 330, 342 and 306 — Constitution of India, Arts. 32, 21 and 22*

The petitioner lodged an FIR for the custodial death of his son. The police alleged that the deceased who had been arrested for the theft of some mobile phone committed suicide inside the lockup. Allegedly attempts by the petitioner to have an impartial post-mortem of the body of the deceased were thwarted by the police who was insisting on the theory of the suicide by hanging with the help of a shirt. It was alleged that the external injuries all over the body of the deceased were not explained and in fact the post-mortem report itself was not accurate as compared with the photographs. The petitioner and his other family members gave a statement setting out the facts.

Pursuant to notice issued in this case, the State filed its response that an FIR had been registered and certain police officials had been charged for commission of offences punishable under Sections 330, 342 and 306 IPC. Sanction for prosecution had been given and the charge-sheet had been filed. The accused persons had surrendered before the CJM and their bail applications had been rejected. Cognizance of the aforesaid offences had been taken. It was submitted that the police after investigation had not found any evidence of murder and, therefore, the charge-sheet had been filed accordingly. Counsel for the petitioner submitted that it was a clear case of custodial torture and death and by giving a colour of Section 306 IPC, an attempt was being made to protect the erring police officials. It was also stated that the compensation should be paid.

Disposing of the petition in the terms below,

Held:

No compensation can be granted in the absence of any adjudication on the issue as to whether there was custodial death. In view of the fact that sanction for prosecution had been granted, charge-sheet had been filed and cognizance had been taken, no further direction at present is necessary. If at any point of time, evidence surfaces before the court concerned to show that some other offences appear to have been committed, necessary orders can be passed. (Paras 14 and 15). *Dalbir Singh* v. *State of U.P.*, (2009) 11 SCC 376: (2009) 3 SCC (Cri) 1388: AIR 2009 SC 1674: 2009 Cri LJ 1543: (2009) 75 AIC 115 (SC): (2009) 2 All LJ 661: (2009) 1 APLJ 110 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 3-2-2009]

Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble, (2003) 7 SCC 749, relied on

[2213] — Ss. 190 and 173 — Recalling of order taking cognizance — Permissibility — *Held, ordinarily, the same is not permissible*

In the present case, if it is to be accepted that the appellant-accused was entitled to the protection of Section 167, even after cognizance had been taken the Magistrate was not only required to declare the charge-sheet illegal, he was also required to recall his own order of taking cognizance. Ordinarily, he could not have done so. (Para 30). *Dinesh Dalmia* v. *CBI*, (2007) 8 SCC 770: (2007) 59 AIC 145 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927; Subramanium Sethuraman v. State of Maharashtra, (2004) 13 SCC 324: 2005 SCC (Cri) 242; Everest Advertising (P) Ltd. v. State (Govt. of NCT of Delhi), (2007) 5 SCC 54: (2007) 2 SCC (Cri) 444, relied on

[2214] — Ss. 190 and 192 — Police inaction in murder or suicide — *Only proper court can investigate — Supreme Court cannot in a petition determine such matter. Bhagwant Singh* v. *Commr. of Police*, (1983) 3 SCC 344: 1983 SCC (Cri) 637: AIR 1983 SC 826: 1983 Cri LJ 1081.

Bench Strength 2. Coram: *P.N. Bhagwati* and **R.S. Pathak**, JJ. [Date of decision: 6-5-1983]

[2215] — Ss. 190 and 193 — Cognizance of offence to be taken by Magistrate even if the case is exclusively triable by Sessions Court — *Magistrate's function under S. 190 is judicial*

Taking cognizance of an offence under S. 190 is a purely judicial function subject to judicial review by court of appeal or revision to which the Magistrate is subject. Cognizance of an offence even if exclusively triable by the Court of Session has to be taken by the Magistrate because S. 193 precludes the Court of Session from taking cognizance of any offence. *State of U.P.* v. *Lakshmi Brahman*, (1983) 2 SCC 372: 1983 SCC (Cri) 489: AIR 1983 SC 439: 1983 Cri LJ 839: 1983 ALJ 419.

Bench Strength 2. Coram: **D.A. Desai** and *R.B. Misra*, JJ. [Date of decision: 11-3-1983]

[2216] — Ss. 190 and 193 — Methods of taking cognizance of offence

The Code of Criminal Procedure has prescribed four known methods of taking cognizance of offences by the courts competent to try the same. The court has to take cognizance of the offence before initiation of the proceeding can be contemplated. The court called upon to take cognizance of the offence must apply its mind to the facts placed before it either upon a police report or upon a complaint or in some other manner the court came to know about it and in the case of Court of Session upon commitment of the case by the Magistrate. *A.R. Antulay* v. *Ramdas Sriniwas Nayak*, (1984) 2 SCC 500: 1984 SCC (Cri) 277: AIR 1984 SC 718: 1984 Cri LJ 647: 1984 Bom LR 228.

Bench Strength 5. Coram: **D.A. Desai**, *R.S. Pathak, O. Chinnappa Reddy, A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

[2217] — Ss. 190 and 197 — Proper materials should be placed before the court to substantiate the claim that the allegations made in the complaint were false — *There must be some foundation for the allegation and minute details are not neces-*

sary — At the cognizance stage, veracity of the allegations are not examined. B. Saha v. *M.S. Kochar*, (1979) 4 SCC 177: 1979 SCC (Cri) 939: AIR 1979 SC 1841: 1979 Cri LJ 1367: (1979) 16 ACC 318.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *O. Chinnappa Reddy*, JJ. [Date of decision: 27-7-1979]

[2218] — Ss. 190 and 200 to 203, 154 and 156 — Information to police regarding commission of cognizable offence — Accused alleged to have made speeches likely to disturb communal harmony — No action taken by police — Proper remedy in case of — *Held, in such a case, complainant is given power under S. 190 r/w S. 200 CrPC to lay the complaint before the Magistrate concerned — Then Magistrate is required to enquire into the complaint as provided in Ch. XV CrPC — Writ petition in such a case, held, not maintainable — Constitution of India, Arts. 32 and 226* (Paras 6 to 8). *Aleque Padamsee* v. *Union of India*, (2007) 6 SCC 171: (2007) 3 SCC (Cri) 1: 2007 Cri LJ 3729: (2007) 56 AIC 20 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P.K. Balasubramanyan* and *D.K. Jain*, JJ. [Date of decision: 18-7-2007]

All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India, (1996) 11 SCC 582: 1997 SCC (Cri) 303; Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310; Hari Singh v. State of U.P., (2006) 5 SCC 733: (2006) 3 SCC (Cri) 63, applied

Ramesh Kumari v. State (NCT of Delhi), (2006) 2 SCC 677: (2006) 1 SCC (Cri) 678; Lallan Chaudhary v. State of Bihar, (2006) 12 SCC 229: (2007) 1 SCC (Cri) 684, clarified and distinguished

[2219] — Ss. 190 and 200 to 203, 154 and 156 — Information to police regarding commission of cognizable offence — No action taken by police — *Held, in such a case, complainant is given power under S. 190 r/w S. 200 CrPC to lay the complaint before the Magistrate concerned — Then the Magistrate is required to enquire into the complaint as provided in Ch. XV CrPC — Writ petition in such a case, held, not maintainable* (Para 13). *Gangadhar Janardan Mhatre* v. *State of Maharashtra*, (2004) 7 SCC 768: (2004) 114 DLT 193.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 28-9-2004]

All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India, (1996) 11 SCC 582: 1997 SCC (Cri) 303, relied on

Applied in Aleque Padamsee v. Union of India, (2007) 6 SCC 171

[2220] — Ss. 190, 154, 173 and 200 — Serious offences — Delay in institution of prosecution — Effect of — *Held, mere delay in approaching a court of law is not a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict — Maxims — Nullum tempus aut locus occurrit regi*

The provisions as to limitation have been inserted by Parliament in the larger interest of administration of criminal justice keeping in view two conflicting considerations:

(*i*) the interest of persons sought to be prosecuted (prospective accused);

(*ii*) and organs of State (prosecuting agencies). (Para 20)

The general rule of criminal justice is that "a crime never dies". The principle is reflected in the well-known maxim *nullum tempus aut locus occurrit regi* (lapse of time is no bar to Crown in proceeding against offenders). The Limitation Act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114, 115, 131 and 132 of the Act. It is settled law that a criminal offence is considered as a wrong against the State and the society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a court of law has no power to throw away prosecution *solely* on the ground of delay. Mere delay in approaching a court of law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict. (Para 14)

But it also cannot be overlooked that no person can be kept under continuous apprehension that he can be prosecuted at "any time" for "any crime" irrespective of the nature or seriousness of the offence. "People will have no peace of mind if there is no period of limitation even for petty offences." (Para 16). *Japani Sahoo* v. *Chandra Sekhar Mohanty*, (2007) 7 SCC 394: (2007) 3 SCC (Cri) 388: AIR 2007 SC 2762: (2007) 3 KLT 760: 2007 Cri LJ 4068.

Bench Strength **2**. Coram: **C.K. Thakker** and *Tarun Chatterjee*, JJ. [Date of decision: 27-7-2007]

Asstt. Collector of Customs v. L.R. Melwani, AIR 1970 SC 962: (1969) 2 SCR 438: 1970 Cri LJ 885, relied on

[2221] — S. 190 — Cognizance of offence taken after more than 21 years of lodging of FIR — *FIR lodged on 5-8-1979, but for unknown reasons, proceedings not placed before the Magistrate, who was to take cognizance, for more than ten years (from year 1990 to 2000) — Who played that mischief not found out — Due to the efforts of appellant, case placed before the ACJM and cognizance of the offence under S. 302 IPC taken against the respondent on 28-1-2000 — Considering respondent's* *contention that the case had been dragged on for a long period of 21 years without any fault on the part of the accused, High Court dropping the prosecution by holding that the cognizance of the matter was taken in a mechanical manner — Held, it is the duty of the courts to see that neither the victim nor the accused suffers by mischief of the investigating agency or the staff of the court — Further, the said ground was not sufficient for dropping the prosecution where the accused were involved for the offences punishable under Ss. 302, 147, 148 and 149 IPC — The instant case, held, revealed a sorry state of affairs in administration of justice by the court concerned. Ram Ekbak Missir* v. *Ram Niwash Pandey*, (2002) 8 SCC 161: 2002 SCC (Cri) 1870: AIR 2002 SC 3523.

Bench Strength **2**. Coram: **M.B. Shah** and *D.M. Dharmadhikari*, JJ. [Date of decision: 9-10-2002]

[2222] — S. 190 — Complaint — Three/four months' delay in filing — On facts, held, not fatal to the maintainability of the complaint — Infraction of person of lady outraging her modesty despite her objection, with culpable intention — Conviction under, held on facts, was justified — *Senior police officer (DGP in the present case) despite objection from a lady gently slapping her on her posterior in the presence of guests at a dinner party — By doing so with culpable intention, held, he committed the offence under Ss. 354 and 509 IPC — Since immediately thereafter the victim reported the matter to various officers present there and pursued the matter with other authorities including the Chief Secretary and the Governor and after 10 days lodged an FIR with the police but finding those efforts to have gone in vain her husband filed a complaint with the CJM after a period of three/four months, such delay, held, not fatal to the maintainability of the complaint — Moreover, in view of the concurrent findings of fact recorded by two courts and affirmed by High Court in revision, held, High Court's order upholding the conviction could not be set aside on mere assertion by the accused that the whole incident was falsely foisted on him with ulterior motives — Penal Code, 1860 — Ss. 354 and 509*

On 18-7-1988, a senior IAS officer invited some IAS and IPS officers, advocates and journalists for a dinner at 8.30 p.m. at his residence. Ladies were sitting in a semi-circle slightly away from the male guests. The appellant accused, who was the then DGP of the State of Punjab, allegedly came and occupied a chair which was lying vacant at the place where the ladies were sitting. On the pretext of some intended talks the accused asked the prosecutrix to sit near him and when she intended to do so the accused pulled the chair close to his chair and on resistance from the prosecutrix repeated that act. The prosecutrix then returned to her original seat. The accused again reached there and despite objection from the prosecutrix, pressed her to accompany him. Moreover, the accused blocked her way. The prosecutrix then tried to get away from the place whereupon the accused slapped on the posterior of the prosecutrix in the presence of other guests. The prosecutrix then made a complaint to the host who got the accused gently removed from that place. She thereafter brought the matter to the notice of the Chief Secretary with the request to take suitable action against the accused. She also met the Advisor to the Governor, the Secretary to the Governor as well as the Governor with the same purpose. On 29-7-1988, she gave a written complaint to the police and a case was registered but no further step was taken. After about four months, the husband of the prosecutrix filed a complaint before the CJM. The complaint culminated in conviction of the accused under Sections 354 and 509, IPC. He was sentenced to undergo a sentence of imprisonment and to pay fine but the appellate court directed the accused to be released on probation in lieu of custodial sentence. However, it enhanced the amount of fine to Rs 50,000. The High Court upheld the conviction but enhanced the fine further to Rs 2,00,000, the entire of which was directed to be given to the prosecutrix. The present cross appeals were filed against that judgment.

Denying the correctness of the findings, the appellant accused contended that the entire case was falsely foisted on him. Much emphasis was laid by him on the delay of three months in the filing of the complaint.

On the other hand the complainant in her cross appeal solicited enhancement of the appeal. Moreover, she submitted that the amount of compensation awarded in her favour should instead be given to any women's organisation engaged in doing service for the cause of women.

Dismissing both the appeals, but referring the matter of disposal of the compensation to the High Court,

Held :

Although there was some delay in filing the complaint before the Magistrate, but that by itself was not sufficient to reject the complaint put forward by the prosecutrix. It is important that she recounted the entire incident immediately to the

Chief Secretary and other officers and raised objections and also sought for stringent action against the accused. When she failed in all these attempts, she and her husband filed a criminal complaint before the Chief Judicial Magistrate. There is nothing to suggest that the prosecutrix acted in connivance with some others and that she hatched a conspiracy to malign the accused. If the whole incident is viewed in correct perspective, it is clear that the behaviour of the accused on the date of the incident was not consistent with the high standard expected of a top-ranking police officer. The findings of the various courts is to the effect that the accused gently slapped on the posterior of the prosecutrix in the presence of some guests. This act on the part of the accused would certainly constitute the ingredient of Section 354 IPC. It is proved that the accused used criminal force with the intent to outrage the modesty of the complainant and that he knew fully well that gently slapping on the posterior of the prosecutrix in the presence of other guests would embarrass her. Knowledge can be attributed to the accused that he was fully aware that touching the body of the prosecutrix at that place and time would amount to outraging her modesty. Had it been without any culpable intention on the part of the accused, nobody would have taken notice of the incident. The prosecutrix made such a hue and cry immediately after the incident and the reaction of the prosecutrix is very much relevant to take note of the whole incident. The accused being a police officer of the highest rank should have been exceedingly careful and failure to do so and by touching the body of the complainant with culpable intention he committed the offence punishable under Sections 354 and 509 IPC. In view of the findings of fact recorded by the two courts and affirmed by the High Court in revision, the order of the High Court cannot be set aside on mere assertion by the accused that the whole incident was falsely foisted on him with ulterior motives. (Para 4)

As regards the appeal filed by the complainant, it is relevant that the incident happened in 1988. Despite the accused holding a high position in the State police, the various courts found him guilty of the offence punishable under Sections 354 and 509 IPC and that by itself is setting a model for others and would enhance the faith in the judicial system. The accused has completed the period of probation. There was no occasion for any complaint or violation of any of the terms of the bond. At this juncture, it would not be just and proper to resort to any other punishment. (Para 6). *Kanwar Pal Singh Gill* v. *State*, (2005) 6 SCC 161: 2005 SCC (Cri) 1420: AIR 2005 SC 3104: 2005 Cri LJ 3443.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 27-7-2005]

[2223] — Ss. 190 and 319 — Maxims — Generalia specialibus non derogant — Contention that court takes cognizance of an offence and not of an offender and hence where cognizance had already been taken as against one J, no fresh sanction was required against D for same offence — *Held, such contention holds good only when Magistrate takes cognizance under S. 190 CrPC — Further held, Prevention of Corruption Act is a special statute and hence maxim* ***generalia specialibus non derogant*** *would apply — Hence, S. 19 of PC Act, will have an overriding effect over the general provisions of S. 190 or S. 319 CrPC — Special Judge trying an offence under the PC Act cannot summon another accused and proceed against him in purported exercise of power under S. 319 CrPC in absence of valid sanction — Prevention of Corruption Act, 1988, Ss. 13(2) and 19(1)* (Paras 3 and 8). *Dilawar Singh* v. *Parvinder Singh*, (2005) 12 SCC 709.

Bench Strength 2. Coram: *H.K. Sema* and **G.P. Mathur**, JJ. [Date of decision: 8-11-2005]

Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423: AIR 1967 SC 1167: 1967 Cri LJ 1081, distinguished on facts

Godde Venkateswara Rao v. Govt. of A.P., (1966) 2 SCR 172: AIR 1966 SC 828; State of Bihar v. Dr. Yogendra Singh, (1982) 1 SCC 664: 1982 SCC (L&S) 142; Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 27, relied on

***Followed in** Paul Varghese v. State of Kerala, (2007) 14 SCC 783*

[2224] — Ss. 190 and 482 — Power of Magistrate to issue process against more persons on the basis of private complaint — *Power of High Court to interfere with such exercise of power — Propriety of High Court going into merits at such stage — Right of such accused to pray for discharge upon committal under S. 227, CrPC, 1973*

Under S. 190, Criminal Procedure Code, 1973, the Magistrate takes cognizance of an offence made out in the police report or in the complaint and there is nothing like taking cognizance of the offenders at that stage. As to who actually the offenders are is to be decided by the Magistrate after taking cognizance of the offence.

The Magistrate is restricted to find out whether there was a prima facie case or not for proceeding against the accused, and he cannot enter into a detailed discussion of the merits and demerits of the case, and hence, the scope of the revisional jurisdiction of the High Court is limited and the High Court cannot launch on a detailed and meticulous examination of the merits of the case.

The respondents, however, are at liberty to invoke the provisions of S. 227 of the Criminal Procedure Code and it is open to the Court of Session, after committal of the case, to discharge the accused if, upon a consideration of the record it considers that there are no sufficient grounds for proceeding against the accused. *Hareram Satpathy* v. *Tikaram Agarwala*, (1978) 4 SCC 58: 1978 SCC (Cri) 496: AIR 1978 SC 1568: 1978 Cri LJ 1687.

Bench Strength 2. Coram: **Jaswant Singh** and *P.S. Kailasam*, JJ. [Date of decision: 24-8-1978]

[2225] — Ss. 190, 193, 238 to 250 — Court of Special Judge — Position of — *Enjoys all powers conferred on court of original jurisdiction functioning under High Court except those specifically conferred under the Act — For enjoying powers under the Code, Special Judge need not fall within the category of 'Magistrate' or 'Sessions Judge' specified in the Code — Criminal Law (Amendment) Act, 1952, Ss. 8 and 9*

The Court of Special Judge is a court of original jurisdiction under the High Court. As such in order to make it functionally oriented some powers were conferred by the statute setting up the court. Except those specifically conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hidebound by the terminological status description of Magistrate or a Court of Session. Therefore, the view that a Special Judge must fit in the slot of a 'Magistrate' or a 'Court of Session' in order to make the provisions of CrPC applicable is erroneous.

The provisions in the CrPC relating to trial of warrant cases by Magistrate, which has been made applicable by S. 8(1) of the Act, include both the trial of cases initiated upon police report and those initiated otherwise than on police report. In order to give full effect to S. 8(1), the word 'Special Judge' has to be read in Ss. 238 to 250, CrPC wherever the expression 'Magistrate' occurs. This is legislation by incorporation. *A.R. Antulay* v. *Ramdas Sriniwas Nayak*, (1984) 2 SCC 500: 1984 SCC (Cri) 277: AIR 1984 SC 718: 1984 Cri LJ 647: 1984 Bom LR 228.

Bench Strength 5. Coram: **D.A. Desai**, *R.S. Pathak, O. Chinnappa Reddy, A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

[2226] — Ss. 190 and 193 — Power of Court of Special Judge to take cognizance of offence enumerated in Ss. 6(1)(a) and (b), PC Act — *Includes taking cognizance upon private complaint but excludes that upon commitment of accused by Magistrate under S. 193, CrPC — Criminal Law (Amendment) Act, 1952, S. 8(1)*

Section 5-A of the Prevention of Corruption Act is a safeguard against investigation of offences committed by public servants, by petty or lower rank police officer. It has nothing to do directly or indirectly with the mode and method of taking cognizance of offences by the Court of Special Judge.

Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations. Therefore, in the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statue, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code. The Code prescribes four methods for taking cognizance upon a complaint, or upon a report of the police officer or where the Magistrate himself comes to know of the commission of offence through some other source and in the case of Sessions Court upon a commitment by the Magistrate. The Court of the Special Judge as the expression is used in S. 8(3) of the 1952 Act is a criminal court and in view of S. 9 of that Act it is under the appellate and administrative control of the High Court. It must take cognizance of offences with a view to trying the same but it shall not take it on commitment of the accused to the court, as provided under S. 193, CrPC. Thus under S. 8(1) the Special Judge can take cognizance of offences enumerated in Ss. 6(1)(*a*) and (*b*) upon a complaint or upon a police report or upon his coming to know in some manner of the offence having been committed. Therefore, the Special Judge can take cognizance of offences committed by public servants upon receiving a complaint of facts constituting such offences.

There is no warrant for the approach that on receipt of the private complaint the Special Judge must direct an investigation under S. 5-A, for to a person accused of an offence there is no better safeguard than a court. This is constitutionally epitomised under Art. 22 and equally accepted by the Legislature as is evidenced from numerous provisions of CrPC such as Ss. 161, 164 and also S. 25 of the Evidence Act.

Section 8(1) does not show any preference in the matter of modes of taking cognizance of offences. If S. 190, CrPC is not attracted in case of the Special Judge, all the three modalities of taking cognizance would not be available. *A.R. Antulay* v. *Ramdas Sriniwas Nayak*, (1984) 2 SCC 500: 1984 SCC (Cri) 277: AIR 1984 SC 718: 1984 Cri LJ 647: 1984 Bom LR 228.

Bench Strength 5. Coram: **D.A. Desai**, *R.S. Pathak*, *O. Chinnappa Reddy*, *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

[2227] — Ss. 190 (Ch. XIV), 200, 202 (Ch. XV) and 204 (Ch. XVI) — Cognizance of offences under FERA, 1973 after coming into effect of FEMA, 1999 — Limitation period for — Applicability — Word "cognizance" — Meaning of, point in time and determination of occurrence of cognizance — Distinction with issuance of process — *When used with reference to a court or Judge, "cognizance" connotes "to take notice of judicially" — It occurs simultaneously with the application of mind by the court or Magistrate to the suspected commission of an offence — Moreover, it precedes commencement of criminal proceedings — Whether cognizance of an offence was taken or not depends on the facts and circumstances of each case and no rule of universal application can be laid down to determine it — Hence, where complaint under Ss. 18(2) & (3), 68(1) and 56(1)(ii), Foreign Exchange Regulation Act, 1973 was filed as well as cognizance thereof taken after the commencement of Foreign Exchange Management Act, 1999 but within the limitation period under S. 49(3) of the latter Act, held, High Court erred in equating issuance of process with taking cognizance and quashing the proceedings as time-barred merely because the process was issued after the limitation period under S. 49(3) — FERA, 1973, Ss. 18(2) & (3), 68(1), 56(1)(ii) and 40 — Foreign Exchange Management Act, 1999, S. 49(3)*

The respondent Company entered into an agreement with a foreign (Russian) importer for supply of certain goods for a certain amount. Pursuant to summons issued under Section 40 of the Foreign Exchange Regulation Act, 1973 (FERA), a Director of the Company appeared before the Department on 25-4-1999. He stated that he had procured the goods for export from certain other foreign suppliers (Japanese and Korean) and due to fluctuation in rate of exchange of the relevant currency, he had to pay more rupees to the said foreign suppliers than received from the foreign (Russian) importer. On 24-5-2002, the appellant complainant, in his official capacity, filed a criminal complaint alleging that the respondent Company had failed to take steps to realise the export proceeds to the extent specified within the stipulated period of six months and had thereby contravened Sections 18(2) and 18(3) read with Section 68(1), punishable under Section 56(1)(*ii*) of FERA. On the same day i.e. on 24-5-2002, after hearing the Department, the Magistrate took cognizance of the offence and issued summons to the accused. On 3-2-2003 he issued process requiring the respondent to appear before the court and answer the charge under FERA.

At the instance of the respondent Company, the High Court quashed the proceedings initiated against it, on the ground that cognizance could be said to have been taken when process was issued and since process was issued in February 2003, the proceedings were time-barred. The complainant Department then filed the present appeal by special leave.

Before the Supreme Court, the appellant Department contended that the High Court erred in equating taking cognizance of an offence with issuance of process and in holding that the cognizance was taken after the limitation period. That under Section 49(3) of the Foreign Exchange Management Act, 1999 (FEMA) which came into force from 1-6-2000, cognizance of an offence under FERA could have been taken within a period of two years from the date of commencement thereof. That cognizance was taken by the Magistrate on 24-5-2002 i.e. the day when complaint was filed which was well within the limitation period. It was alternatively submitted that the relevant date for counting the limitation period was not the date of taking cognizance or issuance of process by the court but the date of filing the complaint. That the complaint filed on 24-5-2002 was within limitation.

On the other hand, supporting the order of the High Court, the respondent Company contended, inter alia, that cognizance of an offence under FERA could have been taken under FEMA latest by 1-6-2002. That therefore the process issued in February 2003 was time-barred. It added that the material date for computing the limitation period was the date of taking cognizance by the court and not the date of filing of the complaint.

Allowing the appeal,

Held:

The High Court was in error in equating issuance of process with taking cognizance by a criminal court and in quashing the proceedings treating them as time-barred. (Para 18)

The expression "cognizance" has not been defined in CrPC. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone. (Para 19)

"Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance. (Para 20)

The underlying object of the inquiry under Section 202 is to ascertain whether there is *prima facie* case against the accused. It thus allows a Magistrate to form an opinion whether the process should or should not be issued. The scope of inquiry under Section 202 is extremely limited. At that stage, what a Magistrate is called upon to see is whether there is *sufficient ground for proceeding with the matter* and not whether there is *sufficient ground for conviction of the accused*. (Para 22)

Chapter XVI (Commencement of proceedings before Magistrates) containing Section 204, whereunder process can be issued, will apply only after cognizance of an offence has been taken by a Magistrate under Chapter XIV containing Section 190 which empowers a Magistrate to take cognizance of an offence in certain circumstances. (Paras 23 and 21)

Thus, from the scheme of CrPC it is clear that "Initiation of proceedings", dealt with in Chapter XIV, is different from "Commencement of proceedings" covered by Chapter XVI. For commencement of proceedings, there must be initiation of proceedings. In other words, initiation of proceedings must precede commencement of proceedings. Without initiation of proceedings under Chapter XIV, there cannot be commencement of proceedings before a Magistrate under Chapter XVI. The High Court was not right in equating initiation of proceedings under Chapter XIV with commencement of proceedings under Chapter XVI. (Para 24)

In the present case, cognizance of the offence was taken by the Magistrate on 24-5-2002 i.e. the day on which the complaint was filed. The Magistrate, after hearing the Department, took cognizance of the offence and passed the order for issuing summons to the accused under Sections 18(2), (3) of FERA, 1973 read with Central notification and Sections 68(1) and 56(1) of the said Act and Sections 49(3) and (4) of FEMA, 1999. Undoubtedly, the process was issued on 3-2-2003. However, it was in pursuance of the cognizance taken by the court on 24-5-2002 that a subsequent action was taken under Section 204 under Chapter XVI. Taking cognizance of offence was entirely different from initiating proceedings; râther it was the condition precedent to the initiation of the proceedings. The High Court therefore, was not right in equating taking cognizance with issuance of process and in holding that the complaint was barred by law and criminal proceedings were liable to be quashed. (Paras 35 to 37). *Chief Enforcement Officer* v. *Videocon International Ltd.*, (2008) 2 SCC 492: (2008) 1 SCC (Cri) 471: AIR 2008 SC 1213: 2008 Cri LJ 1636.

Bench Strength 2. Coram: **C.K. Thakker** and *P.P. Naolekar*, JJ. [Date of decision: 25-1-2008]

R.R. Chari v. State of U.P., AIR 1951 SC 207: 1951 SCR 312; Narayandas Bhagwandas Madhavdas v. State of W.B., AIR 1959 SC 1118: (1960) 1 SCR 93; Ajit Kumar Palit v. State of W.B., AIR 1963 SC 765: 1963 Supp (1) SCR 953; Hareram Satpathy v. Tikaram Agarwala, (1978) 4 SCC 58: 1978 SCC (Cri) 496; Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986; Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521; Darshan Singh Ram Kishan v. State of Maharashtra, (1971) 2 SCC 654: 1971 SCC (Cri) 628; Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380; M.L. Sethi v. R.P. Kapur, AIR 1967 SC 528: (1967) 1 SCR 520, relied on

Supdt. & Remembrancer of Legal Affairs v. Abani Kumar Banerjee, AIR 1950 Cal 437, approved

[2228] — Ss. 190 to 210, 225 to 235 and 238 to 250 — Army Rules, 1954 — Rr. 45, 41, 43 and 48 — Limitation of six months prescribed for commencement of trial of an offender who ceases to be subject to the provisions of the Act — Trial when commences — Expression "trial commenced" in S. 123(2), Army Act, 1950 — Meaning of — *Held, trial commences when GCM assembles and examination of charge is undertaken and not when oath is administered to the members, etc. — Even on narrow interpretation, accused himself being responsible for delay by escaping from detention, he cannot take advantage of his own wrong — Maxim "nullus commodum capere potest de injuria sua propria" would apply — Army Act, 1950, Ss. 123(2) (as it stood prior to amendment by Act 37 of 1992) and 122(3)*

At the relevant time the respondent was working as Major General, Army Ordnance Corps, Southern Command, Pune and was in charge of purchase. The Controller General of Defence Accounts in special audit on the local purchases sanctioned by the respondent prima facie found that the respondent had derelicted his duty and action under the Army Act was initiated against him. The respondent had retired from service on 31-8-1986. He was kept under open arrest from 26-8-1986. General Court Martial (GCM) was ordered on 24-2-1987 and the GCM assembled to try the respondent on 25-2-1987. The respondent was directed to be produced on 26-2-1987 but he escaped from lawful military custody on the intervening night of 15 and 16-2-1987 and voluntarily surrendered on 1-3-1987. The respondent challenged the jurisdiction of the court martial to try him. The Division Bench of the Bombay High Court allowed the writ petition and held that the trial of the accused had not commenced within six months of his ceasing to be subject to the Army Act. The trial by the court martial was, therefore, held to be illegal and accordingly writ was issued. The question before the Supreme Court was on which date did the trial of the respondent commence? In other words, whether the trial of the respondent commenced within six months from the date of his retirement viz. 31-8-1986? By prescription of six months' limitation under sub-section (2), the trial of the respondent was to commence before 28-2-1987. Consequently, the question, therefore, is: what is the meaning of the words "trial commenced" as used in sub-section (2) of Section 123 and as to when it commences?

Held :

The words "trial commences" employed in Section 123(2) shall be required to be understood in the light of the scheme of the Act and the Rules. Trial means act of proving or judicial examination or determination of the issues including *its own* jurisdiction or authority in accordance with law or adjudging guilt or innocence of the accused including all steps necessary thereto. The trial commences with the performance of the first act or steps necessary or essential to proceed with the trial.

It would be seen from the scheme of the Act and the Rules that constitution of court martial for trial of an offence under the Act is a precondition for commencement of trial. Members of the court martial and the presiding officer on nomination get jurisdiction to try the person for offence under the Act. Before actual trial begins, oath would be administered to the members of the court martial, the Judge-Advocate and the staff. The regular trial begins and ends with recording the proceedings either convicting and sentencing or acquitting the accused. Thus two views would be possible while considering as to when the trial commences. The broader view is that the trial commences the moment the GCM assembles for proceeding with the trial, consideration of the charge and arraignment of the accused to proceed further with the trial including all preliminaries like objections to the inclusion of the members of the court martial, reading out the charge/charges, amendment thereof etc. The narrow view is that trial commences with the actual administration of oath to the members etc. and to the prosecution to examine the witnesses when the accused pleads not guilty.

It is true that the legislature has made a distinction between Section 122(3) and Section 123(2). While in the former, power to exclude time taken in specified contingencies is given, in the latter, no such provision is made for exclusion of the time since the accused will be kept under detention after he ceased to be governed by the Act. It is equally settled law that penal provisions would be construed strictly. From a conspectus of the scheme of the Act and the Rules, the broader view appears to be more conducive to and consistent with the scheme of the Act and the Rules. As soon as GCM assembles the members are charged with the duty to examine the charge/charges framed in summary trial, to give an opportunity to the accused to exercise his right to object to the empanelment of member/members of the GCM, to amend the charge and the right to plead guilty or not guilty. These procedural steps are integral and inseparable parts of the trial. If the accused pleads guilty, further trial by adducing evidence by the prosecution is obviated. The need for adduction of evidence arises only where the accused pleads "not guilty". In that situation, the members are required to take oath or affirmation according to Rule 45. The members get right, power and duty to try an accused only on appointment and the same ends with the close of the particular case. Therefore, Rule 45 insists on administration of oath in the prescribed manner. Therefore, the occasion to take oath as per the procedure for GCM and the right of the members of the GCM arises with their empanelment as GCM and they get power to try the accused the moment they assemble and commence examination of the case, i.e., charge-sheet and the record. The trial, therefore, must be deemed to have commenced the moment the GCM assembles and examination of the charge is undertaken.

Under the Code of Criminal Procedure, 1973 trial commences the moment cognizance of the offence is taken and process is issued to the accused for his appearance etc. Equally, at a sessions trial, the court considers the committal order under Section 209 by the Magistrate and proceeds further. It takes cognizance of the offence from that stage and proceeds with the trial. The trial begins with the taking of the cognizance of the offence and taking further steps to conduct the trial.

Even if a narrow interpretation is plausible, on the facts in this case, the trial began on 25-2-1987 on which date the court martial assembled, considered the charge and the prosecution undertook to produce the respondent who was found escaped from the open detention, before the Court. On consideration of the charge, the proceedings were adjourned from day to day till the respondent appeared on 2-3-1987. It is obvious that the respondent had avoided trial to see that the trial would not get commenced. Under the scheme of the Act and the Rules, presence of the accused is a precondition for commencement of trial. In his absence and until his presence was secured, it became difficult, nay impossible, to proceed with the trial of the respondent-accused. In this behalf, the maxim *nullus commodum capere potest de injuria sua propria* — meaning no man can take advantage of his own wrong — squarely stands in the way of avoidance by the respondent and he is estopped from pleading the bar of limitation contained in Section 123(2). Therefore, even on the narrow interpretation continuation of trial from 2-3-1987 which commenced on 25-2-1987 is not a bar and it is a valid trial.

The respondent had frustrated the trial by escaping from detention and reappeared after the limitation for trial of the offence was barred. Therefore, disallowing the trial on ground of delay would amount to putting a premium on avoidance. *Union of India* v. *Madan Lal Yadav*, (1996) 4 SCC 127: 1996 SCC (Cri) 592: AIR 1996 SC 1340.

Bench Strength 3. Coram: **K. Ramaswamy**, *S. Saghir Ahmad* and *G.B. Pattanaik*, JJ. [Date of decision: 22-3-1996]

Harish Chandra Bajpai v. Triloki Singh, AIR 1957 SC 444: 1957 SCR 370; Om Prabha Jain v. Gian Chand, AIR 1959 SC 837: ILR 1959 Punj 1631, relied on

Devi Lal v. State of Rajasthan, (1971) 3 SCC 471: 1971 SCC (Cri) 719, distinguished

Gulab Nath Singh v. Chief of the Army Staff, 1974 Ass LR 260, overruled

— S. 190(1) *See* Ss. 156(3), 190(1), 200 and 4

See also Ss. 173(2), 169 and 203 & 190(1)

See also Ss. 203, 173(1) and 190(1)

See also Ss. 239, 240, 227, 190(1), 156(3) and 468

See also Ss. 309 & 190(1)

See also Ss. 482, 190(1) & 204

See also Ss. 482, 190(1), 204, 233 & 243

[2229] — S. 190(1) — Magistrate not debarred from taking cognizance on a complaint merely on the ground that he had earlier declined to take cognizance on police report. *Gopal Vijay Verma* v. *Bhuneshwar Prasad Sinha*, (1982) 3 SCC 510: 1983 SCC (Cri) 110.

Bench Strength 2. Coram: *O. Chinnappa Reddy* and *V. Balakrishna Eradi*, JJ. [Date of decision: 17-11-1982]

[2230] — S. 190(1) — Prevention of Corruption Act, 1947, S. 6 — Court takes cognizance of an offence and not an offender. *State of W.B.* v. *Manmal Bhutoria*, (1977) 3 SCC 440: 1977 SCC (Cri) 520: AIR 1977 SC 1772: 1977 Cri LJ 1164: 1977 MLJ (Cri) 592.

Bench Strength 2. Coram: **P.K. Goswami** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 3-5-1977]

[2231] — Ss. 190(1), 173(2), 169, 200 and 202 — Magistrate's power to take cognizance of offence — Conclusion drawn by IO — Effect — *Report forwarded by police to Magistrate that no case made out against accused — Held, the Magistrate can ignore the conclusion arrived at by IO — He can independently apply his mind to the facts emerging from investigation and take cognizance, if he thinks fit, by exercising powers under S. 190(1)(b) CrPC — Not bound to follow the procedure under Ss. 200 and 202 for taking cognizance under S. 190(1)(a) CrPC though open to him to act under S. 200 or S. 202 also*

There is no obligation on the Magistrate to accept the police report if he does not agree with the opinion formed by the police. The power to take cognizance notwithstanding formation of the opinion by the police which is the final stage in the investigation has been provided for in Section 190(1)(*c*). (Para 10)

When a report forwarded by the police to the Magistrate under Section 173(2)(*i*) is placed before him several situations arise: the report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (*1*) accept the report and take cognizance of the offence and issue process, or (*2*) may disagree with the report and drop the proceeding, or (*3*) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he again has option of adopting one of the three courses open i.e. (*1*) he may accept the report and drop the proceeding; or (*2*) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (*3*) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(*b*) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(*b*) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(*b*) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(*a*) though it is open to him to act under Section 200 or Section 202 also. (Para 11). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

Abhinandan Jha v. Dinesh Mishra, (1967) 3 SCR 668: AIR 1968 SC 117: 1968 Cri LJ 97; India Carat (P) Ltd. v. State of Karnataka, (1989) 2 SCC 132: 1989 SCC (Cri) 306; Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404, relied on

Applied in Aleque Padamsee v. Union of India, (2007) 6 SCC 171

[2232] — Ss. 190(1), 173(2), 169, 200 and 202 — Magistrate's power to take cognizance of offence — Report forwarded by police to Magistrate that no case made out against accused — *Held, the Magistrate can ignore the conclusion arrived at by IO — He can independently apply his mind to the facts emerging from investigation and take cognizance, if he thinks fit, by exercising powers under S. 190(1)(b) CrPC — Not bound to follow the procedure under Ss. 200 and 202 for taking cognizance under S. 190(1)(a) CrPC though open to him to act under S. 200 or S. 202 also*

The functions of the magistracy and the police are entirely different, and the Magistrate cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion so as to accord with his view. However, he is not deprived of the power to proceed with the matter. There is no obligation on the Magistrate to accept the report if he does not agree with the opinion formed by the police. The power to take cognizance notwithstanding formation of opinion by the police which is the final stage in the investigation has been provided for in Section 190(1)(*c*) CrPC. (Para 8)

When a report forwarded by the police to the Magistrate under Section 173(2)(*i*) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (*1*) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (*3*) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e. (*1*) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (*3*) he may direct further investigation to be made by the police under Section 156(3). (Para 9)

Therefore, upon receipt of a police report under Section 173(2) CrPC a Magistrate is entitled to take cognizance of an offence under Section 190(1)(*b*) CrPC even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(*b*) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(*b*) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 CrPC for taking cognizance of a case under Section 190(1)(*a*) though it is open to him to act under Section 200 or Section 202 also. (Para 9).

Gangadhar Janardan Mhatre v. *State of Maharashtra*, (2004) 7 SCC 768: (2004) 114 DLT 193.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 28-9-2004]

Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: 1968 Cri LJ 97: (1967) 3 SCR 668; India Carat (P) Ltd. v. State of Karnataka, (1989) 2 SCC 132: 1989 SCC (Cri) 306: AIR 1989 SC 885, relied on

[2233] — Ss. 190(1)(b), 173(2), 209, 228, 227 and 319 — Power of Magistrate to take cognizance against accused named in FIR but not in charge-sheet, on basis of police report itself — *Held, even if investigating authority is of view that no case is made out against accused, Magistrate can apply his mind independently to materials contained in police report and take cognizance based thereupon under S. 190(1)(b) — In instant case investigation had been handed over to CID and both CID and local police had submitted their reports in final form exonerating petitioner of allegations made against him in FIR — However, CJM was entitled to take cognizance under S. 190(1)(b) on basis of police report itself — Moreover, petitioner's application for discharge had been dismissed and a date was fixed for framing of charge by Sessions Court — Penal Code, 1860, Ss. 302 and 291/34* (Paras 19 to 21). *Uma Shankar Singh* v. *State of Bihar*, (2010) 9 SCC 479: (2010) 4 UPLJ 39.

Bench Strength 2. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 9-9-2010]

India Carat (P) Ltd. v. State of Karnataka, (1989) 2 SCC 132: 1989 SCC (Cri) 306; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: 1968 Cri LJ 97: (1967) 3 SCR 668, relied on

Dharam Pal v. State of Haryana, (2004) 13 SCC 9: (2006) 1 SCC (Cri) 273, clarified and distinguished on facts

Raj Kishore Prasad v. State of Bihar, (1996) 4 SCC 495: 1996 SCC (Cri) 772; Ranjit Singh v. State of Punjab, (1998) 7 SCC 149: 1998 SCC (Cri) 1554; Kishun Singh v. State of Bihar, (1993) 2 SCC 16: 1993 SCC (Cri) 470; Kishori Singh v. State of Bihar, (2004) 13 SCC 11: (2006) 1 SCC (Cri) 275, considered

[2234] — Ss. 190(1), 209, 216 and 223 — Cognizance of offence not included in charge-sheet — Permissibility — *Cognizance can be taken by Magistrate of an offence (under S. 395 IPC) not included in the charge-sheet submitted by police and thereafter, on being prima facie satisfied on the basis of evidence collected by police, about commission of that offence also by some persons other than those arrested by police, it is the duty of the Magistrate to proceed against those persons also — Penal Code, 1860, Ss. 147, 148, 323, 324, 149, 427 and 395*

A Magistrate has jurisdiction to take cognizance of offences against such persons also who have not been arrested by the police as accused persons, if it appears from the evidence collected by the police that they were prima facie guilty of the offence alleged to have been committed. Section 209 refers back to Section 190, as is evident from the words "instituted on a police report" used in Section 190(1)(*b*) of the Code. The cognizance taken by the Magistrate was of the offence and not of the offenders. Having taken cognizance of the offence, a Magistrate can find out who the real offenders were and if he comes to the conclusion that apart from the persons sent by the police some other persons were also involved, it is his duty to proceed against those persons as well. (Para 11). *Rajinder Prasad* v. *Bashir*, (2001) 8 SCC 522: 2002 SCC (Cri) 28: AIR 2001 SC 3524.

Bench Strength 2. Coram: *M.B. Shah* and **R.P. Sethi**, JJ. [Date of decision: 19-9-2001]

Krishnan v. Krishnaveni, (1997) 4 SCC 241: 1997 SCC (Cri) 544; Raghubans Dubey v. State of Bihar, AIR 1967 SC 1167: (1967) 2 SCR 423: 1967 Cri LJ 1081; SWIL Ltd. v. State of Delhi, (2001) 6 SCC 670, relied on

(2001) 1 Raj Cri Cas 33, reversed

[2235] — Ss. 190(1) and 173 — Where police filed a final report that no offence as alleged in FIR was made out — *Magistrate passing an order accepting the final report by observing that despite service of notice the aggrieved person had failed to appear to oppose the final report but the protest complaint was passed thereafter on the same allegations — Whether Magistrate can take cognizance of the case and initiate proceedings on the protest complaint — Question referred to a larger Bench for deciding the legal position involved in the case. Kishore Kumar Gyanchandani* v. *G.D. Mehrotra*, (2001) 10 SCC 59.

Bench Strength 2. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 25-1-2001]

[2236] — Ss. 190(1) and 200 & 154, 156 — Simultaneous proceedings of civil and criminal nature in a given matter — Permissibility of — Initiation of criminal proceedings on basis of observations made by trial court in civil matter — *Stay of criminal proceedings by High Court in civil appeal — Challenge to — Sustainability of — Held, civil and criminal proceedings in a given matter can proceed simultaneously — Question whether civil or criminal proceedings must be stayed would depend upon the facts and circumstances of each case — Where an independent criminal proceeding was filed in terms of certain observations/findings made by trial court in civil case, the said criminal proceeding was not barred under any statute — Although High Court in civil appeal could go into the correctness of the said observations/findings and could set aside these observations/findings, it could not stay the investigation in the criminal case — Thus, the order passed by High Court in relation to the said stay,* *not sustainable — Hence, set aside — CPC, 1908, Ss. 96 and 9* (Paras 11, 13, 14, 18, 10 and 16)

The appellant was owner of a cinema theatre. An agreement of sale was entered into between the appellant and the respondent in respect of the said property for a consideration of Rs 64 lakhs. The respondent made an advance of Rs 32,97,000. A suit for specific performance of contract was filed by the respondent as no deed of sale was executed in terms of the said agreement. During hearing of the said suit, a receipt was filed by the respondent showing payment of a sum of Rs 4,03,000 to the appellant. The said receipt was marked as Exhibit A-15. On the said basis, allegedly, possession of the theatre was obtained by the respondent. The trial court found that the respondent-plaintiff failed to prove its case. The said court opined that the signature of DW 1 was forged in Ext. A-15. In this view it was held that the contention of the plaintiff and the evidence of PW 1 that on 18-9-2002 the plaintiff paid Rs 4,03,000 towards part of sale consideration and DW 1 delivered possession of plaint schedule theatre to him was not true. The trial court observed that the respondent-plaintiff approached the court with unclean hands. In these facts and circumstances, the trial court dismissed the said suit.

On the basis of the above observations made by the trial court regarding the forgery of document i.e. Ext. A-15, a first information report was lodged by the appellant-defendant. On the other hand, the respondent-plaintiff preferred an appeal against the said judgment and decree passed by the trial court. In the said appeal, the High Court granted interim relief to the plaintiff (respondent herein) and also stayed the investigation of the criminal case.

Allowing the appeal filed against the stay of the investigation in the criminal case, the Supreme Court decided as above. *P. Swaroopa Rani* v. *M. Hari Narayana*, (2008) 5 SCC 765: (2008) 3 SCC (Cri) 79: AIR 2008 SC 1884: (2008) 3 CHN 95 (SC): (2008) 106 Cut LT 539.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 4-3-2008]

M.S. Sheriff v. State of Madras, AIR 1954 SC 397; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101; Institute of Chartered Accountants of India v. Assn. of Chartered Certified Accountants, (2005) 12 SCC 226: (2006) 1 SCC (Cri) 544, relied on

Mahar Jahan v. State of Delhi, (2004) 13 SCC 421: (2006) 1 SCC (Cri) 320, distinguished on facts

[2237] — Ss. 190(1) & 200 and 204 — Taking cognizance of the offence — Meaning of — *Held, once the court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence — Absence of words "cognizance taken" in the order would make no difference — Taking of cognizance distinguished from issuance of process — Complaint under S. 138 of the Negotiable Instruments Act, 1881 — High Court holding that Magistrate issued process against the respondents without taking cognizance of the offence, and since taking of cognizance was a condition precedent, the issuance of process was bad — Record indicating that Magistrate had taken cognizance — The said order passed by High Court, held, not sustainable — Contention that cognizance taken was improper due to non-application of mind by Magistrate, not acceptable — Hence, High Court's order set aside — Negotiable Instruments Act, 1881, Ss. 138 and 141*

Cognizance is taken of the offence and not of the offender and, therefore, once the court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. The record shows that the Magistrate took cognizance and fixed the matter for recording of the statement of the complainant on 1-6-2000. Even if it is assumed, though that is not the case, that the words "cognizance taken" were not to be found in the order recorded by him on that date, that would make no difference. (Para 10)

One should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the court decides to proceed against the offenders against whom a prima facie case is made out. It is possible that a complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance and examining the complainant on oath, the court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. It may also be that having considered the complaint, the court may consider it appropriate to send the complaint to the police for investigation under Section 156(3) CrPC. Many other situations can be conceived in which a Magistrate may not take cognizance at all, for instance, a case where he finds that the complaint is not made by the person who in law can lodge the complaint, or that the complaint is not entertainable by that court, or that cognizance of the offence alleged to have been committed cannot be taken without the sanction of the competent authority, etc. These are cases where the Magistrate will refuse to take cognizance and return the complaint to the complainant. But if he does not do so and proceeds to examine the complainant and such other evidence as the complainant may produce before him then, it should be held to have taken cognizance of the offence and proceeded with the inquiry. (Para 10)

Therefore, in the facts and circumstances of this case, the High Court erred in holding that the Magistrate had not taken cognizance, and that being a condition precedent, issuance of process was illegal. (Para 10)

It is further submitted that cognizance even if taken was improperly taken because the Magistrate had not applied his mind to the facts of the case. There is no merit in this submission. So far as taking of cognizance is concerned, in the facts and circumstances of this case, it has been taken properly after application of mind. The Magistrate issued process only after considering the material placed before him. Therefore, the judgment and order of the High Court is unsustainable and must be set aside. (Para 11). *CREF Finance Ltd.* v. *Shree Shanthi Homes (P) Ltd.*, (2005) 7 SCC 467: 2005 SCC (Cri) 1697: (2005) 127 Comp Cas 311.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 23-8-2005]

Ajit Kumar Palit v. State of W.B., 1963 Supp (1) SCR 953: (1963) 1 Cri LJ 797, relied on

— S. 190(1)(a) *See* Ss. 2(c) & (d), 154, 155(2) & 190(1)(a) and (b)

See also Ss. 154(1), 154(2), 154(3), 157(1), 190(1)(a) and 200

See also Ss. 156(3), 173(2), 154 and 190(1)(a) & (b)

See also Ss. 200, 190(1)(a), 204, 300 and 482

See also Ss. 204 and 190(1)(a)

See also Ss. 204, 190(1)(a) and 178

See also Ss. 204, 190(1)(a) and 200

See also Ss. 482 and 200 first proviso, 190(1)(a) & 204

[2238] **— S. 190(1)(a) — Corporate criminal liability — TDS — AY 1989-1990 — Liability of company and Directors** — *Where the assessee company failed to pay into the account of Central Government the amount of tax deducted at source, the company or its directors, held, not immune from prosecution — That a company is not a natural person, inconsequential — IT Act, 1961, Ss. 200, 201 (Ch. XVII), 276-B, 278-B (Ch. XXII) and 2(20), (31) & (35) — Companies Act, 1956, S. 2(13)*

The appellant Company filed its returns for AY 1989-1990 on 29-12-1989. A certain amount deducted by it as TDS was not credited by it in time as required by Sections 194-C and 200 of the Income Tax Act, 1961 (for short "the Act") read with Rule 30 of the Income Tax Rules, 1962 (for short "the Rules"). However, it credited the same with interest later on. Therefore, alleging that having violated Section 276-B of the Act, the Company had committed an offence punishable under Section 278-B of the Act, the Department required the appellant Company and its Directors (Appellants 2 to 4 herein) to show cause against the proposed proceedings. The show-cause notice added that Appellants 2 to 4 were to be considered as "principal officers" within the meaning of Section 2(35) of the Act.

In its reply, the Company denied any violation of the provisions of the Act on its part and stated that there was "reasonable cause" for the delay in payment. In that regard, it stated certain circumstances. Rejecting the Company's reply, the CIT granted sanction under Section 279 of the Act to prosecute the Company and its Directors. Accordingly, a complaint was filed against the appellants in the trial court. The appellants filed applications under Section 245 CrPC for discharge.

The trial court rejected the said applications. After unsuccessfully approaching the revisional court thereagainst, the appellants approached the High Court by a petition under Section 482 CrPC. That petition was dismissed for default of appearance. However, at the appellant's instance, it was restored to file but was heard on the same day, and was summarily rejected. The appellants then filed the present appeal by special leave and obtained stay against the impugned order.

Before the Supreme Court, the appellants submitted that: (*i*) the Company was not a natural person but merely a legal or juristic person and hence neither the Company nor its Directors and officers could be punished for such an act, (*ii*) Appellants 2 to 4 could not be said to be "principal officers" under the Act and no prosecution could be initiated against them, and moreover, a separate notice and/or communication ought to have been issued before issuance of show-cause notice under Section 276-B read with Section 278-B of the Act that the Directors were to be treated as principal officers under the Act, (*iii*) the present case was not one of non-payment of tax but merely of some delay in crediting the amount and therefore there was no reason for prosecuting the Company and/or its Directors, (*iv*) the appellants had shown "reasonable cause" for delay in depositing the amount and therefore, the sanction for prosecution granted by CIT suffered from non-application of mind as in view of Section 278-AA of the Act, the present case was not a fit one for prosecution, (*v*) criminal prosecution was a drastic step and should not be taken lightly particularly when there were several provisions in the Act for payment of interest, penalty, etc., (*vi*) Appellant 4 was a lady who could not be said to be in charge of business or management and therefore, the order to prosecute her was not sustainable, (*vii*) the alleged defaults were committed almost two long decades ago whereas the Revenue had not suffered and, therefore, by exercising plenary powers under Article 136 read with Article 142 of the Constitution, the proceedings should be ordered to be dropped, and (*viii*) an appropriate direction should be issued to the trial court to dispense with the personal presence of Respondents 2-4, (*ix*) on restoring the matter, the High Court could not have insisted on the appellants to proceed with the matter on merits on the same day, and (*x*) since the matter raised important questions of law, the same could not have been dismissed by the High Court by a non-speaking order.

Dismissing the appeal,

Held :

From Sections 200, 201 (Ch. XVII), 276-B, 278-B (Ch. XXII) and 2(20), (31), & (35) of the Act, it is clear that wherever a company is required to deduct tax at source and to pay it to the account of the Central Government, failure on the part of the company in deducting or in paying such amount is an offence under the Act and has been made punishable. It, therefore, cannot be said that the prosecution against a company or its Directors in default of deducting or paying tax is not envisaged by the Act. (Para 27)

Although a company is not a natural person but "legal" or "juristic" person, that does not mean that company is not liable to prosecution under the Act. "Corporate criminal liability" is not unknown to law. (Paras 28 and 29). *Madhumilan Syntex Ltd.* v. *Union of India*, (2007) 11 SCC 297: (2008) 1 SCC (Cri) 143: AIR 2007 SC 1481: (2007) 210 ELT 484: (2007) 290 ITR 199.

Bench Strength 2. Coram: **C.K. Thakker** and *P.K. Balasubramanyan*, JJ. [Date of decision: 23-3-2007]

Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530: 2005 SCC (Cri) 961, followed

[2239] — S. 190(1)(a) — Complaint against Directors of company — Necessary averments in, for maintainability of complaint — Maintainability — AY 1989-1990 — Company defaulting in paying into the account of Central Government the amount of TDS — *Show-cause notice issued under Ss. 276-B and 278-B, IT Act to the company and its Directors as well as the complaint filed against them stating that the said Directors were considered to be principal officers under S. 2(35), Income Tax Act — Such a complaint, held, maintainable — Whether the said allegation was correct or incorrect would be a matter of evidence and could be decided at the trial but such a complaint could not be held to be not maintainable — Moreover, in such a case no separate notice stating that the Directors were to be treated as principal officers need be issued to them — Therefore, grant of sanction by CIT to prosecute them, held, valid — IT Act, 1961, Ss. 276-B, 278-B, 2(35) and 279*

From the statutory provisions, it is clear that to hold a person responsible under the Act, it must be shown that he/she is a "principal officer" under Section 2(35) of the Act or is "in charge of" and "responsible for" the business of the company or firm. It is also clear from case law that where necessary averments have been made in the complaint, initiation of criminal proceedings, issuance of summons or framing of charge, cannot be held illegal and the court would not inquire into or decide correctness or otherwise of the allegations levelled or averments made by the complainant. It is a matter of evidence and an appropriate order can be passed at the trial. (Para 43)

In the present case, in the show-cause notice issued under Section 276-B read with Section 278-B of the Act, it was expressly stated that the Directors were considered to be principal officers under Section 2(35) of the Act. In the complaint filed by the CIT also, it was stated that the appellants were considered as principal officers. Therefore, it cannot be held that the complaint filed against the appellants, particularly against Appellants 2-4 was ill-founded or not maintainable. (Para 44)

No independent and separate notice to the effect that the Directors were to be treated as principal officers under the Act was necessary and when in the show-cause notice it was stated that the Directors were to be considered as principal officers under the Act and a complaint was filed, such complaint was entertainable by a court provided it was otherwise maintainable. (Para 45). *Madhumilan Syntex Ltd.* v. *Union of India*, (2007) 11 SCC 297: (2008) 1 SCC (Cri) 143: AIR 2007 SC 1481: (2007) 210 ELT 484: (2007) 290 ITR 199.

Bench Strength 2. Coram: **C.K. Thakker** and *P.K. Balasubramanyan*, JJ. [Date of decision: 23-3-2007]

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115, explained

MCD v. Purshottam Das Jhunjhunwala, (1983) 1 SCC 9: 1983 SCC (Cri) 123; Monaben Ketanbhai Shah v. State of Gujarat, (2004) 7 SCC 15: 2004 SCC (Cri) 1857; S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975, followed

Puran Devi v. Z.S. Klar, (1988) 169 ITR 608 (P&H); K. Subramanyam v. ITO, (1993) 199 ITR 723 (Mad); Jamshedpur Engg. & Machine Mfg. Co. Ltd. v. Union of India, (1995) 214 ITR 556 (Patna); M.A. Unneerikutty v. CIT, (1996) 218 ITR 606 (Kerala), approved

Sham Sunder v. State of Haryana, (1989) 4 SCC 630: 1989 SCC (Cri) 783; State of Karnataka v. Pratap Chand, (1981) 2 SCC 335: 1981 SCC (Cri) 453, considered

[2240] — S. 190(1)(a) — Expression "taking cognizance of an offence" — *Meaning of*

This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of S. 190 and the caption of Chapter XIV under which Ss. 190 to 199 occur, it is clear that a case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in cls. (*a*), (*b*) and (*c*) of S. 190(1). Whether the magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the magistrate. Broadly speaking, when on receiving a complaint, the magistrate applies his mind for the purposes of proceeding under S. 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of S. 190(1)(*a*). If, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under S. 156(3), he cannot be said to have taken cognizance of any offence. *Devarapally Lakshminarayana Reddy* v. *V. Narayana Reddy*, (1976) 3 SCC 252: 1976 SCC (Cri) 380: AIR 1976 SC 1672: 1976 Cri LJ 1361.

Bench Strength 3. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *Jaswant Singh*, JJ. [Date of decision: 4-5-1976]

Distinguished in State, CBI v. Sashi Balasubra- manian, (2006) 13 SCC 252: (2007) 3 SCC (Cri) 337

[2241] — **S. 190(1)(a) — Private complaint — Unexplained delay of a long period of more than one year in filing** — *Such delay rightly held by High Court to be a vulnerable circumstance* (Para 23). *Shakila Abdul Gafar Khan* v. *Vasant Raghunath Dhoble*, (2003) 7 SCC 749: 2003 SCC (Cri) 1918: AIR 2003 SC 4567.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-9-2003]

[2242] — **Ss. 190(1)(a), 200, 204, 173 and 482 — Power to take cognizance of offence — Final report submitted by police stating the complaint to be false** — *Held, notwithstanding the opinion of police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose — At this stage, a Magistrate has only to decide whether there is sufficient ground to proceed and not whether there is sufficient ground for conviction — Order passed by Magistrate taking cognizance of offence — Challenge to, before High Court under S. 482 CrPC — On facts, held, High Court rightly declined to interfere*

The complainant *R* was a Class IV employee in Ayurvedic Aushdhalaya, Fatehgarh. According to *R* on 7-11-1985 when the appellant, a District Ayurvedic Officer, visited the said place several patients were present. The appellant asked *R* to bring water. When *R* brought water, he was insulted by the appellant who said to him that he did not want to spoil his religion by drinking water from the hands of *R*. Thereafter, the appellant started abusing *R*. Hence, *R* filed a complaint in the Court of Chief Judicial Magistrate alleging commission of offence under Section 7 of the Protection of Civil Rights Act, 1955. The said complaint was sent to police for investigation. After completing the investigation the police submitted a final report under Section 173 CrPC stating that the complaint was false. After the submission of the final report, *R* filed another complaint. On considering the said complaint, the Additional Chief Judicial Magistrate (ACJM) found a prima facie case and so he took cognizance and issued process against the appellant. The order issuing the process was challenged by the appellant in a revision petition filed before the Sessions Judge which was dismissed. On a petition filed under Section 482 CrPC, the orders of the ACJM and the Sessions Judge were set aside by the High Court. The case was remanded to the trial court with direction that the trial court should consider the entire material available on record before deciding whether the process should be issued against the appellant or not. After remand, the Magistrate again reached the same conclusion and took cognizance by order dated 22-1-1990. This led to filing of another petition under Section 482 CrPC by the appellant. The High Court set aside the order dated 22-1-1990 and observed that the ACJM while disagreeing with the final report should have given some reasons for not accepting it. This time also the case was remanded to the Magistrate directing him to consider the material available on record and thereafter pass an appropriate order. The Magistrate again considered the matter for the third time, but reached the same conclusion. Hence, the appellant filed a third petition under Section 482 CrPC challenging the order taking cognizance. But this time the High Court held that no case for exercising inherent powers under Section 482 CrPC was made out. Therefore, the appellant challenged the said judgment of the High Court by filing the instant appeal.

One of the contentions urged in this appeal for quashing the criminal proceedings was long delay of 19 years.

Dismissing the appeal,

Held :

It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. Further, at the stage of issuing the process to the accused, the Magistrate is not required to record reasons. (Para 10)

The order passed by the Magistrate taking cognizance is a well-written order. The High Court has rightly concluded that the said order does not call for any interference under Section 482 CrPC. (Paras 10 and 11). *Jagdish Ram* v. *State of Rajasthan*, (2004) 4 SCC 432: 2004 SCC (Cri) 1294: AIR 2004 SC 1734.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *Arijit Pasayat*, JJ. [Date of decision: 9-3-2004]

Chief Controller of Imports & Exports v. Roshanlal Agarwal, (2003) 4 SCC 139: 2003 SCC (Cri) 788, relied on

[2243] — Ss. 190(1)(a), 200 and 204 — Cognizance of offences under Ss. 403, 406, 420 and 120-B IPC — Validity — Essential ingredients of S. 403 — *Held, words "dishonestly" and "misappropriate" used in S. 403 are the necessary ingredients of the said section — Neither of these ingredients satisfied where a contractor having received payments for works completed failed to pay his sub-contractor, the complainant — Order taking cognizance of the offences under Ss. 403, 406, 420 and 120-B IPC, held, was therefore not proper — Penal Code, 1860, Ss. 403, 406, 420 and 120-B*

Bokaro Steel Plant awarded a contract of certain works to TCPL company. But, TCPL instead getting the said work done by the complainant company after entering into a separate contract with it. On completion of the said work, TCPL failed to pay the balance amount due under the contract to the complainant. Hence, a complaint under Sections 403, 406, 420 and 120-B IPC was filed against the appellants alleging therein that TCPL misappropriated the money received from Bokaro Steel Plant instead of paying it to the complainant company. The Magistrate concerned took cognizance of the alleged offences and issued summons to the appellants. The High Court declined to interfere in the said order.

Allowing the appeals,

Held :

Section 403 IPC uses the words "dishonestly" and "misappropriate". These are necessary ingredients of an offence under the said section. (Para 7)

The rights and obligations of the parties i.e. the complainant and TCPL are to be governed by the contract between them for which the contract between TCPL and Bokaro Steel (SAIL) has no relevance. Therefore, even if Bokaro Steel has made the payment to TCPL under its contract with the latter, it will not give rise to plea of misappropriation of money because that money is not money or movable property of the complainant. Thus, it cannot be said that there is any dishonest intention on the part of the appellants nor can it be said that TCPL or the appellants have misappropriated or converted the movable property of the complainant to their own use. (Paras 6 and 8)

Since the basic ingredients of Section 403 are not satisfied, the impugned orders of the High Court as well as of the Chief Judicial Magistrate are hereby ordered to be quashed. (Para 8). *U. Dhar* v. *State of Jharkhand*, (2003) 2 SCC 219: 2003 SCC (Cri) 490: AIR 2003 SC 974: 2003 Cri LJ 1224.

Bench Strength 2. Coram: *M.B. Shah* and **Arun Kumar**, JJ. [Date of decision: 20-1-2003]

[2244] — Ss. 190(1)(a) and 200 — Cognizance of offence when can be said to have been taken, explained

As to when cognizance of an offence is taken will depend upon the facts and circumstances of each case and it is not possible to state the same with precision. Obviously, it is only when the Magistrate applies his mind for the purpose of proceeding under Section 200 CrPC and subsequent sections that it can positively be stated that he has taken cognizance. (Para 4). *Bhagat Ram* v. *Surinder Kumar*, (2004) 11 SCC 622.

Bench Strength 3. Coram: *S. Rajendra Babu*, *B.N. Agrawal* and *G.P. Mathur*, JJ. [Date of decision: 13-2-2004]

Narayandas Bhagwandas Madhavdas v. State of W.B., AIR 1959 SC 1118: 1959 Cri LJ 1368; Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380, relied on

[2245] — Ss. 190(1)(a) & 200 and 173 — Cognizance of an offence on a protest/complaint petition after the acceptance of final report — *Held, merely because the Magistrate has accepted a final report, the same by itself would not stand in* *his way to take cognizance of the offence on a protest/complaint petition* (Para 12). *Mahesh Chand* v. *B. Janardhan Reddy*, (2003) 1 SCC 734: 2003 SCC (Cri) 425: AIR 2003 SC 702.

Bench Strength **3**. Coram: *M.B. Shah, D.M. Dharmadhikari* and **S.B. Sinha**, JJ. [Date of decision: 4-12-2002]

[2246] — Ss. 190(1)(a) & (b) and 173(2), 200 & 202 — Powers of Magistrate under — Cognizance of an offence by Magistrate — *Held, Magistrate has ample power to take cognizance even when the police report is to the effect that the investigation has not made out any offence against the accused — In such cases, further held, he is not bound to follow the procedure laid down in Ss. 200 and 202, though it is open to him to act under those provisions also*

The respondent, a Minister holding different portfolios, was charged under Section 13(1)(*e*) of the Prevention of Corruption Act, 1988, for acquiring disproportionate assets to a tune of about Rs 14 lakhs. The period under consideration was from June 1980 to November 1989. A charge-sheet was thereafter submitted and cognizance was taken by the Special Court on 27-3-1991. A petition filed by the accused on 25-7-1997 seeking reinvestigation was rejected by the Special Court on 3-1-1998. Thereafter a representation was again made by the respondent in July 1998 when he was a Minister to consider his income from the sale of paddy in the said case and sought reinvestigation on that basis. Accordingly, an application was made by the investigating officer before the Special judge seeking reinvestigation. The Special Judge ordered that it was open to the IO to do so. In the final report after reinvestigation dated 29-9-1998, it was observed that no material to prove the charge of disproportionate assets was made out. The Special Court did not accept the final report and concluded that there was prima facie case requiring the framing of charge. The order framing the charge was quashed by the High Court. Hence the present appeal by the appellant State.

Allowing the appeal,

Held :

A Magistrate has ample power to take cognizance of an offence under Section 190(1)(*b*) even when the police report is to the effect that the investigation has not made out any offence against an accused. A Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 CrPC for taking cognizance of a case under Section 190(1)(*a*) CrPC though it is open to him to act under Section 200 or Section 202. (Para 4). *State of Orissa* v. *Habibullah Khan*, (2003) 12 SCC 129.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *B.N Agrawal*, JJ. [Date of decision: 16-12-2003]

Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: (1967) 3 SCR 668: 1968 Cri LJ 97; H.S. Bains v. State (Union Territory of Chandigarh), (1980) 4 SCC 631: 1981 SCC (Cri) 93; India Carat (P) Ltd. v. State of Karnataka, (1989) 2 SCC 132: 1989 SCC (Cri) 306, relied on

— S. 190(1)(b) *See* Ss. 2(c) & (d), 154, 155(2) & 190(1)(a) and (b)

See also Ss. 156(3), 173(2), 154 and 190(1)(a) & (b)

See also Ss. 173 and 190(1)(b)

See also Ss. 173, 190(1)(b), 156(3), 200, 203 and 204

See also Ss. 173(8) & (2) and 190(1)(b)

See also Ss. 190(1)(a) & (b) and 173(2), 200 & 202

See also Ss. 197 and 190(1)(b) & (c)

See also Ss. 437, 173(2) and 190(1)(b)

See also Ss. 482, 156, 190(1)(b) & 204

See also Ss. 482, 190(1)(b), 204, 173, 169 and 362

[2247] — S. 190(1)(b) — Appeal against quashing of FIR/complaint by High Court — *Police report that allegations made in FIR not made out accepted by Magistrate — Instead of directing the Magistrate to decide afresh, Supreme Court itself deciding whether prima facie it was a fit case for taking cognizance under S. 190(1)(b) CrPC — Sufficient material prima facie found to be existing for taking cognizance of the offence — Order quashing FIR set aside and CJM directed to take cognizance and try the case himself — Constitution of India, Art. 136*

Two courses are left open to the Court: to direct the Magistrate to hear the parties afresh on the question of acceptance of the police report and pass a reasoned order or to decide for itself whether it is a fit case for taking cognizance under Section 190(1)(*b*) CrPC. Keeping in view the fact that the case is pending for the last seven years only on the threshold question it is not desirable to take the former course as that would only delay the matter further. Instead thereof, looking carefully into the police report and its accompaniments, keeping in view the observations in *H.S. Bains case*, it must be held that the opinion of the Investigating Officer that the allegations contained in the FIR were not substantiated by the statements of witnesses recorded during investigation is not a proper one, for there are sufficient materials for taking cognizance of the offences under Sections 354 and 509

IPC. (Paras 28 and 29). *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*, (1995) 6 SCC 194: 1995 SCC (Cri) 1059: AIR 1996 SC 309.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 12-10-1995]

[2248] — Ss. 190(1)(b), 200, 202 and 204 — Despite police report that no case made out against the accused, magistrate can take cognizance of offence under S. 190(1)(b) taking into account the statement of witnesses made under police investigation and issue process — *Whether investigation commenced pursuant to a complaint made before the magistrate or a report made to the police would not make any difference in this context*

On the basis of a report made to Commissioner of Police by the appellant against the second respondent alleging commission of cheating and criminal breach of trust, the police made investigation and submitted a 'B' report to the court stating that further investigation was not required as the case was of a civil nature. The appellant approached the Second Additional Chief Metropolitan Magistrate for quashing the report and for grant of permission to him to prove the commission of offences by the second respondent. The Magistrate, after perusing the investigation records came to the view that a prima facie case was made out against the second respondent and consequently he passed an order for registering a calendar case against him under Ss. 408 and 420 IPC and for issuing summons to him under S. 204 CrPC. The second respondent thereupon preferred a petition under S. 428 CrPC before High Court for setting aside the order of the Magistrate on the ground that the Magistrate had not followed the procedure laid down by the Code for taking cognizance of the case and issuing process to the accused after the police had sent a 'B' report in the case. The High Court allowed the petition. Allowing the present appeal by special leave, quashing the order of the High Court and restoring that of the Magistrate,

Held :

The Magistrate was entitled to direct the registration of a case against the second respondent and order the issue of summons to him.

Upon receipt of a police report under S. 173(2), CrPC a Magistrate is entitled to take cognizance of an offence under S. 190(1)(*b*) even if the police report is to the effect that no case is made out against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation taking into account the statements of the witnesses examined by the police during the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under S. 190(1)(*b*) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Ss. 200 and 202 for taking cognizance of a case under S. 190(1)(*a*) though it is open to him to act under S. 200 or S. 202 also. The fact that in this case the investigation had not originated from a complaint preferred to the Magistrate but had been made pursuant to a report given to the police would not alter the situation in any manner. Even if complaint had been preferred before the Magistrate and the Magistrate had ordered investigation under S. 156(3), the police would have to submit a report under S. 173(2). *India Carat (P) Ltd.* v. *State of Karnataka*, (1989) 2 SCC 132: 1989 SCC (Cri) 306: AIR 1989 SC 885: 1989 Cri LJ 963: (1989) 2 Crimes 483.

Bench Strength 3. Coram: *R.S. Pathak, C.J.* and **S. Natarajan** and *M.N. Venkatachaliah*, JJ. [Date of decision: 15-2-1989]

[2249] — Ss. 190(1)(b) and 173(2) — Power of Magistrate to take cognizance — Relevance of opinion of investigating officer — *Held, it is trite that the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion irrespective of the view expressed by the police in their report and decide whether an offence has been made out or not — This is because the purpose of the police report under S. 173(2), which will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom is primarily to enable the Magistrate to satisfy himself whether on the basis of the report and the material referred therein, a case for cognizance is made out or not* (Paras 11 and 12). *Fakhruddin Ahmad* v. *State of Uttaranchal*, (2008) 17 SCC 157: (2008) 6 All LJ 249: (2009) 1 ECrN 455 (SC): 2008 Cri LJ 4377: (2008) 3 APLJ 163 (SC).

Bench Strength 2. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 5-9-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[2250] — Ss. 190(1)(b) and 173 — Magistrate can take cognizance on a police report filed under S. 173 of the Code regarding an offence under Essential Commodities Act, 1955 — *Court can look into other papers and documents accompanying the report. Satya Narain Musadi* v. *State of Bihar,* (1980) 3 SCC 152: 1980 SCC (Cri) 660: AIR 1980 SC 506: 1980 Cri LJ 227.

Bench Strength 2. Coram: **D.A. Desai** and *O. Chinnappa Reddy*, JJ. [Date of decision: 17-9-1979]

[2251] — Ss. 190(1)(b), 173(2), 209, 228, 227 and 319 — Magistrates' power of enquiry if he disagreed with final report submitted by investigating authorities — Issue pending reference before larger Bench — Effect — *In present case, held, it is not necessary to wait for outcome of decision of said reference because in instant case issue was whether Magistrate can take cognizance against accused not named in charge-sheet on basis of police report itself, which is well settled — Magistrate in present case had not ordered any further enquiry — Constitution of India — Art. 141* (Paras 16 to 18). *Uma Shankar Singh* v. *State of Bihar*, (2010) 9 SCC 479: (2010) 4 UPLJ 39 (SC).

Bench Strength **2**. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 9-9-2010]

India Carat (P) Ltd. v. State of Karnataka, (1989) 2 SCC 132: 1989 SCC (Cri) 306; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: 1968 Cri LJ 97: (1967) 3 SCR 668, relied on

Dharam Pal v. State of Haryana, (2004) 13 SCC 9: (2006) 1 SCC (Cri) 273, clarified and distinguished on facts

Raj Kishore Prasad v. State of Bihar, (1996) 4 SCC 495: 1996 SCC (Cri) 772; Ranjit Singh v. State of Punjab, (1998) 7 SCC 149: 1998 SCC (Cri) 1554; Kishun Singh v. State of Bihar, (1993) 2 SCC 16: 1993 SCC (Cri) 470; Kishori Singh v. State of Bihar, (2004) 13 SCC 11: (2006) 1 SCC (Cri) 275, considered

[2252] — Ss. 190(1)(b) & 204, 200, 156(3), 468 and 401 — Private complaint — Order taking cognizance of alleged offence — Sustainability of — *Delay/laches in filing complaint — Dispute of civil nature — Absence of ingredients of alleged offence of cheating — As per the complaint A-1 executed an agreement to sell dated 25-12-1988 in respect of a house in favour of the wife of the complainant* **C** *and a sum of Rs 1,25,000 was paid in advance in respect thereof — Allegation that A-1 instead sold the said property to wife of A-4 — Legal notice dated 11-7-1996 issued by* **C** *calling upon A-1 to execute the sale deed — Replying to that notice on 18-7-1996, A-1 specifically denying the very existence of the said agreement and the receipt of Rs 1,25,000 —* **C**, *after keeping quiet for nearly 3 years from the date of reply of A-1, filing complaint on 17-5-1999 i.e. after a lapse of 101/2 years from the date of the alleged agreement — Held, the said complaint was not at all maintainable at this distance of time — It was liable to be dismissed on the question of inordinate laches on the part of the complainant himself — Further, the allegations in complaint were of a civil nature and did not prima facie disclose commission of alleged offence under S. 420 IPC — Police had given clean chit to A-2 to A-4 — Hence, the order of the Magistrate taking cognizance of the alleged offence, as confirmed by High Court in revision, was not sustainable — Penal Code, 1860, Ss. 420 and 415* (Paras 10 to 12). *Suresh* v. *Mahadevappa Shivappa Danannava*, (2005) 3 SCC 670: 2005 SCC (Cri) 783: AIR 2005 SC 1047.

Bench Strength **2**. Coram: *Ashok Bhan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 16-2-2005]

Suresh v. Mahadevappa Shivappa Danannavar, 2004 Cri LJ 3580 (Kant), reversed

[2253] — Ss. 190(1)(b) and 173(2) — Magistrate can take cognizance of offence if he is satisfied that material placed by the prosecution is sufficient for taking cognizance — *He is not debarred from doing so merely because police has filed an application, after submission of the charge-sheet, seeking permission to file supplementary charge-sheet — Power of Magistrate not controlled by the investigating agency — That the investigating officer termed the police report "incomplete" immaterial*

The purpose of submission of the police report with the details mentioned in sub-section (2) of Section 173 is to enable the Magistrate to satisfy himself, whether on the basis of the report and the material filed along with the police report, a case for taking cognizance has been made out or not. After applying his mind to the police report and the material submitted therewith, if the Magistrate is satisfied that cognizance of the offence is required to be taken, he shall proceed further in accordance with the provisions of the Code of Criminal Procedure. Section 190(1)(*b*) CrPC provides that a Magistrate has the power to take cognizance upon a police report of such facts as are provided therein on being satisfied that the case is a fit one for taking cognizance of the offence. Therefore, if the police report and the material filed therewith is sufficient to satisfy the Magistrate that he should take cognizance, his power is not fettered by the label which the investigating agency chooses to give to the report submitted by it under Section 173(2) CrPC. Merely, because the prosecution had filed an application, after submission of the charge-sheet, seeking permission to file "supplementary charge-sheet", it could not affect the jurisdiction of the Magistrate to take cognizance, if he was otherwise satisfied from the material placed before him along with the charge-sheet that cognizance of the offence was required to be taken. It is the jurisdiction of the Magistrate and Magistrate alone to decide whether the material placed by the prosecution with the report (charge-sheet) was sufficient to take cognizance or not. The power of the Magistrate to take cognizance cannot be controlled by the investigating agency, whose duty is only to investigate and place the facts and the evidence before the Magistrate. (Para 7)

In the present case the High Court quashed the order only because it was influenced by the application filed by the prosecution seeking permission to record additional evidence and file a "supplementary charge-sheet" and from that it inferred that the report filed by the prosecution was 'incomplete'. It cannot be said that if the investigating officer terms a police report as 'incomplete', it takes away the jurisdiction of the Magistrate to take cognizance of the offence, even if in the opinion of the Magistrate, the material is sufficient for him to be satisfied that it was a fit case for him to take cognizance of the offence. The Magistrate is not bound by the label given to the report or the charge-sheet by the investigating officer and it is for him to decide whether the report and the material on which it is based, is sufficient for him to take cognizance or not. (Para 8). *State of Maharashtra* v. *Sharadchandra Vinayak Dongre*, (1995) 1 SCC 42: 1995 SCC (Cri) 16: AIR 1995 SC 231: (1995) 1 Mah LJ 432: (1995) 32 ACC 25: 1995 Cr LR (SC) 114.

Bench Strength 3. Coram: *R.M. Sahai*, **Dr. A.S. Anand** and *N.P. Singh*, JJ. [Date of decision: 7-10-1994]

— S. 190(1)(c) *See* Ss. 197 and 190(1)(b) & (c)

— S. 191 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

— S. 192 *See also* S. 192, Criminal Procedure Code, 1898, p. 1051 in Vol. 2

— S. 192 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190 and 192

See also Ss. 340, 192 to 196, 227 and 482

[2254] — Ss. 192 and 190 — Transfer of case — Illegality in — Effect — *Transfer of case by the Chief Judicial Magistrate to the Magistrate without taking cognizance — Magistrate not debarred from taking cognizance of the offence*

A Magistrate who receives the case on transfer and takes cognizance would not become incompetent to do so merely because the sanction of transfer of the case to his file is not in accordance with law. The power to take cognizance has been conferred on a Magistrate by Section 190(1) of the Code and he would not be denuded of this power because the case has come to his file pursuant to some illegal order of the Chief Judicial Magistrate. The former would be exercising his power of taking cognizance even in such a case, because of his having received a complaint constituting the offence. It would not be material, for this purpose, as to how he came to receive the complaint — directly or on transfer from the Chief Judicial Magistrate. (Para 6). *Anil Saran* v. *State of Bihar*, (1995) 6 SCC 142: 1995 SCC (Cri) 1051: AIR 1996 SC 204.

Bench Strength 2. Coram: *K. Ramaswamy* and *B.L. Hansaria*, JJ. [Date of decision: 24-8-1995]

— S. 193 *See also* S. 193, Criminal Procedure Code, 1898, p. 1051 in Vol. 2

— S. 193 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190 & 193

See also Ss. 190, 193, 179 and 177

See also Ss. 190, 193 and 195 to 199 & 204

See also Ss. 190, 193, 238 to 250

See also Ss. 196, 190, 193 and 209

See also Ss. 209, 193, 26 and 306

See also Ss. 227, 193, 204, 211

See also Ss. 319 and 190, 193 & 209

See also Ss. 319, 193 and 209

See also S. 319 read with Ss. 209 and 193, 227, 228, 229, 230, 231 and 482

See also Ss. 340, 192 to 196, 227 and 482

See also Ss. 482 and 193, 190, 156 & 157

[2255] — S. 193 — Cognizance is taken of offence, not of offender

It is essential to bear in mind the fact that cognizance is in regard to the offence and not the offender. *Kishun Singh* v. *State of Bihar*, (1993) 2 SCC 16: 1993 SCC (Cri) 470: 1993 Cri LJ 1700: (1993) 1 Crimes 494: (1993) 1 BLJR 309.

Bench Strength 2. Coram: **A.M. Ahmadi** and *N.P. Singh*, JJ. [Date of decision: 11-1-1993]

[2256] — S. 193 — "Except as otherwise expressly provided" — *Means except positively provided differently in clear and unambiguous language*

Section 193 of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. A Court of Session can take cognizance only if "the case has been committed to it by a Magistrate", as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is, when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word "expressly" which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session. (Paras 11 and 12). *Moly* v. *State of Kerala*, (2004) 4 SCC 584: 2004 SCC (Cri) 1348: AIR 2004 SC 1890: 2004 Cri LJ 1812.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 23-3-2004]

[2257] — S. 193 — "Except otherwise expressly provided" — Means except positively provided differently in clear and unambiguous language

Section 193 of the Code imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. It can take cognizance only if "the case has been committed to it by a Magistrate", as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word "expressly" which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. As such the charge-sheet or complaint cannot straight away be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session. (Paras 10 and 11). *Gangula Ashok* v. *State of A.P.*, (2000) 2 SCC 504: 2000 SCC (Cri) 488: AIR 2000 SC 740: 2000 Cri LJ 819: (2000) 1 KLT 609.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 28-1-2000]

[2258] — S. 193 — Sessions Court has no jurisdiction to take cognizance of an offence directly except expressly provided so — *Special Court presided by Additional Sessions Judge constituted under S. 12-A of E.C. Act cannot get jurisdiction by a mere transfer of a case by the High Court — Essential Commodities Act, 1955, Ss. 12-A and 12-AA — Cognizance of offence under. Jagdish Prasad Gupta* v. *State of Rajasthan*, 1995 Supp (3) SCC 386: 1995 SCC (Cri) 924.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *Dr. A.S. Anand*, JJ. [Date of decision: 29-3-1994]

[2259] — S. 193 — Summoning any person — Once the case is committed to the Court of Session, bar under is lifted and the Court of Session can summon any person whose complicity in the commission of the crime can prima facie be gathered from the material on record (Para 9). *Nisar* v. *State of U.P.*, (1995) 2 SCC 23: 1995 SCC (Cri) 306: 1995 Cri LJ 2118: (1995) 32 ACC 148.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 9-11-1994]

Kishun Singh v. State of Bihar, (1993) 2 SCC 16: 1993 SCC (Cri) 470, followed

[2260] — Ss. 193 to 196, 199, 200, 205 to 211 — Ordering prosecutions casually — Direction to — *High Court by impugned judgment, besides holding that persons whose names were entered in revenue records, were alone entitled to notice, and others though may have an interest, were not so entitled directing Respondents 1 and 2 to initiate criminal action against appellants and private Respondents 7 to 18 "for playing fraud on the Government and the court, for making wrongful gains by filing writ petition which was not maintainable" — No finding that their claim was false or that they had furnished false information — Writ petition seeking to enforce or protect rights of the writ petitioners, purely based on legal contentions, cannot be termed as "playing of a fraud by the writ petitioners against the Government or the court" — Further held, power to order a prosecution has to be used sparingly and in exceptional circumstances, either to maintain majesty of law or to ensure that clearly established offences relating to fraud/forgery with reference to court proceedings do not go unprosecuted or unpunished — Ordering prosecutions in a casual manner while reversing the decision of a Single Judge in a writ petition, without any investigation or enquiry either by itself or by any independent investigation agency, is to be deprecated — Criminal law cannot be set into motion against a litigant, as a matter of course —*

Besides, provisions under which they were to be prosecuted were also not specified — Penal Code, 1860, Ss. 191 to 196, 198 to 210 and 228 (Paras 17 to 26). *S. Palani Velayutham* v. *Collector*, (2009) 10 SCC 664.

Bench Strength 2. Coram: **R.V. Raveendran** and *P. Sathasivam*, JJ. [Date of decision: 7-8-2009]

[2261] — Ss. 193, 190, 156, 157 and 173 — Error or irregularity in investigation — Cognizance on the basis of such investigation — Validity of — *Held, even if CBI committed an error or irregularity in submitting the charge-sheet without the approval of CVC, the cognizance taken by the Special Judge on the basis of such a charge-sheet could not be set aside*

The Supreme Court in *H.N. Rishbud case* has held that if cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating to investigation, the result of the trial, which follows it, cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice and that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial. Hence, even assuming for the sake of argument that CBI committed an error or irregularity in submitting the charge-sheet without the approval of CVC, the cognizance taken by the learned Special Judge on the basis of such a charge-sheet could not be set aside nor could further proceedings in pursuance thereof be quashed. (Para 21). *Union of India* v. *Prakash P. Hinduja*, (2003) 6 SCC 195: 2003 SCC (Cri) 1314: AIR 2003 SC 2612: 2003 Cri LJ 3117.

Bench Strength 2. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 7-7-2003]

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150: 1955 Cri LJ 526, followed

[2262] — Ss. 193, 209 and 319 — Cognizance of offences against persons not charge-sheeted, whose complicity in the crime comes to light from material available on record — *Power of Sessions Court to take such cognizance at stage of committal of case to it — In view of disagreement with ruling in* Ranjit Singh case, *(1998) 7 SCC 149, which had held that such power did not exist, matter referred to larger Bench. Dharam Pal* v. *State of Haryana*, (2004) 13 SCC 9.

Bench Strength 3. Coram: *Y.K. Sabharwal, Tarun Chatterjee* and *P.P. Naolekar*, JJ. [Date of decision: 1-12-2004]

Kishun Singh v. State of Bihar, (1993) 2 SCC 16: 1993 SCC (Cri) 470, affirmed

Ranjit Singh v. State of Punjab, (1998) 7 SCC 149: 1998 SCC (Cri) 1554, doubted

[2263] — Ss. 193, 209 and 319 — Sessions Court has jurisdiction, on committal of a case to it, to take cognizance of offence of persons not named as offenders, whose complicity in the crime comes to light from the material available on record — *Hence on committal under S. 209, Sessions Judge justified in summoning, without recording evidence, the appellants not named in police report under S. 173 to stand trial along with those already named therein — Sessions Court having jurisdiction under S. 193, mere exercise of power under a wrong provision (S. 319) would not render its order invalid*

An FIR was lodged naming 20 persons, including the two appellants, as assailants of the deceased who died in the occurrence. After investigation police submitted its report under S. 173 CrPC showing 18 persons other than the two appellants as offenders. The Magistrate committed the 18 persons named in the report to the Court of Session under S. 209 of the Code to stand trial. Before the Sessions Court, an application was presented under S. 319 of the Code praying that the material on record annexed to the report under S. 173 revealed the involvement of the two appellants also and hence they should be summoned and arraigned before the Court as accused persons along with the eighteen already named in the charge-sheet. Thereupon a show-cause notice was issued to the present two appellants in response whereto they contended that though they were not present at the place of occurrence, they were falsely named in the First Information Report and the investigating officer had rightly omitted their names from the charge-sheet filed in Court. The Sessions Judge rejected the plea and in exercise of discretion under S. 319 impleaded the appellants as co-accused along with 18 others before any evidence was recorded i.e. before the commencement of the actual trial. The appellants thereupon filed a criminal revision application before the High Court which was dismissed.

Dismissing the appeal,

Held :

In the present case, the stage for the exercise of power under S. 319 of the Code had not reached, inasmuch as the trial had not commenced and evidence was not led.

The Court of Session had the power under S. 193 of the Code to summon the appellants as their involvement in the commission of the crime prima facie appeared from the record of the case. Though power was exercised under S. 319, there is no reason to interfere with the impugned order as it is well settled that once it is found that the power exists the exercise of power under a wrong provision will not render the order illegal or invalid.

Once the Magistrate takes cognizance of the offence he may proceed to try the offender (except where the case is transferred under S. 191) or commit him for trial under S. 209 if the offence is triable exclusively by a Court of Session. Cognizance is taken of the offence and not the offender. There is a difference in the language of S. 193 of the two Codes; under the old Code the Court of Session was precluded from taking cognizance of any offence as a court of original jurisdiction unless *the accused* was committed to it whereas under the present Code the embargo is diluted by the replacement of the words *the accused* by the words *the case*. Thus, on a plain reading of S. 193, as it presently stands, once *the case* is committed under S. 209 to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record. For the limited purpose of deciding whether or not to frame a charge against the accused, the Judge would be required to examine the record of the case and the documents submitted therewith, which would comprise the police report, the statements of witnesses recorded under S. 161 of the Code, the seizure-memoranda, etc. Once the court takes cognizance of the offence (not the offender) it becomes the court's duty to find out the real offenders and if it comes to the conclusion that besides the persons put up for trial by the police some others are also involved in the commission of the crime, it is the court's duty to summon them to stand trial along with those already named, since summoning them would only be a part of the process of taking cognizance. *Kishun Singh* v. *State of Bihar*, (1993) 2 SCC 16: 1993 SCC (Cri) 470: 1993 Cri LJ 1700: (1993) 1 Crimes 494: (1993) 1 BLJR 309.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *N.P. Singh*, JJ. [Date of decision: 11-1-1993]

Raghubans Dubey v. State of Bihar, AIR 1967 SC 1167: (1967) 2 SCR 423: 1967 Cri LJ 1081; Hareram Satpathy v. Tikaram Agarwala, (1978) 4 SCC 58: 1978 SCC (Cri) 496, relied on

Sk. Lutfur Rahman v. State, 1985 PLJR 640: 1985 Cri LJ 1238 (Pat HC) (FB), affirmed

***Affirmed** in Dharam Pal v. State of Haryana, (2004) 13 SCC 9*

[2264] — Ss. 193, 4, 5 and 2(g) — Special Court — Held, it is a Court of Session — *It is specified for trial of offences as distinguished from "inquiry" as defined in S. 2(g) CrPC — Therefore, it cannot take cognizance directly as a court of original jurisdiction without the case being committed to it by a Magistrate in view of S. 193 CrPC — Ss. 4 and 5 CrPC do not indicate any departure from this position — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ss. 14 and 2(1)(d)*

Pursuant to a complaint lodged against the appellants the police filed charge-sheet directly before the Sessions Court which was designated as Special Court for trial of offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. A charge was framed by the Special Judge against both the appellants for the alleged offences under the Act. At that stage the appellants moved the High Court for quashing the charge as well as the charge-sheet on various reasons. A Single Judge of the High Court of Andhra Pradesh found that the procedure adopted by the investigating officer in filing the charge-sheet straight away to the Special Court was not in accordance with law, and the Special Judge had no jurisdiction to take cognizance of any offence under the Act without the case having been committed to that Court. Accordingly the Single Judge set aside the proceedings of the Special Court and directed the charge-sheet and the connected papers to be returned to the police officer concerned who, in turn, was directed to present the same before a Judicial Magistrate of Ist Class "for the purpose of committal to the Special Court". The Single Judge further directed that "on such committal the Special Court shall frame appropriate charges in the light of the observations in the order". Disposing of the appeal,

Held :

It is clear from Sections 14 and 2(1)(*d*) of the Act that it is for trial of the offences under the Act that a particular Court of Session in each district is sought to be specified as a Special Court. Though the word "trial" is not defined either in the Code or in the Act it is clearly distinguishable from inquiry. Inquiry must always be a forerunner to the trial. Thus the Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Evidently the legislature wanted the Special Court to be a Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a Court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for "trial before a Court of Session". (Paras 8 and 9)

Section 193 of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. It can take cognizance only if "the case has been committed to it by a Magistrate", as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word "expressly" which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. As such the charge-sheet or complaint cannot straight away be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session. (Paras 10 and 11)

Contentions based on Sections 4 and 5 of the Code as suggesting that a departure from Section 193 of the Code is permissible under special enactments cannot be accepted. Section 4(2) CrPC makes it clear that if another enactment contains any provision which is contrary to the provisions of the Code, such other provision would apply in place of the particular provision of the Code. If there is no such contrary provision in other laws, then provisions of the Code would apply to the matters covered thereby. Section 5 of the Code cannot also be brought in aid for supporting the view that the Court of Session specified under the Act can obviate the interdict contained in Section 193 of the Code as long as there is no provision in the Act empowering the Special Court to take cognizance of the offence as a court of original jurisdiction. (Paras 12 to 14)

It must, therefore, be held that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge-sheet cannot straight away be laid down before the Special Court under the Act. (Para 16)

So the High Court of Andhra Pradesh has rightly set aside, as per the impugned order, the proceedings initiated by the Special Court specified under the Act. But it is not possible to support the directions given by the Single Judge in his order that after committal of the case the Special Court shall frame charge against the appellants. It is for the Special Court to decide regarding the action to be taken next, after hearing both sides as provided in Section 227 of the Code. No direction can be given to the Special Court at this premature stage as to what course the court should adopt then. It is open to the appellants to raise all their contentions at that stage if they wish to make a plea for discharge. If any such plea is made, the Judge of the Special Court shall pass appropriate orders untrammelled by the observations made in the impugned order. (Para 26). *Gangula Ashok* v. *State of A.P.*, (2000) 2 SCC 504: 2000 SCC (Cri) 488: AIR 2000 SC 740: 2000 Cri LJ 819: (2000) 1 KLT 609.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 28-1-2000]

Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440: 1994 SCC (Cri) 785, relied on

Meerabai v. Bhujbal Singh, 1995 Cri LJ 2376 (MP); Pappu Singh v. State of U.P., 1995 Cri LJ 2803 (All); Jhagru Mahto v. State of Bihar, (1993) 1 Crimes 643 (Pat) (DB); Jyoti Arora v. State of Haryana, (1998) 2 Cri LR 73 (P&H); Referring Officer rep. by State of A.P. v. Shekar Nair, (1999) 3 An LT 533: 1999 Cri LJ 4173 (AP) (DB), approved

Director General of Prosecution, In re, 1993 Cri LJ 760: (1992) 2 KLT 748 (Ker); Hareendran v. Sarada, (1996) 1 An LT (Cri) 162: (1995) 1 KLT 231 (Ker) (FB), overruled

A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500: 1984 SCC (Cri) 277, distinguished

[2265] — Ss. 193, 4(2), 5, 2(g) and 6(i) — Requirements for exception from interdiction under S. 193 CrPC — *Whether Special Court under the Act a Court of Session and reason therefor — Whether "Special Court" under the 1989 Act, being a Court of Session, excepted from interdict of S. 193 CrPC — Whether there was any express provision in the Act or in CrPC excepting* *the Special Court — Whether a combined reading of Ss. 4(2) and 5 CrPC excepted the Special Court — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ss. 2(1)(d) and 14*

(i) Whether Special Court under the Act a Court of Session and reason therefor

The Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Evidently, the legislature wanted the Special Court to be a Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fascicule of provisions for "trial before a Court of Session". (Para 17)

It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Therefore the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session. (Para 19)

(ii) Whether Special Court excepted from interdict of S. 193 CrPC, 1973

Section 193 of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. It can take cognizance only if "the case has been committed to it by a Magistrate", as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding the taking of cognizance of offences under such law. The word "expressly" which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently, no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate. (Para 18)

(a) Whether there was any express provision in the Act or in CrPC excepting the Special Court

Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. Therefore there is no reason to think that a charge-sheet or a complaint can straight away be filed before such Special Court for offences under the Act. (Para 19)

(b) Whether a combined reading of Ss. 4(2) and 5 CrPC excepted the Special Court

Section 5 of the Code cannot be brought in aid for supporting the view that the Court of Session specified under the Act obviates the interdict contained in Section 193 of the Code so long as there is no provision in the Act empowering the Special Court to take cognizance of the offence as a court of original jurisdiction. (Paras 20 and 21)

The Sessions Court in the case at hand, undisputedly, has acted as one of original jurisdiction, and the requirements of Section 193 of the Code were not met. (Para 23)

The inevitable conclusion is that the learned Sessions Judge, as the undisputed factual position goes to show, could not have convicted the appellant for the offence relatable to Section 3(1)(*xi*) of the Act in the background of the legal position noted supra. That is, accordingly, set aside. However, for the offence under Sections 354 and 448 IPC, custodial sentence for the period already undergone, which as the records reveal is about three months, would meet the ends of justice considering the background facts and the special features of the case. The appeal is accordingly disposed of. (Para 24). *Vidyadharan* v. *State of Kerala*, (2004) 1 SCC 215: 2004 SCC (Cri) 260: AIR 2004 SC 536: (2004) 1 KLT 105: 2004 Cri LJ 605: (2004) 2 MPLJ 251.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 14-11-2003]

A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500: 1984 SCC (Cri) 277; Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440: 1994 SCC (Cri) 785, relied on

Gangula Ashok v. State of A.P., (2000) 2 SCC 504: 2000 SCC (Cri) 488, followed

[2266] — Ss. 193, 4(2), 5, 2(g) and 6(i) — "Special Court" under the 1989 Act, held, is a Court of Session — *It is specified for trial of offences as distinguished from "inquiry" — Cognizance by said court directly as a court of original jurisdiction without the case being committed to it by a Magistrate — Permissibility of — Held, in view of S. 193 CrPC, not permissible in the absence of any contrary provision in the 1989 Act or in CrPC in that* *regard — S. 5 CrPC cannot be brought in aid for supporting the contrary view — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ss. 14 and 2(1)(d)*

The appellants faced trial for alleged commission of offences punishable under Sections 3(1)(*iii*), 3(1)(*v*) and 3(1)(*x*) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "the Act"). The trial court (Special Court under the Act) found the appellants guilty and imposed sentences. The said court had suo motu entertained and registered the complaint and, thus, it had taken cognizance of the offence straight away without the case being committed to it. The issues involved in these appeals were whether the Special Court under the Act is a Court of Session and, if so, whether in view of the interdict contained in Section 193 CrPC it cannot take cognizance without the case being committed to it.

Held :

Section 193 of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. A Court of Session can take cognizance only if "the case has been committed to it by a Magistrate", as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is, when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word "expressly" which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session. (Paras 11 and 12)

A reading of the provisions concerned [provisions under Section 4(2) CrPC] makes it clear that if another enactment contains any provision which is contrary to the provisions of the Code, such other provision would apply in place of the particular provision of the Code. If there is no such contrary provision in other laws, then provisions of the Code would apply to the matters covered thereby. Section 5 of the Code cannot be brought in aid for supporting the view that the Court of Session specified under the Act obviates the interdict contained in Section 193 of the Code so long as there is no provision in the Act empowering the Special Court to take cognizance of the offence as a court of original jurisdiction. (Paras 13 and 14)

Hence, there is no doubt that a Special Court under the Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge-sheet cannot straight away be laid down before the Special Court under the Act. The Sessions Court in the case at hand, undisputedly has acted as one of original jurisdiction, and the requirements of Section 193 of the Code were not met. (Para 16). *Moly* v. *State of Kerala*, (2004) 4 SCC 584: 2004 SCC (Cri) 1348: AIR 2004 SC 1890: 2004 Cri LJ 1812.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 23-3-2004]

A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500: 1984 SCC (Cri) 277; Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440: 1994 SCC (Cri) 785, relied on

Gangula Ashok v. State of A.P., (2000) 2 SCC 504: 2000 SCC (Cri) 488; Vidyadharan v. State of Kerala, (2004) 1 SCC 215: 2004 SCC (Cri) 260, followed

[2267] — S. 193 — Special Judge constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — *Has no jurisdiction to entertain complaint alleging offence under S. 3(1)(x) thereof, take cognizance and issue process without the case being committed to it by a competent Magistrate — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ss. 3(1)(x) and 14* (Para 10). *M.A. Kuttappan* v. *E. Krishnan Nayanar*, (2004) 4 SCC 231: 2004 SCC (Cri) 1073: 2004 Cri LJ 1770: (2004) 2 KLT 145.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 26-2-2004]

Gangula Ashok v. State of A.P., (2000) 2 SCC 504: 2000 SCC (Cri) 488; Vidyadharan v. State of Kerala, (2004) 1 SCC 215: 2004 SCC (Cri) 260, relied on

— **S. 194** *See also* S. 193, Criminal Procedure Code, 1898, p. 1051 in Vol. 2

— **S. 194** *See* Ss. 9(6), 194, 327 and 2(p)

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 340, 192 to 196, 227 and 482

See also Ss. 407 and 194

See also Ss. 409(2) & 194, 407 and 462 & 465

[2268] — S. 194 — Case made over by an order of Sessions Judge to Additional Sessions Judge wrongly under S. 409(1) instead of S. 194 — *Held, order would not become invalid merely because of recitation of a wrong provision*

Mere recital of a wrong provision of law does not have the effect of invalidating an order which is otherwise within the power of the authority making it. The Sessions Judge's order making over the case to the Additional Sessions Judge was within his power; the only error was that he recited a wrong section of the Code viz. S. 409(1) instead of S. 194. Therefore, this order must be read as an order made under S. 194 so far as the direction making over the case to the Additional Sessions Judge is concerned. *State of Karnataka* v. *Muniyalla*, (1985) 1 SCC 196: 1985 SCC (Cri) 50: AIR 1985 SC 470: 1985 Cri LJ 751.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *V. Khalid*, JJ. [Date of decision: 12-11-1984]

[2269] — S. 194 — Scope of High Court's power to issue 'special order' under S. 194 — *High Court can allot a case to a particular Judge. Kehar Singh* v. *State (Delhi Admn.)*, (1988) 3 SCC 609: 1988 SCC (Cri) 711: AIR 1988 SC 1883.

Bench Strength **3**. Coram: **G.L. Oza**[1], **B.C. Ray**[2] and **K. Jagannatha Shetty**[3], JJ. [Date of decision: 3-8-1988]

— **S. 195** *See also* S. 195, Criminal Procedure Code, 1898, pp. 1052 et seq. in Vol. 2

— **S. 195** *See* Ss. 154, 190, 195, 196, 197 and 200

See also Ss. 156, 195 & 340 and 341

See also Ss. 156(3), 340 and 195

See also Ss. 169 and 195

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193 and 195 to 199 & 204

See also Ss. 196, 195 and 197

See also Ss. 340, 192 to 196, 227 and 482

See also Ss. 340 and 195

See also Ss. 482 and 195

[2270] — S. 195 — Applicability — Question whether it applies to documents forged/fabricated prior to their being produced in court — *Held, that question arises only after the court takes cognizance — At the stage of investigation S. 195 has no application — Hence, on facts, the Supreme Court was not concerned with the said question — Penal Code, 1860, Ss. 468, 471, 470 and 120-B*

It is to be seen that the High Court does not quash the complaint on the ground that Section 195 applied and that the procedure under Chapter XXVI had not been followed. Thus such a ground could not be used to sustain the impugned judgment. (Para 8). *M. Narayandas* v. *State of Karnataka*, (2003) 11 SCC 251: 2004 SCC (Cri) 118.

Bench Strength **2**. Coram: **S.N. Variava** and *H.K. Sema*, JJ. [Date of decision: 19-9-2003]

[2271] — S. 195 — Mandatory nature and requirements of, reiterated — Test of whether there is evasion or non-compliance with S. 195, laid down

There was no wrong in clubbing together of the two crimes. Keeping in view the totality of the circumstances and evidence, the second occurrence was nothing but a fallout of the first occurrence. Merely because two separate complaints had been lodged, did not mean that they could not be clubbed together and one charge-sheet could not be filed. (Paras 37, 8 and 36)

Therefore although the charges under Section 188 are quashed as no complaint in this regard had ever been filed, it would by no means have any bearing on the case of the prosecution, so far as the charges for other offences are concerned. It cannot be accepted that absence of a complaint under Section 195 CrPC falsifies the genesis of the prosecution case and is fatal to the entire prosecution case. (Paras 36 and 35)

The legislative intent behind Section 195(1)(*a*)(*i*) CrPC read with Section 188 is that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 CrPC. (Para 28)

Thus, there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 CrPC are mandatory. Non-compliance with it would vitiate the prosecution and all other consequential orders. The court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction. (Para 33)

The test of whether there is evasion or non-compliance with Section 195 CrPC or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. The provisions of this section cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 CrPC. Thus, cognizance of such an offence cannot be taken by misdescribing it or by putting a wrong label on it. (Para 29). *C. Muniappan* v. *State of T.N.*, (2010) 9 SCC 567: (2010) 5 CTC 794 .

Bench Strength 2. Coram: *G.S. Singhvi* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 30-8-2010]

T.T. Antony v. State of Kerala, (2001) 6 SCC 181: 2001 SCC (Cri) 1048; Govind Mehta v. State of Bihar, (1971) 3 SCC 329: 1971 SCC (Cri) 608; Patel Laljibhai Somabhai v. State of Gujarat, (1971) 2 SCC 376: 1971 SCC (Cri) 548; Surjit Singh v. Balbir Singh, (1996) 3 SCC 533: 1996 SCC (Cri) 521; State of Punjab v. Raj Singh, (1998) 2 SCC 391: 1998 SCC (Cri) 642; K. Vengadachalam v. K.C. Palanisamy, (2005) 7 SCC 352: 2005 SCC (Cri) 1673; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101; M.S. Ahlawat v. State of Haryana, (2000) 1 SCC 278: 2000 SCC (Cri) 193; Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493: 1998 SCC (Cri) 660; Daulat Ram v. State of Punjab, AIR 1962 SC 1206: (1962) 2 Cri LJ 286; Basir-ul-Haq v. State of W.B., AIR 1953 SC 293: 1953 Cri LJ 1232; Durgacharan Naik v. State of Orissa, AIR 1966 SC 1775: 1966 Cri LJ 1491, relied on

[2272] — S. 195 — Discretion of the court to order prosecution — How to be exercised — Explained

Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but requires the court to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice. Section 340 CrPC prescribes the procedure as to how a complaint may be preferred under Section 195 CrPC. A complaint outside the provisions of Section 340 CrPC cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction. (Paras 5 and 6). *M.S. Ahlawat* v. *State of Haryana*, (2000) 1 SCC 278: 2000 SCC (Cri) 193: AIR 2000 SC 168: 2000 Cri LJ 388.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and **S. Rajendra Babu** and *R.C. Lahoti*, JJ. [Date of decision: 27-10-1999]

Chajoo Ram v. Radhey Shyam, (1971) 1 SCC 774: 1971 SCC (Cri) 331, relied on

[2273] — S. 195 — "Civil court" — What is — Debts Recovery Tribunal (DRT) — Nature of, and extent of powers of — If civil court — Held, DRT cannot be treated as civil court — *Specific Relief Act, 1963, S. 34 — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 17, 19 and 22. Nahar Industrial Enterprises Ltd.* v. *Hong Kong and Shanghai Banking Corpn.*, (2009) 8 SCC 646.

Bench Strength 2. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 29-7-2009]

[2274] — S. 195 — Inconsistent stand or pleas taken by counsel at different stages of the proceedings — S. 195, held, not attracted (Para 10). *N. Natarajan* v. *B.K. Subba Rao*, (2003) 2 SCC 76: 2003 SCC (Cri) 437: AIR 2003 SC 541: 2003 Cri LJ 820.

Bench Strength 2. Coram: **S. Rajendra Babu** and *Arun Kumar*, JJ. [Date of decision: 3-12-2002]

[2275] — S. 195 — Investigation into offences against public justice — Bar under S. 195 against cognizance except on complaint in writing of court concerned — *Investigation on basis of information received should not be quashed at initial stage more so when charges are grave — Bar under S. 195 can be gone into when court takes cognizance of the offence* (Paras 3 and 5). *Manohar M. Galani* v. *Ashok N. Advani*, (1999) 8 SCC 737: AIR 2000 SC 202.

Bench Strength 2. Coram: **G.B. Pattanaik** and *R.P. Sethi*, JJ. [Date of decision: 17-11-1999]

[2276] — S. 195 — Offences under Ss. 420, 467, 471 and 474 IPC — *Bar under S. 195 regarding court's power to take cognizance — Applicability — High Court not expressing any view on this aspect — Since it was a contentious issue and High Court's order under Ss. 482 and 468 CrPC found unsustainable, held, proper course would be to remit the matter to the High Court for fresh consideration* (Para 7). *Harnam Singh* v. *Everest Construction Co.*, (2004) 6 SCC 754: 2004 SCC (Cri) 1828.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 17-8-2004]

[2277] — Ss. 195, 190 and 340 — Power of police to investigate into a cognizable offence not controlled by S. 195 — *Charge-sheet filed by police in respect of offence covered by S. 195 — Court not competent to take cognizance thereof in view of S. 195(1)(b)(ii) — However, court not debarred from filing a complaint on the basis of FIR and other materials collected during investigation provided it* *forms the requisite opinion and follows the procedure laid down in S. 340. State of Punjab* v. *Raj Singh*, (1998) 2 SCC 391: 1998 SCC (Cri) 642: AIR 1998 SC 768.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *K.T. Thomas*, JJ. [Date of decision: 16-1-1998]

Gopalakrishna Menon v. D. Raja Reddy, (1983) 4 SCC 240: 1983 SCC (Cri) 822, distinguished

[2278] — Ss. 195 and 190 — Nature of S. 195 — *Held, it is an exception to general provision under S. 190 regarding cognizance of offences by Magistrates — It creates an embargo upon the power of the court to take cognizance of certain types of offences enumerated therein*

Section 190 CrPC provides that a Magistrate may take cognizance of any offence (*a*) upon receiving a complaint of facts which constitute such offence, (*b*) upon a police report of such facts, and (*c*) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Section 195 CrPC is a sort of exception to this general provision and creates an embargo upon the power of the court to take cognizance of certain types of offences enumerated therein. (Para 21). *Iqbal Singh Marwah* v. *Meenakshi Marwah*, (2005) 4 SCC 370: 2005 SCC (Cri) 1101: AIR 2005 SC 2119: (2005) 3 Mah LJ 530: 2005 Cri LJ 2161.

Bench Strength **5**. Coram: *R.C. Lahoti, C.J.* and *B.N. Agrawal, H.K. Sema*, **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 11-3-2005]

[2279] — Ss. 195 and 340 — Bar to take cognizance of private complaint in respect of offences covered by S. 195 — *Object of — Cognizance of private complaint already taken by the Magistrate before filing of the alleged forged document in civil court — Held, bar of S. 195(1)(b)(ii) not attracted — High Court was right in granting liberty to the Magistrate to proceed with the trial of the criminal case*

The object of Section 195 is to protect persons from needless harassment by prosecution for private vendetta; to preserve purity of the judicial process and unsullied administration of justice; to prevent the parties of the temptation to pre-empt the proceedings pending in a court and to pressurise and desist parties from proceeding with the case. Equally when the act complained of relates to an offence, i.e., contempt of lawful authority of public servant, or against public justice or for offences relating to documents produced or given in evidence, public justice demands absolute bar of private prosecution and that power be given to the court to lay complaint under Section 340 of the Code as per the procedure prescribed therein.

For taking cognizance of an offence, the document, the foundation for forgery, if produced before the court or given in evidence, the bar of taking cognizance under Section 195(1)(*b*)(*ii*) gets attracted and the criminal court is prohibited from taking cognizance of offence unless a complaint in writing is filed as per the procedure prescribed under Section 340 of the Code by or on behalf of the court. The object thereby is to preserve purity of the administration of justice and to allow the parties to adduce evidence in proof of certain documents without being compelled or intimidated to proceed with the judicial process. The bar of Section 195 is to take cognizance of the offences covered thereunder.

In the present case cognizance was taken by the criminal court on 27-9-1983 and the original agreement appears to have been filed in the civil court on 9-2-1984 — long after cognizance was taken by the Magistrate. It is settled law that once cognizance is taken, two courses are open to the Magistrate, namely, either to discharge the accused if the evidence does not disclose the offence or to acquit the accused after a full trial. Unless either of the two courses is taken and orders passed, the cognizance duly taken cannot be set at naught. In this case since cognizance was already taken before filing of the document in the civil court and the original has not been filed before cognizance was taken, the High Court was right in directing that the Magistrate is at liberty to proceed with the trial of the criminal case. *Surjit Singh* v. *Balbir Singh*, (1996) 3 SCC 533: 1996 SCC (Cri) 521: AIR 1996 SC 1592.

Bench Strength **3**. Coram: *K. Ramaswamy, S. Saghir Ahmad* and *G.B. Pattanaik*, JJ. [Date of decision: 29-2-1996]

Harmonised in Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370

[2280] — Ss. 195 and 340 — Perjury before Supreme Court — Powers of Supreme Court when perjury is committed before it — Where Supreme Court found the writ petitioner before it to have filed affidavits with forged signatures and made false statements at different stages before it, infliction of punishment under S. 193 IPC on the writ petitioner by Supreme Court after a show-cause notice, held, was without jurisdiction — *Supreme Court ought to have rather followed the procedure under Ss. 195 and 340 CrPC — Hence, conviction of the writ petitioner by Supreme Court set aside but in the peculiar circumstances of the case, filing of a complaint under S. 340 at this stage, held, was not expedient — However, the writ petitioner restrained from claiming* *any compensation or initiating any judicial proceedings on account of the conviction — Constitution of India, Arts. 142 and 129 — Penal Code, 1860, S. 193*

While disposing of an earlier writ petition, the Supreme Court found the writ petitioner to have filed affidavits before it with forged signatures. He was also found to have made false statements at different stages in the court. Therefore, after a show-cause notice, the Supreme Court convicted the writ petitioner under Section 193 of the Penal Code and also under Article 129 of the Constitution for committing contempt of the Supreme Court. The writ petitioner filed the instant writ petition to challenge his conviction under Section 193 IPC on the ground that the Supreme Court could not itself inflict the punishment under Section 193 IPC. It ought to have, instead follow the procedure under Sections 195 and 340 CrPC. However, he did not challenge his conviction under Article 129. By the time of the decision in the instant case, he had already undergone the sentence under the said provisions. Allowing the instant writ petition, although simultaneously upholding his conviction under Article 129,

Held :

Under Article 142 of the Constitution the Supreme Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. (Para 10)

Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but requires the court to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice. Section 340 CrPC prescribes the procedure as to how a complaint may be preferred under Section 195 CrPC. A complaint outside the provisions of Section 340 CrPC cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction. (Paras 5 and 6)

The Supreme Court has always adopted the procedure prescribed by Section 195 CrPC whenever it is noticed that proceedings before it have been tampered with by production of forged or false documents or any statement has been found to be false. In the present case also the Supreme Court could not have assumed jurisdiction by issue of a notice proposing conviction for forgery and making false statements at different stages in the Court punishable under Section 193 IPC without following the procedure prescribed under Sections 195 and 340 CrPC. Primarily the Supreme Court does not exercise any original criminal jurisdiction in relation to offences arising under Section 193 IPC and secondly the seriousness of the charge arising under Section 193 IPC requires an elaborate inquiry and trial into the matter by the competent criminal court and a summary inquiry by mere issuing a show-cause notice and considering affidavits or inquiry reports would not tantamount to the procedure provided under the CrPC. The order made by the Supreme Court convicting the petitioner under Section 193 IPC is, therefore, one without jurisdiction and without following the due procedure prescribed under law. Though it is not clear from the impugned order whether the powers under Article 142 of the Constitution were exercised to convict the petitioner under Section 193 IPC, one can presume that it is by exercise of that power that the impugned order had been made for there is no other provision enabling the passing of such an order. (Paras 12 and 13)

To perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience. Therefore, the conviction of the petitioner under Section 193 IPC has to be set aside. Moreover, at this stage it is not expedient to direct the filing of a complaint in the competent court as envisaged by Section 340 CrPC because the petitioner has already undergone the sentence imposed upon him for an offence under Section 193 IPC. However, the instant order will not enable the petitioner to claim any compensation or initiate any proceedings in any court arising out of his conviction under Section 193 IPC except to use the same in any proceeding initiated against the petitioner departmentally regarding his services. (Paras 15 and 16)

The petitioner's conviction and sentence imposed under Article 129 of the Constitution of India for committing contempt of court is upheld. (Para 15). *M.S. Ahlawat* v. *State of Haryana*, (2000) 1 SCC 278: 2000 SCC (Cri) 193: AIR 2000 SC 168: 2000 Cri LJ 388.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **S. Rajendra Babu** and *R.C. Lahoti*, JJ. [Date of decision: 27-10-1999]

Chajoo Ram v. Radhey Shyam, (1971) 1 SCC 774: 1971 SCC (Cri) 331; Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409; Mohan Singh v. Amar Singh, (1998) 6 SCC 686, relied on

Afzal v. State of Haryana, (1996) 7 SCC 397, partly overruled

[2281] — Ss. 195 to 199 — Locus standi of a private complainant — *General principle that a private complainant has locus standi to present a complaint before a court is applicable unless there is a specific statutory provision to the contrary*

It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision. While S. 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Ss. 195 to 199 of the CrPC. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force [see S. 2(*n*), CrPC] is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the court would require an unambiguous statutory provision and a tangled web of argument for drawing a far fetched implication, cannot be a substitute for an express statutory provision. *A.R. Antulay* v. *Ramdas Sriniwas Nayak*, (1984) 2 SCC 500: 1984 SCC (Cri) 277: AIR 1984 SC 718: 1984 Cri LJ 647: 1984 Bom LR 228.

Bench Strength **5**. Coram: **D.A. Desai**, *R.S. Pathak*, *O. Chinnappa Reddy*, *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

[2282] — S. 195 — Provision in S. 142(2-A), IT Act, 1961 empowering the assessing officer to direct, with the approval of Commissioner, for special audit — Conditions precedent for exercise of such power, applicability of principles of natural justice and nature of such direction — *AYs falling within block period 1-4-1996 to 18-12-2002 — The word "and" occurring in S. 142(2-A) between the expressions "complexity of the accounts of assessee" and "the interests of the Revenue", held, is conjunctive and not disjunctive — The expression "complexity" in S. 142(2-A) means intricate or difficult to understand — Therefore, opinion for issuing such a direction must be formed on an objective consideration all the three factors stated in that provision — The expression "having regard to" requires to have regard to the said factors together with all relevant factors — In the absence of even one of them, no direction can be issued — The direction under S. 142(2-A) is, by virtue of the legal fiction in S. 136, a judicial proceeding and not administrative or quasi-judicial — It leads to civil consequences and is prejudicial to the assessee and therefore principles of natural justice have to be treated as implicit in S. 142(2-A) — A prior notice to the assessee would enable him to show that the nature of his accounts did not warrant appointment of special auditor or that the proposal therefor was not bona fide and was meant only for extension of limitation period in terms of Expln. 2 to S. 158-BE — That the assessee was maintaining two sets of account books would not by itself lead to the conclusion that the same involved "complexity" — Moreover, approval should be granted by Commissioner not mechanically but having record to the material on record and the explanation, if any, given by the assessee — However, the hearing need not be elaborate and the notice may only contain the necessary issues in brief — The reasons for appointment of special auditor must be assigned albeit they need not be detailed — Otherwise there would be no remedy to cure a wrong exercise of the power — CPC, 1908, Or. 12 and S. 105 — IT Act, 1961, Ss. 142(2-A), 158-BC, 158-BE & Expln. 2, 136, 139, 139-A, 140, 141-A, 142(1) & (3) and 44-AB. Rajesh Kumar* v. *CIT*, (2007) 2 SCC 181: AIR 2007 SC 181: (2006) 287 ITR 91.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 1-11-2006]

[2283] — Ss. 195 and 340 — Writ petition challenging conviction of petitioner under S. 193 IPC for forgery of signature of a Superintendent of Police on affidavits — Conviction of the Superintendent of Police under similar circumstances, set aside by Supreme Court — *By accepting the plea of non-compliance with the procedure required under S. 195 r/w S. 340 CrPC and also on account of want of original jurisdiction of Supreme Court to try criminal offence under S. 193 IPC, Supreme Court in that case holding that punishment was liable to be quashed — Situation in the case of the petitioner identical on this aspect — Following the judgment of the Supreme Court in the case of the Superintendent of Police and for the reasons stated therein, held, sentence imposed on the petitioner under S. 193 IPC also liable to be quashed — Considering the special features of the case, held, this is not a fit case to direct the filing of a complaint in the competent court as envisaged by S. 340 CrPC because the petitioner has already undergone the sentence imposed upon him for an offence under S. 193 IPC although set aside now by this order — Penal Code, 1860, S. 193 — Constitution of India, Art. 32. Randhir Singh* v. *State of Haryana*, (2000) 1 SCC 760: 2000 SCC (Cri) 308: AIR 2000 SC 544: 2000 Cri LJ 755.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and **S. Rajendra Babu** and *R.C. Lahoti*, JJ. [Date of decision: 6-1-2000]

M.S. Ahlawat v. State of Haryana, (2000) 1 SCC 278, followed

[2284] — Ss. 195 and 340 — Refusal to grant liberty to reagitate the grievances before an appropriate forum, while permitting the withdrawal of the appeal, when improper — *Single Judge although dismissing the writ petition on the ground that the same involved disputed questions of fact, opining that the writ petitioner could agitate his grievances before an appropriate forum — Writ petitioner then filing Letters Patent Appeal — Question arising therein as to whether the same had been filed by the appellant or some one else — Hand writing expert opining against the appellant but the Division Bench not passing any order upon taking cognizance thereof — At this stage, appellant seeking to withdraw the LPA with liberty to reagitate the grievances before an appropriate forum — In such circumstances, order of Division Bench permitting withdrawal of the writ appeal but refusing such liberty, held, improper as it placed the appellant in a worse position — Letters Patent of Gujarat High Court, Cl. 15 — CPC, 1908, Or. 23 R. 1(3)*

An order of preventive detention was passed against the appellant under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "the COFEPOSA Act"). Certain immovable and movable properties belonging to him were forfeited under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for short "SAFEMA"). He successfully challenged both the orders. Pursuant thereto, the competent authority cancelled the order of forfeiture. However, whereas the movable properties were returned to him, the immovable properties were not. He then filed a writ petition. Allegations made in the said writ petition were denied and disputed. Respondent 4 herein contended that the appellant had transferred the said property in his favour. A Single Judge of the High Court dismissed the said writ petition on the ground that the same involved disputed questions of fact. He further observed that the appellant could initiate appropriate proceedings before appropriate court. The Single Judge, therefore, did not go into the question, as to whether the appellant had transferred the said property in favour of Respondent 4 herein or not. The appellant then filed a Letters Patent Appeal. A question arose therein as to whether the same was filed by the appellant or some other person. A handwriting expert opined that two signatures on the application and two signatures on a certified photostat copy of affidavit were not that of the appellant. However, no order was passed upon taking cognizance thereof, even no proceeding under Section 340 CrPC was initiated. Before the Division Bench, the appellant purportedly admitted that he had executed a sale deed in favour of Respondent 4. He then made a request for withdrawal of the appeal reserving right to agitate the grievances before an appropriate forum. The Division Bench while granting permission to withdraw the appeal, refused to grant liberty to reagitate the grievances and observed that looking to the peculiar facts and circumstances of the case and the seriousness of the matter, it might rather like to decide the appeal on merits and that ultimately the person concerned in the matter might have to face the consequences. Thereupon, the appellant gave up his request. Thereafter, he filed the present appeal by special leave.

Before the Supreme Court, the appellant contended that by preferring the appeal before the Division Bench, he could not have been put in a worse condition.

On the other hand, Respondent 4 contended that the appellant was guilty of making a misrepresentation before the Division Bench. That moreover, having admitted the execution of the sale deed in favour of Respondent 4 herein, the appellant could not be permitted to litigate before any other forum. However, the appellant denied and disputed the said allegation of guilt.

Allowing the appeal in part,

Held:

The Single Judge refused to entertain the writ petition on the premise that the same involved disputed questions of fact. He opined that the appellant may agitate his grievances before an appropriate forum. An intra-court appeal was filed thereagainst by the appellant alone. The respondent did not do so. The jurisdiction of the appellate court, thus, should have been kept confined only to the question as to whether the writ petition should have been determined on merit by the Single Judge. (Para 9)

A party having a grievance must have a remedy. Access to justice is a human right. When there exists such a right, a disputant must have a remedy in terms of the doctrine *ubi jus ibi remedium*. (Para 10)

There is nothing on record to show that the Division Bench while entertaining the Letters Patent Appeal intended to enter into any other question. Judges' record is final and conclusive. Any dispute in relation thereto must be raised before the same court. (Para 13)

The Division Bench did not go into the correctness or otherwise of the allegations and counter-allegations made by the parties before it. Whether the appellant was guilty of any forgery or not was not determined. It allowed the appellant to withdraw the appeal. By doing so, the parties were relegated to the same position to which they had been viz. when the Single Judge dismissed the writ petition. The appellant, thus, could not have been placed in a worse position. (Paras 16 and 18)

Therefore, the part of the impugned order whereby and whereunder the Division Bench refused to grant leave to the appellant to ventilate his grievances before an appropriate forum, cannot be sustained. (Para 19). *Bhagubhai Dhanabhai Khalasi* v. *State of Gujarat*, (2007) 4 SCC 241: (2007) 2 SCC (Cri) 260: (2007) 53 AIC 8 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 5-4-2007]

Dwarka Prasad Agarwal v. Ramesh Chander Agarwal, (2003) 6 SCC 220; Dwarka Prasad Agarwal v. B.D. Agarwal, (2003) 6 SCC 230; Swamy Atmananda v. Sri Ramakrishna Tapovanam, (2005) 10 SCC 51; Associated Tubewells Ltd. v. R.B. Gujarmal Modi, AIR 1957 SC 742; State of Maharashtra v. Ramdas Shrinivas Nayak, (1982) 2 SCC 463: 1982 SCC (Cri) 478; Guruvayoor Devaswom Managing Committee v. C.K. Rajan, (2003) 7 SCC 546, relied on

[2285] — S. 195(1) — Where some offences are covered by S. 195(1) and some are not, compliance with S. 195(1) required only for those covered by it provided the two kinds of offences are separate and distinct and do not form part of the same transaction. *State of U.P.* v. *Suresh Chandra Shrivastava*, (1984) 3 SCC 92: 1984 SCC (Cri) 415: AIR 1984 SC 1108: 1984 Cri LJ 926.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**, *A. Varadarajan* and *Ranganath Misra*, JJ. [Date of decision: 3-5-1984]

[2286] — S. 195(1) — Where though offences stated in the complaint are covered by S. 195(1) but on facts and in substance the offences do not appear to be so covered, held, compliance with S. 195(1) not required. *State of U.P.* v. *Suresh Chandra Shrivastava*, (1984) 3 SCC 92: 1984 SCC (Cri) 415: AIR 1984 SC 1108: 1984 Cri LJ 926.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**, *A. Varadarajan* and *Ranganath Misra*, JJ. [Date of decision: 3-5-1984]

— S. 195(1)(a) *See also* Ss. 204 and 195(1)(a)

[2287] — S. 195(1)(a) — Object and scope of — *Court is barred from taking cognizance of offences mentioned therein except on a written complaint by the public servant concerned — Private compliant not maintainable — If the public servant concerned does not or refuses to make a complaint some other public servant to whom he is administratively subordinate can prefer a complaint — Penal Code, 1860, Ss. 172 to 188. State of U.P.* v. *Mata Bhikh*, (1994) 4 SCC 95: 1994 SCC (Cri) 831.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *P.B. Sawant*, JJ. [Date of decision: 9-3-1994]

[2288] — S. 195(1)(a) — "Complaint in writing of the public servant concerned...." — Interpretation of the expression — *Appellant who was aggrieved against trade mark and copyright violations by Respondent 2, initially approaching SHO of the area for taking criminal action against Respondent 2 — SHO in turn directed appellant to approach Senior Superintendent of Police (SSP) — SSP got the complaint investigated and finding it to be false, action initiated against appellant under S. 182 IPC — Held, proper authority to initiate action under S. 195(1)(a) CrPC for breach of S. 182 IPC was SSP and not SHO — There was no provision for delegation of power under S. 195(1)(a) — Proceedings initiated under S. 182 IPC against complainant company by SHO were incompetent — Penal Code, 1860, S. 182*

— Copyright Act, 1957, S. 63 — Trade and Merchandise Marks Act, 1958, Ss. 78 and 79 (Paras 13 to 16). *P.D. Lakhani* v. *State of Punjab*, (2008) 5 SCC 150: (2008) 2 SCC (Cri) 553: (2008) 2 KLT 575.

Bench Strength 2. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 22-4-2008]

Daulat Ram v. State of Punjab, AIR 1962 SC 1206: 1962 Supp (2) SCR 812; State of U.P. v. Mata Bhikh, (1994) 4 SCC 95: 1994 SCC (Cri) 831, relied on

[2289] — S. 195(1)(a) — Expression "public servant concerned" — Meaning of — *Held, includes successor in office also*

A successor in office of a public servant concerned will also fall within the ambit of the expression 'public servant concerned'. Any other view contrary to it will only create difficulties in certain situations. The successor in office of the public servant gets into the same position of the public servant concerned and he is in law eligible to file a complaint against wrongdoers. To say in other words, the successor in office falls within the ambit of the expression 'public servant concerned'. *State of U.P.* v. *Mata Bhikh*, (1994) 4 SCC 95: 1994 SCC (Cri) 831.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *P.B. Sawant*, JJ. [Date of decision: 9-3-1994]

Ajaib Singh v. Joginder Singh, AIR 1968 SC 1422: 1969 Cri LJ 4: 70 Pun LR 1131, followed

P.D. Patel v. Emperor, AIR 1933 Rang 292: 146 IC 653; Subramanian Chettiar, Re, AIR 1957 Mad 442: 1957 Cri LJ 765; Public Prosecutor v. Mohammed Ali, AIR 1969 AP 41: 1969 Cri LJ 145; Government Advocate, Bihar v. Kumar Singh, AIR 1938 Pat 83: 173 IC 432: 39 Cri LJ 314; Manik Lal Bhagat v. State, 1982 Cri LJ 1473: (1982) 1 Cal HN 149, approved

Mata Bhikh v. State, 1980 Cri LJ 575: 1979 All Cri R 454: 1980 All Cri C 72, overruled

[2290] — Ss. 195(1)(a) and 340(3) — Delegation of power to file complaint — Need for express provision permitting delegation — *Held, CrPC, where delegation is permitted, makes express provision to this effect as in the case of S. 340(3) — S. 195(1)(a) does not contemplate any delegation — Cognizance for offence under S. 182 IPC could not therefore be taken unless there was a written complaint from the public servant concerned, who in the present case was SSP — SHO's complaint was therefore incompetent — Penal Code, 1860, S. 182* (Paras 16 and 18). *P.D. Lakhani* v. *State of Punjab*, (2008) 5 SCC 150: (2008) 2 SCC (Cri) 553: (2008) 2 KLT 575.

Bench Strength 2. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 22-4-2008]

— S. 195(1)(b) *See also* Ss. 340 and 195(1)(b)

[2291] — S. 195(1)(b) — Applicability — *Complaint by a private party (landlord), inter alia under S. 467 read with S. 114 and S. 193, IPC for forgery of sale deed of land, filed subsequent to his filing suit for redemption of mortgage of the land — But sale deed allegedly forged by the accused prior to filing the suit not produced by the plaintiff-landlord before the court in the proceedings of suit — Held, S. 195(1)(b) not applicable and committal court could not take cognizance of offence under S. 193, Penal Code, 1860 — But complaint under S. 467 read with S. 114, Penal Code, 1860 be maintainable as no complaint under S. 195(1)(b) required to be made by the court in regard to offence under S. 467 read with S. 114, Penal Code, 1860*

In cases where in the course of the same transaction an offence for which no complaint by a court is necessary under S. 195(1)(*b*), CrPC and an offence for which a complaint of a court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in S. 195(1)(b) should be upheld. However, it cannot be said that the complaint in the present case given by the private individual for the offence under S. 467 read with S. 114, IPC was not cognizable and that S. 195(1)(b), CrPC was attracted as regards the accused- respondent.

The legislature did not intend to extend the prohibition contained in S. 195(1), CrPC to the offences mentioned therein when committed by a party to a proceeding in that Court prior to his becoming such party. S. 195(1)(*b*) requires that the offence under S. 193, IPC should be alleged to have been committed in or in relation to, any proceeding in any court. Since the forged sale deed was not produced in evidence in any stage of the redemption suit, S. 195(1)(*b*), CrPC is not attracted. Therefore, the Magistrate who committed the accused to the Sessions, could not have taken cognizance of any offence under S. 193, IPC. The complaint could have been taken on file only for an offence punishable under S. 467 read with S. 114, IPC, so far as that accused is concerned. It would follow that no complaint by the court for prosecuting the accused for the offence under S. 467 read with S. 114, IPC is required, and she could be validly convicted for that offence on the complaint given by the private individual. *State of Karnataka* v. *Hemareddy*, (1981) 2 SCC 185: 1981 SCC (Cri) 395: AIR 1981 SC 1417: (1981) 2 SCR 695: 1981 Cri LJ 1019.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and **A. Varadarajan**, JJ. [Date of decision: 27-1-1981]

[The Supreme Court overruled the view expressed in *Re Vasudeo Ramchandra Joshi*, AIR 1923 Bom 105: 24 Bom LR 1153: 71 IC 523, that even when the offence of instigating the witnesses to give false evidence was committed in relation to a proceeding which was not actually pending in the court but was only under contemplation the provisions of S. 195 (1)(b), CrPC would be attracted.]

[2292] — S. 195(1)(b) — Commission of inquiry appointed to probe into unnatural death of patients after administration of contaminated glycerol — *Allegation of giving false evidence under Ss. 193 and 228, Penal Code, 1860, by former Health Minister — Held, Commission is not a 'Court'. Baliram Waman Hiray* v. *Justice B. Lentin*, (1988) 4 SCC 419: 1988 SCC (Cri) 941: AIR 1988 SC 2267.

Bench Strength **2**. Coram: **A.P. Sen** and *L.M. Sharma*, JJ. [Date of decision: 12-9-1988]

[2293] — Ss. 195(1)(b) and 340 — Inquiry/Complaint, in respect of offences specified under S. 195(1)(b) which had been committed in or in relation to a proceeding in any court, by some other court to which that court is subordinate — *Judicial subordination contemplated in cl. (b) of S. 195(1) — Determination of hierarchy of courts for purpose of S. 195 — Held, the said hierarchy will have to be determined having regard to the nature of proceedings and the statutes under which the same is required to be determined — Subordination of courts as specified in S. 3 CPC is only for the purpose of the said Code and not for the purpose of a special Act, although the provisions thereof may be applicable to a case arising thereunder — CPC, 1908, S. 3 — Land Acquisition Act, 1894, S. 53*

The Court of the Subordinate Judge may be subordinate to the District Judge for administrative purpose. He may be a court subordinate to it under the Code of Civil Procedure. But in relation to a proceeding under the Land Acquisition Act, it would not be. In terms of Section 53 of the Land Acquisition Act, the procedures laid down under the Civil Procedure Code would apply but the same is subject to the exceptions specified therein viz. save insofar as they may be inconsistent with anything contained therein. The Land Acquisition Act is a special statute. It provides for the forums, both original and appellate. The subordination of courts as specified in Section 3 CPC, is only for the purpose of the said Code and not for the purpose of a special Act, although the provisions thereof may be applicable to a case arising thereunder. The civil courts exercise their jurisdiction not only in respect of a suit filed before it, they do so under various special statutes. The hierarchy of the courts for the purpose of Section 195 CrPC, therefore, will have to be determined, having regard to the nature of the proceedings and the statutes under which the same is required to be determined. The Act makes a distinction between filing a complaint by a public servant and a court. Whereas clause (*a*) of sub-section (1) of Section 195 contemplates administrative subordination, clause (*b*) contemplates judicial subordination. Each expression used in CrPC, therefore, must be understood upon reading the provisions thereof in their entirety and not in isolation. (Paras 16, 17 and 25). *State of A.P.* v. *V. Sarma Rao*, (2007) 2 SCC 159: (2007) 1 SCC (Cri) 535: AIR 2007 SC 137: 2007 Cri LJ 289.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-11-2006]

[2294] — Ss. 195(1)(b)(i) and (ii) — Prosecution for offences against public justice and for offences relating to forged documents given in evidence — Procedure for prosecution — *Direction to Registrar of High Court to file criminal complaint — Appellant-Federation filing an application in the High Court under S. 195 for initiating criminal proceedings against respondent for submitting forged documents but the application dismissed by the High Court — On the directions of the Supreme Court, District Judge submitting a report that documents submitted by respondent were forged — Respondent's objections against the report rejected and findings of the report accepted — Registrar of the High Court, directed to take necessary steps to file a criminal complaint in the competent court. Punjab State Coop. Supply & Marketing Federation Ltd.* v. *B.S. Aulakh*, (1997) 4 SCC 756: 1997 SCC (L&S) 1169: AIR 1997 SC 2001: (1997) 2 SLR 565.

Bench Strength **2**. Coram: **S.C. Agrawal** and *S. Saghir Ahmad*, JJ. [Date of decision: 9-4-1997]

[2295] — S. 195(1)(b)(i) — Applies in case of offences under Ss. 191 and 192, IPC which are punishable under S. 193, Indian Penal Code. *Premjit Kaur* v. *Harsinder Singh*, (1982) 2 SCC 167: 1982 SCC (Cri) 379(1).

Bench Strength **2**. Coram: **V.D. Tulzapurkar** and *O. Chinnappa Reddy*, JJ. [Date of decision: 17-3-1980]

[2296] — Ss. 195(1)(b)(i) and 195(3) — Rent Control Officer deemed to be a 'civil court' within the meaning of Ss. 345 and 346, CrPC and any proceeding before him deemed to be a judicial proceeding within Ss. 193 and 228, IPC by virtue of S. 34(2) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act 13 of 1972) — *Cognizance of alleged offence under S. 193, IPC committed by one of the parties to the allotment proceedings before Rent Control Officer, held, cannot be taken in absence of any complaint in that regard by that Officer/Court*

The Rent Control Officer being an officer authorised by District Magistrate under S. 3(*c*) of the Rent Act, the proceedings commencing upon the intimation of a vacancy for release or allotment of the premises under S. 15(1) and (2) of that Act will be conducted before him and in view of S. 34(2) of the Act he shall be deemed to be a 'civil court' within the meaning of Ss. 345 and 346, CrPC, 1973(corresponding to Ss. 480 and 482 respectively of the old Code) and any proceeding before him shall be deemed to be a judicial proceeding within the meaning of Ss. 193 and 228, IPC. If, therefore, according to the complainant false evidence was given in a judicial proceeding before the Rent Control Officer, which is civil court, and the persons giving such false evidence have committed an offence under S. 193, IPC in or in relation to a proceeding before the Rent Control Officer, S.195(1)(*b*)(*i*), CrPC would be attracted and consequently, no court can take cognizance of such offence except on a complaint in writing of that Officer or Court. *Kalloomal Tapeswari Prasad (HUF)* v. *CIT*, (1982) 1 SCC 447: AIR 1982 SC 760: (1982) 133 ITR 690: 1982 Tax LR 314.

Bench Strength **2**. Coram: *R.S. Pathak* and **E.S. Venkataramiah**, JJ. [Date of decision: 12-1-1982]

[2297] — Ss. 195(1)(b)(i) and 340 — Offences under Ss. 193, 194, 211 and 218 IPC committed in, or in relation to, any proceedings in a court — Complaint by court concerned after holding a preliminary enquiry under S. 340 necessary — Supreme Court cannot direct the CBI to file challan for said offences in the court concerned and direct that court to try those offences — *Direction given by the Supreme Court in* Punjab and Haryana High Court Bar Assn. case *does not run counter to the provisions of Ss. 195 and 140 as interpreted in* Raj Singh case *— On facts, CBI misunderstood the directions in* Punjab and Haryana High Court Bar Assn. case *and instead of filing a challan for offences of abduction and murder filed it for offences under Ss. 193, 194, 211 and 218 IPC — Order taking cognizance of offences under Ss. 193, 194, 211 and 218 IPC quashed and the court directed to make a complaint to a Magistrate having jurisdiction in respect of those offences — However, enquiry under S. 340 having already been held by the Supreme Court, which it was competent to undertake under S. 340(2), process issued by the Designated Court against the accused persons need not be set aside — CBI also directed to file an additional challan against the accused persons as directed in* Punjab and Haryana High Court Bar Assn. case. *Arvindervir Singh* v. *State of Punjab*, (1998) 6 SCC 352: 1998 SCC (Cri) 1448: AIR 1998 SC 2950.

Bench Strength **3**. Coram: **G.T. Nanavati**, *S.P. Kurdukar* and *S.S.M. Quadri*, JJ. [Date of decision: 5-8-1998]

State of Punjab v. Raj Singh, (1998) 2 SCC 391: 1998 SCC (Cri) 642; Punjab and Haryana High Court Bar Assn. v. State of Punjab, (1996) 4 SCC 742: 1996 SCC (Cri) 858, explained and harmonised

— S. 195(1)(b)(ii) *See* Ss. 195(1)(b)(i) and (ii)
See also Ss. 340 and 195(1)(b)(ii)

[2298] — S. 195(1)(b)(ii) — An unworkable or impracticable result should be avoided — *Hence, the interpretation which was capable of great misuse and was leading to a situation where the victim of crime was rendered remediless, discarded* (Para 23). *Iqbal Singh Marwah* v. *Meenakshi Marwah*, (2005) 4 SCC 370: 2005 SCC (Cri) 1101: AIR 2005 SC 2119: (2005) 3 Mah LJ 530: 2005 Cri LJ 2161.

Bench Strength **5**. Coram: *R.C. Lahoti*, *C.J.* and *B.N. Agrawal*, *H.K. Sema*, **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 11-3-2005]

[2299] — S. 195(1)(b)(ii) — Language employed in a heading — Value of, while construing the sections which immediately follow it — *Held, as a general rule, it cannot be used to give a different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning — However, headings constitute an important part of the Act itself — In comparison to preamble of statute, they may provide a better key to the construction of the sections which follow them*

The heading of Chapter XXVI CrPC is — "*Provisions as to Offences Affecting the Administration of Justice*". Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the sections which follow them than might be afforded by a mere preamble. The fact that the procedure for filing a complaint by court has been provided in Chapter XXVI CrPC dealing with offences affecting administration of justice, is a clear pointer to the legislative intent that the offence committed should be of such type which directly affects the administration of justice viz. which is committed after the document is produced or given in evidence in court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in court cannot, strictly speaking, be said to be an offence affecting the administration of justice. (Para 11). *Iqbal Singh Marwah* v. *Meenakshi Marwah*, (2005) 4 SCC 370: 2005 SCC (Cri) 1101: AIR 2005 SC 2119: (2005) 3 Mah LJ 530: 2005 Cri LJ 2161.

Bench Strength **5**. Coram: *R.C. Lahoti*, *C.J.* and *B.N. Agrawal*, *H.K. Sema*, **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 11-3-2005]

[2300] — **S. 195(1)(b)(ii) — Applicability of — Forgery of document committed prior to that document being produced or given in evidence in court proceedings** — *Reiterated, S. 195(1)(b)(ii) would not be attracted in such a case — Penal Code, 1860, Ss. 463 to 465 and 471* (Para 12). *P. Swaroopa Rani* v. *M. Hari Narayana*, (2008) 5 SCC 765: (2008) 3 SCC (Cri) 79: AIR 2008 SC 1884: (2008) 3 CHN 95 (SC): (2008) 106 Cut LT 539.

Bench Strength 2. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 4-3-2008]

Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, followed

Francis Bennion: Statutory Interpretation, 3rd Edn., Para 313, cited

[2301] — **S. 195(1)(b)(ii) — Bar under — Applicability** — *Challan under Ss. 471 & 474, Indian Penal Code for producing copy of forged document in Court and obtaining injunction on its strength — Bar under S. 195(1)(b)(ii), held, not applicable to taking cognizance in such a case. Sushil Kumar* v. *State of Haryana*, 1987 Supp SCC 654: 1988 SCC (Cri) 136: AIR 1988 SC 419.

Bench Strength 2. Coram: *A.P. Sen* and **L.M. Sharma**, JJ. [Date of decision: 8-12-1987]

[2302] — **S. 195(1)(b)(ii) — Bar under, on taking cognizance of certain offences — Applicability** — *Whether applicable to a private complaint for an offence under Ss. 467 and 471 IPC committed in respect of a document forged prior to filing thereof in the court — In view of conflicting views expressed by Supreme Court in earlier decisions some of which were delivered by three-Judge Benches, matter referred by two-Judge Bench to a larger Bench — Penal Code, 1860, Ss. 467 and 471* (Para 4). *Balasubramaniam* v. *State*, (2002) 7 SCC 649: 2002 SCC (Cri) 1812.

Bench Strength 2. Coram: *U.C. Banerjee* and *N. Santosh Hegde*, JJ. [Date of decision: 6-9-2001]

[2303] — **S. 195(1)(b)(ii) — Commission of forgery in respect of a document produced or given in evidence in a proceeding in any court — Bar under S. 195(1)(b)(ii) that no court shall take cognizance of any such offence except on the complaint in writing of the court concerned — Scope and applicability of — Private complaint in such matter — Maintainability** — *Held, the said bar would be attracted only when the offences enumerated in S. 195(1)(b)(ii) have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in* ***custodia legis*** *— If such offence is committed prior to its production or giving in evidence in court, no complaint by court would be necessary and a private complaint would be maintainable — Scheme of S. 195, taken note of — Heading of Ch. XXVI CrPC — Consideration of — Further held, complaint as to offence referred to in S. 195(1)(b) was to be made by the court concerned only if it was expedient in the interests of justice and not in every case — Thus, broad view of clause (b)(ii) of S. 195(1) i.e. extending it to cases where forgery of a document is committed prior to that document being produced or given in evidence in a proceeding in any court would render the victim of such forgery or forged document remediless in cases where the court may not consider it expedient in the interests of justice to make a complaint — Further, the procedure for filing a complaint by court was such that it may delay the trial and thus lead to loss of evidence — That apart, the enlarged interpretation was capable of great misuse — Hence, broad view of S. 195(1)(b)(ii) not acceptable — Contention that due to above interpretation by Supreme Court there was possibility of conflicting findings being recorded by the civil or revenue court where the document had been produced or given in evidence and that recorded by the criminal court on the basis of private complaint, not sustainable*

As per Section 195(1)(*b*)(*ii*) CrPC, 1973, no court shall take cognizance of an offence relating to forgery of a document, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, except on the complaint in writing of that court, or of some other court to which that court is subordinate. The question involved in the instant case was whether the bar contained in Section 195(1)(*b*)(*ii*) would apply where forgery of a document was committed before the said document was produced in court. The Supreme Court in *Sachida Nand Singh case*, (1998) 2 SCC 493 observed that the said bar would not be applicable to a case where forgery of the document was committed before the document was produced in a court. But, in view of conflict of opinion between decisions of the Supreme Court in *Sachida Nand Singh case* and *Surjit Singh case*, (1996) 3 SCC 533, the instant appeal was placed before the present Bench.

The facts giving rise to the instant appeal were that the appellants filed proceedings before the District Judge for grant of probate of a Will allegedly executed by the deceased *M* (brother of the appellants). The respondents filed a criminal complaint for prosecution of the appellants and their mother under Sections 192, 193, 463, 464, 465, 467, 469, 471, 499 and 500 IPC on the ground that the said

Will produced by the appellants was a forged and fictitious document. In view of the bar contained in Section 195(1)(*b*)(*ii*) CrPC, the Magistrate dismissed the complaint. In revision, relying upon *Sachida Nand Singh case*, the Sessions Judge held that the bar contained in Section 195(1)(*b*)(*ii*) would not apply where forgery of a document was committed before the said document was produced in court. The High Court upheld the order of the Sessions Judge. Hence, the present appeal by the accused.

Dismissing the appeal,

Held :

Clause (*b*)(*ii*) of Section 195(1) CrPC contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court. The scheme of clauses (*a*) and (*b*)(*i*) of Section 195(1) being that the offence described therein should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court" occurring in clause (*b*)(*ii*) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in court, does not appear to be in tune with clauses (*a*)(*i*) and (*b*)(*i*) and consequently with the scheme of Section 195 CrPC. (Para 10)

The heading of Chapter XXVI CrPC is — "*Provisions as to Offences Affecting the Administration of Justice*". Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the sections which follow them than might be afforded by a mere preamble. The fact that the procedure for filing a complaint by court has been provided in Chapter XXVI CrPC dealing with offences affecting administration of justice, is a clear pointer to the legislative intent that the offence committed should be of such type which directly affects the administration of justice viz. which is committed after the document is produced or given in evidence in court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in court cannot, strictly speaking, be said to be an offence affecting the administration of justice. (Para 11)

Further, the provisions of Sections 340, 341 and 343(2) CrPC show that, in reality, the procedure prescribed for filing a complaint by the court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration is against accepting the broad interpretation sought to be placed upon clause (*b*)(*ii*) of Section 195(1). (Para 24)

That apart, an enlarged interpretation to Section 195(1)(*b*)(*ii*) CrPC, whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. After preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large. (Para 25)

Judicial notice can be taken of the fact that the courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (*b*)(*ii*) of Section 195(1) CrPC is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. (Para 26)

Therefore, in order that a victim of a crime of forgery, namely, the person aggrieved is able to exercise his right conferred by law to initiate prosecution of the offender, it is necessary to place a restrictive interpretation on clause (*b*)(*ii*) of Section 195(1) CrPC. (Para 28)

Hence, in view of the above, it is held that *Sachida Nand Singh*, (1998) 2 SCC 493 has been correctly decided and the view taken therein is the correct view. Section 195(1)(*b*)(*ii*) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in *custodia legis*. (Para 33)

In the present case, the Will has been produced in the court subsequently. Therefore, the bar created by Section 195(1)(*b*)(*ii*) CrPC would not come into play. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference. (Para 34). *Iqbal Singh Marwah* v. *Meenakshi Marwah*, (2005) 4 SCC 370: 2005 SCC (Cri) 1101: AIR 2005 SC 2119: (2005) 3 Mah LJ 530: 2005 Cri LJ 2161.

Bench Strength 5. Coram: *R.C. Lahoti, C.J.* and *B.N. Agrawal, H.K. Sema*, **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 11-3-2005]

Sheffield City Council v. Yorkshire Water Services Ltd., (1991) 1 WLR 58: (1991) 2 All ER 280; S.J. Grange Ltd. v. Customs and Excise Commrs., (1979) 2 All ER 91: (1979) 1 WLR 239; Patel Laljibhai Somabhai v. State of Gujarat, (1971) 2 SCC 376: 1971 SCC (Cri) 548; Raghunath v. State of U.P., (1973) 1 SCC 564: 1973 SCC (Cri) 448; Mohan Lal v. State of Rajasthan, (1974) 3 SCC 628: 1974 SCC (Cri) 118; Legal Remembrancer, Govt. of W.B. v. Haridas Mundra, (1976) 1 SCC 555: 1976 SCC (Cri) 67; Mahadev Bapuji Mahajan v. State of Maharashtra, 1994 Supp (3) SCC 748: 1995 SCC (Cri) 198, relied on

Surjit Singh v. Balbir Singh, (1996) 3 SCC 533: 1996 SCC (Cri) 521, harmonised

Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493: 1998 SCC (Cri) 660, affirmed

Emperor v. Kushal Pal Singh, AIR 1931 All 443: 32 Cri LJ 1105 (SB), approved

Gopalakrishna Menon v. D. Raja Reddy, (1983) 4 SCC 240: 1983 SCC (Cri) 822, considered and distinguished

***Followed** in P. Swaroopa Rani v. M. Hari Narayana, (2008) 5 SCC 765*

[2304] — S. 195(1)(b)(ii) — Expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court" — Meaning of — *Held, would normally mean commission of such an offence after the document has actually been produced or given in evidence in court. Iqbal Singh Marwah* v. *Meenakshi Marwah*, (2005) 4 SCC 370: 2005 SCC (Cri) 1101: AIR 2005 SC 2119: (2005) 3 Mah LJ 530: 2005 Cri LJ 2161.

Bench Strength 5. Coram: *R.C. Lahoti, C.J.* and *B.N. Agrawal, H.K. Sema*, **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 11-3-2005]

[2305] — S. 195(1)(b)(ii) — Nature of — Held, is not a penal provision — *Penal statute, what is — Explained — Hence, principle that a penal statute should be strictly construed is not applicable while interpreting S. 195(1)(b)(ii) — Thus, contention relating to broad interpretation of S. 195(1)(b)(ii) i.e. extending it to cases where forgery of document is committed prior to that document being produced or given in evidence in a proceeding in any court, rejected*

Section 195(1)(*b*)(*ii*) CrPC which is required to be interpreted is not a penal provision but is part of a procedural law, namely, the Code of Criminal Procedure which elaborately gives the procedure for trial of criminal cases. The provision only creates a bar against taking cognizance of an offence in certain specified situations except upon complaint by court. A penal statute is one upon which an action for penalties can be brought by a public officer or by a person aggrieved and a penal Act in its wider sense includes every statute creating an offence against the State, whatever is the character of the penalty for the offence. The principle that a penal statute should be strictly construed, as projected by the appellants can, therefore, have no application here. (Paras 31 and 29). *Iqbal Singh Marwah* v. *Meenakshi Marwah*, (2005) 4 SCC 370: 2005 SCC (Cri) 1101: AIR 2005 SC 2119: (2005) 3 Mah LJ 530: 2005 Cri LJ 2161.

Bench Strength 5. Coram: *R.C. Lahoti, C.J.* and *B.N. Agrawal, H.K. Sema*, **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 11-3-2005]

[2306] — S. 195(1)(b)(ii) — Offence punishable under S. 467 Penal Code is "offence described in S. 463 IPC" and hence cannot be taken cognizance of in absence of a written complaint by court

Section 195(1)(*b*)(*ii*) CrPC uses two different expressions viz. "offence described" in regard to S. 463 IPC and 'punishable' in regard to S. 471, 475 or 476, IPC. The opening S. 463 of Chapter XVIII IPC *defines* the offence of forgery and S. 467 IPC *punishes* forgery of a particular category. Thus the offence punishable under S. 467 is an "offence described in S. 463 "within the meaning of S. 195(1)(*b*)(*ii*), CrPC. Therefore, in absence of a complaint from the appropriate civil court prosecution under S. 467, IPC on the basis of a private complaint would not be maintainable. *Gopalakrishna Menon* v. *D. Raja Reddy*, (1983) 4 SCC 240: 1983 SCC (Cri) 822: AIR 1983 SC 1053: 1983 Cri LJ 1599.

Bench Strength 2. Coram: *D.A. Desai* and **Ranganath Misra**, JJ. [Date of decision: 5-9-1983]

S.L. Goswami v. High Court of M.P., (1979) 1 SCC 373: 1979 SCC (Cri) 311, applied

[2307] — Ss. 195(1)(b)(ii), 156(3) and 482 — Private complaint — Bar under S. 195(1)(b)(ii) that no court shall take cognizance of any offence described in S. 463 IPC, or punishable under S. 471, S. 475 or S. 476 IPC, committed in respect of a document produced or given in evidence in a proceeding in the court, except on complaint in writing of the court concerned — Private complaint in such matter — Maintainability — *Held, said bar not attracted, as offence committed by respondent-accused in collusion with Area Lekhpal was not in relation to court proceedings — It was behind the back of appellant and as soon as he came to know about the illegal designs of accused, he lodged a private complaint under S. 156(3), which was maintainable — Magistrate directed to proceed with criminal complaint — Penal Code, 1860, Ss. 463, 471, 475 and 476*

The appellant purchased land from one *M* (vendor) and pursuant to the execution of sale deed in his favour, he was handed over possession. Respondent-accused (Respondents 2 to 4 herein) contended that land in question was recorded in their names. On inquiries made by both appellant and vendor in Tahsildar's court, they came to know that accused, in collusion with the Area Lekhpal, got their names mutated on the basis of Area Lekhpal's report. Area Lekhpal had given a totally untrue statement, and by showing an alive person, appellant's vendor as dead had got the names of the accused mutated. Appellant filed an application before SDM to set aside such mutation order, which was allowed and appeal of respondent-accused thereagainst dismissed. Thus, matter relating to mutation proceedings came to an end.

However, the appellant initiated criminal proceedings against respondent-accused by filing application/complaint under Section 156(3) CrPC, alleging the aforesaid facts. The said application/complaint of the appellant was allowed and police registered the FIR and started investigation. Ultimately, after further litigation, police completed the investigation and the investigating officer submitted the charge-sheet for commission of alleged offences under Sections 420, 467, 468, 471 and 120-B IPC and criminal case was registered against the respondents and cognizance taken against them. Respondent-accused then filed petition under Section 482 CrPC before the High Court for quashing the charge-sheet and taking cognizance thereof, which was allowed.

The High Court held that the application under Section 156(3) CrPC was barred in view of the provisions of Section 195 CrPC. However, appellant complainant was given liberty to move an application before the court concerned for taking action against the accused persons in accordance with the provisions of Section 340 CrPC.

Allowing the appeal,

Held:

Section 195(1)(*b*)(*ii*) CrPC contemplates a situation where offences enumerated therein are committed with respect to a document, subsequent to its production or giving in evidence in a proceeding in any court. (Para 23)

The impugned order was passed by the High Court on total non-application of law with regard to provision contained in Section 195 CrPC, which cannot be sustained in law. It proceeded on absolutely wrong facts and incorrect principles of law were applied. It completely lost sight of the fact that the offence committed by the accused in collusion with the Area Lekhpal was not in relation to court proceedings. It was in any case behind the back of the appellant and as soon as he came to know with regard to the illegal designs of the accused he lodged a complaint under Section 156(3) CrPC. (Paras 16 and 22)

The High Court further committed a gross error in resorting to Section 340 CrPC as provisions of the said section can be invoked only when it is established that offence of forgery had already been committed. (Para 24)

The accused had miserably failed for grant of any relief under Section 482 CrPC. The limit of exercising jurisdiction conferred on the High Court under Section 482 CrPC is well defined and by no stretch of imagination, it could be said that petition filed by the accused under Section 482 CrPC had fulfilled the requirement as contemplated in this section. (Para 25)

Hence, the impugned order cannot be sustained. The same is, accordingly, set aside and quashed. As a necessary consequence thereof, the Magistrate is directed to proceed with the criminal complaint filed by the appellant against respondent-accused in accordance with law and on merits. (Para 26). *Mahesh Chand Sharma* v. *State of U.P.*, (2009) 15 SCC 519: (2009) 82 AIC 227 (SC).

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **Deepak Verma**, JJ. [Date of decision: 28-8-2009]

Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493: 1998 SCC (Cri) 660; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, followed

[2308] — S. 195(1)(b)(ii) — Offence under S. 471 IPC committed before the start of the proceedings — *Complaint by the court concerned not nec-*

essary either in the old Code or in the new Code. *Mahadev Bapuji Mahajan* v. *State of Maharashtra*, 1994 Supp (3) SCC 748: AIR 1994 SC 1549: 1994 Cri LJ 1389.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 14-9-1993]

[2309] — **S. 195(1)(b)(ii) — Words "by a party to any proceeding in any court" occurring in S. 195(1)(c) CrPC, 1898** — *Omission of, in the corresponding provision of new CrPC of 1973 i.e. S. 195(1)(b)(ii) — Object of, held, is to afford protection against vexatious prosecutions to witnesses also — CrPC, 1898, S. 195(1)(c)* (Paras 20 and 19). *Iqbal Singh Marwah* v. *Meenakshi Marwah*, (2005) 4 SCC 370: 2005 SCC (Cri) 1101: AIR 2005 SC 2119: (2005) 3 Mah LJ 530: 2005 Cri LJ 2161.

Bench Strength 5. Coram: *R.C. Lahoti, C.J.* and *B.N. Agrawal, H.K. Sema*, **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 11-3-2005]

[2310] — **Ss. 195(1)(b)(ii) and 195(3) — "Court" — Does not include Compensation Officer appointed under S. 19 of Bihar Land Reforms Act, 1950 for determination of compensation for divesting proprietor, tenure-holder or intermediary of his right in the estate or tenure under the Act** — *Such Compensation Officer is neither a civil court even though he possesses certain powers possessed by civil court under Civil Procedure Code, nor a revenue court, nor a criminal court as defined in S. 195(3) — Bihar Land Reforms Act, 1950, S. 19*

The appellants are facing trial in the Court of Special Judge (Vigilance), Patna wherein it is alleged that in pursuance of a conspiracy entered into by them, payment of Rs 2 crores by way of compensation was fraudulently obtained by them and thus they have committed offences punishable under Sections 120-B, 420, 467, 468, 471 and 477 of the Indian Penal Code and under Section 5(2) read with sub-sections (1)(*c*) and (*d*) of Section 5 of the Prevention of Corruption Act, 1947. The appellants raised a preliminary objection before the Special Judge that the aforesaid offences are alleged to have been committed by the appellants in respect of a document produced in the compensation proceedings before the Compensation Officer and as Compensation Officer appointed under the Bihar Land Reforms Act is a "court" within the meaning of Section 195(1)(*b*), the complaint could have been filed only by that Compensation Officer and as that has not been done in this case, the Special Judge (Vigilance) had no jurisdiction to take cognizance of those offences. The Special Judge overruled the objection. A Full Bench of the High Court also held that Compensation Officer appointed under the Act is not a court within the meaning of Section 195(1)(*b*) of the Code. The correctness of that decision is questioned in this appeal. Dismissing the appeal,

Held :

The word "court" is a word of very wide connotation. In legal parlance it indicates a place where justice is judicially administered. But for the purposes of Section 195(1)(*b*) of the Code, definition of "court" contained in sub-section (3) of Section 195 of the Code has to be seen. The term "court" had a wider meaning under the old Code but under the new Code it is given a restricted meaning. Now the word "court" in Section 195 does not include all the judicial bodies and authorities constituted for administering justice. The courts contemplated now by Section 195 are only civil courts, revenue courts and criminal courts and those tribunals which are required by the Acts constituting them to be courts for the purposes of Section 195. (Para 7)

Assuming that the Compensation Officer appointed under the Act can be said to be a court, it is not possible to hold that he is a civil court. Neither the Act nor any other legislation expressly provides that the Compensation Officer is a civil court. Though he possesses certain powers which a civil court possesses under the Code of Civil Procedure and the proceedings before him are deemed to be judicial proceedings he does not possess all the attributes of a civil court. Though proceedings before him are to be considered as judicial proceedings and is of a civil nature, it is of a limited nature. His appointment is under a special law and for a specific and limited purpose. His main function is to determine the amount of compensation. The amount of compensation is to be determined by finding out the rent and then making certain additions, subtractions and multiplications as provided in the Act itself. He cannot determine the questions of title or rights of the rival claimants except for the purpose of determining who should be paid compensation. The party claiming compensation cannot lead evidence as regards the value of his interest in the estate or tenure. Nor does a Compensation Officer has the discretion to decide independently the amount of compensation on the basis of such evidence. (Para 9)

Determination of compensation for divesting a tenure-holder or an intermediary of his right in the estate or tenure is not a matter pertaining to revenue. For that reason he is not a revenue court also. (Para 9)

The Compensation Officer cannot also be said to be a criminal court merely because the Bihar Land Reforms Act provides imposition of penalty for non-compliance with the requisition to give true information or produce a document, An argument on this point was, however, not pressed on behalf of the appellants. (Para 6). *Keshab Narayan Banerjee* v. *State of Bihar*, (2000) 1 SCC 607: 2000 SCC (Cri) 272: AIR 2000 SC 485: 2000 Cri LJ 595.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.N. Phukan*, JJ. [Date of decision: 16-12-1999]

Canara Bank v. Nuclear Power Corpn. of India Ltd., 1995 Supp (3) SCC 81; Baliram Waman Hiray (Dr.) v. Justice B. Lentin, (1988) 4 SCC 419: 1988 SCC (Cri) 941, relied on

Chandra Kishore Jha v. State of Bihar, 1975 BBCJ 656 (DB), overruled

[2311] — Ss. 195(1)(b)(ii) and 340(1) — Bar under S. 195(1)(b)(ii) of taking cognizance of offence if offence described in S. 463 or punishable under Ss. 471, 475, 476 IPC committed in respect of a document produced or given in evidence in a proceeding in a court — *Held, bar not applicable where the said offence was committed before document was produced in a court*

A complaint was filed by the second respondent in the Court of the Chief Judicial Magistrate alleging offences, inter alia, under Sections 468, 469 and 471 of the Indian Penal Code on the facts that the appellants had forged a document (certified copy of Jamabandi-Rent Roll) and produced it in the Court of the Executive Magistrate which was then dealing with proceedings under Section 145 of the Code. The Chief Judicial Magistrate forwarded the complaint to the police as provided in Section 156(3) of the Code. Police registered an FIR on the basis of the said complaint and after investigation laid a charge-sheet against appellants for those offences. The Chief Judicial Magistrate took cognizance of those offences and issued process to the accused. The appellants then moved the Patna High Court under Section 482 of the Code for quashing the prosecution on the main ground that the Magistrate could not have taken cognizance of the said offences in view of the bar contained in Section 195(1)(*b*)(*ii*) of the Code. Before the High Court the appellants cited the decision of the Supreme Court in *Gopalakrishna Menon* v. *V.D. Raja Reddy*, (1983) 4 SCC 240. But the High Court relying on the Supreme Court's decision in *Patel Laljibhai Somabhai* v. *State of Gujarat*, (1971) 2 SCC 376 dismissed the petition of the appellant. Dismissing the present appeal,

Held:

Section 195(1)(*b*)(*ii*) CrPC reveals two main postulates for operation of the bar mentioned there. First is, there must be allegation that an offence (it should be either an offence described in Section 463 or any other offence punishable under Sections 471, 475, 476 of the IPC) has been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a proceeding in any court. It is undisputed that if forgery has been committed while the document was in the custody of a court, then prosecution can be launched only with a complaint made by that court. Again, if forgery was committed with a document which has not been produced in a court then the prosecution would lie at the instance of any person. A question arises whether in the latter situation production of such document in Court will make any difference. Now, even if the clause is capable of two interpretations the narrower interpretation has to be chosen. Provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise.

That apart it is difficult to interpret Section 195(1)(*b*)(*ii*) as containing a bar against initiation of prosecution proceedings merely because the document concerned was produced in a court albeit the act of forgery was perpetrated prior to its production in the Court. Any such construction is likely to ensue unsavoury consequences. It is a settled proposition that if the language of a legislation is capable of more than one interpretation, the one which is capable of causing mischievous consequences should be averted.

As Section 340(1) of the Code has an interlink with Section 195(1)(*b*) it is necessary to refer to that sub-section in the present context. No complaint can be made by a court regarding any offence falling within the ambit of Section 195(1)(*b*) of the Code without first adopting the procedural requirement of Section 340(1). The scope of the preliminary enquiry envisaged in Section 340(1) is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in court or given in evidence in a proceeding in that Court. So the offences envisaged in Section 195(1)(*b*) must involve acts which would have affected the administration of justice. The offence should have been committed during the time when the document was in *custodia legis*.

It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the court records. It must therefore be held that the bar contained in Section 195(1)(*b*)(*ii*) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court. *Sachida Nand Singh* v. *State of Bihar*, (1998) 2 SCC 493: 1998 SCC (Cri) 660: AIR 1998 SC 1121.

Bench Strength 3. Coram: *M.M. Punchhi, C.J. and* **K.T. Thomas** and *M. Srinivasan*, JJ. [Date of decision: 3-2-1998]

Patel Laljibhai Somabhai v. State of Gujarat, (1971) 2 SCC 376: 1971 SCC (Cri) 548, affirmed

Gopalakrishna Menon v. D. Raja Reddy, (1983) 4 SCC 240: 1983 SCC (Cri) 822, overruled

Mahadev Bapuji Mahajan v. State of Maharashtra, 1994 Supp (3) SCC 748: 1995 SCC (Cri) 198; Raghunath v. State of U.P., (1973) 1 SCC 564: 1973 SCC (Cri) 448; Mohan Lal v. State of Rajasthan, (1974) 3 SCC 628: 1974 SCC (Cri) 118; Legal Remembrancer of Govt. of W. B. v. Haridas Mundra, (1976) 1 SCC 555: 1976 SCC (Cri) 67, relied on

Harbans Singh v. State of Punjab, AIR 1987 P&H 19: 1986 Cri LJ 1834; T. Govindaraju v. State of Karnataka, 1995 Cri LJ 1491 (Kant); Alka Bhagwant Jadhav v. State of Maharashtra, ILR 1986 Bom 64, approved

***Affirmed** in Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370; Rugmini Ammal v. V. Narayana Reddiar, (2007) 12 SCC 611*

[2312] — **Ss. 195(1)(b)(ii) and 482 — Commission of forgery in respect of a document produced or given in evidence in a proceeding in any court — Bar under S. 195(1)(b)(ii) that no court shall take cognizance of any such offence except on the complaint in writing of the court concerned — Scope and applicability** — *Forgery committed before the document was filed in court — Held, provisions of S. 195(1)(b)(ii) not applicable in such a case — Hence, High Court was not justified in quashing the prosecution launched under Ss. 467, 468, 471, 472 and 477-A r/w S. 34 IPC on the ground that the complaint was barred under S. 195(1)(b)(ii)* — Iqbal Singh Marwah, *(2005) 4 SCC 370, followed — Penal Code, 1860, Ss. 467, 468, 471, 472 and 477-A r/w S. 34* (Paras 3 and 4). *K. Vengadachalam* v. *K.C. Palanisamy*, (2005) 7 SCC 352: 2005 SCC (Cri) 1673.

Bench Strength 2. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 8-8-2005]

Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, followed

[2313] — **Ss. 195(1)(b)(ii) and (3) — Impersonation as CA, etc. — "Offence committed in respect of a document produced or given in evidence in proceedings in any court" — "Court" — Tax authorities** — *Income Tax Department and authorities constituted under M.P. Trade Tax Act do not fall within ambit of "court" as defined in S. 195(3) — Hence failure to file complaint by said authorities, not being "court", against respondent did not attract bar of S. 195*

The further submission that the respondent cannot be prosecuted for the offences defined under IPC because no complaint had been filed against him by the court concerned or authority as per the requirement of Section 195(1)(*b*)(*ii*) CrPC sounds attractive but lacks merit. The prohibition contained in Section 195 CrPC against taking of cognizance by the court except on a complaint in writing made by the court concerned before which the document is produced or given in a proceeding is not attracted in the case like the present one because the officers of the Income Tax Department and the authorities constituted under the Madhya Pradesh Trade Tax Act, 1995 before whom the respondent is alleged to have acted on the basis of power of attorney or as legal representative or produced audit report do not fall within the ambit of the term "court" as defined in Section 195(3) CrPC. Such officer/authorities were neither discharging the functions of a civil, revenue or criminal court nor could they be treated as tribunal constituted by or under the Central or State Act, which is declared to be a court for the purpose of Section 195. (Para 42). *Institute of Chartered Accountants of India* v. *Vimal Kumar Surana*, (2011) 1 SCC 534.

Bench Strength 2. Coram: **G.S. Singhvi** and *A.K. Ganguly*, JJ. [Date of decision: 1-12-2010]

Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, relied on

Emperor v. Kushal Pal Singh, AIR 1931 All 443; Raghunath v. State of U.P., (1973) 1 SCC 564: 1973 SCC (Cri) 448; Patel Laljibhai Somabhai v. State of Gujarat, (1971) 2 SCC 376: 1971 SCC (Cri) 548; Mohan Lal v. State of Rajasthan, (1974) 3 SCC 628: 1974 SCC (Cri) 118; Legal Remembrancer, Govt. of W.B. v. Haridas Mundra, (1976) 1 SCC 555: 1976 SCC (Cri) 67; Mahadev Bapuji Mahajan v. State of Maharashtra, 1994 Supp (3) SCC 748: 1995 SCC (Cri) 198; Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493: 1998 SCC (Cri) 660, cited

Craies on Statute Law, 7th Edn., pp. 207, 209, cited

— S. 195(3) *See* Ss. 195(1)(b)(i) and 195(3)

See also Ss. 195(1)(b)(ii) and 195(3)

See also Ss. 340 and 195(3)

[2314] **— S. 195(3) — Provision in statute deeming a tribunal as a court essential**

Sub-section (3) of S. 195 of the CrPC, 1973 has brought about a change in law. In view of this change, a tribunal constituted by or under a Central, Provincial or State Act can be deemed to be a 'Court' only if it is declared to be so by that Act for the purposes of S. 195. It is now a familiar feature of recent Acts to insert a specific provision deeming a tribunal to be a court and wherever such a provision is not there, the court cannot deem a tribunal to be a court. It is no more a question of interpretation but one of express enactment.

To construe sub-s. (3) of S. 195 of the Code it is not only legitimate but highly convenient to refer both to the former Code and the state of uncertainty brought about due to conflict of views between different High Courts, and to the present Code which seeks to provide the remedy. It was to cure this mischief that Parliament brought in sub-sec. (3) of S. 195 of the Code and put an end to the controversy. The principles laid down in *Heydon case* are still in full force and effect, with the addition that regard must now be had not only to the existing law but also to prior legislation and to the judicial interpretation thereof.

The decision in *Lalji Haridas case* was rendered prior to the enactment of sub-sec. (3) of S. 195 of the present Code. The court was therefore concerned with the definition of the term 'Court' under S. 195 (2) of the earlier Code which was an inclusive one. There being no express provision akin to S. 40 of the Indian Railways Act, S. 23 of the Workmen's Compensation Act or S. 18 of the Payment of Wages Act, the matter was one of construction than of express enactment. The decision of the majority in *Lalji Haridas case* is now more of academic interest. The decision in *Balwant Singh case* does not carry the matter any further. *Baliram Waman Hiray* v. *Justice B. Lentin*, (1988) 4 SCC 419: 1988 SCC (Cri) 941: AIR 1988 SC 2267.

Bench Strength **2**. Coram: **A.P. Sen** and *L.M. Sharma*, JJ. [Date of decision: 12-9-1988]

Heydon case, (1584) 3 Co Rep 7a: 76 ER 637, approved and applied

Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 2 SCR 603: AIR 1955 SC 661: (1955) 6 STC 446; R.M.D. Chamarbaugwalla v. Union of India, 1957 SCR 930: AIR 1957 SC 628 and CIT v. Sodra Devi, 1958 SCR 1: AIR 1957 SC 832: (1957) 32 ITR 615, relied on

Lalji Haridas v. State of Maharashtra, (1964) 6 SCR 700: AIR 1964 SC 1154 and Balwant Singh v. L.C. Bharupal, ITO, (1968) 70 ITR 89(SC), overruled by legislative enactment

[2315] — S. 195(3) — Sub-section (3) held, is a clearly expressed explanatory provision imposing a restriction on the interpretation of the term "court" — *Restriction is discernible from the words: "... if declared by that Act to be a court for the purposes of this section" — IT Act, 1961, S. 136 — Motor Vehicles Act, 1988, S. 169(2) — Administrative Tribunals Act, 1985, S. 22(3) — Consumer Protection Act, 1986, S. 13(4) — Monopolies and Restrictive Trade Practices Act, 1969, S. 12 — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, S. 22*

The body of sub-section (1)(*b*) of Section 195 CrPC refers to the expression "court" and the same stands explained in sub-section (3). Without a reading of sub-section (3), "court" may be interpreted in a narrow context, but with the inclusion of sub-section (3), widest possible connotation is to be made available provided however, the statute declares it to be so. The language "if declared by that Act" is significant. (Para 6)

The inclusion of sub-section (3) under Section 195 cannot but be taken to be an explanatory provision. The body of Section 195(1)(*b*) refers to the expression "court" and the same stands thus explained in sub-section (3). The restriction imposed is easily ascertainable by reason of the inclusion of the words *"if declared by that Act to be a court for the purposes of this section"* (emphasis supplied) — the user of the words is very significant. One of the golden canons of interpretation is that the legislature always avoids surplusage and attributes a definite meaning to each of the words mentioned in the statute. By the very inclusion of sub-section (3) and the language, the intent of the legislature cannot thus be far to seek — it is connotative of a definite meaning. (Para 7)

The clear language of Section 195(3) CrPC unmistakably depicts the restrictive intent of the legislature and if the intent was otherwise to include an Arbitral Tribunal within the fold of Section 195(3) of the Code, that is to say, if the legislature wanted to confer such a status there was no difficulty as such in incorporating thereunder a provision as is contained in the Debt Recovery Act (vide Section 22); Income Tax Act (vide Section 136); Motor Vehicles Act [vide Section 169(2)]; Administrative Tribunals Act [vide Section 22(3)]; Consumer Protection Act; MRTP Act; and Companies Act etc. etc. since these statutes have definitely included and declared the Tribunal being ascribed to be a court within the meaning of Section 195 of the Criminal Procedure Code. The inclusion of explanatory provision by way of sub-section (3) makes the situation abundantly clear. (Para 16). *Manohar Lal* v. *Vinesh Anand*, (2001) 5 SCC 407: 2001 SCC (Cri) 1322: AIR 2001 SC 1820: 2001 Cri LJ 2044.

Bench Strength **2**. Coram: *A.P. Misra* and **U.C. Banerjee**, JJ. [Date of decision: 9-4-2001]

Baliram Waman Hiray (Dr.) v. Justice B. Lentin, (1988) 4 SCC 419: 1988 SCC (Cri) 941, relied on

Sailaja Kanta Mitra v. State of W.B., AIR 1971 Cal 137: 75 CWN 804, overruled

Puhupram v. State of M.P., 1968 MPLJ 629, approved by implication

Virindar Kumar Satyawadi v. State of Punjab, AIR 1956 SC 153: 1956 Cri LJ 326; H.C. Ganti v. F.L. Harcourt, AIR 1931 Cal 436: 32 Cri LJ 826, distinguished

[2316] — S. 195(4) — "Ordinarily" — Meaning of — Explained

The expression "ordinarily" may mean "normally" but, the said expression must be understood in the context in which it has been used. "Ordinarily" may not mean "solely" or "in the name", and thus, if under no circumstance an appeal would lie to the Principal District Judge, the court would not be subordinate to it. When in a common parlance the expression "ordinarily" is used, there may be an option. There may be cases where an exception can be made out. It is never used in reference to a case where there is no exception. It never means "primarily". (Para 19). *State of A.P.* v. *V. Sarma Rao*, (2007) 2 SCC 159: (2007) 1 SCC (Cri) 535: AIR 2007 SC 137: 2007 Cri LJ 289.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-11-2006]

Kuldip Singh v. State of Punjab, 1956 SCR 125: 1956 Cri LJ 781, distinguished on facts

— **S. 196** *See also* Ss. 196, 196-A, Criminal Procedure Code, 1898, pp. 1062 et seq. in Vol. 2

— **S. 196** *See* Ss. 154, 190, 195, 196, 197 and 200

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193 and 195 to 199 & 204

See also Ss. 195 to 199

See also Ss. 197 and 196

See also Ss. 340, 192 to 196, 227 and 482

See also Ss. 482, 200, 196

[2317] — S. 196 — Sanction for prosecution under — Appropriate authority to grant — *Held, Lt. Governor of Delhi is appropriate authority for NCT of Delhi in light of Ministry of Home Affairs, GOI Noti. dated 20-3-1974 — Government of NCT of Delhi Act, 1991 does not in any way affect validity of the same — Constitution of India, Arts. 239 and 239-AA — Appropriate authority to accord sanction under S. 196, CrPC for NCT of Delhi — Held, is Lt. Governor of Delhi*

As regards the sanction under Section 196 CrPC it is recited in the sanction order (Ext. P-11/2) that the Lieutenant Governor acted in exercise of powers conferred by Section 196(1) CrPC read with the Government of India, Ministry of Home Affairs notification dated 20-3-1974. Under that notification, there was delegation of powers to the Lieutenant Governor to grant sanction. The said notification which finds place in the annexures to the written submissions made on behalf of Gilani shows that it was issued under Article 239(1) of the Constitution enabling the Administrator of the Union Territory to discharge powers and functions of the State Government under CrPC. The delegation of power contained in the said notification will continue to operate unless Parliament by law provides otherwise. The Government of NCT of Delhi Act, 1991 does not in any way affect the validity of delegation contained in the presidential notification issued under Article 239. (Para 11)

Hence, the sanctions under Section 50 of POTA and Section 196 CrPC were accorded by a competent authority. (Para 12). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Goa Sampling Employees' Assn. v. General Superintendence Co. of India (P) Ltd., (1985) 1 SCC 206: 1985 SCC (L&S) 201, distinguished

[2318] — Ss. 196, 190, 193 and 209 — Whether committal Magistrate takes cognizance of offence while committing the case to Sessions Court and therefore order granting sanction for prosecution has to be produced before the Magistrate or is it the Sessions Court which takes cognizance after committal of the case to it and therefore, the order granting sanction required to be produced before it — *Not necessary to decide since in any event, Sessions Court takes cognizance of the offence irrespective of whether earlier the committal Magistrate had taken cognizance of the same offence for committal of the case — However, since in this case the contention that the order of sanction having not been produced before the committal Magistrate the entire proceedings were vitiated, was raised for the first time before High Court in revision and since even considering that contention, on facts, it was not possible to grant substantial relief to the petitioner, SLP need not be granted*

Though there is considerable force in the argument of the petitioner that the Magistrate does take cognizance of the offence before committing the case to the Court of Session, still the question remains whether the sanction order is required to be produced before the Magistrate who takes cognizance in the first instance or before the Sessions Court which has exclusive jurisdiction to try the offence. Though the Sessions Court cannot take cognizance of the offence as a court of original jurisdiction, it has to necessarily take cognizance of the offence irrespective of the fact whether the committal Magistrate at an anterior point of time had taken cognizance of the same offence for the purpose of committal. (Para 6)

However, no opinion need be expressed on the question regarding the effect of non-production of sanction order before the Magistrate who committed the case to the Sessions Court since it is not a fit case to interfere by granting leave in exercise of jurisdiction under Article 136. Firstly, the petitioner did not choose to raise the objection regarding sanction either before the Magistrate or even before the Sessions Court. The only point urged before the Sessions Judge in the application for discharge was that there was no evidence even prima facie to connect the accused with the offence. The contention regarding non-production of the order of sanction before the Magistrate was urged for the first time in the revision filed in the High Court. Even then, this contention could have been considered, if substantial relief could be granted to the petitioner or if injustice could be averted. Assuming that the petitioner is right in his contention, at best, the matter has to be sent back to the Magistrate to go through a fresh process of committal after receiving the sanction order filed by the prosecution. In any case, the matter would have to come up to the Sessions Court again. The compliance with the formality would only result in further delay in holding the trial, without any corresponding advantage to the petitioner. Such a situation should not be permitted to happen while exercising the jurisdiction under Article 136, more so when the petitioner inexplicably failed to raise the objection at the earliest. (Para 7). *Dharmesh* v. *State of Gujarat*, (2002) 6 SCC 370: 2002 SCC (Cri) 1327: AIR 2002 SC 2784.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **P. Venkatarama Reddi**, JJ. [Date of decision: 1-8-2002]

Gangula Ashok v. State of A.P., (2000) 2 SCC 504: 2000 SCC (Cri) 488, relied on

[2319] — Ss. 196, 195 and 197 — Sanction order — Grant of sanction — Nature of act — Application of mind in — What is required to show — Test for — *Held, grant of sanction is an executive act and validity thereof cannot be tested in light of principles applied to quasi-judicial orders*

The grant of sanction is an executive act and the validity thereof cannot be tested in the light of principles applied to quasi-judicial orders. (Para 16)

The test to be applied is whether relevant material that formed the basis of allegations constituting the offence was placed before the sanctioning authority and the same was perused before granting sanction. (Para 16)

The observations in *Rambhai case*, (1997) 7 SCC 744, at p. 749, para 11 do not mean that different standards should be applied for judging the validity of a sanction made under the provisions of TADA or POTA and the sanctions under ordinary laws. That is not the ratio of the decision. The learned Judges were only pointing out that enough seriousness was not bestowed in the process of granting sanction for prosecution under a stringent law. (Para 16)

The two-pronged test laid down therein has been amply satisfied in the instant case. The sanction orders on their face indicate that all relevant material viz. the FIR, disclosure statements, recovery memos, draft charge-sheet and other materials on record were placed before the sanctioning authority. The fact that the sanctioning authority perused all this material is also discernible from the recital in the sanction orders. An elaborate narration of facts culled out from the record placed before the sanctioning authority and the discussion as to the applicability of each and every section of the penal provision quoted therein is not an imperative requirement. A pedantic repetition from what is stated in the FIR or the draft charge-sheet or other documents is not what is called for in order to judge whether there was due application of mind. The oral evidence let in by the prosecution by examining PW 11 dispels any doubt as to the consideration of the matter by the sanctioning authority before according the sanction. (Para 16). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Supdt. of Police (CBI) v. Deepak Chowdhary, (1995) 6 SCC 225: 1995 SCC (Cri) 1095, relied on

Gokulchand Dwarkadas Morarka v. R., AIR 1948 PC 82: 49 Cri LJ 261; Jaswant Singh v. State of Punjab, 1958 SCR 762: AIR 1958 SC 124: 1958 Cri LJ 265, followed

Rambhai Nathabhai Gadhvi v. State of Gujarat, (1997) 7 SCC 744: 1997 SCC (Cri) 1169, clarified

[2320] — Ss. 196, 195 and 197 — Sanction order — Requirements for efficaciousness of — *Quality of drafting, charges framed thereupon, mentioning of inapplicable statutory provisions — Relevance of — Prevention of Terrorism Act, 2002, S. 50 — Prevention of Corruption Act, 1988, S. 19*

The charge need not follow the exact terms of the sanction, though it must not relate to an offence essentially different from that to which the sanction relates. In any case the mention of an inapplicable section does not go to the root of the matter or otherwise makes it vulnerable to attack. (Para 15)

Careless drafting cannot deal a fatal blow to the sanction order. Looking at the substance and reading the entirety of the order it can be concluded that the sanction was duly given for the prosecution of the accused for the offences under POTA after the competent authority (the Lieutenant Governor) had reached the satisfaction prima facie in regard to the commission of the POTA offences as well. (Para 14)

Though the conspiracy to commit the offences punishable by Section 121 is covered by Section 121-A, probably Section 120-B was also referred to by way of abundant caution in the sanction order though the prosecution for the said offence does not require sanction. At any rate, the insertion of a seemingly overlapping provision does not and cannot affect the validity of the sanction order. Nor can it be said that the addition of Section 124 IPC, which has really no application to the present case by itself vitiates the sanction order. From the insertion of one inapplicable provision, a reasonable inference cannot be drawn that there was no application of mind by the competent authority. A meticulous and legalistic examination as to the offences applicable and not applicable is not what is expected at the stage of granting sanction. (Para 15). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Gokulchand Dwarkadas Morarka v. R., AIR 1948 PC 82: 49 Cri LJ 261, relied on

[2321] — **S. 196(1) — Absence of sanction under S. 196(1), CrPC for prosecution under — Effect** *— Held, proceedings must be quashed — Written instructions received by the counsel for the State in this regard directed to be kept on record — Penal Code, 1860, S. 295-A. Manoj Rai* v. *State of M.P.*, (1999) 1 SCC 728: 1999 SCC (Cri) 98: AIR 1999 SC 300.

Bench Strength 2. Coram: *M.K. Mukherjee* and *S.S.M. Quadri*, JJ. [Date of decision: 3-8-1998]

[2322] — **S. 196(1-A) — Bar under, against taking cognizance of offences enumerated therein except with prior sanction of Central Govt. or State Govt. or District Magistrate — Applicability** *— Held, the said bar is against taking of cognizance by court and not against registration of criminal case or investigation by police or submission of police report under S. 173 CrPC on completion of investigation — If the said acts are done without prior sanction of Central Govt. or State Govt. or District Magistrate, there will be no violation of S. 196(1-A) — FIR lodged under S. 153-B IPC against respondent — Respondent produced before Magistrate — Magistrate remanding respondent to judicial custody — Held, order of remand did not amount to taking cognizance of the offence — High Court erred in taking a contrary view in this regard — Thus, in such circumstances, S. 196(1-A) had no application — Quashing of proceedings by High Court due to absence of prior sanction under S. 196(1-A), held, not justified — Penal Code, 1860, S. 153-B*

An FIR under Section 153-B IPC was lodged against the respondent. The respondent was arrested. He was produced before a Magistrate on the same day who remanded him to judicial custody as no application for bail had been filed. The respondent filed a petition under Section 482 CrPC before the High Court. The High Court quashed the entire proceedings initiated against the respondent on the ground that as the investigating agency had not obtained previous sanction of the Central Government or of the State Government or of the District Magistrate as required by Section 196(1-A) CrPC, the initiation of criminal proceedings against the respondent was bad in law. Hence, the present appeal by the State.

Allowing the appeal,

Held :

The opening words of Section 196(1-A) are "No court shall take cognizance" and consequently the bar created by the provision is against taking of cognizance by the court. There is no bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173 CrPC. If a criminal case is registered, investigation of the offence is done and the police submits a report as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the District Magistrate, there will be no violation of Section 196(1-A) CrPC and no illegality of any kind would be committed. (Para 8)

Several provisions in Chapter XIV of the Criminal Procedure Code use the word "cognizance". However, the word "cognizance" has not been defined in the Criminal Procedure Code. The dictionary meaning of the word "cognizance" is — "judicial hearing of a matter". Taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out. (Paras 10 and 13)

In the present case neither any complaint had been filed nor any police report had been submitted nor any information had been given by any person other than the police officer before the Magistrate competent to take cognizance of the offence. After the FIR was lodged and the respondent was arrested, he was produced before the Magistrate. The Magistrate had merely passed an order remanding him to judicial custody. An order remanding an accused to judicial custody does not amount to taking cognizance of an offence. In such circumstances Section 196(1-A) CrPC can have no application at all and the High Court clearly erred in quashing the proceedings on the ground that previous sanction of the Central Government or of the State Government or of the District Magistrate had not been obtained. On the view taken by the High Court, no person accused of an offence, which is of the nature which requires previous sanction of a specified authority before taking of cognizance by the court, can ever be arrested nor such an offence can be investigated by the police. Therefore, the whole premise on the basis of which the proceedings have been quashed by the High Court is wholly erroneous in law and is liable to be set aside. (Para 14). *State of Karnataka* v. *Pastor P. Raju*, (2006) 6 SCC 728: (2006) 3 SCC (Cri) 179: AIR 2006 SC 2825: (2006) 102 Cut LT 612: (2006) 3 KLT 830.

Bench Strength 2. Coram: **G.P. Mathur** and *Dalveer Bhandari*, JJ. [Date of decision: 4-8-2006]

R.R. Chari v. State of U.P., 1951 SCR 312: AIR 1951 SC 207: 1951 Cri LJ 775; Darshan Singh Ram Kishan v. State of Maharashtra, (1971) 2 SCC 654: 1971 SCC (Cri) 628; Narayandas Bhagwandas Madhavdas v. State of W.B., (1960) 1 SCR 93: AIR 1959 SC 1118: 1959 Cri LJ 1368; Kishun Singh v. State of Bihar, (1993) 2 SCC 16: 1993 SCC (Cri) 470; State of W.B. v. Mohd. Khalid, (1995) 1 SCC 684: 1995 SCC (Cri) 266, relied on

— S. 196(2) *See also* Ss. 482 and 196(2)

[2323] — S. 196(2) — Charge clearly of conspiracy to cheat by impersonation — *Sanction not necessary — CrPC, 1898, S. 196-A. Yash Pal Mittal* v. *State of Punjab*, (1977) 4 SCC 540: 1978 SCC (Cri) 5: AIR 1977 SC 2433: 1978 Cri LJ 189.

Bench Strength 3. Coram: **P.K. Goswami**, *N.L. Untwalia* and *D.A. Desai*, JJ. [Date of decision: 3-11-1977]

[2324] — S. 196(2) — Applicability — Prior consent of State Govt. or District Magistrate for initiation of proceeding — Requirement of — *Offence under S. 161 IPC may be punished with imprisonment up to three years — Punishment under S. 5(1)(d), Prevention of Corruption Act, 1947 shall not be less than one year, but may extend to seven years — Thus, conspiracy to commit either of the offences was punishable with imprisonment for a term exceeding two years' RI — Hence S. 196(2), held, not applicable in the instant case — Discretion of court in respect of said offences to award lesser sentence (below 2 years), held, would not support the defence plea as to applicability of S. 196(2) — CrPC, 1898, S. 196-A — Penal Code, 1860, Ss. 161 and 120-B — Prevention of Corruption Act, 1947, S. 5(1)(d) — Prevention of Corruption Act, 1988, S. 13(1)(d)*

The conspiracy to commit either of the offences in question was punishable with imprisonment for a term exceeding two years' rigorous imprisonment and, therefore, Section 196(2) CrPC had no application because in respect of both the offences, the court had jurisdiction to pass a sentence of over two years' RI. The submission that it was permissible for the court to award simple imprisonment for any term subject to the maximum prescribed and, therefore, Section 196(2) was applicable, cannot be accepted. Equally without substance is the submission that the conspiracy alleged must be compulsorily punishable with rigorous imprisonment for a term exceeding two years, leaving no discretion in the court to pass a lesser sentence. (Para 3). *Shiv Nandan Dixit* v. *State of U.P.*, (2003) 12 SCC 636.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 19-12-2003]

[2325] — S. 196(2) — Requirement under — *Authorisation obtained by Assistant Collector of Customs for prosecution under S. 120-B, Indian Penal Code, read with Item 81, Schedule to S. 167, Sea Customs Act, 1878, read with Imports and Exports (Control) Act, 1947, held, not improper where such officer was not holding authorisation envisaged by S. 187-A, Sea Customs Act, 1878 — No such requirement can be read into S. 196-A, CrPC, 1898 — Customs Act, 1962, S. 137 — CrPC, 1898, Ss. 196-A & (2). S.N.Banerjee* v. *Babulal Gupta*, (1979) 2 SCC 390: 1979 SCC (Cri) 507: AIR 1979 SC 1526: 1979 Cri LJ 950.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and **A.D. Koshal**, JJ. [Date of decision: 12-4-1979]

Section 197 — Sanction for prosecution of public servants

— **S. 197** *See also* S. 197, Criminal Procedure Code, 1898, pp. 1065 et seq. in Vol. 2

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(1) Object and purpose — Nature of bar under

See also Section 197, '(4) "Discharge of official duty"/"Colour of duty" — What is and Determination of',

'(5) Sanction when necessary', and

'(6) Stage at which question of sanction to be considered/raised — Preliminary enquiry by court as to whether sanction required at all', below

[2326] — S. 197 — Trial without sanction amounts to trial without jurisdiction — *Policy and object underlying S. 6, Prevention of Corruption Act, 1947 indicated*

The policy underlying S. 6 and similar sections, is that there should not be unnecessary harassment of public servants. The object is to save the public servant from the harassment of frivolous or unsubstantiated allegations. Existence thus of a valid sanction is a prerequisite to the taking of cognizance of the offences. In absence of such sanction the Court would have no jurisdiction to take cognizance of the offences. A trial without a valid sanction where one is necessary under S. 6 is a trial without jurisdiction by the court. *R.S. Nayak* v. *A.R. Antulay*, (1984) 2 SCC 183: 1984 SCC (Cri) 172: AIR 1984 SC 684: 1984 Cri LJ 613: (1984) 1 SLR 619: (1984) 86 Bom LR 365.

Bench Strength **5**. Coram: **D.A. Desai**, *R.S. Pathak*, *O. Chinnappa Reddy*, *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

(1) Object and purpose — Nature of bar under *(contd.)*

[2327] — S. 197 — Object, nature and scope, reiterated

All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 CrPC. Further, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. The underlying object of Section 197 CrPC is to enable the authorities to scrutinise the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 CrPC and have to be considered dehors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned. (Para 18). *Choudhury Parveen Sultana* v. *State of W.B.*, (2009) 3 SCC 398.

Bench Strength **2**. Coram: **Altamas Kabir** and *Markandey Katju*, JJ. [Date of decision: 7-1-2009]

Bhagwan Prasad Srivastava v. N.P. Mishra, (1970) 2 SCC 56: 1970 SCC (Cri) 292, relied on

[2328] — S. 197 — Use of words 'no' and 'shall' in expression 'no court shall take cognizance' in S. 197 CrPC, 1973 — *Make abundantly clear the mandatory character of the protection afforded to public servants under S. 197. State of Maharashtra* v. *Dr. Budhikota Subbarao*, (1993) 3 SCC 339: 1993 SCC (Cri) 901.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **R.M. Sahai**, JJ. [Date of decision: 16-3-1993]

[2329] — S. 197 — Bar under, on powers of court to take cognizance — Held, mandatory — *Hence, where the actions alleged against a public servant and constituting the offences had been done in purported discharge of his duties, even though amounting to abuse of power, held, the trial court could not, in absence of sanction under S. 197, take cognizance of the said offences — Hence, the High Court rightly directed the dropping of the proceedings — However, such an order of the High Court did not have the effect of barring of the grant of sanction subsequently and the activating of the prosecution thereafter — Penal Code, 1860, Ss. 120-B, 195, 469 and 471*

In the established facts and circumstances of the case as noticed by the High Court the allegations made against the respondent who was a public servant at the time of the commission of the alleged offence, no cognizance of the offence could have been taken against him in the absence of sanction under Section 197 CrPC. It is not disputed that the actions alleged against him lay within the scope of his official duties or at any event were allegedly committed in the purported discharge of his duties as Director of Enforcement, though it is canvassed that he had abused his official position while discharging his official duties. The High Court has rightly found that that would not oust the necessity of sanction under Section 197 CrPC to take cognizance of the offence.

However, should the competent authority in future grant sanction under Section 197 CrPC, it will be perfectly valid and open to the State to activate the prosecution against the respondent and the order of the High Court or the Supreme Court's order in the instant SLP shall not come in the way of the court to take cognizance nor shall the orders come in the way of the competent authority to grant sanction under Section 197 CrPC. *State* v. *B.L. Verma*, (1997) 10 SCC 772: 1997 SCC (Cri) 1037.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *S.B. Majmudar*, JJ. [Date of decision: 17-3-1997]

[2330] — S. 197 — Bar under, regarding court's power to take cognizance — Nature and applicability of — *Held, is absolute and complete — Hence, court cannot take cognizance of complaint against a public servant in respect of an offence alleged to have been committed in discharge of official duty unless sanction is obtained from the appropriate authority — However, given that it must be determined whether there is a reasonable connection between the act done and the official duty, the concept of S. 197 does not get immediately attracted on institution of the complaint case*

The cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression "no court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and "shall" makes it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to *Black's Law Dictionary* the word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance, it means "taking notice of". A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty. (Para 9). *State of Orissa* v. *Ganesh Chandra Jew*, (2004) 8 SCC 40: 2004 SCC (Cri) 2104: AIR 2004 SC 2179: 2004 Cri LJ 2011.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 24-3-2004]

[2331] — **S. 197 — Bar under, regarding court's power to take cognizance — Nature and applicability of** — *Held, is absolute and complete — Hence, court cannot take cognizance of complaint against a public servant in respect of an offence alleged to have been committed in discharge of official duty unless sanction is obtained from the appropriate authority — However, given that it must be determined whether there is a reasonable connection between the act done and the official duty, the concept of S. 197 does not get immediately attracted on institution of the complaint case* (Paras 9 and 7). *K. Kalimuthu* v. *State*, (2005) 4 SCC 512: 2005 SCC (Cri) 1291: AIR 2005 SC 2257: 2005 Cri LJ 2190.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 30-3-2005]

State of H.P. v. M.P. Gupta, (2004) 2 SCC 349; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096, relied on

[2332] — **S. 197 — Bar under, regarding court's power to take cognizance — Nature of — Held, is absolute and complete** — *Hence, court cannot take cognizance of complaint against a public servant unless sanction is obtained from the appropriate authority*

So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 CrPC unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of official duty. The said section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, "no court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and "shall" makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. The word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty. (Para 10). *State of H.P.* v. *M.P. Gupta*, (2004) 2 SCC 349: 2004 SCC (Cri) 539: AIR 2004 SC 730.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 9-12-2003]

Black's Law Dictionary, referred to

[2333] — **S. 197 — Object of, restated**

The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. (Para 9). *Centre for Public Interest Litigation* v. *Union of India*, (2005) 8 SCC 202: AIR 2005 SC 4413.

Bench Strength **3**. Coram: *Ruma Pal*, **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 6-10-2005]

R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096, followed

[2334] — **S. 197 — Prosecution of public servant — Requirement of obtaining sanction for prosecution mandatory — Bar of taking cognizance of offence in absence of sanction absolute**

So far public servants are concerned the cognizance of any offence, by any court, is barred by S. 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty.

(1) Object and purpose — Nature of bar under *(contd.)*

The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint cannot be taken notice of. *State of Maharashtra* v. *Dr. Budhikota Subbarao*, (1993) 3 SCC 339: 1993 SCC (Cri) 901.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **R.M. Sahai**, JJ. [Date of decision: 16-3-1993]

[2335] — S. 197 — Requirement of obtaining sanction for prosecution before court can take cognizance — Mandatory nature of — *Prevention of Corruption Act, 1988, S. 19. Ashok Mehta* v. *Ram Ashray Singh*, (2004) 13 SCC 705.

Bench Strength **2**. Coram: *B.N. Agrawal* and *H.K. Sema*, JJ. [Date of decision: 3-9-2004]

[**Ed.**: In respect of sanction under Section 197 CrPC *see* (2005) 4 SCC 512, Shortnote A; (2004) 8 SCC 31, Shortnote B; (2004) 8 SCC 40, Shortnote A and (2004) 2 SCC 349, Shortnote B, wherein in the applicability of S. 197 CrPC, a preliminary stage is envisaged. At this preliminary stage the court is to examine if at all S. 197 CrPC is attracted, inasmuch as the court has to determine whether there is any need for any sanction at all. This depends on whether the alleged act done by the public servant is reasonably connected with the discharge of his official duty, in which case the protection of S. 197 is available; and if it is not so reasonably connected, the protection of S. 197 is not available.]

(2) "Public servants" protected under

[2336] — S. 197 — When applies — Public servant must be covered by the definition clause twelfth of S. 21 IPC and must be removable from his office only by the appropriate Government — *Where public servant was not removable by government from the office he initially held viz. Laboratory Officer of Municipal Corporation but was removable from the office to which he was subsequently appointed/deputed by the Government viz. Public Analyst under Prevention of Food Adulteration Act, his official act in connection with the latter office will relate to the former office — Accordingly, he not being a public servant for the purposes of S. 197 while holding the former office of Laboratory Assistant under the Municipal Corporation, held, prior sanction of the Government not required under S. 197 for taking cognizance of offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty as Public Analyst — Penal Code, 1860, S. 21 clause twelfth*

The appellant is an employee of the Municipal Corporation, Ahmedabad. While holding the post of Laboratory Officer, the State Government by a Notification dated December 21, 1966 under S. 8 of the Food Adulteration Act, 1954 appointed the appellant as a Public Analyst for the local area comprised within the limits of the Corporation. The complaint was filed by the respondent before the Magistrate for the offences punishable under Ss. 465, 468 and 201, IPC alleged to have been committed by the appellant while exercising the functions as Public Analyst.

The appellant moved the High Court under S. 482, CrPC for quashing the criminal proceedings on the ground that, he being a public servant removable from office only by the State Government the Magistrate could not take cognizance of the offence alleged to have been committed while discharging the duties as Public Analyst without the requisite sanction under S. 197, CrPC. The High Court rejected this contention and dismissed the petition.

Held :

Section 197(1) extends immunity from irresponsible, frivolous and vexatious prosecution. The privilege of immunity from prosecution without sanction extends only when the accused is a public servant as defined in S. 21 of the Indian Penal Code and not removable from his office save by or with the sanction of the State Government or the Central Government as the case may be. The offence must also be one committed by the accused while acting or purporting to act in the discharge of his official duty.

Section 197, CrPC clearly intends to draw a line between public servants and to provide that only in the case of the higher ranks should the sanction of the government to their prosecution be necessary. While a public servant holding an office of the kind mentioned in the section is as such public servant appointed to another office, his official acts in connection with the latter office will also relate to the former office. The words "removable from office" occurring in S. 197 signify removal from the office he is holding. The authority mentioned in the section is the authority under which the officer is serving and competent to terminate his services. If the accused is under the service and pay of the local authority, the appointment to an office for exercising functions under a particular statute will not alter his status as an employee of the local authority.

The appellant herein is admittedly the Laboratory Officer in the service and pay of the Municipal Corporation of Ahmedabad. The appointment as Public Analyst by the government does not confer on him the status of a public servant or an officer under the service and pay of the government. He is not remunerated by any fee by the government. The appellant was not the employee of the State Government and was not employed in connection with the affairs of the State. He was not holding any public office in connection with the affairs of the State. The State Government had merely entrusted him with the functions of a Public Analyst which could be granted and taken by an administrative act. It was on account of his being employed by the Municipal Corporation that he was appointed as a Public Analyst by the government. He is not appointed as Public Analyst in the cadre against any post. The Prevention of Food Adulteration Act also does not contain any deeming provision to treat the Public Analyst as a public servant.

The appellant is holding an office from which he is removable by the Local Authority and not by the government. The cancellation of the appointment as Public Analyst would not amount to removal from office. Section 197, CrPC in this context contemplates the removal of the appellant from the office of the Laboratory Officer and not his transfer or removal from the office of the Public Analyst. The removal of the appellant from the office of Public Analyst would not affect his office as a Laboratory Officer under the Local Authority and would not amount to removal from office. The appellant is not therefore a public servant removable only by the State Government. *Lakshmansingh Himatsingh Vaghela (Dr.)* v. *Naresh Kumar Chandrashanker Jah*, (1990) 4 SCC 169: 1990 SCC (Cri) 558: AIR 1990 SC 1976.

Bench Strength **3**. Coram: *Dr. T.K. Thommen, Kuldip Singh* and **M. Fathima Beevi**, JJ. [Date of decision: 24-7-1990]

[2337] — **S. 197 — Employee of govt. company or public undertaking — Need for sanction** — *Sanction for prosecution of State Govt. officer (appellant) on deputation as MD of a cooperative society (State Cooperative Land Development Bank) for offence under IPC (S. 500), held, not required to be obtained under S. 197 — No sanction required for prosecution of an officer of a govt. company or public undertaking — Appellant not covered by the definition of public servant under S. 21 IPC — Definition of "government employee" under R. 2(d) of Haryana Civil Services (Punishment and Appeal) Rules, being "for the purpose of these Rules", cannot be applied for affording protection under S. 197 — S. 118 of Haryana Cooperative Societies Act regarding taking cognizance of offence is also confined to offence under the said Act and not under IPC, hence not applicable in this case — S. 123 of the said Act also not applicable to the MD of the cooperative bank as he was not engaged in recovery of loan, nor appointed as a liquidator and nor an arbitrator so as to fall within that provision — Haryana Civil Services (Punishment and Appeal) Rules, 1987, R. 2(d) — Haryana Cooperative Societies Act, 1984 (22 of 1984), Ss. 118 and 123 — Penal Code, 1860, S. 21 cl. 12*

The underlying object in enacting Section 197 CrPC is to protect a public servant from frivolous prosecution. The said provision, however, although may not be construed too narrowly, cannot be interpreted liberally so as to bring within its purview other officers who are not so protected. Section 197, inter alia, protects the public servants. "Public servant" has been defined in Section 21 IPC but the appellant herein does not answer the description of a public servant within the meaning of Section 21 IPC. The salary of the appellant is not paid by the Government. He at the relevant time was not in the service of the State. Prosecution against an officer of a government company or a public undertaking would not require any sanction under Section 197 CrPC. There is a well-marked distinction between a body created by a statute and a body coming into existence and governed in accordance with the provisions of a statute. (Paras 12, 14, 13 and 17)

The appellant also cannot be said to have continued to be a public servant within the meaning of the Haryana Civil Services (Punishment and Appeal) Rules, 1987. The definition of "government employee" in Rule 2(*d*) of the said Rules cannot be extended for purposes other than sought to be achieved thereby. Provisions of the said Rules, therefore, cannot be invoked for affording protection under Section 197 CrPC. (Para 14)

Section 117 of the Haryana Cooperative Societies Act, 1984 enumerates offences. Section 118 limits taking of cognizance of offences which come within the purview of the said Act, as would be evident from sub-section (1) thereof, and not under the provisions of IPC or any other statute. The said provision, therefore, has no application. In terms of Section 123, only an employee who is engaged in the recovery of loans or a person who has been appointed as a liquidator or an arbitrator only shall be treated as a public servant. By reason of the said

(2) "Public servants" protected under *(contd.)*

provision, a legal fiction has been created. A legal fiction, as is well known, is created for a specific purpose and thus, applicability thereof cannot be extended for a purpose other than that for which it has been created. As the Managing Director of Haryana State Cooperative Land Development Bank Ltd., the appellant was not engaged in the recovery of loans or appointed as a liquidator or an arbitrator and in that view of the matter, the limited purpose for which the legal fiction has been created would have no application in the instant case. (Paras 15 and 16). *N.K. Sharma* v. *Abhimanyu*, (2005) 13 SCC 213: (2006) 2 SCC (Cri) 135: AIR 2005 SC 4303: 2005 Cri LJ 4529: (2005) 4 KLT 738.

Bench Strength 2. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 7-10-2005]

Mohd. Hadi Raja v. State of Bihar, (1998) 5 SCC 91: 1998 SCC (Cri) 1265; Shreekantiah Ramayya Munipalli v. State of Bombay, (1955) 1 SCR 1177: AIR 1955 SC 287: 1955 Cri LJ 857; S.S. Dhanoa v. MCD, (1981) 3 SCC 431: 1981 SCC (Cri) 733: 1982 SCC (L&S) 6, relied on

[2338] — S. 197(1)(a) — "Public servant" under — Scope — Chairman and MD of Indian Bank — *Appellant claiming benefit of S. 197 on the basis of the appointment procedure under Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970 whereunder, the Central Government in consultation with RBI had power to appoint Chairman and MD of Indian Bank — Ss. 10(BB) and 36(AA) of the Banking Regulation Act, 1949, however providing that power of removal and appointment of Chairman/Director/CEO (by whatever name called) of any banking company vests with RBI — Therefore, held, it is prima facie clear that the appellant will not come within the scope of S. 197 CrPC as Banking Regulation Act, 1949 would prevail over Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970 — Banking Regulation Act, 1949, Ss. 10(BB) and 36(AA) — Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, Rr. 5(1), 7, 8(1-A) and 8(4) — Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, S. 9 — Constitution of India — Art. 136* (Paras 18, 9 and 7). *M. Gopalakrishnan* v. *State*, (2009) 3 SCC 681.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-2-2009]

[2339] — S. 197 — "Public servant not removable from his office save by or with the sanction of the Government" — *Officer of a nationalised bank even if a public servant, is removable by a competent authority which is not Government — Hence, sanction under S. 197 for launching prosecution against such an officer not required. K. Ch. Prasad* v. *J. Vanalatha Devi*, (1987) 2 SCC 52: 1987 SCC (Cri) 297: AIR 1987 SC 722: 1987 Cri LJ 697: (1987) 1 LLN 424.

Bench Strength 2. Coram: **G.L. Oza** and *M.M. Dutt*, JJ. [Date of decision: 10-2-1987]

K. Ch. Prasad v. J. Vanalatha Devi, 1984 Cri LJ 1013 (AP), affirmed

[2340] — Ss. 197 and 2(y) — Sanction under, not required for prosecution of officers of govt. companies or public undertakings even if such companies or undertakings fall within the definition of State under Art. 12 — *These instrumentalities or agencies of the State, even though perform some of the functions of the State, have their own separate entity and cannot be equated with departments directly run by the Govt. — Therefore, action taken by them, however important the same may be in the interest of the State, cannot be held to be an action taken by or on behalf of the Government as such within the meaning of S. 197 CrPC — Penal Code, 1860, S. 21 Twelfth (b) — Constitution of India, Art. 12*

The protection by way of sanction under Section 197 of the Code of Criminal Procedure is not applicable to the officers of government companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government.

The justification for the protection under Section 197 of the Code of Criminal Procedure lies in the public policy to ensure that official acts performed by a public servant do not lead to needless and vexatious prosecution of such public servant and it is desirable that it should be left to the Government to determine the question of expediency in prosecuting a public servant.

"Public servant" has not been defined in the Code of Criminal Procedure but by virtue of Section 2(*y*) thereof "public servant" defined in Section 21 IPC will have the same meaning in Criminal Procedure Code. But protection under Section 197 CrPC is not available to a public servant unless other conditions indicated in that section are fulfilled.

Although the instrumentality or agency with a corporate veil, for all intents and purposes may be held to be a third arm of the Government and such instrumentality discharges the duties and functions which the State intends to do such instrumentality or agency is none the less a juridical person having a separate legal entity. Therefore, such instrumentality must be held to have an independent status distinct from the State and cannot be treated as a government department for all purposes. Therefore, even if an officer of such instrumentality or agency takes or receives, keeps or expends any property or executes any contract, such acts even though in ultimate analysis may be held to have been done in the interest of the State, such action cannot be construed, as of rule, an action of the Government by its employees or by an authority empowered by the Government.

For the purpose of enforcing the fundamental rights, the public undertaking which, on account of deep and pervasive control, can be held to be a State within the meaning of Article 12 has been treated on a par with the government department but in all its facets, public undertaking has not been equated with the department run directly by the Government. Whenever there was a felt need to include other functionaries within the definition of "public servant", they have been declared to be "public servants" under several special and local acts. If the legislature had intended to include officers of an instrumentality or agency for bringing such officers under the protective umbrella of Section 197 CrPC, it would have done so expressly.

Therefore, it will not be just and proper to bring such persons within the ambit of Section 197 by liberally construing the provisions of Section 197. Such exercise of liberal construction will not be confined to the permissible limit of interpretation of a statute by a court of law but will amount to legislation by court. *Mohd. Hadi Raja* v. *State of Bihar*, (1998) 5 SCC 91: 1998 SCC (Cri) 1265: AIR 1998 SC 1945: 1998 Cri LJ 2826.

Bench Strength **2**. Coram: **G.N. Ray** and *G.B. Pattanaik*, JJ. [Date of decision: 28-4-1998]

[2341] — S. 197 — S. 21 IPC — Minister of a State Government — Held, is a public servant and therefore, entitled to the protection of S. 197(1) — Word "Government" used in S. 197 means the Governor in the case of a Chief Minister or Minister — *General Clauses Act, 1897, S. 3(60) — Constitution of India, Arts. 164 and 167*

The Chief Minister is paid from public exchequer for performing a public duty and is, therefore, a public servant within the meaning of Section 197 of the Code. So also a Minister of a State is paid from its public exchequer. He is paid for doing the duty entrusted to him as a Minister and, therefore, the Minister must also be held to be a public servant. Since he is appointed or dismissed by the Governor, he would fall within the expression "a public servant not removable from his office save by or with the sanction of the Government". By virtue of Section 3(60) of the General Clauses Act, 1897 the expression 'Government' used in Section 197 would mean the Governor in the case of a Chief Minister or a Minister. Therefore, a Minister would be entitled to the protection of Section 197(1) of the Code. *R. Balakrishna Pillai* v. *State of Kerala*, (1996) 1 SCC 478: 1996 SCC (Cri) 128: AIR 1996 SC 901: (1996) 1 KLT 250: (1996) 1 KLJ 112.

Bench Strength **2**. Coram: *A.M. Ahmadi, C.J.* and *S.C. Sen*, J. [Date of decision: 5-12-1995]

M. Karunanidhi v. Union of India, (1979) 3 SCC 431: 1979 SCC (Cri) 691, followed

Namdeo Kashinath Aher v. H.G. Vartak, AIR 1970 Bom 385: 1970 Cri LJ 1427: 1970 Mah LJ 662, approved

[2342] — S. 197 — Sanction for prosecution of public servants — Conditions for applicability of S. 19, PC Act, 1988 — MP is a public servant but there is no authority competent to remove him from his office — *Held, per Agrawal and Anand, JJ. (Ray J, concurring) merely because there is no authority to remove an MP from his office, he does not cease to be a public servant for the purpose of the Act — In absence of authority competent to remove and grant sanction under S. 19(1) there is no limitation on the power of the court to take cognizance of offence under S. 190 CrPC of offences mentioned in S. 19(1) — But till provision is made by Parliament in that regard by suitable amendment in the law, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Ss. 7, 10, 11, 13 and 15 of the 1988 Act against an MP in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be — Held, per Bharucha and Rajendra Babu, JJ., S. 19 applicable only to public servant who is removable from his office by a competent authority — Hence, court must try to identify the authority competent to remove the public servant — If court fails to identify the competent authority to remove, the public servant would not be liable to be prosecuted under Ss. 7, 10, 11, 13 and 15 though he would be liable to be prosecuted for any other offence under the Act — If a person is found to be a public servant within the meaning of the definition under S. 2(c), he must be treated as such for the purpose of all the provisions of the Act where the expression is used including for the purposes of the sanction provision and the position cannot change even if it be found that there is no authority competent to remove him from his office — Prevention of Corruption Act, 1988 — S. 19*

(2) "Public servants" protected under *(contd.)*

Per Agrawal and Anand, JJ.

The definition of "public servant" in Section 2(*c*) of the 1988 Act includes persons who are public servants under that provision though the criterion of removability does not apply to them and there is no single individual authority which is competent to grant sanction for their prosecution under Section 19 of the 1988 Act. In respect of a Member of Parliament the Constitution does not confer on any particular authority the power to remove him. It is no doubt true that the House in exercise of its power of contempt can pass a resolution for expulsion of a Member who is found guilty of breach of privilege and acceptance of bribe by a Member in connection with the business of the House is regarded as breach of privilege. On that basis it may be possible to say that the House has the power to remove a Member who is found to have indulged in bribery and corruption. But in view of the decision in Veeraswami wherein Shetty, J. has said that the legislature while enacting clause (c) of Section 6 of the 1947 Act could not have intended Parliament to be the sanctioning authority, the House cannot be regarded as the authority competent to grant sanction under Section 19(1)(c) of the 1988 Act. On that view of the matter it must be held that there is no authority who can remove a Member of Parliament and who would be competent under clauses (a), (b) or (c) of Section 19(1) of the 1988 Act to grant sanction for his prosecution. This does not, however, lead to the conclusion that he cannot be treated as a "public servant" under Section 2(c)(viii) of the 1988 Act if, on a proper interpretation of the said provision he is found to be a public servant. Since on an interpretation of the provisions of Section 2(c)(viii) of the 1988 Act it has been held that a Member of Parliament is a public servant, a Member of Parliament has to be treated as a public servant for the purpose of the 1988 Act even though there is no authority who can grant sanction for his prosecution under Section 19(1) of the 1988 Act. (Para 93)

When there is an authority competent to remove a public servant and to grant sanction for his prosecution under Section 19(1) of the 1988 Act the requirement of sanction precludes a court from taking cognizance of the offences mentioned in Section 19(1) against him in the absence of such sanction, but if there is no authority competent to remove a public servant and to grant sanction for his prosecution under Section 19(1) there is no limitation on the power of the court to take cognizance under Section 190 CrPC of the offences mentioned in Section 19(1) of the 1988 Act. The requirement of sanction under Section 19(1) is intended as a safeguard against criminal prosecution of a public servant on the basis of malicious or frivolous allegations by the interested persons. The object underlying the said requirement is not to condone the commission of an offence by a public servant. The inapplicability of the provisions of Section 19(1) to a public servant would only mean that the intended safeguard was not intended to be made available to him. The rigour of the prohibition contained in sub-section (1) is now reduced by sub-section (3) of Section 19 because under clause (*a*) of sub-section (3) it is provided that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby. This would show that the requirement of sanction under sub-section (1) of Section 19 is a matter relating to the procedure and the absence of the sanction does not go to the root of the jurisdiction of the court. It must, therefore, be held that merely because there is no authority which is competent to remove a public servant and to grant sanction for his prosecution under Section 19(1) it cannot be said that a Member of Parliament is outside the purview of the 1988 Act. (Para 95)

In the absence of requirement of previous sanction for initiating proceedings in a court of law against a Member of Parliament in respect of an offence mentioned in Section 19(1) of the 1988 Act the possibility of a Member of Parliament being subjected to criminal prosecution on the basis of malicious or frivolous allegations made by interested persons cannot be excluded. It is hoped that Parliament will provide for an adequate safeguard in that regard by making suitable amendment in the 1988 Act. But till such safeguard is provided, it appears appropriate that protection from being subjected to criminal prosecution on the basis of malicious or frivolous allegations should be available to Members of Parliament. The Chairman of the Rajya Sabha/Speaker of the Lok Sabha by virtue of the position held by them are entrusted with the task of preserving the independence of the Members of the House. In order that Members of Parliament may not be subjected to criminal prosecution on the basis of frivolous or malicious allegations at the hands of interested persons, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 13 and 15 of the 1988 Act against a Member of Parliament in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be. (Paras 96 and 97)

Per Ray, J. (concurring)

I respectfully concur with the findings of Mr Justice Agrawal and agree with the reasoning for such findings that since there is no authority competent to grant sanction for the prosecution of a Member of Parliament under Section 19(1) of the Prevention of Corruption Act, 1988, the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but before filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 12 and 15 of 1988 Act against a Member of Parliament in a criminal court, the prosecuting agency shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be. (Para 99)

Per Bharucha and Rajendra Babu, JJ.

Members of Parliament and the State Legislatures are public servants liable to be prosecuted for offences under the Prevention of Corruption Act but they cannot be prosecuted for offences under Sections 7, 10, 11 and 13 thereof because of want of an authority competent to grant sanction thereto. It is hoped that Parliament will address itself to the task of removing this lacuna with due expedition. (Para 182)

Sanction is not required in respect of all offences covered by the said Act; it is required only in respect of the offences that are punishable under Sections 7, 10, 11, 13 and 15. Secondly, the person charged must be a public servant at the point of time the court is asked to take cognizance; that is the material time for the purposes of the section. Thirdly, the sanction must precede cognizance; it must be prior sanction. Fourthly, and this from the point of view of this judgment is most material, the section covers all public servants. In other words, if any public servant is charged with an offence punishable under the aforesaid sections, the court shall not take cognizance in the absence of sanction. That the section applies to all public servants is also clear from the three clauses of sub-section (1). The question as to whether or not a person is a public servant within the meaning of the statute must be determined having regard to the definition of a public servant contained in the statute. If the person is found to be a public servant within the meaning of the definition, he must be taken to be a public servant for the purposes of all provisions in the statute in which the expression "public servant" occurs. If, therefore, a person is found to satisfy the requirements of the definition of a public servant, he must be treated as a public servant for the purposes of the sanction provision. (Paras 166 and 175)

It is not possible to accept the view that the provisions of Section 19 are applicable only to a public servant who is removable from his office by an authority competent to do so. It is correct to say that Section 19 contemplates that for every public servant there must be an authority competent to remove him from his office and that, therefore, the effort must be to identify that authority. But if no authority can be identified in the case of a public servant or a particular category of public servant, it cannot lead to the conclusion that he is not a public servant or this is not a category of public servant within the meaning of the said Act. The finding that the Members of Parliament are public servants, based upon the definition section, must apply to the phrase "public servant" wherever it occurs in the said Act. It cannot change if it be found that there is no authority competent to remove Members of Parliament from office. Members of Parliament would, then, not be liable to be prosecuted for offences covered by Sections 7, 10, 11, 13 and 15, the condition of prior sanction being incapable of being satisfied, but they would remain liable to prosecution for offences under the said Act other than those covered by Sections 7, 10, 11, 13 and 15. (Paras 167 and 169)

It is clear from Article 101 that the seat of a Member of Parliament becomes vacant immediately upon his becoming subject to the disqualifications mentioned in Article 102, without more. The removal of a Member of Parliament is occasioned by operation of law and is self-operative. Reference to the President under Article 103 is required only if a question arises as to whether a Member of Parliament has earned such disqualification; that is to say, if it is disputed. The President would then have to decide whether the Member of Parliament had become subject to the automatic disqualification contemplated by Article 101. His order would not remove the Member of Parliament from his seat or office but would declare that he stood disqualified. It would operate not with effect from the date upon which it was made but would relate back to the date upon which the disqualification was earned. Without, therefore, having to go into the connotation of the word "removal" in service law, it seems clear that the President cannot be said to be the authority competent to remove a Member of Parliament from his office. (Para 180)

(3) Retirement/Change in post of public servant, etc. — Effect on protection under S. 197

In the light of the aforesaid position it is not necessary to consider the submission that the scheme of the 1988 Act, as compared to the 1947 Act, had undergone an important change by reason of the introduction of sub-section (3) in Section 19. (Para 181). *P.V. Narasimha Rao* v. *State (CBI/SPE)*, (1998) 4 SCC 626: 1998 SCC (Cri) 1108: AIR 1998 SC 2120.

Bench Strength 5. Coram: **S.C. Agrawal**[1], **G.N. Ray**[2], *Dr. A.S. Anand*[1], **S.P. Bharucha**[3] and *S. Rajendra Babu*[3], JJ. [Date of decision: 17-4-1998]

K. Veeraswami v. Union of India, (1991) 3 SCC 655: 1991 SCC (Cri) 734, dissenting view overruled

S.A. Venkataraman v. State, AIR 1958 SC 107: 1958 SCR 1040: (1958) 2 LLJ 1; Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651, relied on

Habibulla Khan v. State of Orissa, 1993 Cri LJ 3604: (1993) 3 Crimes 198, overruled

(3) Retirement/Change in post of public servant, etc. — Effect on protection under S. 197

See also Section 197, '(12) Relative scope vis-à-vis S. 6, PC Act, 1947', and

'(13) Relative scope vis-à-vis S. 19, PC Act, 1988', below

[2343] — S. 197 — 'Any person who is or was ... a public servant' — *Held, even a retired public servant entitled to protection under — Hence respondent, an ex-Naval captain protected*

Section 197 of the Code as it stands after 1973, extends the protection even to a retired public servant as is clear from use of the words, 'is or was' provided the accusation is in respect of an act or omission done or purported to have been done when such public servant was in office. By legislative fiction the officer is deemed to be a public servant under S. 197 of the Code irrespective of his retirement if the accusations against him are for act or omission done by him when he was in service. The purpose is to avoid exposing a public servant to vexatious or frivolous prosecutions merely because he has demitted his office. The submission that if a public servant ceases to hold the office by the time the court is called upon to take cognizance he cannot claim any protection, being in the teeth of the section, does not need any further elucidation. *State of Maharashtra* v. *Dr. Budhikota Subbarao*, (1993) 3 SCC 339: 1993 SCC (Cri) 901.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and **R.M. Sahai**, JJ. [Date of decision: 16-3-1993]

[2344] — S. 197 — Prosecution of a retired public servant — Necessity of obtaining sanction for — *Held, is essential in cases where S. 197 has application — But an accused facing prosecution for offences under Prevention of Corruption Act, 1947 or Prevention of Corruption Act, 1988 cannot claim any immunity on the ground of want of sanction if he ceased to be a public servant on the date when the court took cognizance of the said offences (Para 11). S.K. Zutshi* v. *Bimal Debnath*, (2004) 8 SCC 31: 2004 SCC (Cri) 2096: AIR 2004 SC 4174: (2004) 3 KLT 505.

Bench Strength 2. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 10-8-2004]

R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40, relied on

[2345] — S. 197 — Prosecution of a retired public servant — Necessity of obtaining sanction for — *Held, is essential in cases where S. 197 has application — But an accused facing prosecution for offences under Prevention of Corruption Act, 1947 or Prevention of Corruption Act, 1988 cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences* (Paras 16 and 18). *State of Orissa* v. *Ganesh Chandra Jew*, (2004) 8 SCC 40: 2004 SCC (Cri) 2104: AIR 2004 SC 2179: 2004 Cri LJ 2011.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 24-3-2004]

S.A. Venkataraman v. State, AIR 1958 SC 107: 1958 Cri LJ 254; C.R. Bansi v. State of Maharashtra, (1970) 3 SCC 537: 1971 SCC (Cri) 143; State of Maharashtra v. Dr. Budhikota Subbarao, (1993) 3 SCC 339: 1993 SCC (Cri) 901; Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411: 1998 SCC (Cri) 1455; R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128: AIR 1996 SC 901; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349, followed

41st Report of Law Commission, para 15.123, relied on

[2346] — S. 197 — Prosecution of a retired public servant — Necessity of obtaining sanction for — *Held, is essential in cases where S. 197 has application — But, an accused facing prosecution for offences under the Prevention of Corruption Act, 1947 or Prevention of Corruption Act, 1988 cannot claim any immunity on the ground of want of sanction if he ceased to be a public servant on the date when the court took cognizance of the said offences* (Paras 8 to 10). *N. Bhargavan Pillai* v. *State of Kerala*, 2005 SCC (Cri) 142: AIR 2004 SC 2317: (2004) 2 KLT 725: 2004 Cri LJ 2494.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 20-4-2004]

Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411: 1998 SCC (Cri) 1455; R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128, followed

41st Law Commission's Report, para 15.123, relied on

[2347] — S. 197 — Prosecution of a retired public servant — Necessity of obtaining sanction for — *Held, is essential in cases where S. 197 has application — But an accused facing prosecution for offences under the Prevention of Corruption Act, 1947 or Prevention of Corruption Act, 1988 cannot claim any immunity on the ground of want of* *sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences* (Paras 17 and 19). *State of H.P.* v. *M.P. Gupta*, (2004) 2 SCC 349: 2004 SCC (Cri) 539: AIR 2004 SC 730.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 9-12-2003]

S.A. Venkataraman v. State, AIR 1958 SC 107: 1958 Cri LJ 254; C.R. Bansi v. State of Maharashtra, (1970) 3 SCC 537: 1971 SCC (Cri) 143; State of Maharashtra v. Dr. Budhikota Subbarao, (1993) 3 SCC 339: 1993 SCC (Cri) 901; Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411: 1998 SCC (Cri) 1455; R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128, followed

[2348] — S. 197 — Prosecution of a retired public servant — Necessity of obtaining sanction for — Held, is essential in cases where S. 197 has application — *But an accused facing prosecution for offences under the Prevention of Corruption Act, 1947 or Prevention of Corruption Act, 1988 cannot claim any immunity on the ground of want of sanction if he ceased to be a public servant on the date when the court took cognizance of the said offences — Prevention of Corruption Act, 1947, S. 6 — Inapplicability to retired public servant — Position contrasted with that obtaining under S. 197, CrPC — Prevention of Corruption Act, 1988, S. 19 — Inapplicability to retired public servant — Position contrasted with that obtaining under S. 197 CrPC*

The correct legal position, therefore, is that an accused facing prosecution for offences under the Prevention of Corruption Act, 1947 or Prevention of Corruption Act, 1988 cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. But the position is different in cases where Section 197 of the Code has application the expression "was" came to be employed after the expression "is" in Section 197 so as to make the (*sic* need for) sanction applicable even in cases where a retired public servant is sought to be prosecuted. (Paras 17 and 19). *Rakesh Kumar Mishra* v. *State of Bihar*, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432: AIR 2006 SC 820: 2006 Cri LJ 808: (2006) 38 AIC 13 (SC): (2006) 1 KLJ 405: (2006) 2 KLT 26.

Bench Strength **2**. Coram: **Arijit Pasayat** and *G.P. Mathur*, JJ. [Date of decision: 3-1-2006]

Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411: 1998 SCC (Cri) 1455, followed

[2349] — S. 197 — Sanction for prosecution — Requirement of, after retirement of public servant — *S. 197, unlike the provisions of Prevention of Corruption Act, postulates obtaining an order of sanction even where the public servant has ceased to hold office. P.K. Choudhury* v. *Commander, 48 Brtf (Gref)*, (2008) 13 SCC 229: AIR 2008 SC 1937.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 13-3-2008]

[2350] — S. 197 — Sanction for prosecution in case public servant is no longer holding the post/office during the currency of which the alleged offence was committed — Need for — Position obtaining under S. 197 contrasted with that obtaining under S. 19 PC Act, 1988 — *Held, there is no need for sanction under S. 19 in the abovestated situation while sanction is required under S. 197 CrPC in such a situation — The difference in the positions is not the result of a casus omissus and S. 19, PC Act, 1988 and S. 197 CrPC operate in conceptually different fields — Prevention of Corruption Act, 1988, S. 19*

Section 197 CrPC and Section 19 of the PC Act, 1988 operate in conceptually different fields. In cases covered under the PC Act, 1988 in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 CrPC, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus with the discharge of duties. Position is not so in case of Section 19 of the PC Act, 1988. The reason is obvious. The sanction contemplated in Section 197 CrPC concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the PC Act, 1988 are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the PC Act, 1947 was materially imported into the new PC Act, 1988 without any change in spite of the change made while enacting Section 197 CrPC. (Paras 10 and 9)

Hence, the plea that the effect of the Law Commission's Forty-first Report which recommended extending the protection of sanction under Section 197 CrPC to a retired public servant as well should have been also extended to Section 19(1) of the PC Act, 1988, and Dr. Bakshi Tekchand's Report has not been considered by the legislature, and therefore this is a case of "casus omissus", is clearly without any substance. (Para 9). *Lalu Prasad* v. *State of Bihar*, (2007) 1 SCC 49: (2007) 1 SCC (Cri) 241: (2007) 1 KLT 47: (2007) 50 AIC 107 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411: 1998 SCC (Cri) 1455, followed

R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183: 1984 SCC (Cri) 172, held, affirmed

(3) Retirement/Change in post of public servant, etc.— Effect on protection under S. 197 *(contd.)*

[2351] — S. 197 — Sanction for prosecution of a public servant — *Held, is necessary even if the public servant sought to be prosecuted has ceased to be a public servant on the date of taking cognizance of the offence. R. Balakrishna Pillai* v. *State of Kerala*, (1996) 1 SCC 478: 1996 SCC (Cri) 128: AIR 1996 SC 901: (1996) 1 KLT 250: (1996) 1 KLJ 112.

Bench Strength **2**. Coram: *A.M. Ahmadi, C.J.* and *S.C. Sen*, J. [Date of decision: 5-12-1995]

[2352] — S. 197 — Sanction for prosecution — Applicability to retired government servant — Held, applicable if the offence was relatable to official duty — *Maharashtra Civil Services (Pension) Rules, 1982, R. 27*

Though the view of the High Court that no sanction under Section 197(1) CrPC is needed in the case of retired government servant is erroneous, in view of the finding that the charged offences are not relatable to any official duty, the appeal fails and deserves to be dismissed. The High Court, was in error in observing that sanction was not necessary because the expression used in Section 197(1) CrPC to refer to a public servant is "was". But the question is really of academic nature because the alleged offences cannot be related to any official duty. (Paras 13, 8 and 9). *Raghunath Anant Govilkar* v. *State of Maharashtra*, (2008) 11 SCC 289: 2008 Cri LJ 2054.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 8-2-2008]

Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432; R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096, relied on

(4) "Discharge of official duty"/"Colour of duty" — What is and Determination of

See also Section 197, '(1) Object and purpose — Nature of bar under', above, and

'(5) Sanction when necessary', and

'(6) Stage at which question of sanction to be considered/raised — Preliminary enquiry by court as to whether sanction required at all', below

[2353] — S. 197 — " Offence committed in discharge of official duty" — Test — *Held, there must be direct and reasonable nexus between the offence committed and the discharge of official duty — Charge of dishonest misappropriation or conversion of goods by Customs Authorities which they had seized and held in trust — The act, held, not in discharge of official duty — Hence, sanction under S. 197 not required — Accused must act in his official capacity so far as entrustment is concerned to attract S. 409, IPC, and for subsequent act of misappropriation or conversion, he need not be in his official capacity — CrPC, 1898, S. 197*

The respondent imported certain goods from Germany under a valid customs clearance permit for a certain period and the goods were to be re-exported thereafter. After the expiry of that period the Customs Officers (appellants) raided the premises of the respondent and seized the goods, prepared their inventories and then packed them in boxes and sealed them. The respondent made an application before the SDM praying for return of the goods. The SDM issued an order accordingly against which the appellants carried revision up to the High Court. Under an order of the High Court, the goods were produced before the SDM, who got opened the boxes and noted that the seals of the boxes were tampered with and one of the boxes was broken while the remaining packages were completely empty but sealed. The respondent thereupon made a complaint before the SDM alleging that the appellants by their act in illegally tampering and breaking the seals of the goods seized by them and removing some of those goods and further abusing their positions and seizing some of the personal articles of the complainant under the colour of search warrant and illegally holding those goods had committed offences under Ss. 120-B/166/409, Indian Penal Code. After a preliminary enquiry the SDM having found a prima facie case under Ss. 120-B/409, Indian Penal Code, against the appellants, directed that the appellants be summoned. The appellants appeared but contended that the Magistrate had no jurisdiction to take cognizance of the complaint in the absence or sanction under S. 197, Criminal Procedure Code, 1898 and S. 155, Customs Act, 1962, for their prosecution. The Magistrate accepted the contention and a revision application having been dismissed by the Additional Sessions Judge, a further revision was carried before the High Court which held that no sanction was required for the prosecution of the appellants as they were not acting in the discharge of their official duties when they misappropriated the goods.

Held :

The sine qua non for the applicability of S. 197 is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.

The test for determining whether an offence was committed in the course of official duty or under colour of office is that the act constituting the offence must directly and reasonably be connected with his official duty. It is the quality of the act that is important.

Although the seizure of the goods by the appellants and their being thus entrusted with the goods or dominion over them, was an act committed by them while acting in the discharge of their official duty, there is nothing in the nature or quality of the complained subsequent act of dishonest misappropriation or conversion of goods by the appellants which attaches to or partakes of the official character of the appellants. Nor could the alleged act of misappropriation or conversion, be reasonably said to be imbued with the colour of the office held by the appellants. Generally in the case under S. 409, Indian Penal Code, the official capacity is material only in connection with the 'entrustment' and does not necessarily enter into the later act of misappropriation or conversion, which is the act complained of.

This, however, should not be understood as an invariable proposition of law. The question depends on the facts of each case. Where on special facts of the case the act of criminal misappropriation or conversion complained of is inseparably intertwined with the performance of the official duty of the accused, sanction under S. 197(1) for prosecution of the accused for an offence under S. 409, Indian Penal Code would be necessary. *B. Saha* v. *M.S. Kochar*, (1979) 4 SCC 177: 1979 SCC (Cri) 939: AIR 1979 SC 1841: 1979 Cri LJ 1367: (1979) 16 ACC 318.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *O. Chinnappa Reddy*, JJ. [Date of decision: 27-7-1979]

[2354] — **S. 197 — Applicability — Expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" — Words "official duty", how to be construed** — *Held, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should fall within the scope and range of his official duty — Test is whether omission or neglect to do that act would have brought on the charge of dereliction of his official duty — S. 197 to be construed strictly while determining its applicability to any act or omission in the course of service — Hence protection does not extend to criminal activities — But, where act or omission performed by a public servant had reasonable connection with discharge of his duty, it must be held to be official*

There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. (Paras 6 and 13)

"Official", according to the dictionary, means pertaining to an office, and "official act" or "official duty" means an act or duty done by an officer in his official capacity. Use of the expression "official duty" therefore implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. (Paras 10 and 11)

The protective cover of Section 197 has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty; that is under the colour of office. Official duty, therefore, implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. (Para 12). *Rakesh Kumar Mishra* v. *State of Bihar*, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432: AIR 2006 SC 820: 2006 Cri LJ 808: (2006) 38 AIC 13 (SC): (2006) 1 KLJ 405: (2006) 2 KLT 26.

Bench Strength **2**. Coram: **Arijit Pasayat** and *G.P. Mathur*, JJ. [Date of decision: 3-1-2006]

(4) "Discharge of official duty"/"Colour of duty" — What is and Determination of *(contd.)*

Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663: 1988 SCC (Cri) 29: AIR 1988 SC 257; P. Arulswami v. State of Madras, (1967) 1 SCR 201: AIR 1967 SC 776: 1967 Cri LJ 665; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44; R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128: AIR 1996 SC 901; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096, relied on

[2355] — S. 197 — Applicability — Expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" — *Words "official duty", how to be construed — Test for — Held, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should fall within the scope and range of his official duty — Test is whether omission or neglect to do that act would have brought on him the charge of dereliction of his official duty — S. 197 to be construed strictly while determining its applicability to any act or omission in the course of service — Hence, protection does not extend to criminal activities — But, where act or omission performed by a public servant had reasonable connection with discharge of his duty, it must be held to be official*

"Official", according to the dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. Thus, use of the expression "official duty" in Section 197 implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. (Para 10)

It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. (Para 7)

Section 197 CrPC has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in course of duty. For instance, a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. (Paras 11 and 12). *State of Orissa* v. *Ganesh Chandra Jew*, (2004) 8 SCC 40: 2004 SCC (Cri) 2104: AIR 2004 SC 2179: 2004 Cri LJ 2011.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 24-3-2004]

Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663: 1988 SCC (Cri) 29 ; P. Arulswami v. State of Madras, AIR 1967 SC 776: 1967 Cri LJ 665; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939, relied on

Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: 1956 Cri LJ 140, followed

[2356] — S. 197 — "Official duty" — Test for ascertainment of — Public servant purporting to act in official capacity — If covered — Exercise of discretion in discharge of administrative duties — *In the instant case where State's officers were required to take decisions in matters placed before them by their subordinates, or were required to apply their mind, or were required to take decisions in supervision and completion of a government project, or having regard to rules of executive business were required to take decision for and on behalf of State, or were required by their superiors to render their individual opinions, or were members of a committee constituted by authorities which assignment they could not decline or were under obligation to render their opinion* *being such a member, held, each of them was performing his official duties — Further held, not only when public servant acts in his official capacity but also when he purports to act in that capacity, provisions of S. 197 of the Code are attracted — In the instant case, where trial court had observed that sanction for prosecution was not required inasmuch as criminal misconduct arising out of corrupt practices of a public servant committed under Ss. 13(1)(d)(ii)-(iii) of Prevention of Corruption Act, 1988 had nothing to do with his normal activity as a public servant, and also that none of the accused was any longer a public servant, held, sanction for prosecution was required under S. 197 CrPC — Prevention of Corruption Act, 1988, Ss. 13(1)(d)(ii)-(iii)* (Paras 57 to 59, 22 and 64). *State of M.P.* v. *Sheetla Sahai*, (2009) 8 SCC 617: (2009) 3 SCC (Cri) 901.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 4-8-2009]

Centre for Public Interest Litigation v. Union of India, (2005) 8 SCC 202: (2006) 1 SCC (Cri) 23; Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358; Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: (1955) 2 SCR 925; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128; Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432; State of Karnataka v. Ameerjan, (2007) 11 SCC 273: (2008) 1 SCC (Cri) 130, relied on

[2357] — S. 197 — Applicability — Expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" — Words "official duty", how to be construed — *Held, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should fall within the scope and range of his official duty — Test is whether omission or neglect to do that act would have brought on the charge of dereliction of his official duty — S. 197 to be construed strictly while determining its applicability to any act or omission in the course of service — Hence, protection does not extend to criminal activities — But, where act or omission performed by a public servant had reasonable connection with discharge of his duty, it must be held to be official*

"Official", according to the dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. Thus, use of the expression "official duty" in Section 197 implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. (Para 8)

Section 197 CrPC has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the colour of office. Official duty, therefore, implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which, further, must have been official in nature. The section has, thus, to be construed strictly while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. For instance, a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. (Paras 9 and 10). *S.K. Zutshi* v. *Bimal Debnath*, (2004) 8 SCC 31: 2004 SCC (Cri) 2096: AIR 2004 SC 4174: (2004) 3 KLT 505.

Bench Strength 2. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 10-8-2004]

B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939, relied on

Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: 1956 Cri LJ 140, followed

[2358] — S. 197 — Applicability — Expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" — Words "official duty", how to be construed — *Held, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty — S. 197 to be construed strictly while determining its applicability to any act or omission in the course of service — But once any act or omission is found to have been committed by a public servant in discharge of his duty, held, liberal and wide construction to be given so far as its official nature is concerned — Where act or omission performed by a public servant had reasonable connection with discharge of his duty, it must be held to be official*

"Official" according to the dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. Thus, use of expression "official duty" in Section 197 implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by

(4) "Discharge of official duty"/"Colour of duty" — What is and Determination of *(contd.)*

a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. (Para 11)

It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which, further, must have been official in nature. The section has, thus, to be construed strictly while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far as its official nature is concerned. For instance, a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance, a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar under Section 197 of the Code is not attracted. If, on facts, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed. (Paras 12 and 13). *State of H.P.* v. *M.P. Gupta*, (2004) 2 SCC 349: 2004 SCC (Cri) 539: AIR 2004 SC 730.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 9-12-2003]

B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939, relied on

Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: 1956 Cri LJ 140, followed

[2359] — S. 197 — Applicability — Expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" — Words "official duty", how to be construed — Test for — *Held, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should fall within the scope and range of his official duty — Test is whether omission or neglect to do that act would have brought on him the charge of dereliction of his official duty — S. 197 to be construed strictly while determining its applicability to any act or omission in the course of service — Hence, protection does not extend to criminal activities — But, where act or omission performed by a public servant had reasonable connection with discharge of his duty, it must be held to be official*

"Official" according to the dictionary, means pertaining to an office, and "official act" or "official duty" means an act or duty done by an officer in his official capacity. Thus, use of the expression "official duty" in Section 197 CrPC implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. (Para 10)

It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 CrPC does not get immediately attracted on institution of the complaint case. (Para 7)

Section 197 CrPC has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in course of duty. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. (Para 11)

If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 CrPC cannot be disputed. (Para 12). *K. Kalimuthu* v. *State*, (2005) 4 SCC 512: 2005 SCC (Cri) 1291: AIR 2005 SC 2257: 2005 Cri LJ 2190.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 30-3-2005]

Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663: 1988 SCC (Cri) 29; P. Arulswami v. State of Madras, (1967) 1 SCR 201: AIR 1967 SC 776: 1967 Cri LJ 665; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44: 1956 Cri LJ 140; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096; P.K. Pradhan v. State of Sikkim, (2001) 6 SCC 704: 2001 SCC (Cri) 1234, relied on

[2360] — S. 197 — Applicability — Words "official duty" occurring in, how to be construed — *Held, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should fall within the scope and range of his official duty — Test is whether omission or neglect to do that act would have brought on the charge of dereliction of his official duty — S. 197 to be construed strictly while determining its applicability to any act or omission in the course of service*

The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. (Para 9)

The protection under Section 197 has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 CrPC cannot be disputed. (Paras 9 to 11)

If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 CrPC can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. (Para 9)

It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of

(4) "Discharge of official duty"/"Colour of duty" — What is and Determination of *(contd.)*

dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 CrPC does not get immediately attracted on institution of the complaint case. (Para 9). *Centre for Public Interest Litigation* v. *Union of India*, (2005) 8 SCC 202: AIR 2005 SC 4413: (2005) 128 Comp Cas 387.

Bench Strength **3**. Coram: *Ruma Pal*, **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 6-10-2005]

R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096, followed

[2361] — S. 197 — "Offence committed in discharge of official duty" — Test — *Act/omission must be integral to the performance of public duty — Misappropriation of public funds and fabrication of false record is not in furtherance of or in discharge of public duty — Held, sanctions not necessary — Object of obtaining sanction for prosecution of a government servant stated*

The essential requirement postulated for the sanction to prosecute the public servant is that the offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. In such a situation, it postulates that the public servant's act is in furtherance of the performance of his official duties. If the act/omission is integral to the performance of public duty, the public servant is entitled to the protection under Section 197(1) of CrPC. Without the previous sanction, the complaint/charge against him for the alleged offence cannot be proceeded with in the trial. The sanction of the appropriate Government or competent authority would be necessary to protect a public servant from needless harassment or prosecution. The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer. The requirement of the sanction by competent authority or appropriate Government is an assurance and protection to the honest officer who does his official duty to further public interest. However, performance of official duty under colour of public authority cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The Court to proceed further in the trial or the enquiry, as the case may be, applies its mind and records a finding that the crime and the official duty are not integrally connected.

When the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. it cannot be said that he acted in discharge of his official duties because it is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction. *Shambhoo Nath Misra* v. *State of U.P.*, (1997) 5 SCC 326: 1997 SCC (Cri) 676: AIR 1997 SC 2102: 1997 Cri LJ 2491: 1997 All LJ 1089.

Bench Strength **2**. Coram: *K. Ramaswamy* and *G.T. Nanavati*, JJ. [Date of decision: 14-3-1997]

[2362] — S. 197 — Offence committed 'while acting or purporting to act in the discharge of his official duty' — 'Official duty' — Meaning of — *Conditions for applicability of S. 197, held, are: (1) act or omission must have been done by public servant in course of his service, and (2) it should have been in discharge of his duty — On facts held, both the conditions fulfilled — Hence failure to obtain sanction for prosecution vitiated the entire proceedings against the accused — Official Secrets Act, 1923, Ss. 3(1)(c), 6(2)(a)(b) and 9 — Atomic Energy Act, 1962, Ss. 24(1)(d) r/w 18(2) and 24(2)(d) r/w 19(b)*

The accused-respondent was selected in course of his employment in the Navy to study the feasibility of nuclear power propelled submarine vessel and was attached with Bhabha Atomic Research Centre (B.A.R.C.) as second officer in command. He joined the project in 1976 and was associated with the Centre for nearly 10 years. The accused while working with B.A.R.C. not only obtained Ph.D. but was awarded gold medal for his achievements for his inventions. He voluntarily opted out of service in 1987. He was arrested on May 30, 1988, just when he was about to board a plane for New York. His residence was searched on the next day. Amongst various documents which were seized were the Identity Card of the Indian Armed Forces bearing his photograph and name, eight files containing different types of maps of India, diagrams and computer information, certain books, project report etc. Most of the documents which can be said to be sensitive which were recovered from the accused were admittedly either the book written by him or the paper read by him. Even the thesis written by the accused on which he was awarded Ph.D. by the Bhabha Institute of Technology was seized by the prosecution. On the basis of the documents seized and his interrogation, a complaint was filed against him under S. 3(1)(*c*), read with Ss. 9, 6(2)(*a*) and 6(2)(*b*) of the Official Secrets Act and Ss. 24(1)(*d*) read with 18(2) and 24(2)(*d*) read with S. 19(*b*) of the Atomic Energy Act before the Metropolitan Magistrate who being prima facie satisfied of the offences and their gravity committed the accused to stand trial before the Court of Sessions. Five charges were framed against the accused. First two related to Ss. 3(1) and 3(1)(*c*) of the O.S. Act. Third and fifth related to Ss. 6(2)(*a*) and 5 of the O.S. Act and fourth related to violation of Ss. 18(2) and 19 of A.E. Act. The validity of the charges framed was challenged by way of writ petition under Arts. 226 and 227. The High Court directed the Additional Sessions Judge to decide inter alia if sanction under S. 197 CrPC was required. The ASJ held that the documents seized from possession of the accused indicated that they were inseparably intertwined with performance of his official duties whilst in the Navy and therefore, the prosecution could not have been initiated without sanction. In revision filed by the State, the High Court agreed with this finding.

Dismissing the appeal,

Held:

Two questions arose for consideration — one if the offence for which the accused was charged and of which cognizance was taken was committed by him during the period he was in Naval service and if it be so then whether the violations were in discharge of official duty or they were beyond it. As regards the first question, the facts disclose that the act or omission which furnished foundation for indicting the accused either under O.S. Act or A.E. Act were related to the period when he was in service. Moreover, S. 197 of the Code as it stands after 1973, extends the protection even to a retired public servant as is clear from use of the words, 'is or was' provided the accusation is in respect of an act or omission done or purported to have been done when such public servant was in office. By legislative fiction the officer is deemed to be a public servant under S. 197 of the Code irrespective of his retirement if the accusations against him are for act or omission done by him when he was in service. The purpose is to avoid exposing a public servant to vexatious or frivolous prosecutions merely because he has demitted his office.

As regards the second question, evidence shows that the papers seized from the accused were written and the books published when the accused was attached with B.A.R.C. as a Second Officer-in-Command and, therefore, the material or documents which were found by him cannot be said to have been collected or procured by him by going out of way and beyond the discharge of his duties as an officer in the Naval Department. Maybe some of them were secret, confidential or unclassified items. But the accused came across them and obtained their copies in course of his duty as an officer attached to B.A.R.C. Taking out of information obtained in course of employment was thus squarely covered by S. 197. Whether it was for communication or not is not material. Retention of Identity Card issued during service may be dereliction of duty but it was committed when the accused was in service and it was issued to him while discharging his duties as a Naval officer. The Identity Card was issued to the accused as a retired officer and consequently the claim of the prosecution that the accused acted in violation of the provisions of the Act was not justified. But assuming there was violation since it was done when the accused was in service he was entitled to protection under S. 197 of the Code. Likewise the alleged information which the accused was taking with him to United States having been obtained by him in course of employment and in discharge of his duty the High Court did not commit any error of law in recording the finding that no prosecution could be initiated unless sanction under S. 197 was obtained. Thus even the second and the most important requirement of acting in discharge of official duty was satisfied. Therefore, it was necessary for the prosecution to have obtained sanction for prosecuting the accused.

Section 197 does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found

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to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of S. 197 of the Code cannot be disputed.

So far public servants are concerned the cognizance of any offence, by any court, is barred by S. 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint cannot be taken notice of.

In the present case the courts below did not commit any error of law in coming to conclusion that the entire proceedings were vitiated as no cognizance of the offences could have been taken against the accused without complying with provisions of S. 197 of the Code. *State of Maharashtra* v. *Dr. Budhikota Subbarao*, (1993) 3 SCC 339: 1993 SCC (Cri) 901.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **R.M. Sahai**, JJ. [Date of decision: 16-3-1993]

[2363] — S. 197 — Whether offence committed "while acting or purporting to act in the discharge of his official duty" — Test to determine *— The act complained of (1) must be an offence, and (2) must be done in discharge of official duty — There must be a reasonable connection between the act and the official duty — It does not matter that the act exceeds what is strictly necessary for the discharge of the official duty, since that question would arise only later when the trial proceeds — But no sanction is required where there is no such connection and the official status furnishes only the occasion or opportunity for the acts — The claim of the accused that the act alleged was done reasonably and not in pretended course of his official duty can be examined during the trial by giving an opportunity to the defence to prove it — In such cases the question of sanction should be left open to be decided in the main judgment after conclusion of trial*

In order to implement certain rural development schemes, approved by the State Cabinet of Sikkim, the Deptt. of Rural Development invited sealed tenders from enlisted contractors. In response, tenders were received and the same were opened by a Tender Committee. Necessary action for acceptance/rejection of tender then followed in respective files. It was alleged that at that stage the then Chief Minister of Sikkim and the then Secretary, Rural Development Deptt., the appellant, along with certain contractors entered into a criminal conspiracy with the object of securing contract works in favour of the said contractors by corrupt or illegal means or by abusing the position of the then Chief Minister and the appellant as public servant and got the works awarded in favour of those contractors thereby causing them pecuniary advantage and corresponding loss to the State of Sikkim by various commissions and omissions. Charge-sheet was submitted against the appellant, the then Chief Minister and the said contractors under Section 120-B IPC read with Sections 5(2)/5(1)(*d*) of the Prevention of Corruption Act, 1947 corresponding to Sections 13(2)/13(1)(*d*) of the 1988 Act. Before cognizance was taken upon the charge-sheet, the then Chief Minister and the appellant ceased to be public servants. The Special Judge took cognizance and summoned all the accused. On behalf of the appellant a preliminary objection was raised that his prosecution under Section 120-B IPC read with Sections 5(2) and 5(1)(*d*) of the 1947 Act was not warranted as he being a public servant at the relevant time, sanction was required under Section 197 of the Code and the same having not been obtained, the prosecution for these offences was not fit to continue. The Special Judge rejected the objection. The High Court also dismissed the revision petition holding that no sanction under Section 197 was required. The only question that arose before the Supreme Court was whether sanction for prosecution of the appellant was required under Section 197 CrPC for the said offences. Dismissing the appeal,

Held :

The legislative mandate engrafted in sub-section (1) of Section 197 touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197: "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, and the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. (Paras 5 and 15)

It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial. (Para 15)

In the present case, the accused is claiming that in awarding contract in his capacity as Secretary, Department of Rural Development, Government of Sikkim, he did not abuse his position as a public servant and works were awarded in favour of the contractor at a rate permissible under law and not at low rates. These facts are required to be established which can be done at the trial. Therefore, it is not possible to grant any relief to the appellant at this stage. During the course of trial, the court below shall examine this question afresh and deal with the same in the main judgment in the light of the law laid down in this case without being prejudiced by any observation in the impugned orders. (Para 16). *P.K. Pradhan* v. *State of Sikkim*, (2001) 6 SCC 704: 2001 SCC (Cri) 1234: AIR 2001 SC 2547.

Bench Strength 3. Coram: *G.B. Pattanaik, S.N. Phukan* and **B.N. Agrawal**, JJ. [Date of decision: 24-7-2001]

Hori Ram Singh (Dr.) v. Emperor, AIR 1939 FC 43: 1939 FCR 159; H.H.B. Gill v. R., AIR 1948 PC 128: 49 Cri LJ 503; Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287: 1955 Cri LJ 857: (1955) 1 SCR 1177; Amrik Singh v. State of Pepsu, AIR 1955 SC 309: 1955 Cri LJ 865: (1955) 1 SCR 1302; Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: 1956 Cri LJ 140: (1955) 2 SCR 925; Baijnath Gupta v. State of M.P., AIR 1966 SC 220: 1966 Cri LJ 179: (1966) 1 SCR 210; Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan, (1998) 1 SCC 205: 1998 SCC (Cri) 1; Abdul Wahab Ansari v. State of Bihar, (2000) 8 SCC 500: 2001 SCC (Cri) 18; K. Satwant Singh v. State of Punjab, AIR 1960 SC 266: 1960 Cri LJ 410: (1960) 2 SCR 89; Om Parkash Gupta v. State of U.P., AIR 1957 SC 458: 1957 SCR 423: 1957 Cri LJ 575, relied on

[2364] — Ss. 197 and 190 — "Acting in the discharge of his official duty" — *Magistrate to consider not only the allegations made in the complaint but also other materials on record — Allegation in the complaint that the accused police officials raided the house of the complainant without warrant, assaulted and abused his wife and others and took away certain articles belonging to him — Material on record showing that material facts were suppressed by the complainant and some of the allegations were false — Held, in the circumstances of the case, sanction was necessary*

(4) "Discharge of official duty"/"Colour of duty" — What is and Determination of *(contd.)*

The High Court was wrong in holding that the Magistrate should have considered only the allegations made in the complaint to find out whether the alleged acts were committed by the police officials while discharging or purporting to discharge their duties.

There was also no material to show that any article belonging to the complainant was misappropriated by any of the police officials. On the contrary the material discloses that seizure lists were prepared and copies thereof were given to the brother-in-law of the complainant who was present. Thus the material collected during the inquiry discloses that material facts were suppressed by the complainant and some of the allegations made in the complaint were not correct.

As the search was made by the police officials after obtaining a proper warrant for that purpose and as there is no credible material to show that they had either abused or assaulted the wife of the complainant or any other person, what they had done appears to have been done while discharging or purporting to discharge their duty. Therefore, no cognizance of the alleged offences could be taken without a proper sanction of the Government. *State of Bihar* v. *Kamla Prasad Singh*, (1998) 5 SCC 690: 1998 SCC (Cri) 1374: AIR 1998 SC 2379: 1998 Cri LJ 3601.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 6-5-1998]

[2365] — S. 197 — "Acting or purporting to act in discharge of his official duty" — Defamatory language used by a Judge to an Advocate — *Held, not in discharge of his official duty — Hence S. 197 not applicable and Sanction for prosecution of the Judge not required — Penal Code, 1860, S. 499*

The District Court called for remarks from the appellant, a Munsif Magistrate, on certain allegations made by the respondent, an Advocate, in his application for transfer of a suit pending in the appellant's court. The appellant in his written remarks called the respondent as 'rowdy', 'a big gambler' and 'a mischievous element'. The District Judge read out the appellant's remarks in open court. The respondent then filed a criminal complaint alleging that the remarks amounted to his defamation under S. 499, IPC.

Held :

There was no reasonable nexus between the act complained of, i.e. the defamatory language used by the appellant in his remarks, and the discharge of official duty i.e. to offer his remarks regarding the allegations made in the transfer petition. Therefore, S. 197 was not attracted. *B.S. Sambhu* v. *T.S. Krishnaswamy*, (1983) 1 SCC 11: 1983 SCC (Cri) 125: AIR 1983 SC 64: 1983 Cri LJ 158.

Bench Strength **2**. Coram: *V.D. Tulzapurkar* and *A. Varadarajan*, JJ. [Date of decision: 9-11-1982]

Matajog Dubey H.C. Bhari, (1957) 2 SCR 925: AIR 1956 SC 44, applied

[2366] — S. 197 — "Acting or purporting to act in discharge of official duties" — Whether act complained of has a direct nexus or relation with the official duties of a public servant will depend on the facts of each case — Proper approach of the court indicated — *Minister for Electricity entering into a criminal conspiracy with the co-accused and illegally selling electricity to an industry — Held, act alleged is directly and reasonably connected with the official duty as a Minister and, therefore, attracts the protection of S. 197(1)*

In the present case, the appellant is charged with having entered into a criminal conspiracy with the co-accused while functioning as a Minister. The criminal conspiracy alleged is that he sold electricity to an industry in the State of Karnataka "without the consent of the Government of Kerala which is an illegal act" under the provisions of the Electricity (Supply) Act, 1948 and the Kerala Electricity Board Rules framed thereunder. It was alleged that the Minister in pursuance of the said alleged conspiracy abused his official position and illegally sold certain units to the private industry in Bangalore which profited the private industry to the tune of Rs 19,58,630.40 or more and it is, therefore, obvious that the criminal conspiracy alleged against the appellant is that while functioning as the Minister for Electricity he without the consent of the Government of Kerala supplied certain units of electricity to a private industry in Karnataka. Obviously, he did this in the discharge of his duties as a Minister. The allegation is that it was an illegal act inasmuch as the consent of the Government of Kerala was not obtained before this arrangement was entered into and the supply was effected. For that reason, it is said that he had committed an illegality and hence he was liable to be punished for criminal conspiracy under Section 120-B IPC. It is, therefore, clear from the charge that the act alleged is directly and reasonably connected with his official duty as a Minister and would, therefore, attract the protection of Section 197(1) of the Act. *R. Balakrishna Pillai* v. *State of Kerala*, (1996) 1 SCC 478: 1996 SCC (Cri) 128: AIR 1996 SC 901: (1996) 1 KLT 250: (1996) 1 KLJ 112.

Bench Strength **2**. Coram: *A.M. Ahmadi, C.J.* and *S.C. Sen*, J. [Date of decision: 5-12-1995]

Harihar Prasad v. State of Bihar, (1972) 3 SCC 89: 1972 SCC (Cri) 409, explained and distinguished

B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939, followed

[2367] — S. 197 — 'Acting or purporting to act in the discharge of his official duty' — *Speech delivered by a member of IAS at a college function not in course of his official act. Govt. of T.N.* v. *Badrinath*, (1987) 4 SCC 654: 1988 SCC (L&S) 44: AIR 1987 SC 2381.

Bench Strength 2. Coram: **A.P. Sen** and *M.N. Venkatachaliah*, JJ. [Date of decision: 15-10-1987]

[2368] — S. 197 — Offences under Ss. 406, 409 read with S. 120-B IPC — Sanction under S. 197 for prosecution of public servant, held, not necessary

It was laid down in *Harihar Prasad case*, (1972) 3 SCC 89 that:

> "As far as the offence of criminal conspiracy punishable under Section 120-B, read with Section 409, Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act is concerned, they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar."

Learned Single Judge of the High Court declined to follow the aforesaid legal position in the present case on the sole premise that the offence under Section 406 of IPC has also been fastened against the accused besides Section 409 of IPC. It is difficult to discern the rationale in the distinguishment. Sections 406 and 409 of IPC are cognate offences in which the common component is criminal breach of trust. When the offender in the offence under Section 406 is a public servant (or holding any one of the positions listed in the section) the offence would escalate to Section 409 of the Penal Code. When in *Harihar Prasad case* it was held that in regard to the offence under Section 409 of IPC read with Section 120-B it is no part of the duty of the public servant to enter into a criminal conspiracy for committing breach of trust, there is no sense in stating that if the offence is under Section 406 read with Section 120-B IPC it would make all the difference vis-à-vis Section 197 of the Code. (Para 8). *State of Kerala* v. *V. Padmanabhan Nair*, (1999) 5 SCC 690: 1999 SCC (Cri) 1031: AIR 1999 SC 2405: 1999 Cri LJ 3696: (1999) 4 LLN 77.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 14-7-1999]

Harihar Prasad v. State of Bihar, (1972) 3 SCC 89: 1972 SCC (Cri) 409; Shreekantiah Ramayya Munnipalli v. State of Bombay, AIR 1955 SC 287: 57 Bom LR 632; Amrik Singh v. State of Pepsu, AIR 1955 SC 309, followed

[2369] — S. 197 — Sanction for prosecution — Charge for offences under Ss. 406, 409 and 120-B IPC — Inclusion of S. 406 IPC is immaterial as Ss. 406 and 409 are cognate offences, reiterated (Para 12). *Raghunath Anant Govilkar* v. *State of Maharashtra*, (2008) 11 SCC 289: 2008 Cri LJ 2054.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 8-2-2008]

[2370] — S. 197 — Sanction under — Held, is not a condition precedent for launching prosecution for an offence under S. 409 IPC — *Penal Code, 1860, S. 409* (Para 12). *N. Bhargavan Pillai* v. *State of Kerala*, (2004) 13 SCC 217: 2005 SCC (Cri) 142: AIR 2004 SC 2317: 2004 Cri LJ 2494.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 20-4-2004]

State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539, followed

[2371] — Ss. 197 and 420, 467, 468, 471 and 120-B, Penal Code, 1860 — Offences for which sanction required under S. 197 — *Held, no sanction for prosecution is necessary for offences under Ss. 420, 467, 468, 471 and 120-B, Penal Code, 1860*

The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B, Penal Code, 1860 can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence. (Para 50). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193: AIR 2007 SC 1274: (2007) 51 AIC 623 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432, distinguished

[2372] — S. 197 — Expression "acting or purporting to act in the discharge of his official duty" — Test of connection between the offence and performance of the official duty for determining — *Cheating by drawing false. T.A. bills, held, does not fall within the expression — Hence sanction for prosecution under S. 420, Penal Code not required*

The appellant, a Regional Officer of the Directorate of Field Publicity, Government of India, travelled by air by obtaining air tickets in lieu of exchange orders. The cost of the tickets was

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debitable to the account of the Directorate and was to be excluded from the T.A. bills under the rules. On the allegation that the appellant submitted bills including the air fare and received payment for the same, a prosecution report against him was submitted to Magistrate for offence of cheating under S. 420, IPC. The appellant contended that the prosecution was not maintainable in absence of sanction under S. 197, CrPC. The Magistrate as well as the High Court in revision rejected the contention.

Held :

Where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty as such offence has no necessary connection between it and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences.

Drawing of T.A. bills cannot be said to have been directly and reasonably connected with appellant's duty as Regional Officer of the Directorate and the official status furnished the opportunity for doing the acts which constitute ingredients of the offence. He was, therefore, not entitled to claim the protection of S. 197(1) of the Code. The prosecution is not vitiated for want of sanction. *Manohar Nath Kaul* v. *State of J&K*, (1983) 3 SCC 429: 1983 SCC (Cri) 647: AIR 1983 SC 610: 1983 Cri LJ 988. Bench Strength 2. Coram: *D.A. Desai* and **Ranganath Misra**, JJ. [Date of decision: 19-4-1983]

[2373] — S. 197 — "Acting or purporting to act in discharge of his official duty" — Offences under Ss. 409, 420, 467, 468 and 471 IPC — If covered — *Held, the said offences cannot be regarded as committed by public servant while discharging or purporting to act in discharge of his official duty — Penal Code, 1860, Ss. 409, 420, 467, 468 and 471* (Para 60). *Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710. Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193, relied on

[2374] — S. 197 — Complaint against police officer — Bar of limitation under S. 53, T.N. District Police Act — *When does not apply — Respondent police officer beating and torturing the appellant on the latter appearing before the former in response to a summons issued by him — Criminal complaint filed after two years — Held, bar of S. 53 not attracted — Conduct of the respondent not covered by the expression 'act done or intended to be done under provisions of the Act or any other law' — There is no nexus between the official act of issuance of summons and the action of the respondent on appearance of the appellant — High Court wrongly quashed the complaint as time-barred — T.N. District Police Act, 1859 (24 of 1859), Ss. 53 and 21*

Before a prosecution is terminated as barred by S. 53 of the Act, the accused must show that on the allegations made in the complaint it ex facie appears that the act complained of was done under the provisions of the Act or under the provisions of any other law for the time being in force whereunder powers are conferred on the police. It is true that under S. 21 of the Act a police officer can be said to be on duty all the 24 hours. The prosecution launched against the respondent is in regard to the ill-treatment meted out to the appellant when the latter visited the former in response to the summons. It was no part of the duty under the Act, Code or any other law for the time being in force conferring power on the police to beat and torture the appellant when he presented himself before the respondent in response to the summons. By no stretch of reasoning can it be said that the respondent's action of torturing the appellant was in discharge of any duty or function under the Act or under any other law. It is also difficult to say, if the allegations made are taken at their face value, that the respondent's action was incidental to or in furtherance of his duties and functions under any law. It must be realised that in order to avail of the benefit of S. 53 of the Act, the respondent must show that he acted 'under' the Act or any other law. Merely because the appellant was called through a summons issued under law, the conduct of beating and torturing the appellant on the latter appearing in obedience to the summons cannot establish any nexus between the official act of issuance of summons and the action of the respondent on the appearance of the appellant. Unless a relationship is established between the provision of law 'under' which the respondent purports to act and the misdemeanour complained of, the provision of S. 53 will not be attracted. In the present case the allegation in the complaint is that while the appellant was called by service of a summons presumably to inquire into allegations of illicit distillation, the respondent had merely used it as an excuse to secure his presence but in fact his real intention was to beat him up to prevent him from complaining against those who were paying him 'mamool' (illegal gratification) money. Thus according to the appellant the respondent bore a grudge against him and, therefore, he misused his power, issued a summons, secured his presence and then tortured him. He has charged him for the commission of offences under Ss. 341, 342, 363, 364, 506 (Part II) and 307 IPC. These do not attract the provision of S. 53 of the Act. *S.P. Vaithianathan* v. *K. Shanmuganathan*, (1994) 4 SCC 569: 1994 SCC (Cri) 1311: AIR 1994 SC 1771: 1994 Cri LJ 2265: (1994) 1 Crimes 725: (1994) 1 MWN (Cri) 161.

Bench Strength 2. Coram: **A.M. Ahmadi** and *N. Venkatachala*, JJ. [Date of decision: 1-3-1994]

State of A.P. v. N. Venugopal, (1964) 3 SCR 742: AIR 1964 SC 33: (1964) 1 Cri LJ 16, followed

[2375] — S. 197 — Sanction — Offence must be committed while acting or purporting to act in discharge of official duty — *Tampering with search memo while in court's custody by police officials — Held, not act purported to have been done in discharge of their official duty — Hence previous sanction for prosecution not necessary. Balbir Singh* v. *D.N. Kadian*, (1986) 1 SCC 410: 1986 SCC (Cri) 80: AIR 1986 SC 345: 1986 Cri LJ 314: (1986) 1 PLR 296.

Bench Strength 2. Coram: *A.P. Sen* and **B.C. Ray**, JJ. [Date of decision: 10-12-1985]

[2376] — S. 197 — Whether act done by a public servant in discharge or purported discharge of his official duty — *Offence alleged against police officer of keeping in police custody persons suspected of having committed an offence without producing them before Magistrate within 24 hours of arrest — Held, act of keeping the suspected offenders in police custody was initially legal but later it became illegal when those persons were not produced before a Magistrate within 24 hours of their arrest — Hence the offence alleged was committed by the police officer in his official capacity*

The real test to be applied to attract the applicability of Section 197(3) is whether the act which is done by a public officer and is alleged to constitute an offence was done by the public officer whilst acting in his official capacity though what he did was neither his duty nor his right to do as such public officer. The act complained of may be in exercise of the duty or in the absence of such duty or in dereliction of the duty; if the act complained of is done while acting as a public officer and in the course of the same transaction in which the official duty was performed or purported to be performed, the public officer would be protected. (Para 15)

In this case cognizance was only under Section 220 (commitment for trial or confinement by person having authority who knows that he is acting contrary to law) and Section 342 (wrongful confinement) of the Indian Penal Code. Cognizance has also been taken for offences under Section 147 (vexatious injury, search, arrest etc. by police officer) and Section 148 (vexatious delay in forwarding a person arrested) of the Bombay Police Act, 1951. Cognizable and non-bailable offences were registered against the appellants. They were liable to be arrested and detained. The gravamen of the charge is the failure on the part of the accused persons to produce them before a Magistrate within 24 hours of arrest. The complainants were in the custody of the police officers and at the police station. It cannot be denied that the custody which was legal to begin with became illegal on account of non-production of the complainants before the Magistrate by the police officers officially detaining the appellants at a place meant for detaining the persons suspected of having committed an offence under investigation. The act constituting an offence alleged to have been committed by the accused-respondents was certainly done by them in their official capacity though at a given point of time it had ceased to be legal in spite of being legal to begin with. On the totality of the facts and circumstances of the case the Magistrate and the High Court have not erred in holding the accused-respondents entitled to the benefit of protection under Section 197(2) CrPC. (Para 16) . *Rizwan Ahmed Javed Shaikh* v. *Jammal Patel*, (2001) 5 SCC 7: AIR 2001 SC 2198: 2001 Cri LJ 2897.

Bench Strength 2. Coram: **R.C. Lahoti** and *N. Santosh Hegde*, JJ. [Date of decision: 12-5-2001]

[2377] — Ss. 197 and 196 — Sanction for prosecution of police officer accused of causing grievous injuries and death in conducting raid and search — *Whether the police officer while acting in purported discharge of official duty exceeded limits of his official capacity — For determination of the question, cognizance of the offence has to be taken — In the circumstances, held, trial need not be stayed for want of sanction for prosecution of the accused officer*

The question is while investigating and performing the duties as a police officer was it necessary for the petitioner to conduct himself in such a manner which would result in such consequences. In the facts and circumstances of each case protection of public officers and public servants functioning in discharging of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that S. 196 states that no cognizance can be taken and even after cognizance having been taken if facts

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come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time, criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence. Therefore, the trial should proceed. If necessary the question of sanction under S. 197 may be agitated after some evidence has been noted by the trial court. *Bakhshish Singh Brar* v. *Gurmej Kaur*, (1987) 4 SCC 663: 1988 SCC (Cri) 29: AIR 1988 SC 257.

Bench Strength 2. Coram: **Sabyasachi Mukharji** and *M.M. Dutt*, JJ. [Date of decision: 12-10-1987]

Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944, relied on

[2378] — S. 197 — Offence committed by a police officer "on account of any act done in pursuance of any duty imposed or authority conferred on him" — *Policemen (appellants) keeping a person in lock-up for more than 24 hours without authority and subjecting to third-degree treatment — Held, such offence neither covered by S. 64(3) of the Act nor by S. 197(1) CrPC — Kerala Police Act, 1960 (5 of 1961), S. 64(3)*

Even under Section 197 CrPC no protection has been granted to public servants for the type of acts alleged in the case against the appellants. If a police officer dealing with law and order duty uses force against unruly persons, either in his own defence or in defence of others and exceeds such right it may amount to an offence. But such offence might fall within the amplitude of Section 197 CrPC as well as Section 64(3) of the KP Act. But if a police officer assaults a prisoner inside a lock-up he cannot claim such act to be connected with the discharge of his authority or exercise of his duty unless he establishes that he did such acts in his defence or in defence of others or any property. Similarly, if a police officer wrongfully confines a person in the lock-up beyond a period of 24 hours without the sanction of a Magistrate or an order of a court it would be an offence for which he cannot claim any protection in the normal course, nor can he claim that such act was done in exercise of his official duty. A policeman keeping a person in the lock-up for more than 24 hours without authority is not merely abusing his duty but his act would be quite outside the contours of his duty or authority. (Paras 19 and 21). *P.P. Unnikrishnan* v. *Puttiyottil Alikutty*, (2000) 8 SCC 131: 2000 SCC (Cri) 1460: AIR 2000 SC 2952.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 5-9-2000]

K.K. Patel v. State of Gujarat, (2000) 6 SCC 195, distinguished

Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: 1956 Cri LJ 140: (1955) 2 SCR 925; H.H.B. Gill v. R., AIR 1948 PC 128: 49 Cri LJ 503; Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944, relied on

P.P. Unnikrishnan v. Puttiyottil Alikutty, 1999 Cri LJ 4261 (Ker), affirmed

[2379] — S. 197 — Applicability — Demand of illegal gratification of Rs 10,000 by appellant public servants from a shopkeeper (complainant) — *On refusal to pay the same, appellants ransacking his shop and taking away the goods — Threatening him with dire consequences — Held, court below was justified in holding that S. 197 was not applicable in such a case — Appellants not entitled to protection under S. 197 — Penal Code, 1860, Ss. 395, 447 and 506* (Para 13). *S.K. Zutshi* v. *Bimal Debnath*, (2004) 8 SCC 31: 2004 SCC (Cri) 2096: AIR 2004 SC 4174: (2004) 3 KLT 505.

Bench Strength 2. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 10-8-2004]

[2380] — S. 197 — Sanction for prosecution — When not required — Relatability of offence to official duty necessary — False allotment of premises and false issuance of rent receipts by public servant to various persons to show false possession of tenements — *Appellant-accused working with Maharashthon Housing and Area Development Authority (MHADA) allotted premises to various persons under his signature, issued rent receipts so that the said persons could claim that they were in possession of the tenements, though in fact, the tenements, in question, were vacant and were not in possession of MHADA — Appellant charged for offences punishable under Ss. 420, 465, 466, 467, 468 and 471 IPC — Held, the charged offences are not relatable to any official duty — Sanction under S. 197(1), therefore, not needed — Penal Code, 1860, Ss. 420, 465, 466, 467, 468 and 471*

The allegation against the appellant-accused was that while working with Maharashthon Housing and Area Development Authority (MHADA) the appellant allotted premises to various persons under his signature, issued rent receipts so that the said persons could claim that they were in possession of the tenements, though in fact, the tenements, in question, were vacant and were not in possession of MHADA. According to the prosecution, the appellant committed offences punishable under Sections 420, 465, 466, 467, 468 and 471 IPC.

Before the trial court, the appellant filed an application for discharge in terms of Section 228 CrPC primarily on the ground that sanction under Section 197 CrPC had not been obtained. It was also submitted that proceedings could not have been initiated after his retirement in view of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. The application was dismissed by the trial court. It was noted that the appellant was in government service till 31-8-1989. The complaint was filed on 17-7-1989 which was treated as an FIR and, therefore, Rule 27 of the Pension Rules had no application. As regards the requirement of sanction in terms of Section 197 CrPC it was held that acts done by the accused did not fall within the ambit of official duty and, therefore, question of sanction did not arise.

The High Court by the impugned order dismissed the criminal writ petition filed by the appellant, affirming the view taken by the trial court although it held that on 10-8-1992 when the cognizance was taken, the appellant had ceased to be a public servant and that no sanction under Section 197(1) CrPC is needed in the case of retired government servant.

Dismissing the appeal,

Held :

Though the view of the High Court that no sanction under Section 197(1) CrPC is needed in the case of retired government servant is erroneous, in view of the finding that the charged offences are not relatable to any official duty, the appeal fails and deserves to be dismissed. The High Court, was in error in observing that sanction was not necessary because the expression used in Section 197(1) CrPC to refer to a public servant is "was". But the question is really of academic nature because the alleged offences cannot be related to any official duty. (Paras 13, 8 and 9). *Raghunath Anant Govilkar* v. *State of Maharashtra*, (2008) 11 SCC 289: 2008 Cri LJ 2054.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 8-2-2008]

Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432; R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096, relied on

41st Law Commission Report; Black's Law Dictionary, cited

[2381] — **S. 197 — Sanction for prosecution of appellant police officer for conducting a search without warrant (though other procedures followed) — Need for** — *Search of residential premises of R-2 conducted by police team headed by appellant on basis of report received by appellant as to commission of dacoity, in which R-2's son was implicated, with a view to arrest the said son — Alleging that search was motivated and was for purpose of humiliating and harassing R-2 and his son, as no search warrant had been obtained, complaint filed by R-2 — Whereupon, Magistrate taking cognizance of offences under Ss. 342, 389, 469, 471 and 120-B IPC against appellant, without sanction under S. 197 having been obtained — Order of Magistrate upheld by High Court — Sustainability — Held, High Court was not justified in holding that S. 197 was not applicable — It only focussed on absence of search warrant and totally ignored other relevant aspects, which had a determinative role in the issue — Hence order of Magistrate taking cognizance set aside — Penal Code, 1860, Ss. 342, 389, 469, 471 and 120-B* (Paras 21 and 22). *Rakesh Kumar Mishra* v. *State of Bihar*, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432: AIR 2006 SC 820: 2006 Cri LJ 808: (2006) 38 AIC 13 (SC): (2006) 1 KLJ 405: (2006) 2 KLT 26.

Bench Strength **2**. Coram: **Arijit Pasayat** and *G.P. Mathur*, JJ. [Date of decision: 3-1-2006]

Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663: 1988 SCC (Cri) 29; P. Arulswami v. State of Madras, (1967) 1 SCR 201: AIR 1967 SC 776: 1967 Cri LJ 665; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44; R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096, relied on

[2382] — S. 197 — Whether offence committed by public servant "while acting or purporting to act in discharge of his official duty" — Appellant public servant, appointed as Duty Magistrate and asked by SDM to remove an encroachment, ordering to open fire on the mob at the site when, according to him, situation became out of control and as a result one person died and two other received injuries — *Held, appellant gave the order of opening fire in exercise of his official duty*

There was a dispute between two sets of Mohammedan residents, one set complaining against the other about the encroachment of the property belonging to the mosque and the appellant as the Circle Inspector, on the basis of a complaint had inquired into the matter and arrived at a finding that the situation at the site was volatile for which order under Section 144 CrPC had been promulgated. Thereafter, the appellant made several requests to the encroachers for removal of the encroachment and ultimately the Sub-Divisional Magistrate appointed the appellant as Duty Magistrate for use of police force to remove the encroachment in question. The appellant visited the encroachment site and was able to remove the

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encroachment partially and reported the said fact to his senior officer, but next day when the appellant along with armed force, reached the encroachment site, several miscreants armed with weapons, started hurling stones and as the situation became out of control, after giving due warning, the appellant was compelled to give order for opening fire and dispersed the mob. On account of such firing, one of the persons died and two others were injured and the appellant then sent a report to his senior officer about the incident. The son of the deceased, Respondent 2, filed a complaint before the Chief Judicial Magistrate, alleging commission of offence by the appellant under Sections 302, 307, 380, 427, 504, 147, 148, and 149 IPC as well as Section 27 of the Arms Act. The CJM held that Section 197 CrPC was not applicable to the facts of the case and that there was sufficient evidence available to establish that prima facie case under Sections 302, 307, 147, 148, 149 and 380 was made out against the accused and, therefore, he directed issuance of non-bailable warrants against the appellant. The appellant then moved the High Court under Section 482 CrPC praying inter alia that no cognizance could be taken without a sanction of the appropriate Government, as required under Section 197 CrPC as the appellant was discharging his official duty pursuant to an order of the competent authority. The High Court, however, without going into the merits of the matter and being of the opinion that all the questions may be raised at the time of framing of charge, disposed of the application filed by the appellant and hence the present appeal in the Supreme Court. When the present appeal had been listed before the Supreme Court, a judgment of the Court in *Birendra K. Singh* v. *State of Bihar* (decided on April 7, 2000) had been placed and it was contended that the question of applicability of Section 197 CrPC can be raised at the stage of framing of charge and, therefore, the impugned order of the High Court does not require any interference by the Supreme Court. Correctness of the aforesaid enumeration of law having appeared to be doubtful, the matter had been referred to the present three-Judge Bench. Two questions arose before the larger Bench for consideration:

1. Assuming the provisions of Section 197 of the Code of Criminal Procedure applies, at what stage the accused can take such plea? Is it immediately after the cognizance is taken and process is issued or is it only when the court reaches the stage of framing of charge as held by the Supreme Court in *Birendra K. Singh case*?

2. Whether in the facts and circumstances of the present case, is it possible for the Court to come to a conclusion that the appellant was discharging his official duty and in course of such discharge of duty, ordered for opening of fire to control the mob in consequence of which a person died and two persons were injured and in which event, Section 197 CrPC can be held to be attracted?

Allowing the appeal and quashing the criminal proceedings,

Held :

The appellant had been directed by the Sub-Divisional Magistrate to be present with police force and remove the encroachment in question and in course of discharge of his duty to control the mob, when he had directed for opening of fire, it must be held that the order of opening of fire was in exercise of the power conferred upon him and the duty imposed upon him under the orders of the Magistrate and in that view of the matter Section 197(1) applies to the facts of the present case. Admittedly, there being no sanction, the cognizance taken by the Magistrate is bad in law and unless the same is quashed qua the appellant, it will be an abuse of the process of Court. (Para 9). *Abdul Wahab Ansari* v. *State of Bihar*, (2000) 8 SCC 500: 2001 SCC (Cri) 18: AIR 2000 SC 3187.

Bench Strength 3. Coram: **G.B. Pattanaik**, *M.B. Shah* and *S.N. Phukan*, JJ. [Date of decision: 17-10-2000]

Gauri Shankar Prasad v. State of Bihar, (2000) 5 SCC 15: 2000 SCC (Cri) 872, applied

[2383] — S. 197 — Requirement of obtaining sanction for prosecution — Notification in question making S. 197 applicable to serving police officials charged with the maintenance of public order — Applicability of — Expression "public order" — Meaning and scope — *Respondent police officer committing offences in question while investigating case under Essential Commodities Act (EC Act) — Held, the said investigation may not be equated with the maintenance of public order as is commonly understood — Activities of a single individual giving rise to irregularities of maintenance of books of accounts as regards an essential commodity or resorting to black marketing, unless a volatile situation arises therefrom, cannot lead to disturbance of public peace, safety and tranquillity, which are essential requisites of "public order" — Therefore, the notification in question had no application in the facts and circumstances of the case — Thus, no sanction was required in terms of S. 197 — Prevention of Corruption Act, 1988, Ss. 19 and 13(2) — Prevention of Corruption Act, 1947, S. 6* (Paras 14 and 15). *Romesh Lal Jain v. Naginder Singh Rana*, (2006) 1 SCC 294: (2006) 2 SCC (Cri) 593: AIR 2006 SC 336: 2005 Cri LJ 5068: (2005) 36 AIC 108 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

[2384] — S. 197 — Requirement of obtaining sanction to prosecute a public servant — Offences under Ss. 467, 468 and 471 IPC — *Held, it is no part of the duty of a public servant while discharging his official duties to commit the said offences — Hence, want of sanction under S. 197, held, is no bar to prosecute a public servant in respect of such offences* (Para 22). *State of H.P.* v. *M.P. Gupta*, (2004) 2 SCC 349: 2004 SCC (Cri) 539: AIR 2004 SC 730.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 9-12-2003]

Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287: (1955) 1 SCR 1177: 1955 Cri LJ 857; Amrik Singh v. State of Pepsu, AIR 1955 SC 309: (1955) 1 SCR 1302: 1955 Cri LJ 865; Harihar Prasad v. State of Bihar, (1972) 3 SCC 89: 1972 SCC (Cri) 409; State of Kerala v. V. Padmanabhan Nair, (1999) 5 SCC 690: 1999 SCC (Cri) 1031, followed

(1997) 1 Shim LC 188 (HP), reversed

[2385] — S. 197 — Sanction for launching prosecution against public servant accused to have committed offence while acting or purporting to act in discharge of his official duty — Appellant while serving as Commandant of BRTF (GREF) alleged of committing offences under Ss. 166 and 167 IPC — *Held, appellant was a public servant who misused his position as a public servant — As the offences under Ss. 166 and 167 IPC have direct nexus with commission of criminal misconduct on the part of the public servant, an order of sanction was pre-requisite before issuing summons upon appellant by Judicial Magistrate in this case, but no such order was passed — Contention that no sanction was required in view of Ss. 125 and 126 of Army Act cannot be accepted since those provisions do not apply in the instant case*

As an option to get the appellant tried in an ordinary criminal court had been exercised by the respondent, there cannot be any doubt whatsoever that all the prerequisites therefor in regard to the period of limitation as also the necessity to obtain the order of sanction were required to be complied with. A court of law cannot take cognizance of an offence, if it is barred by limitation. Delay in filing a complaint petition therefore has to be condoned. If the delay is not condoned, the court will have no jurisdiction to take cognizance. Similarly unless it is held that a sanction was not required to be obtained, the court's jurisdiction will be barred. (Para 15). *P.K. Choudhury* v. *Commander, 48 Brtf (Gref)*, (2008) 13 SCC 229: AIR 2008 SC 1937.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 13-3-2008]

S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; Raghunath Anant Govilkar v. State of Maharashtra, (2008) 11 SCC 289, relied on

(5) Sanction when necessary

Synopsis

(i)	Need for acts to fall under/ have reasonable connection with "discharge of official duty"	**783**
(ii)	Need for prima facie case against accused	**791**

(i) Need for acts to fall under/have reasonable connection with "discharge of official duty"

See also Section 197, '(1) Object and purpose — Nature of bar under', and

'(4) "Discharge of official duty"/"Colour of duty" — What is and Determination of', above, and

'(6) Stage at which question of sanction to be considered/raised — Preliminary enquiry by court as to whether sanction required at all', below

[2386] — S. 197 — Applicability — Deeds and acts attributed to public servant not being part of his official duties — Disentitlement to protection of S. 197 — *Held, for applying bar of S. 197, each case has to be considered in its own fact situation in order to arrive at a finding as to whether protection of S. 197 could be given to the public servant — Herein, offences complained of cannot be said to be part of duties of respondent investigating officer while investigating an offence allegedly committed — It was no part of his duties to threaten appellant complainant or her husband to withdraw the complaint — Fact situation in the complaint herein was not such to bring the case within ambit of S. 197 — High Court, therefore, erred in quashing the complaint — Penal Code, 1860, Ss. 384/506* (Paras 19, 21 and 22)

In the instant case, appellant's husband suffered grievous injury in a shoot-out for which a case was registered and police investigations started. Subsequently, appellant filed a complaint before CJM alleging therein that Respondent 2 (investigating officer) and the co-accused used to come to the house of the appellant on the pretext of conducting investigation in the aforesaid case and on one day they threatened her husband and wanted him to make a tutored statement and under threat even tried to obtain his signature on a blank paper. Therefore, cognizance was taken by the Magistrate and summons were directed to be issued under Sections 384/506 IPC.

Being aggrieved, Respondent 2 moved the High Court under Sections 397/401 read with Section 482 CrPC for quashing the same. Contention of Respondent 2 before the High Court was that the offence was allegedly committed during course of

(5)(i) Sanction when necessary - Need for acts to fall under/have reasonable connection with "discharge of official duty" *(contd.)*

investigation of the case and, accordingly, such offence, if at all committed, was committed by him while discharging official duties which brought him within protective umbrella of Section 197 CrPC. Accordingly, the High Court quashed the proceedings and the cognizance taken on the basis thereof. Hence, the present appeal.

Allowing the appeal, the Supreme Court decided as above. *Choudhury Parveen Sultana* v. *State of W.B.*, (2009) 3 SCC 398.

Bench Strength 2. Coram: **Altamas Kabir** and *Markandey Katju*, JJ. [Date of decision: 7-1-2009]

Bhagwan Prasad Srivastava v. N.P. Mishra, (1970) 2 SCC 56: 1970 SCC (Cri) 292, followed

Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358; Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944; Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193, relied on

[2387] — S. 197 — Bar under S. 197 — *Held, is mandatory where the act has been done by the public servant in the course of his service or in the discharge of his duty — Protection under S. 197 not available, if the act complained of is not in connection with the discharge of official duty*

There can be no dispute on the point that the bar under Section 197 CrPC is mandatory where the act has been done by the public servant in the course of his service or in the discharge of his duty. But, under the said section, no protection has been granted to the public servant if the act complained of is not in connection with the discharge of his duty or in exercise of his duty. (Paras 7 and 10). *Raj Kishor Roy* v. *Kamleshwar Pandey*, (2002) 6 SCC 543: 2002 SCC (Cri) 1423: AIR 2002 SC 2861.

Bench Strength 2. Coram: *S.S.M. Quadri* and **S.N. Variava**, JJ. [Date of decision: 5-8-2002]

[2388] — S. 197 — Essential requirements of — Expression "acting or purporting to act in discharge of his official duty" — Test — There must be a reasonable connection between the act and discharge of official duty — *For this purpose allegations in complaint relevant — Counter-affidavit containing alleged defamatory statement filed by the accused, a Govt. officer, only as a defence to the allegations made in the writ petition in connection with transfer of the complainant — Held, accused was acting in discharge of his official duties — It is for the criminal court to decide the question of necessity of sanction — Opinion of sanctioning authority in this regard immaterial — Penal Code, 1860, Ss. 500/34 and S. 499 Ninth Exception*

The complainant was subordinate to the accused persons. He filed two writ petitions under Art. 226 of the Constitution in connection with his promotion and transfer. The accused persons filed counter-affidavit making certain averments. The complainant filed two complaints before the Chief Judicial Magistrate for offence under Ss. 500/34 IPC alleging that in the said counter-affidavit the accused persons had made defamatory statements. The Chief Judicial Magistrate took cognizance of the offence complained of and issued process and summoned the appellants to face the trial. The appellants filed two petitions under S. 482 CrPC in the High Court for quashing the complaints on the ground that the Chief Judicial Magistrate had no jurisdiction to take cognizance of the offence in the absence of any sanction under S. 197 CrPC by the Government and also on the ground that they were entitled to the benefit under the Ninth Exception to S. 499 IPC. The High Court dismissed both the petitions.

Allowing the appeal,

Held :

The counter-affidavit was filed on behalf of the accused-appellants in their defence to the allegations made in the writ petition by the respondent. Therefore whatever imputations that have been made in the counter-affidavit were made certainly while acting or purporting to act in the discharge of the official duties. The imputations which according to the complainant amounts to defamation cannot in any manner be said to be not in connection with the official duty. The appellants made these alleged imputations only by virtue of their office while filing the counter-affidavit.

In order to apply the provisions of S. 197 CrPC two conditions must be fulfilled; one is that the offence mentioned therein must be committed by a public servant and the other is that the public servant employed in connection with the affairs of the Union or a State is not removable from his office save by or with the sanction of the Central Government or the State Government, as the case may be. The object of the section is to provide guard against vexatious proceedings against judges, magistrates and public servants and to secure the opinion of superior authority whether it is desirable that there should be a prosecution. If on the date of the complaint itself it is incumbent upon the court to take cognizance of such offence only when there is a previous sanction then unless the sanction to prosecute is produced the court cannot take cognizance of the offence. Naturally at that stage, the court taking cognizance has to examine the acts complained of and see whether the provisions of S. 197 CrPC are attracted. If the above two conditions are satisfied then the further enquiry would be whether the alleged offences have been committed by the public servant while acting or purporting to act in discharge of his official duties. If this requirement also is satisfied then no court shall take cognizance of such offences except with the previous sanction. For this purpose the allegations made in the complaint are very much relevant to appreciate whether the acts complained of are directly concerned or reasonably connected with official duties so that if questioned the public servant could claim to have done these acts by virtue of his office, that is to say, there must be a reasonable connection between the act and the discharge of official duties. It is in this context that the words "purporting to act in discharge of official duties" assume importance. The public servant can only be said to act or purporting to act in the discharge of his official duties if his act is such as to lie within the scope of his official duties. *Director of Inspection & Audit* v. *C.L. Subramaniam*, 1994 Supp (3) SCC 615: 1995 SCC (Cri) 121: AIR 1995 SC 866.

Bench Strength **2**. Coram: *M.M. Punchhi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 16-9-1994]

Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44: 1956 Cri LJ 140; Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944; State of Maharashtra v. Dr. Budhikota Subbarao, (1993) 3 SCC 339: 1993 SCC (Cri) 901, followed

Hori Ram Singh (Dr.) v. Emperor, AIR 1939 FC 43: 40 Cri LJ 468: 43 CWN 50: 1939 FCR 159, approved

[2389] — Ss. 197 and 245 — Requirement under S. 197 to obtain sanction to prosecute a public servant — Invocation of said provision — Conditions for — Existence of reasonable connection between the act in question and the discharge of official duty — Necessity of — Stage at which S. 197 could be invoked — *Law relating to in this regard, reiterated — Whether on facts the prosecution of appellant public servant without obtaining sanction under S. 197 in respect thereof was proper — Wife of respondent running a kiosk in hospital premises — Govt. deciding to remove the said kiosk as it was causing inconvenience to public and also causing health hazards by supplying unhygienic food — Said decision of Govt. later held by Supreme Court to be valid — In pursuance of the said Govt. order, appellant removing the said kiosk on direction of Executive Engineer* **T** *— Filing of complaint under Ss. 166, 448, 427, 380, 392 and 506(II) IPC against Dean of Medical College — Though appellant was known to complainant personally, his name not appearing in complaint — Appellant made accused when his name taken by* **T** *in his statement during investigation — No allegation against appellant either in complaint or in statement of complainant under S. 161 CrPC — No material to show commission of alleged crime by appellant — On these facts, held, no case made out against appellant — Further, even if charge-sheet filed against him was accepted to be correct, sanction under S. 197 CrPC was necessary in the present case — Hence, order of High Court setting aside the order of Magistrate which discharged the appellant, not sustainable*

Allowing the appeal,

Held :

The wife of Respondent 1 was running a kiosk in a hospital premises. The State Government concerned took a policy decision to remove all kiosks, bunks and tea stalls, etc. from the hospital premises as they were causing inconvenience to the public and were also causing health hazards as food stuffs supplied from the said kiosks, bunks and tea stalls were prepared in unhygienic conditions. In pursuance thereof, a government order was issued for removing all the said kiosks. The Public Works Department issued directions to the Executive Engineer to take steps for the said removal. The wife of Respondent 1 was requested through a letter by the Executive Engineer to remove her tea stall. The Executive Engineer *T* directed the appellant to remove the said tea stall. Pursuant to the said direction, the appellant requested the Assistant Commissioner of Police to give police protection for the purpose of causing such removal.

A writ petition was filed by the wife of Respondent 1, which was disposed of by the High Court with certain directions. In the meanwhile, however, the said tea stall was removed whereupon a contempt petition was filed against the appellant. The said contempt petition was dismissed. The matter thereupon came before the Supreme Court. The Supreme Court decided the said matter on 21-2-1997 by holding that the reasons given by the State for removing the bunks/kiosks were reasonable and acceptable. The act of removal was not in any manner inconsistent with the propositions enunciated in the judgment of the High Court.

Thereafter, a complaint petition was filed by Respondent 1 against the Dean of the Medical College under Sections 166, 448, 427, 380, 392 and 506(II) IPC. The Magistrate sent the complaint petition for inquiry to the police authority whereupon a FIR was lodged. It was during investigation that the name of the appellant was taken by *T*. In respect of the appellant, *T* in his statement said only

(5)(i) Sanction when necessary - Need for acts to fall under/have reasonable connection with "discharge of official duty" *(contd.)*

that the appellant had informed him by his letter dated 2-7-1997 that he had removed the stall of the wife of Respondent 1 on 1-7-1997. It was also stated that the appellant had engaged men on his own supervision and removed the shop. On the basis of the said statement, the appellant was made an accused and a charge-sheet was filed against him also. In the said charge-sheet only the allegations made in the complaint petition were repeated. What transpired during investigation had not been disclosed. The Magistrate took cognizance against the appellant herein on the basis of the said purported charge-sheet. The IO had noticed that removal of the tea shop was effected as per an order of a court of law. Validity or otherwise of the action on the part of the appellant was not in question. Thereafter, an application for discharge was filed before the Magistrate by the appellant, *inter alia*, on the ground that no sanction was obtained as was required mandatorily in terms of Section 197 CrPC. The Magistrate allowed the said application. He observed that the act of the appellant was in compliance with the order of *T*. The case against him was baseless. He was a government servant, but no permission under Section 197 had been obtained to prosecute him. The revision petition filed by Respondent 1 before the High Court against the said order was allowed. Hence, the present appeal.

Allowing the appeal,

Held :

In *Matajog Dobey*, (1955) 2 SCR 925 the Constitution Bench of the Supreme Court held that Section 197 CrPC would be attracted if the offence alleged to have been committed (by the accused) must have something to do or must be related in some manner with the discharge of official duty. There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim), but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. Whether for prosecution of a public servant sanction is necessary to be obtained or not would depend upon the facts and circumstances of each case. Similarly, whether in view of the allegations made in the complaint an order of sanction would be essential or not would again depend upon the facts and circumstances of each case. Further, in *Romesh Lal Jain*, (2006) 1 SCC 294 it was held that the question as to whether sanction is necessary or not, that may be appropriately raised at different stages of the case depending upon the allegations made in the complaint. (Paras 13, 14 and 16)

In the present case, no court has declared the policy decision of removal of kiosks, tea stalls and bunks from the hospital premises to be *ultra vires*. Further, the validity of such a policy decision has been upheld in *N. Jagadeesan*, (1997) 4 SCC 508. (Para 10)

If, in the aforementioned situation, the appellant only complied with the order of *T* asking him to remove the said tea stall, he cannot be said to have committed any offence whatsoever. (Para 11)

The statement of *T*, on the basis whereof the appellant had been charge-sheeted, even if given face value and taken to be correct in its entirety does not disclose an offence. Respondent 1, in view of the fact that a contempt petition was filed against the appellant, presumably knew him personally. Despite the same, he had not been named in the complaint petition. No allegation had been made against him either in his complaint or in his statement under Section 161 CrPC that he had transgressed his authority or committed the alleged crime. (Para 12)

Hence the impugned order cannot be sustained as:

(*i*) no case was made out to frame charges against the appellant.

(*ii*) even if the statement of *T* on the basis whereof the charge-sheet has been filed against the appellant is accepted to be correct, sanction for prosecution of the appellant, as envisaged under Section 197 CrPC in the facts and circumstances of this case was necessary. The High Court, therefore, was not correct in allowing the revision case filed by Respondent 1. (Paras 18, 13 to 17 and 19). *Jayasingh* v. *K.K. Velayutham*, (2006) 9 SCC 414: (2006) 2 SCC (Cri) 573: AIR 2006 SC 2407: 2006 Cri LJ 3272.

Bench Strength 2. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 25-4-2006]

Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44: 1956 Cri LJ 140; Romesh Lal Jain v. Naginder Singh Rana, (2006) 1 SCC 294; Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432; Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584, relied on

[2390] — S. 197 — Sanction for prosecution of public servant — Object — Reasonable connection between discharge of public duty and the offending act or omission essential

Per Kuldip Singh, J.

The sanction under S. 197 CrPC is not an empty formality. It is essential that the provisions therein are to be observed with complete strictness. The object of obtaining sanction is that the authority concerned should be able to consider for itself the material before the Investigating Officer, before it comes to the conclusion that the prosecution in the circumstances be sanctioned or forbidden. To comply with S. 197 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is desirable that the facts should be referred to on the face of the sanction. Section 197 does not require the sanction to be in any particular form. If the facts constituting the offence charged are not shown on the face of the sanction, it is open to the prosecution, if challenged, to prove before the court that those facts were placed before the sanctioning authority. It should be clear from the form of the sanction that the sanctioning authority considered the relevant material placed before it and after a consideration of all the circumstances of the case it sanctioned the prosecution.

Per K. Ramaswamy, J. (supplementing)

The object behind prior sanction is to prevent malicious, vexatious and unnecessary harassment to a public servant by laying false or frivolous accusation or prosecution.

There must be reasonable connection between the acts complained of and discharge or purported discharge of the official duty. The act or omission must bear such a relation to the duty that the accused could lay reasonable nexus between the offending act or omission and the duty but not a pretended or fanciful claim that he did it in the course of the performance of his duty. Public servant can only be said to act or purported to act in the discharge of his official duty if his act or omission is such as to lie within the scope of his official duty. It is not every offence committed by a public servant that requires sanction for prosecution not even every act done by him while he was actually engaged or purported to have engaged under colour of his official duty that receives protection from prosecution. If questioned he must claim that he had done by virtue of office and it is inextricably connected with the duty. Sanction then would be necessary, irrespective of whether it was in fact a proper discharge of his duty or not which is a matter of defence on merits to be considered at the trial and could not arise at the time of grant of sanction which must precede taking cognizance of the prosecution. *State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192: AIR 1991 SC 1260. Bench Strength 2. Coram: **Kuldip Singh**[1] and **K. Ramaswamy**[2], JJ. [Date of decision: 2-4-1991]

[2391] — S. 197 — Sanction for prosecution — When mandatory — Respondent accused of committing offence under Ss. 7 and 13(2), PC Act while acting or purporting to act in discharge of official duty — Sanction by appointing authority, held, is mandatory — *Prevention of Corruption Act, 1988, Ss. 19, 7 and 13(2)*

An FIR was lodged against the respondent under Sections 7 and 13(2), PC Act. By an order dated 15-12-2002, the competent authority refused to grant sanction for prosecution. The matter, however, was placed before the competent authority once again and on or about 14-9-2004 sanction to prosecute the respondent was granted. The High Court by the impugned order dismissed a writ petition thereagainst, holding that the State has no power to review an order granting sanction having exhausted its jurisdiction once.

Dismissing the appeal,

Held :

The respondent is a public servant. The Governor of the State is his appointing authority. He is, therefore, not removable from his office save by and with the sanction of the Government and in that view of the matter if he is accused in any offence alleged to have been committed by him while acting or purporting to act in discharging of his official duty, grant of prior sanction is imperative in character in terms of Section 197 CrPC. (Para 5)

Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction under Section 197, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. (Para 6)

Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and consideration of all the material facts and evidence collected during investigation and placed before it. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. While passing an order for grant of sanction, serious application of mind on the part of the authority concerned is imperative. (Paras 7 and 6)

In the present case there is no application to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise. Such application of mind does not appear from the order of sanction. The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. (Paras 21 and 7)

(5)(i) Sanction when necessary - Need for acts to fall under/ have reasonable connection with "discharge of official duty" *(contd.)*

Only when a new Government came in, was a request made for reconsideration of the earlier order. It is not a case where fresh materials were placed before the sanctioning authority. The Government sent nine letters for obtaining the clarifications regarding false implications of the respondent, which were not replied to. If the clarification sought for by the Hon'ble Minister had been supplied, the same should have formed a ground for reconsideration of the order. Only a communication was received from the Director, Vigilance Bureau, which according to the High Court, was not a new material. (Paras 14 to 20 and 8). *State of Punjab* v. *Mohd. Iqbal Bhatti*, (2009) 17 SCC 92: 2010 Cri LJ 1436: (2010) 4 CTC 458: (2009) 4 CHN 65: (2009) 82 AIC 114 .

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 31-7-2009]

[2392] — S. 197 — Sanction for prosecution — When necessary — Nexus of acts alleged with discharge of official duty — Need for satisfaction of requirement of, before sanction became necessary — *Supply of HIV contaminated blood by blood bank of Government Medical College and Hospital due to which some patients who were given blood transfusion testing HIV positive — Prosecution initiated against doctors and technicians of said Hospital for offences under IPC and the Drugs and Cosmetics Act, 1940 — Entries in registers maintained at blood bank found tampered with and corrections made without any initials to certify those corrections — Some pages from official registers torn by accused doctor i.e. Respondent 7 who carried away those pages with him on his transfer — Recovery of said pages from his house — Sanction if necessary to prosecute said doctors and technicians — Considering the allegations pertaining to offences under IPC, held, the acts alleged had no nexus or connection with the discharge of official duties by accused — Hence, prosecution for the said allegations did not require any sanction under S. 197 CrPC — However, as regards the offences under the Drugs and Cosmetics Act, 1940 pertaining to acts of omission and commission in working of blood bank, the question of sanction for prosecution left open to be decided at the end of the trial — Drugs and Cosmetics Act, 1940, S. 18(a)(i) r/w Ss. 27, 17-A and 17-C — Penal Code, 1860, Ss. 269, 201 and 204 r/w S. 34* (Paras 14 and 16). *State of Maharashtra* v. *Devahari Devasingh Pawar*, (2008) 2 SCC 540: (2008) 1 SCC (Cri) 502: AIR 2008 SC 1375: 2008 Cri LJ 1593.

Bench Strength **2**. Coram: *G.P. Mathur* and *Aftab Alam*, JJ. [Date of decision: 18-1-2008]

[2393] — S. 197 — Where the alleged act viz. entry of the accused inside the premises in question was on the basis of an order passed by CJM and was thus intrinsically connected with the discharge of the official duty, held, S. 197 gets attracted even if the act was in excess of discharge of the official duty — *Therefore, sanction under S. 197 was required to be obtained before taking cognizance of the offence complained of. Surendra Pandey* v. *State of Bihar*, (2000) 9 SCC 199.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 10-3-2000]

[2394] — S. 197 — Sanction for prosecution of public servant — Conditions precedent for invoking S. 197 — Whether the accused committed an offence while acting or purporting to act in discharge of his official duty — *Test to determine is whether the alleged action which constituted an offence has a reasonable and rational nexus with the official duties required to be discharged by the public servant — If answer is in affirmative then sanction for his prosecution is required to be obtained — Appellant in his official capacity as Sub-Divisional Magistrate going to the place of the complainant for the purpose of removal of encroachment from govt. land and in exercise of such duty he allegedly entering the chamber of the complainant, using filthy language and dragging him out of his chamber — Held, the act alleged had a reasonable nexus with the official duty of the appellant — Hence no criminal proceedings could be initiated against the appellant without obtaining sanction*

Section 197 CrPC affords protection to a Judge or a Magistrate or a public servant not removable from his office save by or with the sanction of the Government against any offence which is alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. The protection is provided in the form that no court shall take cognizance of such offence except with the previous sanction of the Central Government or the State Government as the case may be. The object of the section is to save officials from vexatious proceedings against Judges, Magistrates and public servants but it is no part of the policy to set an official above the common law. If he commits an offence not connected with his official duty he has no privilege. But if one of his official acts is alleged to be an offence, the State will not allow him to be prosecuted without its sanction. Section 197 embodies one of the exceptions to the general rules laid down in Section 190 CrPC, that any offence may be taken cognizance of by the Magistrates enumerated therein. Before this section can be invoked in the case of a public servant two conditions must be satisfied i.e. (*1*) that the accused was a public servant who was removable from his office only with the sanction of the State Government or the Central Government; and (*2*) he must be accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. (Para 7)

What offences can be held to have been committed by a public servant while acting or purporting to act in the discharge of his official duties is a vexed question. Broadly speaking the alleged action constituting the offence said to have been committed by the public servant must have a reasonable and rational nexus with the official duties required to be discharged by such public servant. (Para 8)

In the present case the appellant was present at the place of occurrence in his official capacity as Sub-Divisional Magistrate for the purpose of removal of encroachment from government land and in exercise of such duty, he is alleged to have committed the acts which form the gravamen of the allegations contained in the complaint lodged by the respondent. In such circumstances, it cannot but be held that the acts complained of by the respondent against the appellant have a reasonable nexus with the official duty of the appellant. It follows, therefore, that the appellant is entitled to the immunity from criminal proceedings without sanction provided under Section 197 CrPC. Therefore, the High Court erred in holding that Section 197 CrPC is not applicable in the case. (Para 14). *Gauri Shankar Prasad* v. *State of Bihar*, (2000) 5 SCC 15: 2000 SCC (Cri) 872: AIR 2000 SC 3517.

Bench Strength **2**. Coram: *K.T. Thomas* and **D.P. Mohapatra**, JJ. [Date of decision: 19-4-2000]

Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: (1955) 28 ITR 941; Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan, (1998) 1 SCC 205: 1998 SCC (Cri) 1; State v. B.L. Verma, (1997) 10 SCC 772: 1997 SCC (Cri) 1037; N.K. Ogle v. Sanwaldas, (1999) 3 SCC 284: 1999 SCC (Cri) 405, relied on

[2395] — S. 197 — Object of — Protection given to public servants thereunder — Scope of — Case-law considered — *Per C.K. Thakker, J., said protection is qualified and conditional — Protection not available if the act complained of has no nexus, reasonable connection or relevance to the official act or duty of the public servant and is otherwise illegal, unlawful or in the nature of an offence*

The primary object of the legislature behind Section 197 CrPC is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by a public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter of Section 197 CrPC. In other words, protection afforded by the said section is qualified and conditional. (Para 67). *Sankaran Moitra* v. *Sadhna Das*, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358: AIR 2006 SC 1599.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.*[1] and **C.K. Thakker**[2] and **P.K. Balasubramanyan**[1], JJ. [Date of decision: 24-3-2006]

[2396] — S. 197 — Offence by public servant in discharge of his official duty — Bar under S. 197 regarding court's power to take cognizance — Nature and applicability of — *Held, is absolute and complete — Hence, court cannot take cognizance of complaint against public servant in respect of an offence alleged to have been committed in discharge of official duty unless sanction is obtained from the appropriate authority — However, given that it must be determined whether there is a reasonable connection between the act done and the official duty, the concept of S. 197 does not get immediately attracted on institution of the complaint case* (Paras 7 and 5). *S.K. Zutshi* v. *Bimal Debnath*, (2004) 8 SCC 31: 2004 SCC (Cri) 2096: AIR 2004 SC 4174: (2004) 3 KLT 505.

Bench Strength **2**. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 10-8-2004]

[2397] — S. 197 — Offence by public servant in discharge of his official duty — Bar under S. 197 regarding court's power to take cognizance — Nature and applicability of — *Held, is absolute and complete — Hence, court cannot take cognizance of complaint against public servant in respect of an offence alleged to have been committed in discharge of official duty unless sanction is obtained from the appropriate authority — However, given that it must be determined whether there is a reasonable connection between the act done and the official duty, the concept of S. 197 does not get immediately attracted on institution of the complaint case — Word "cognizance" — Meaning of, explained — Use of words "no" and "shall"*

Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the

(5)(i) Sanction when necessary - Need for acts to fall under/ have reasonable connection with "discharge of official duty" *(contd.)*

official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. (Para 6)

There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. (Paras 6 and 13)

The mandatory character of the protection afforded to a public servant is brought out by the expression "no court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and "shall" make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. (Para 9)

The protective cover of Section 197 has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty; that is under the colour of office. Official duty, therefore, implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. (Para 12). *Rakesh Kumar Mishra* v. *State of Bihar*, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432: AIR 2006 SC 820: 2006 Cri LJ 808: (2006) 38 AIC 13 (SC): (2006) 1 KLJ 405: (2006) 2 KLT 26.

Bench Strength **2**. Coram: **Arijit Pasayat** and *G.P. Mathur*, JJ. [Date of decision: 3-1-2006]

Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663: 1988 SCC (Cri) 29: AIR 1988 SC 257; P. Arulswami v. State of Madras, (1967) 1 SCR 201: AIR 1967 SC 776: 1967 Cri LJ 665; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44; R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128: AIR 1996 SC 901; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096, relied on

Black's Law Dictionary, referred to

[2398] — S. 197 — Offences under S. 409 IPC (criminal breach of trust by a public servant, etc.) and S. 468 IPC (forgery for the purpose of cheating) — Sanction for prosecution, held, not required as these offences are not committed in the discharge of official duty — *Respondent charged with commission of offences under Ss. 409, 420, 461 and 468 IPC but convicted by trial court for the offences under Ss. 409 and 468 only — Appellate court discharging respondent inter alia on the ground that sanction for prosecution was not granted by competent authority — High Court affirming the order — Held, sanction was not required in the present case — High Court's order set aside and appeal of the State directed to be heard on merits — Penal Code, 1860, Ss. 409 and 468* (Paras 6 and 9). *State of U.P.* v. *Paras Nath Singh*, (2009) 6 SCC 372.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *D.K. Jain* and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44; S.A. Venkataraman v. State, AIR 1958 SC 107; C.R. Bansi v. State of Maharashtra, (1970) 3 SCC 537: 1971 SCC (Cri) 143; Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287: (1955) 1 SCR 1177; Amrik Singh v. State of Pepsu, AIR 1955 SC 309; Harihar Prasad v. State of Bihar, (1972) 3 SCC 89: 1972 SCC (Cri) 409; State of Kerala v. V. Padmanabhan Nair, (1999) 5 SCC 690: 1999 SCC (Cri) 1031; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539, applied

[2399] — S. 197 — What acts can be alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duties — *Alleged action constituting the offence alleged to have been committed by the public servant must have a reasonable and rational nexus with the official duties required to be discharged by such public servant. Mohd. Hadi Raja* v. *State of Bihar*, (1998) 5 SCC 91: 1998 SCC (Cri) 1265: AIR 1998 SC 1945: 1998 Cri LJ 2826.

Bench Strength **2**. Coram: **G.N. Ray** and *G.B. Pattanaik*, JJ. [Date of decision: 28-4-1998]

(ii) Need for prima facie case against accused

[2400] — Ss. 197, 170 and 173(2) — Investigating agency (CBI) not obliged to place materials collected during investigation for opinion of sanctioning authority when no prima facie case is made out against the accused — *Court can direct further investigation if it is found that the opinion of the IO is not based on full and complete investigation — However, on facts, opinion expressed by the CBI that no prima facie case was made out against the accused is just and proper — Prevention of Corruption Act, 1947 — Ss. 6 and 5(2) r/w S. 5(1)(e)*

From a plain reading of Section 6 of the Prevention of Corruption Act, 1947 it is evidently clear that a court cannot take cognizance of the offences mentioned therein without sanction of the appropriate authority. In enacting the above section, the legislature thought of providing a reasonable protection to public servants in the discharge of their official functions so that they may perform their duties and obligations undeterred by vexatious and unnecessary prosecutions. The CBI was under no obligation to place the materials collected during investigation before the sanctioning authority, when they found that no case was made out against the respondent. To put it differently, if the CBI had found on investigation that a prima facie case was made out against the respondent to place him on trial and accordingly prepared a charge-sheet (challan) against him, then only the question of obtaining sanction of the authority under Section 6(1) of the Act would have arisen for without that the Court would not be competent to take cognizance of the charge-sheet. It must, therefore, be said that both the Special Judge and the High Court were patently wrong in observing that the CBI was required to obtain sanction from the prosecuting authority before approaching the Court for accepting the report under Section 173(2) CrPC for discharge of the respondent.

As regards the direction for further investigation, it is, of course, true that the Special Judge has power to so direct if he finds, on consideration of the police report, that the opinion formed by the Investigating Officer seeking discharge of the respondent is not based on full and complete investigation, however, in issuing the above direction, the Special Judge has not given any reason whatsoever which prompted him to direct further investigation nor does it appear that he has gone through the police report and its accompaniments.

In the instant case a thorough investigation has been made and the opinion expressed by the CBI that no prima facie case was made out against the respondent is just and proper. *State* v. *Raj Kumar Jain*, (1998) 6 SCC 551: 1998 SCC (Cri) 1485: AIR 1998 SC 2985.

Bench Strength 2. Coram: *M.K. Mukherjee* and *D.P. Wadhwa*, JJ. [Date of decision: 4-8-1998]

Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: (1967) 3 SCR 668, relied on

(6) Stage at which question of sanction to be considered/raised — Preliminary enquiry by court as to whether sanction required at all

See also Section 197, '(1) Object and purpose — Nature of bar under', and

'(4) "Discharge of official duty"/"Colour of duty" — What is and Determination of', and

'(5) Sanction when necessary', above

[2401] — S. 197 — Applicability — Protection given to public servants under — Object of, restated — Invocation of the said protection — Prerequisite for — Stage at which attracted — Preliminary enquiry by court as to applicability of S. 197 — *Held, protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act — Therefore the concept of S. 197 does not get immediately attracted on institution of the complaint case — Test to determine the reasonable connection between the act complained of and the official duty, restated — Even if the public servant acted in excess of his duty, if there exists the said reasonable connection, held, the excess will not deprive him of the protection*

So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 CrPC unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression "no court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and "shall" make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. The word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common

(6) Stage at which question of sanction to be considered/raised — Preliminary enquiry by court as to whether sanction required at all *(contd.)*

parlance, it means "taking notice of". A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty. (Paras 7 and 5)

The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. (Para 5)

The said protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. (Para 5)

Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. (Para 5)

There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. (Para 5). *S.K. Zutshi* v. *Bimal Debnath*, (2004) 8 SCC 31: 2004 SCC (Cri) 2096: AIR 2004 SC 4174: (2004) 3 KLT 505.

Bench Strength **2**. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 10-8-2004]

Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663: 1988 SCC (Cri) 29; P. Arulswami v. State of Madras, AIR 1967 SC 776: 1967 Cri LJ 665, relied on

[2402] — S. 197 — Applicability — Protection given to public servants under — Object of, restated — Invocation of the said protection — Prerequisite for — Stage at which attracted — Preliminary enquiry by court as to applicability of S. 197 — *Held, protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act — Therefore the concept of S. 197 does not get immediately attracted on institution of the complaint case — Test to determine the reasonable connection between the act complained of and the official duty, restated — Even if the public servant acted in excess of his duty, if there exists the said reasonable connection, held, the excess will not deprive him of the protection*

The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if it chooses to exercise it, complete control of the prosecution. (Para 6)

The said protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. (Para 6)

Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. (Para 6)

There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. (Paras 6 and 13). *Rakesh Kumar Mishra* v. *State of Bihar*, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432: AIR 2006 SC 820: 2006 Cri LJ 808: (2006) 38 AIC 13 (SC): (2006) 1 KLJ 405: (2006) 2 KLT 26.

Bench Strength **2**. Coram: **Arijit Pasayat** and *G.P. Mathur*, JJ. [Date of decision: 3-1-2006]

Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663: 1988 SCC (Cri) 29: AIR 1988 SC 257; P. Arulswami v. State of Madras, (1967) 1 SCR 201: AIR 1967 SC 776: 1967 Cri LJ 665; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44; R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128: AIR 1996 SC 901; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096, relied on

***Followed in** Goondla Venkateswarlu v. State of A.P., (2008) 9 SCC 613*

[2403] — S. 197 — Applicability — Scope of protection under — Invocation of protection under — Prerequisite for — Stage at which attracted — Preliminary enquiry by court as to applicability of S. 197 — *Held, said protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act — Therefore the concept of S. 197 does not get immediately attracted on institution of the complaint case — Test to determine the reasonable connection between the act complained of and the official duty, restated*

The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. (Para 9)

The protection under Section 197 has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 CrPC cannot be disputed. (Paras 9 to 11)

If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in

(6) Stage at which question of sanction to be considered/raised — Preliminary enquiry by court as to whether sanction required at all *(contd.)*

the discharge of his official capacity. Before Section 197 CrPC can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. (Para 9)

It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 CrPC does not get immediately attracted on institution of the complaint case. (Para 9). *Centre for Public Interest Litigation* v. *Union of India*, (2005) 8 SCC 202: AIR 2005 SC 4413.

Bench Strength **3**. Coram: *Ruma Pal*, **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 6-10-2005]

R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096, followed

[2404] — S. 197 — Applicability — Preliminary enquiry as to reasonable connection — Test for sanction for prosecution restated — *District Collector, by an order accompanying the Revenue Collection Certificate, requiring the Tehsildar to recover a certain sum of lease money from S — Tehsildar registering the matter and getting a demand letter issued and served on S but S not making payment — Subsequently, S appearing in the Tehsil Office with his scooter — Tehsildar seizing the scooter and getting the same auctioned — Such an act on the part of Tehsildar, held, was a bona fide act in purported exercise of the power under M.P. Land Revenue Code — Hence, in absence of necessary sanction under S. 197 CrPC, complaint under S. 379, Penal Code filed by S against the Tehsildar on account of seizure of the scooter, held, not maintainable — Further held, High Court erred in examining the legality of the order of attachment of the Collector at this stage and in holding otherwise on that ground — Penal Code, 1860, S. 379 — M.P. Land Revenue Code, 1959 (20 of 1959)*

Before coming to a conclusion whether the provisions of Section 197 of CrPC will apply, the court must come to a conclusion that there is a reasonable connection between the act complained of and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim that he did it in the course of the performance of his duty. Therefore, in the present case the conclusion is inescapable that the act of the Tehsildar in seizing the scooter of the respondent was in discharge of his official duty which he was required to do in purported exercise of the power under the M.P. Land Revenue Code on the basis of the order issued by the Collector for getting the lease money from the respondent and the said act cannot be said to be a pretended or fanciful claim on the part of the Tehsildar. The High Court committed error at that stage in examining the flaw or legality of the order of attachment issued by the Tehsildar. Therefore, the acts complained of by the respondent in his complaint under Section 379, IPC against the Tehsildar cannot be taken cognizance of by any court without prior sanction of the competent authority under Section 197 CrPC. Admittedly there was no such sanction of the competent authority. *N.K. Ogle* v. *Sanwaldas*, (1999) 3 SCC 284: 1999 SCC (Cri) 405: AIR 1999 SC 1437: 1999 Cri LJ 2105.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 18-3-1999]

Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: (1955) 2 SCR 925: (1955) 28 ITR 941; Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan, (1998) 1 SCC 205: 1998 SCC (Cri) 1, followed

B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; B.S. Sambhu v. T.S. Krishnaswamy, (1983) 1 SCC 11: 1983 SCC (Cri) 125; Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944, distinguished

[2405] — S. 197 — Issue of sanction — Adjudication of — Appropriate time/stage of proceedings — The issue of sanction, held, can be decided at any stage of the proceedings

The Revisional Court was not justified in entering into correctness or otherwise of the evidence at the stage of issuance of summons to Respondent 2. In spite of the above material, the Revisional Court interfered with the order of the trial court issuing summons by entering into merits of the case. Admittedly, the Judicial Magistrate had considered a limited question whether on the basis of evidence of prosecution witnesses PWs 2, 14 and 11, prima facie offence had been made out against Respondent 2. He, on the basis of such evidence, was satisfied that the case was required to be gone into and issued a summons. However, the Revisional Court held that at the most there was negligence on the part of Respondent 2 but there was no criminal intent and that he cannot be held criminally liable. Mens rea can only be decided at the time of trial and not at the stage of issuing summons. Moreover, a point as to need or necessity of sanction under Section 197 CrPC can be taken during the conduct of trial or at any stage of the proceedings. Hence, proceedings could not have been quashed on the ground of want of sanction in the present case. The order of the Revisional Court deserves to be set aside even on that ground. It is settled law that offences punishable under Sections 409, 420, 467, 468, 471, etc. can by no stretch of imagination by their very nature be regarded as having been committed by a public servant while "acting or purporting to act in discharge of official duty". (Paras 57, 58, 60 and 61). *Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

[2406] — S. 197 — Need for sanction under — Question relating to — Determination of — Stage for — *Held, said question is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein — That question may arise at any stage of the proceeding — It may have to be determined from stage to stage — In cases where offences under the Prevention of Corruption Act are concerned, the effect of S. 197 dealing with the question of prejudice is also to be noted — Charge-sheet submitted against appellant public servants in respect of various offences under IPC and Prevention of Corruption Act, 1947 — Held, there was no infirmity in the judgment of the High Court declining to consider the applicability of S. 197 at the stage of taking cognizance — Accused can raise the said question at an appropriate stage during trial — Prevention of Corruption Act, 1947, Ss. 5(2) r/w S. 5(1)(d) — Prevention of Corruption Act, 1988, Ss. 13(2) r/w S. 13(1)(d) and 19* (Paras 15 and 16). *K. Kalimuthu* v. *State*, (2005) 4 SCC 512: 2005 SCC (Cri) 1291: AIR 2005 SC 2257: 2005 Cri LJ 2190.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 30-3-2005]

[2407] — S. 197 — No prosecution of public servant except with previous sanction — Protection given to public servants under S. 197 — Object of, restated — Invocation of the said protection — Prerequisite for — *Held, protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act — Test to determine the reasonable connection between the act complained of and the official duty, restated — Even if the public servant acted in excess of his duty, if there exists the said reasonable connection, held, the excess will not deprive him of the protection*

The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. (Para 8)

The said protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official

(6) Stage at which question of sanction to be considered/raised — Preliminary enquiry by court as to whether sanction required at all *(contd.)*

duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty; if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. (Para 8). *State of H.P.* v. *M.P. Gupta*, (2004) 2 SCC 349: 2004 SCC (Cri) 539: AIR 2004 SC 730.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 9-12-2003]

Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663: 1988 SCC (Cri) 29; P. Arulswami v. State of Madras, AIR 1967 SC 776: 1967 Cri LJ 665, relied on

[2408] — S. 197 — Protection given to public servants under S. 197 — Object of — Invocation of the said protection — Prerequisite for — Stage at which attracted — Preliminary enquiry by court as to applicability of S. 197 — *Held, protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act — Therefore the concept of S. 197 does not get immediately attracted on institution of the complaint case — Test to determine the reasonable connection between the act complained of and the official duty, restated — Even if the public servant acted in excess of his duty, if there exists the said reasonable connection, held, the excess will not deprive him of the protection*

So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 CrPC unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, "no court shall take cognizance of such offence except with the previous sanction". Use of the words, "no" and "shall" make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. The word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty. (Paras 9 and 7)

The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. (Para 7)

The said protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. (Para 7). *State of Orissa* v. *Ganesh Chandra Jew*, (2004) 8 SCC 40: 2004 SCC (Cri) 2104: AIR 2004 SC 2179: 2004 Cri LJ 2011.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 24-3-2004]

[2409] — S. 197 — Protection given to public servants under S. 197 — Object of — Invocation of the said protection — Prerequisite for — Stage at which attracted — Preliminary enquiry by court as to applicability of S. 197 — *Held, protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act — Therefore the concept of S. 197 does not get immediately attracted on institution of the complaint case — Test to determine the reasonable connection between the act complained of and the official duty, restated — Even if the public servant acts in excess of his duty, if there exists the said reasonable connection, held, the excess will not deprive him of the protection*

The protection given under Section 197 CrPC is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. (Para 7)

The said protection under Section 197 CrPC has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 CrPC can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in discharge of his official duties. (Para 7). *K. Kalimuthu* v. *State*, (2005) 4 SCC 512: 2005 SCC (Cri) 1291: AIR 2005 SC 2257: 2005 Cri LJ 2190.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 30-3-2005]

[2410] — S. 197 — Question as to sanction for prosecution — Stage(s) at which may be determined — Determination of said question at trial or after trial — Permissibility (Para 16). *State of Maharashtra* v. *Devahari Devasingh Pawar*, (2008) 2 SCC 540: (2008) 1 SCC (Cri) 502: AIR 2008 SC 1375: 2008 Cri LJ 1593.

Bench Strength **2**. Coram: *G.P. Mathur* and *Aftab Alam*, JJ. [Date of decision: 18-1-2008]

Romesh Lal Jain v. Naginder Singh Rana, (2006) 1 SCC 294: (2006) 2 SCC (Cri) 593, applied

Abdul Wahab Ansari v. State of Bihar, (2000) 8 SCC 500: 2001 SCC (Cri) 18, distinguished on facts

[2411] — S. 197 — Question of requirement of sanction for prosecution can be raised at any time after cognizance of the offence is taken, may be even at the time of conclusion of trial or after conviction

It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial. (Para 15). *P.K. Pradhan* v. *State of Sikkim*, (2001) 6 SCC 704: 2001 SCC (Cri) 1234: AIR 2001 SC 2547.

Bench Strength **3**. Coram: *G.B. Pattanaik*, *S.N. Phukan* and **B.N. Agrawal**, JJ. [Date of decision: 24-7-2001]

[2412] — S. 197 — Question relating to sanction under — Stage(s) at which to be considered — *Held, said question is not necessarily to be considered as soon as the complaint is lodged — This question may arise at any stage of the proceeding, and question whether sanction is necessary or not may have to be determined from stage to stage*

The question relating to the need of sanction under Section 197 CrPC is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question

(6) Stage at which question of sanction to be considered/ raised — Preliminary enquiry by court as to whether sanction required at all *(contd.)*

may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. (Para 38). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193: AIR 2007 SC 1274: (2007) 51 AIC 623 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663: 1988 SCC (Cri) 29; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096; K. Kalimuthu v. State, (2005) 4 SCC 512: 2005 SCC (Cri) 1291; Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432; P.K. Pradhan v. State of Sikkim, (2001) 6 SCC 704: 2001 SCC (Cri) 1234, relied on

[2413] — S. 197 — Requirement under, of obtaining sanction to prosecute a public servant — Necessity of — Stage for raising question as to applicability of S. 197 — *Held (per majority), prosecution hit by provision under S. 197 cannot be launched without the contemplated sanction — It is a condition precedent though the question as to applicability of S. 197 may arise not necessarily at the inception but even at a subsequent stage — Request to postpone the decision on the said question in the instant case, held, not acceptable — Complaint that deceased, a supporter of a political party, was beaten to death by police personnel at the instance of appellant police officer near a polling booth on election day — Appellant was on duty to prevent any breach of law and maintain order on that day — He had reached the spot on receiving information regarding some disturbances at the polling booth — Held, appellant committed the act in question during the course of performance of his duty — Sanction under S. 197(1) was necessary for his prosecution — High Court's judgment taking contrary view set aside — High Court's reasoning that killing of a person by use of excessive force could never be performance of duty, not proper — Its further reasoning that if High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, is also not acceptable — Per C.K. Thakker, J. (dissenting), on applicability of S. 197 it is the duty of the Court to apply its mind to the fact situation before it — In the present case the appellant acted illegally, unlawfully and high-handedly and his act could not be said to be an act in discharge of official duty — Therefore, S. 197 not attracted*

A criminal complaint was filed against the appellant police officer. The appellant challenged the said complaint on the ground that it was liable to be quashed for want of sanction under Section 197(1) CrPC. In the complaint it was alleged that the husband of the complainant was beaten to death on 10-5-2001 by the police personnel at the instance of the appellant. On the said date there was general election of the State Assembly. The complainant's husband was supporting a particular political party. It was the case of the complainant that her husband was supplying food packets at the polling booth. At that time, some police officers came there and they beat her husband. When her husband left the place, policemen chased him towards the lakeside. Her husband stated to the police personnel that he did not know swimming and requested them not to beat him. But the police officers did not pay any heed to the request and continued beating. The husband of the complainant fell down and became unconscious. He was taken to the hospital but was declared dead there. The complainant informed the Deputy Commissioner of Police on 11-5-2001 that her husband was beaten to death by the police and demanded "stern punishment" to persons responsible for killing him. On the next day i.e. on 12-5-2001, the Deputy Commissioner of Police registered a case for an offence punishable under Section 304 IPC. For a long period no action was taken on the basis of the complaint made by the complainant. The complainant therefore filed a private complaint on 28-5-2001 in the Court of CJM against the appellant and two other police officers for offences punishable under Sections 302, 201, 109 and 120-B IPC. The Magistrate took cognizance of the offences. On 16-6-2001 the Magistrate issued non-bailable warrants against the accused persons including the appellant. Meanwhile, on 30-6-2001, the accused preferred an application under Section 210 CrPC before the Magistrate stating therein that a complaint was filed by the complainant on 12-5-2001 which had been registered as PS Case No. 112 of 2001 for an offence punishable under Section 304 IPC by the police station concerned and proceedings were initiated. It was also stated that thereafter fax message was sent to the Joint Commissioner of Police to investigate the case under Section 302 which was treated as FIR. It was, therefore, prayed that the complaint dated 28-5-2001 may be stayed in view of the provisions under Section 210 CrPC.

Thereafter, the accused filed a petition under Section 482 CrPC before the High Court for quashing of proceedings. It was contended that the alleged offence had been committed by the accused "while acting or purporting to act" in the discharge of their official duties and no cognizance could be taken by the Court except with the previous sanction of the State Government. It was argued that since no such sanction was obtained before filing the complaint, the complaint was not maintainable at law and was liable to be dismissed only on that ground. The High Court, by the impugned order, dismissed the petition observing that it was a case of "merciless beating" by a police officer causing death of a person which could not be said to be an act in the discharge of official duty. Thus, the High Court observed that the instant case could not be said to be a case covered by Section 197 CrPC.

Allowing the appeal by a majority of 2:1,

Held :

Per P.K. Balasubramanyan, J. (for Y.K. Sabharwal, C.J., and himself)

The complainant argued that want of sanction under Section 197(1) CrPC did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time. This submission cannot be accepted. Section 197(1), its opening words and the object sought to be achieved by it, and the decisions of the Supreme Court, clearly indicate that a prosecution hit by that provision cannot be launched without the contemplated sanction. It is a condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception, but even at a subsequent stage. One cannot therefore accede to the request to postpone a decision on this question. Postponing a decision on the applicability or otherwise of Section 197(1) CrPC can only lead to the proceedings being dragged on in the trial court and a decision by the Supreme Court, here and now, would be more appropriate in the circumstances of the case especially when the accused involved are police personnel and the nature of the complaint made is kept in mind. (Paras 22 and 11)

Coming to the facts of this case, the question is whether the appellant was acting in his official capacity while the alleged offence was committed or was performing a duty in his capacity as a police officer which led to the offence complained of. That it was the day of election to the State Assembly; that the appellant was in uniform; that the appellant travelled in an official jeep to the spot, near a polling booth and the offence was committed while he was on the spot, may not by themselves attract Section 197(1) CrPC. But, as can be seen from the facts disclosed in the counter-affidavit filed on behalf of the State based on the entries in the general diary of the police station concerned, it emerges that on the election day information was received in the police station at 1400 hours of some disturbance at a polling booth, that it took a violent turn and clashes between the supporters of two political parties were imminent. It was then that the appellant reached the site of the incident in his official vehicle. It is seen that a case had been registered on the basis of the incidents that took place and a report in this behalf had also been sent to the superiors by the Station House Officer. It is also seen and it is supported by the witnesses examined by the Chief Judicial Magistrate while taking cognizance of the offence that the appellant on reaching the spot had a discussion with the officer-in-charge who was stationed at the spot and thereafter a lathi-charge took place or there was an attack on the husband of the complainant and he met with his death. Obviously, it was part of the duty of the appellant to prevent any breach of law and maintain order on the polling day or to prevent the blocking of voters or prevent what has come to be known as booth capturing. It therefore emerges that the act was done while the officer was performing his duty. That the incident took place near a polling booth on an election day has also to be taken note of. The complainant no doubt has a case that it was a case of the deceased being picked and chosen for ill-treatment and he was beaten up by a police constable at the instance of the appellant and the officer in charge of the police station and at their behest. If that complaint were true it will certainly make the action an offence, leading to further consequences. It is also true as pointed out by the complainant that the entries in the general diary remain to be proved. But still, it would be an offence committed during the course of the performance of his duty by the appellant and it would attract Section 197 CrPC. (Para 23)

The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) CrPC cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) could not be attracted. Such a reasoning would be against the ratio of the earlier decisions of the Supreme Court. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a

(6) Stage at which question of sanction to be considered/raised — Preliminary enquiry by court as to whether sanction required at all *(contd.)*

statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) CrPC. (Para 25)

Thus, the High Court was in error in holding that sanction under Section 197(1) CrPC was not needed in this case. It is held that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. (Para 25)

Per C.K. Thakker, J. (dissenting)

The primary object of the legislature behind Section 197 CrPC is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by a public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter of Section 197 CrPC. In other words, protection afforded by the said section is qualified and conditional. (Para 67)

When the question comes up for consideration before a court of law as to the applicability or otherwise of Section 197 CrPC, it is not only the *power* but the *duty* of the court to apply its mind to the fact situation before it. It should ensure that on the one hand, the public servant is protected if the case is covered by Section 197 CrPC and on the other hand, appropriate action would be allowed to be taken if the provision is not attracted and under the guise of his position as public servant he is trying to take undue advantage. (Para 67)

In the instant case, from the material which has been placed on record, it is amply clear that the appellant and other police officers had acted illegally, unlawfully and high-handedly. In the complaint, it was stated by the widow of deceased that the accused chased her husband and assaulted him by causing several injuries which resulted in his death. That apart, the eyewitnesses stated that the deceased was assaulted and beaten by the accused police officers. The deceased had not indulged in any illegal activity. He had not done any unlawful act. He had no weapon with him. He was distributing food packets at the polling booth of a particular political party. (Para 70)

The High Court was wholly justified in observing that "it was a merciless beating by a police officer" causing death of a person which could not be said to be an act in discharge of official duty. The High Court was also right in stating that the post-mortem report clearly indicated the nature and extent of injuries on the victim. Other witnesses had given vivid description of the offence committed by the accused persons. The said finding, which is supported by material on record, cannot be said to be based on "no evidence" or otherwise perverse, nor can it be concluded that an error of law has been committed by the High Court which requires to be corrected by the Supreme Court in exercise of discretionary jurisdiction under Article 136 of the Constitution. Hence, no interference is called for against the order of the High Court. (Para 74). *Sankaran Moitra* v. *Sadhna Das*, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358: AIR 2006 SC 1599.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.*[1] and **C.K. Thakker**[2] and **P.K. Balasubramanyan**[1], JJ. [Date of decision: 24-3-2006]

Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44: 1956 Cri LJ 140; Rizwan Ahmed Javed Shaikh v. Jammal Patel, (2001) 5 SCC 7, applied

Shreekantiah Ramayya Munipalli v. State of Bombay, (1955) 1 SCR 1177: AIR 1955 SC 287: 1955 Cri LJ 857; Amrik Singh v. State of Pepsu, (1955) 1 SCR 1302: AIR 1955 SC 309: 1955 Cri LJ 865; Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663: 1988 SCC (Cri) 29; Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432, relied on

Sankaran Moitra v. Sadhana Das, (2003) 4 Cal HN 82, reversed

[2414] — S. 197 — Necessity of previous sanction of Central Government, has to be decided by trial Court from stage to stage on the basis of materials available at a particular stage — *Question whether offence committed 'while acting or purporting to act' in the discharge of official duty, not considered. Akhilesh Prasad* v. *UT, Mizoram*, (1981) 2 SCC 150: 1981 SCC (Cri) 337: AIR 1981 SC 806: (1981) 2 SCR 789: 1981 Cri LJ 407.

Bench Strength **2**. Coram: **A.D. Koshal** and *A.N. Sen*, JJ. [Date of decision: 11-2-1981]

[2415] — S. 197 — Sanction — Necessity of — Question to be considered at earlier stage of proceedings — *Where material on record insufficient it would be proper to consider question of necessity of sanction after recording some evidence*

The want of sanction under S. 197 of the Code is a prohibition against institution of the proceedings, and the applicability of the section must be judged at the earliest stage of the proceedings. It would be proper that the Magistrate considers the question of necessity of sanction after recording some evidence with opportunity to the parties. The court then will be in a better position to come to a conclusion whether on the facts so established prima facie, sanction under S. 197 is necessary or not. *Ashok Sahu* v. *Gokul Saikia*, 1990 Supp SCC 41: 1990 SCC (Cri) 611.

Bench Strength **2**. Coram: *G.L. Oza* and *K. Jagannatha Shetty*, JJ. [Date of decision: 30-3-1988]

Hori Ram Singh v. Crown, AIR 1939 FC 43: 1939 FCR 159: 40 Cri LJ 468; Sarjoo Prasad v. King Emperor, AIR 1946 FC 25: 1946 FCR 25: 47 Cri LJ 838, approved

[2416] — S. 197 — Sanction for prosecution — Plea of bar against cognizance for want of sanction touches jurisdiction of the Court — Hence can be raised at any stage of the proceedings — *Accused not required to wait till framing of the charges or cross-examination of prosecution witnesses — He is not debarred from producing relevant documentary materials which can be legally looked into without any formal proof to show that acts were committed in discharge of public duties attracting S. 197 — Such enquiry different from the question whether a prima facie offence made out by the complaint — Magistrate not required to confine himself to the allegations in the complaint — On facts, prima facie alleged acts of respondents attracted S. 197*

The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the court on process being issued, by an application indicating that Section 197(1) is attracted merely assists the court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible, for adjudication of the question as to whether in fact Section 197 has any application in the case in hand. The question of sanction can be considered at any stage of the proceedings.

It cannot be said that the accused even though might have really acted in discharge of his official duty for which the complaints have been lodged yet he will have to wait till the stage under sub-section (4) Section 246 is reached or at least till he will be able to bring in relevant materials while cross-examining the prosecution witnesses. On the other hand it would be logical to hold that the matter being one dealing with the jurisdiction of the court to take cognizance, the accused would be entitled to produce the relevant and material documents which can be admitted into evidence without formal proof, for the limited consideration of the court whether the necessary ingredients to attract Section 197 have been established or not. The question of applicability of Section 197 and the consequential ouster of jurisdiction of the court to take cognizance without a valid sanction is genetically different from the plea of the accused that the averments in the complaint do not make out an offence and as such the order of cognizance and/or the criminal proceedings be quashed. Therefore, an accused is not debarred from producing the relevant documentary materials which can be legally looked into without any formal proof, in support of the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty thereby requiring sanction of the appropriate authority.

In the present case considering the facts and circumstances of the case, it prima facie appears that the alleged acts on the part of the respondents were purported to be in the exercise of official duties. Therefore, a case of sanction under Section 197 has been prima facie made out. Whether it was unjustified on the part of the respondents to take recourse to the actions alleged in the complaint or the respondents were guilty of excesses committed by them will be gone into in the trial after the required sanction is obtained on the basis of evidences adduced by the parties. At this stage, such questions are not required to be considered because the accused have not yet led evidence in support of their case on merits. *Suresh Kumar Bhikamchand Jain* v. *Pandey Ajay Bhushan*, (1998) 1 SCC 205: 1998 SCC (Cri) 1: AIR 1998 SC 1524: 1998 Cri LJ 1242.

Bench Strength **2**. Coram: **G.N. Ray** and *G.B. Pattanaik*, JJ. [Date of decision: 27-11-1997]

K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88, distinguished

(6) Stage at which question of sanction to be considered/raised — Preliminary enquiry by court as to whether sanction required at all *(contd.)*

[2417] — S. 197 — Sanction under — Question in this regard can be raised at any stage of the proceedings — *Court can go beyond the allegations in the complaint to consider the question — Material on record up to the stage when question of want of sanction was raised, considered — CrPC, 1898, S. 197*

The question of sanction under S. 197, Criminal Procedure Code can be raised and considered at any stage of the proceedings. Further, in considering the question whether or not sanction for prosecution was required, it is not necessary for the Court to confine itself to the allegations in the complaint, and it can take into account all the material on the record at the time when the question is raised and falls for consideration.

No copy of the statements of the complainant and the SDM recorded in proceedings preliminary to the issue of process having been furnished before the Court, the contention regarding false allegations in the complaint does not stand.

Although precise and detailed particulars were not given in the complaint, some foundation for the allegation that the goods in question had been misappropriated by the appellants some time after their seizure and before their deposit in the Customs House had been laid during the preliminary enquiry made by the Magistrate. *B. Saha* v. *M.S. Kochar*, (1979) 4 SCC 177: 1979 SCC (Cri) 939: AIR 1979 SC 1841: 1979 Cri LJ 1367: (1979) 16 ACC 318.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *O. Chinnappa Reddy*, JJ. [Date of decision: 27-7-1979]

[2418] — S. 197 — Sanction for prosecution of public servant — Held, can be granted at any time before court takes cognizance of the offence — Charge-sheet can be filed even before the sanction

Per K. Ramaswamy, J.

Issuance of the process to the accused to appear before the court is sine qua non of taking cognizance of the offence. The emphasis of S. 197(1) that "no court shall take cognizance of such offence except with the previous sanction" posits that before taking cognizance of the offence alleged, there must be before the court the prior sanction given by the competent authority. Therefore, at any time before taking cognizance of the offence it is open to the competent authority to grant sanction and the prosecution is entitled to produce the order of sanction. Filing of charge-sheet before the court without sanction per se is not illegal, nor a condition precedent. No evidence had been placed before the Court to come to a different conclusion in this case. Accordingly, it must be held that the High Court committed manifest error of law to quash the charge-sheets on those grounds. *State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192: AIR 1991 SC 1260.

Bench Strength **2**. Coram: **Kuldip Singh**[1] and **K. Ramaswamy**[2], JJ. [Date of decision: 2-4-1991]

[2419] — S. 197 — Sanction under, for prosecution — When necessary — Question as to sanction — Consideration of — Stage for — *Held, sanction is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith — Sanction not necessary when the offence complained of has nothing to do with the discharge of his duty — Plea relating to want of sanction, though desirably should be considered at an early stage of the proceedings, can be considered at a later stage, even after the witnesses are examined — Cases in which question as to sanction to be taken note of at the outset or at a later stage, indicated — However held, each case to be considered on its own facts and circumstances and no hard-and-fast rule can be laid down in this regard — Offences under Prevention of Corruption Act, 1988 and IPC — No sanction under S. 197 was necessary to be obtained from the State — Further, valid sanction granted in respect of offences under the 1988 Act — Hence, High Court's order quashing cognizance on ground of absence of sanction by competent authority, held, not proper*

Whereas an order of sanction in terms of Section 197 CrPC is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained of has nothing to do with the same. A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the accused cannot take the said plea or the court cannot consider the same at a later stage. Each case has to be considered on its own facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be determined unless some evidence is taken, and in such an event, the said question may have to be considered even after the witnesses are examined. (Para 33)

In a case where ex facie no order of sanction has been issued when it is admittedly a prerequisite for taking cognizance of the offences or where such an order apparently has been passed by the authority not competent therefor, the court may take note thereof at the outset. But where the validity or otherwise of an order of sanction is required to be considered having regard to the facts and circumstances of the case and furthermore when a contention has to be gone into as to whether the act alleged against the accused has any direct nexus with the discharge of his official act, it may be permissible in a given situation for the court to examine the said question at a later stage. (Para 38)

It is added that the Supreme Court in the present case does not intend to lay down a law that only because a contention has been raised by the complainant or the prosecution that the question as regards necessity of obtaining an order of sanction is dependent upon the finding of fact that the nexus between the offences alleged and the official duty will have to be found out upon analysing the evidences brought on record; the same cannot be done at an earlier stage. Each case will have to be considered having regard to the fact situation obtaining therein and no hard-and-fast rule can be laid down therefor. The question as to whether sanction is necessary or not, thus, in an appropriate case, may have to be determined at different stages. There are cases where the question of validity of sanction has been raised at the trial and the courts have passed appropriate orders upon arriving at a conclusion that the order of sanction was defective. (Paras 39, 41 and 40)

The raid and seizure conducted by the accused police officer in the office and godown of the appellant were made on 18-3-1992. Seizure of gas cylinders and the lodgement of the first information report are no doubt acts of official capacity; but undoubtedly the prosecution was withdrawn on the ground that the same was false. It is in the aforementioned context also the question of criminal breach of trust and other allegations made against the accused as also demand and acceptance of a sum of Rs 20,000 by him may have to be viewed. (Para 34)

Thus, having regard to the facts and circumstances of the case and keeping in view the decision of the Supreme Court, no order of sanction to prosecute the accused under Section 197 CrPC was necessary to be obtained from the State. Therefore, the High Court was not right in passing the impugned order particularly in view of the fact that a valid order of sanction was granted in relation to the offences committed by the accused under the 1988 Act. (Paras 43 and 44). *Romesh Lal Jain* v. *Naginder Singh Rana*, (2006) 1 SCC 294: (2006) 2 SCC (Cri) 593: AIR 2006 SC 336: 2005 Cri LJ 5068: (2005) 36 AIC 108 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

Shreekantiah Ramayya Munipalli v. State of Bombay, (1955) 1 SCR 1177: AIR 1955 SC 287: 1955 Cri LJ 857; P.K. Pradhan v. State of Sikkim, (2001) 6 SCC 704: 2001 SCC (Cri) 1234; Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44: 1956 Cri LJ 140; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; Harihar Prasad v. State of Bihar, (1972) 3 SCC 89: 1972 SCC (Cri) 409; N. Bhargavan Pillai v. State of Kerala, 2005 SCC (Cri) 142; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096; K. Kalimuthu v. State, (2005) 4 SCC 512: 2005 SCC (Cri) 1291; B.S. Sambhu v. T.S. Krishnaswamy, (1983) 1 SCC 11: 1983 SCC (Cri) 125; Om Prakash Gupta v. State of U.P., 1957 SCR 423: AIR 1957 SC 458: 1957 Cri LJ 575; Manohar Nath Kaul v. State of J&K, (1983) 3 SCC 429: 1983 SCC (Cri) 647; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; State of Maharashtra v. Atma Ram, AIR 1966 SC 1786: 1966 Cri LJ 1498; Baijnath Gupta v. State of M.P., (1966) 1 SCR 210: AIR 1966 SC 220: 1966 Cri LJ 179; Amrik Singh v. State of Pepsu, (1955) 1 SCR 1302: AIR 1955 SC 309: 1955 Cri LJ 865; Hori Ram (Dr.) v. Emperor, 1939 FCR 159: AIR 1939 FC 43: 40 Cri LJ 468, followed

State of Karnataka v. C. Nagarajaswamy, (2005) 8 SCC 370; Raj Kishor Roy v. Kamleshwar Pandey, (2002) 6 SCC 543: 2002 SCC (Cri) 1423, relied on

Abdul Wahab Ansari v. State of Bihar, (2000) 8 SCC 500: 2001 SCC (Cri) 18, distinguished on facts

[2420] — S. 197 — Applicability — Plea regarding — Plea that sanction was required to be obtained under S. 197(1) before taking cognizance of offence can be raised at any stage of the proceedings and it need not be raised only when court reaches the stage of framing charge

Previous sanction of the competent authority being a precondition for the court in taking cognizance of the offence if the offence alleged to have been committed by the accused can be said to be an act in discharge of his official duty, the question touches the jurisdiction of the Magistrate in the matter of taking cognizance and, therefore, there is no requirement that an accused should wait for taking such plea till the charges are framed. (Para 7). *Abdul Wahab Ansari* v. *State of Bihar*, (2000) 8 SCC 500: 2001 SCC (Cri) 18: AIR 2000 SC 3187.

Bench Strength 3. Coram: **G.B. Pattanaik**, *M.B. Shah* and *S.N. Phukan*, JJ. [Date of decision: 17-10-2000]

Birendra K. Singh v. State of Bihar, (2000) 8 SCC 498, overruled

Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan, (1998) 1 SCC 205: 1998 SCC (Cri) 1; Ashok Sahu v. Gokul Saikia, 1990 Supp SCC 41: 1990 SCC (Cri) 611; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939, relied on

***Distinguished on facts** in State of Maharashtra v. Devahari Devasingh Pawar, (2008) 2 SCC 540*

(6) Stage at which question of sanction to be considered/raised — Preliminary enquiry by court as to whether sanction required at all *(contd.)*

[2421] — Ss. 197, 227 and 228 — Cognizance of offence taken by Magistrate without sanction required under S. 197 — Appellant charged under S. 302 read with S. 34 IPC, raising objections in respect of it before Supreme Court — Such objections, held, could be raised by the appellant when he submits his argument under Ss. 227 and 228 before the Sessions Court after the case is committed to it — *Court of Session to entertain the objections after the committal of case to it — No order made as to the release of appellant on bail — Penal Code, 1860 — S. 302 r/w S. 34. Birendra K. Singh* v. *State of Bihar,* (2000) 8 SCC 498: 2001 SCC (Cri) 17.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 7-4-2000]

overruled *in Abdul Wahab Ansari v. State of Bihar, (2000) 8 SCC 500 where the Court said: "the judgment of this Court in Birendra K. Singh case, (2000) 8 SCC 498 has been too widely stated and there is no requirement for the accused to wait till the stage of framing of the charge is reached for raising the contention with regard to the applicability of Section 197 of the Code of Criminal Procedure."*

(7) Effect of unavailability of protection under S. 197

[2422] — S. 197 — Unavailability of protection of S. 6 of PC Act, 1947 or 197 CrPC — Effect — *Held, the effect is that the accused ceases to be a public servant and loses his protective cover under Section 6 of the PC Act, 1947 or Section 197 CrPC and is open to prosecution without sanction having to be obtained — Also, the Special Judge under the W.B. Special Courts Act, 1949, would cease to have jurisdiction — W.B. Criminal Law Amendment (Special Courts) Act, 1949 (21 of 1949), S. 4 and Paras 2 and 3 of Schedule*

It is no doubt true that the policy under Section 6 of the PC Act, 1947 is that there should not be unnecessary harassment of a public servant. But if the accused ceases to be a public servant and loses his protective cover under Section 6 of the PC Act, 1947 or Section 197 CrPC and is open to prosecution without sanction having to be obtained, it would also necessarily mean that the Special Judge under the Special Courts Act, 1949, would cease to have jurisdiction over the accused in terms of Section 4 of the Special Courts Act, 1949. (Para 27). *State of W.B.* v. *Shyamadas Banerjee*, (2008) 9 SCC 45: (2008) 3 SCC (Cri) 671: 2008 Cri LJ 4592.

Bench Strength **2**. Coram: **Altamas Kabir** and *Markandey Katju*, JJ. [Date of decision: 3-9-2008]

(8) Sanctioning authority

[2423] — S. 197 — Competent sanctioning authority under for prosecution of public servant — Authority superior to removing authority whether competent — *Where Chief Engineer of a Department is the removing authority under the relevant service rule, held, Chief Minister or Minister concerned not incompetent to give sanction — Prevention of Corruption Act, 1947, S. 6(1)(c) — Constitution of India, Arts. 309, 310 and 311*

The pleasure of the President or Governor under Art. 310 as to the tenure of an officer cannot be fettered except by the provisions of Art. 311 and accordingly cannot be fettered by ordinary legislation. Section 6(1)(*c*) stipulates that removing authority will be the sanctioning authority. In view of Art. 311(1) the removing authority cannot be subordinate in rank to the appointing authority and as such by necessary implication the removing authority may be higher in rank to the appointing authority. Article 311(1) does not require that dismissal or removal must be ordered by the same authority who made the appointment. In view of this an authority superior to the removing authority is competent to give sanction under S. 6(1)(*c*). *Sampuran Singh* v. *State of Punjab*, (1982) 3 SCC 200: 1983 SCC (L&S) 1: 1982 SCC (Cri) 686: AIR 1982 SC 1407: 1982 Cri LJ 1973: (1982) 2 LLJ 281.

Bench Strength **3**. Coram: *A.P. Sen*, *E.S. Venkataramiah* and **R.B. Misra**, JJ. [Date of decision: 17-8-1982]

[2424] — S. 197 — Sanction for prosecution — Authority competent to grant, and procedure therefor — *Whether the Governor of a State (T.N. in this case) was the appropriate authority to grant sanction for prosecution of Chief Minister under S. 197 of the Code and S. 19 of the 1988 Act — If so, whether he could take a decision for granting or refusing sanction only upon the advice of the Council of Ministers excluding the Chief Minister and not upon the basis of his own discretion — Matters referred to Constitution Bench — Constitution of India, Arts. 164 and 163 — Prevention of Corruption Act, 1988, S. 19. J. Jayalalitha* v. *M. Chenna Reddy,* (1998) 8 SCC 601.

Bench Strength **3**. Coram: *S.P. Bharucha*, *Faizan Uddin* and *S.B. Majmudar*, JJ. [Date of decision: 13-2-1996]

[2425] — S. 197 — Sanction for prosecution — Power of Governor to act independently of or contrary to advice of Council of Ministers — Independent/Discretionary powers of Governor under — Grant of sanction for prosecution of Ministers — Advice of Council of Ministers vitiated due to non-consideration of relevant factors

— Power of Governor to act independently of or contrary to such advice — *Lokayukta submitting report holding that there were sufficient grounds for prosecuting two Ministers of Government of State of M.P. under PC Act, 1988 and IPC — Sanction asked for in relation to offence under S. 120-B IPC — Council of Ministers not granting sanction for prosecution on ground that no prima facie case for prosecution had been made out — Governor opining however that available documents and evidence were enough to make out a prima facie case for prosecution and therefore granting sanction under S. 197 CrPC — Held, on the material disclosed by report of Lokayukta it could not have been concluded, at the prima facie stage, that no case was made out — Given how hard it is to prove offence of conspiracy, it was for the court to arrive at a conclusion in respect thereof upon materials placed on record during trial — Such relevant consideration apparently was absent in the mind of Council of Ministers when it passed the order refusing sanction — Hence decision of Council of Ministers was ex facie irrational whereas decision of Governor was not — Further held, doctrine of necessity has no application to facts of the case — Therefore Court ordered to proceed with trial of Ministers — Penal Code, 1860, S. 120-B — Evidence Act, 1872, S. 10 — Constitution of India, Art. 163*

It is well settled that the exercise of administrative power will stand vitiated if there is a manifest error of record or the exercise of power is arbitrary. Similarly, if the power has been exercised on the non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous or the refusal to take into consideration a relevant fact or acting on the basis of irrelevant and extraneous factors not germane to the purpose of arriving at the conclusion would vitiate an administrative order. (Paras 30 and 29)

The office of the Lokayukta was held by a former Judge of the Supreme Court. It is difficult to assume that the said high authority would give a report without any material whatsoever. No law is intended to be laid down in this behalf however. Each case may be judged on its own merits. In this case, on the material disclosed by the report of the Lokayukta it could not have been concluded, at the prima facie stage, that no case was made out. In this case, however, the Lokayukta made a report upon taking into consideration the materials which were placed or received by him. The Lokayukta for the State of Madhya Pradesh admittedly made a detailed inquiry in the matter on a complaint received by him. The inquiry covered a large area, namely, the statutory provisions, the history of the case, orders dated 11-8-1995, 24-2-1997 and 5-3-1997 which were said to have been passed in the teeth of the statutory provisions, the clandestine manner in which the matter was pursued, the notings in the files as also how the accused persons deliberately and knowingly closed their minds and eyes from the realities of the case. The report of the Lokayukta is itself replete with the materials which led him to arrive at the conclusion. (Paras 29 and 28)

When the Council of Ministers takes a decision in exercise of its jurisdiction, it must act fairly and reasonably. It must not only act within the four corners of the statute but also for effectuating the purpose and object for which the statute has been enacted. Respondents 4 in each appeal are to be prosecuted under the Prevention of Corruption Act wherefor no order of sanction is required to be obtained (as they had resigned by the time the Lokayukta had submitted its report). A sanction was asked for and granted only in relation to an offence under Section 120-B of the Penal Code. It is now trite that it may not be possible in a given case even to prove conspiracy by direct evidence. It was for the court to arrive at the conclusion as regards commission of the offence of conspiracy upon the material placed on record of the case during trial which would include the oral testimonies of the witnesses. Such a relevant consideration apparently was absent in the mind of the Council of Ministers when it passed an order refusing to grant sanction. Moreover, the doctrine of necessity has no application to the facts of this case. Therefore the decision of the Council of Ministers was ex facie irrational whereas the decision of the Governor was not. (Paras 29 and 31). *M.P. Special Police Establishment* v. *State of M.P.*, (2004) 8 SCC 788.

Bench Strength 5. Coram: *N. Santosh Hegde*, **S.N. Variava**, *B.P. Singh*, *H.K. Sema* and *S.B. Sinha*, JJ. [Date of decision: 5-11-2004]

[2426] — S. 197 — Sanction for prosecution — Power of Governor to act independently of or contrary to advice of Council of Ministers — Duty of Council of Ministers when considering grant of sanction — Independent/Discretionary powers of Governor under — Grant of sanction for prosecution of Ministers — Power of Governor to act independently of or contrary to advice of Council of Ministers — *Though normally Governor is required to act on aid and advice of Council of Ministers and not in his discretion, held, there may be situations where exercise of such discretion*

(8) Sanctioning authority *(contd.)*

by himself may be proper — Following situations envisaged: (i) where bias is inherent and/or manifest in the advice, or (ii) in those rare situations where on facts bias becomes apparent, or (iii) where decision of Council of Ministers is shown to be irrational and based on non-consideration of relevant factors, or (iv) if Council of Ministers disables or disentitles itself, or (v) where as a matter of propriety Governor may have to act in his own discretion — Cautioned that if in such situations Governor cannot act in his own discretion there would be a complete breakdown of the rule of law and democracy itself will be at stake inasmuch as it would then be open for Governments to refuse sanction in spite of overwhelming material showing that a prima facie case is made out — Clarified however that Governor would not be sitting in appeal over decision of Council of Ministers — Duty of Council of Ministers when considering grant of sanction for prosecution — Held, is to act fairly and reasonably, not only within four corners of the statute but also for effectuating the purpose and object for which the statute has been enacted — Constitution of India, Art. 163

Respondents 4 (in both these appeals) were Ministers in the Government of M.P. A complaint was made to the Lokayukta against them for having released 7.5 acres of land illegally to its earlier owners even though the same had been acquired by the Indore Development Authority. After investigation the Lokayukta submitted a report holding that there were sufficient grounds for prosecuting the two Ministers under Section 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act, 1988 and also for the offence of criminal conspiracy punishable under Section 120-B IPC. By the time the report was given the two Ministers had already resigned.

Sanction was applied for from the Council of Ministers for prosecuting the two Ministers. The Council of Ministers held that there was not an iota of material available against both the Ministers from which it could be inferred that they had entered into a criminal conspiracy with anyone. The Council of Ministers thus refused sanction on the ground that no prima facie case had been made out against them. The Governor then considered grant of sanction keeping in view the decision of the Council of Ministers. The Governor opined that the available documents and the evidence were enough to show that a prima facie case for prosecution had been made out. The Governor accordingly granted sanction for prosecution under Section 197 CrPC.

The question that arose before the Supreme Court was whether a Governor can act in his discretion and against the aid and advice of the Council of Ministers in the matter of grant of sanction for prosecution of Ministers for offences under the Prevention of Corruption Act and/or the Penal Code.

Allowing the appeals,

Held :

The concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. The normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. But there are exceptions under which the Governor can act in his own discretion. Some of the exceptions are as set out in *Samsher Singh case*, (1974) 2 SCC 831, at pp. 848-49, paras 54-56 and p. 885, para 154 [set out in para 12 herein]. However, the exceptions mentioned in the judgment are not exhaustive. Other situations may be situations where by reason of peril to democracy or democratic principles, an action may be compelled which from its nature is not amenable to Ministerial advice. (Para 12)

Undoubtedly, in the matter of grant of sanction to prosecute a Chief Minister or a Minister the Governor is normally required to act on aid and advice of the Council of Ministers and not in his discretion. It is also presumed that a high authority like the Council of Ministers will normally act in a bona fide manner, fairly, honestly and in accordance with law. Where as a matter of propriety the Governor may have to act in his own discretion, or where bias is inherent and/or manifest in the advice of the Council of Ministers or, on those rare occasions where on facts the bias becomes apparent and/or the decision of the Council of Ministers is shown to be irrational and based on non-consideration of relevant factors, the Governor would be right, on the facts of that case, to act in his own discretion and grant sanction. Similar would be the situation if the Council of Ministers disables itself or disentitles itself. If, on these facts and circumstances, the Governor cannot act in his own discretion there would be a complete breakdown of the rule of law and democracy itself will be at stake inasmuch as it would then be open for Governments to refuse sanction in spite of overwhelming material showing that a prima facie case is made out. It would then lead to a situation where people in power may break the law with impunity safe in the knowledge that they will not be prosecuted as the requisite sanction will not be granted. The Governor, however, would not be sitting in appeal over the decision of the Council of Ministers. (Paras 19, 33, 23 and 32)

The Division Bench of the High Court has held that even though the principle in *Ramdas Shrinivas Nayak*, (1982) 2 SCC 463 may apply to the case of a Chief Minister, it cannot apply to a case where Ministers are sought to be prosecuted. The subtle distinction sought to be made by the Division Bench cannot be appreciated. The question in such cases would not be whether the Council of Ministers would be biased. The question would be whether there is reasonable ground for believing that there is likelihood of apparent bias. Actual bias only would lead to automatic disqualification where the decision-maker is shown to have an interest in the outcome of the case. The principle of real likelihood of bias has now taken a tilt to "real danger of bias" and "suspicion of bias". Bias is likely to operate in a subtle manner. Sometimes the decision-makers concerned may not even be unaware of the extent to which their opinion gets influenced. If the facts and circumstances indicate bias, then the conclusion becomes inescapable. (Paras 14 and 22)

Taking a cue from *Antulay*, it is possible to contend that a Council of Ministers may not take a fair and impartial decision when their Chief Minister or other members of the Council face prosecution. But the doctrine of "apparent bias", however, may not be applicable in a case where a collective decision is required to be taken under a statute in relation to former Ministers. In a meeting of the Council of Ministers, each member has his own say. There may be different views or opinions. But in a democracy the opinion of the majority would prevail. No material has been placed on record by the appellants to show as to how the Council of Ministers collectively or the members of the Council individually were in any manner whatsoever biased. There is also no authority for the proposition that a bias can be presumed in such a situation. The doctrine of real likelihood of bias would also not be applicable in such a case. The decision was taken collectively by a responsible body in terms of its constitutional functions. To repeat, only in a case of "apparent bias", the exception to the general rule would apply. On the same analogy in the absence of any material brought on record, it may not be possible to hold that the action on the part of the Council of Ministers was actuated by any malice. So far as plea of malice is concerned, the same must be attributed personally against the person concerned and not collectively. Even in such a case the persons against whom malice on fact is alleged must be impleaded as parties. (Paras 23 to 25)

It is well settled that the exercise of administrative power will stand vitiated if there is a manifest error of record or the exercise of power is arbitrary. Similarly, if the power has been exercised on the non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous or the refusal to take into consideration a relevant fact or acting on the basis of irrelevant and extraneous factors not germane to the purpose of arriving at the conclusion would vitiate an administrative order. (Paras 30 and 29)

The office of the Lokayukta was held by a former Judge of the Supreme Court. It is difficult to assume that the said high authority would give a report without any material whatsoever. No law is intended to be laid down in this behalf however. Each case may be judged on its own merits. In this case, on the material disclosed by the report of the Lokayukta it could not have been concluded, at the prima facie stage, that no case was made out. In this case, however, the Lokayukta made a report upon taking into consideration the materials which were placed or received by him. The Lokayukta for the State of Madhya Pradesh admittedly made a detailed inquiry in the matter on a complaint received by him. The inquiry covered a large area, namely, the statutory provisions, the history of the case, orders dated 11-8-1995, 24-2-1997 and 5-3-1997 which were said to have been passed in the teeth of the statutory provisions, the clandestine manner in which the matter was pursued, the notings in the files as also how the accused persons deliberately and knowingly closed their minds and eyes from the realities of the case. The report of the Lokayukta is itself replete with the materials which led him to arrive at the conclusion. (Paras 29 and 28)

When the Council of Ministers takes a decision in exercise of its jurisdiction, it must act fairly and reasonably. It must not only act within the four corners of the statute but also for effectuating the purpose and object for which the statute has been enacted. Respondents 4 in each appeal are to be prosecuted under the Prevention of Corruption Act wherefor no order of sanction is required to be obtained (as they had resigned by the time the Lokayukta had submitted its report). A sanction was asked for and granted only in relation to an offence under Section 120-B of the Penal Code. It is now trite that it may not be possible in a given case even to prove conspiracy by direct evidence. It was for the court to arrive at the conclusion as regards commission of the offence of conspiracy upon the material placed on record of the case during trial which would include the oral testimonies of the witnesses. Such a relevant consideration apparently was absent in the mind of the Council of Ministers

(8) Sanctioning authority *(contd.)*

when it passed an order refusing to grant sanction. Moreover, the doctrine of necessity has no application to the facts of this case. Therefore the decision of the Council of Ministers was ex facie irrational whereas the decision of the Governor was not. (Paras 29 and 31)

In a situation of this nature, the writ court while exercising its jurisdiction under Article 226 of the Constitution as also the Supreme Court under Articles 136 and 142 of the Constitution can pass an appropriate order which would do complete justice to the parties. The High Court unfortunately failed to consider this aspect of the matter. The order of the Governor sanctioning prosecution should be given effect to and that of the Council of Ministers refusing to do so may be set aside. The Court shall now proceed with the prosecution. (Paras 31 and 34). *M.P. Special Police Establishment* v. *State of M.P.*, (2004) 8 SCC 788.

Bench Strength **5**. Coram: *N. Santosh Hegde*, **S.N. Variava**, *B.P. Singh*, *H.K. Sema* and *S.B. Sinha*, JJ. [Date of decision: 5-11-2004]

State of Maharashtra v. Ramdas Shrinivas Nayak, (1982) 2 SCC 463: 1982 SCC (Cri) 478, followed

Samsher Singh v. State of Punjab, (1974) 2 SCC 831: 1974 SCC (L&S) 550; Bhuri Nath v. State of J&K, (1997) 2 SCC 745; A.K. Kraipak v. Union of India, (1969) 2 SCC 262; Kirti Deshmankar (Dr.) v. Union of India, (1991) 1 SCC 104: 1991 SCC (L&S) 388: (1991) 15 ATC 693, relied on

V.C. Shukla v. State (Delhi Admn.), 1980 Supp SCC 249: 1980 SCC (Cri) 849; State of Punjab v. V.K. Khanna, (2001) 2 SCC 330: 2001 SCC (L&S) 1010; Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant, (2001) 1 SCC 182: 2001 SCC (L&S) 189, clarified and relied on

J. Mohapatra and Co. v. State of Orissa, (1984) 4 SCC 103; Institute of Chartered Accountants v. L.K. Ratna, (1986) 4 SCC 537: (1986) 1 ATC 714; Charan Lal Sahu v. Union of India, (1990) 1 SCC 613; Badrinath v. Govt. of T.N., (2000) 8 SCC 395: 2001 SCC (L&S) 13; Election Commission of India v. Dr. Subramaniam Swamy, (1996) 4 SCC 104; State of M.P. v. Dr. Yashwant Trimbak, (1996) 2 SCC 305: 1996 SCC (L&S) 510: (1996) 33 ATC 208, distinguished

[**Ed.**: *See also* (2004) 2 SCC 349; (2001) 4 SCC 752; (1995) 2 SCC 437 and (1998) 6 SCC 411]

[2427] — S. 197 — Sanction for prosecution granted by a person not authorised in law — Validity of — *Held, it being without jurisdiction, would be a nullity — PW 37 was not competent to accord sanction for prosecution of respondent — Nothing to show that he was delegated with power to accord sanction — Hence, grant of sanction by him was vitiated in law — Prevention of Corruption Act, 1947, S. 6 — Prevention of Corruption Act, 1988 — S. 19* (Paras 26, 22 and 23). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

S.N. Bose v. State of Bihar, (1968) 3 SCR 563: AIR 1968 SC 1292: 1968 Cri LJ 1484; State of Karnataka v. C. Nagarajaswamy, (2005) 8 SCC 370: (2006) 1 SCC (Cri) 47, relied on

Clarified in CBI v. Edwin Devasahayam, (2007) 12 SCC 139

[2428] — S. 197 — Sanction order — Validity — First sanction order issued by an incompetent authority — Second sanction order issued retrospectively after the cognizance was taken and that too by an incompetent authority — *On such facts, held, when Special Judge took cognizance, there was no sanction order under the law authorising him to take cognizance — This was a fundamental error which invalidated the cognizance as being without jurisdiction — Having regard to the gravity of the allegations levelled against the respondent, authority competent under the Rules concerned permitted to issue a fresh sanction order and proceed afresh against the respondent from the stage of taking cognizance of the offence — Goa Shipyard Officers' (Conduct, Discipline and Appeal) Rules, 1979 — Prevention of Corruption Act, 1947, S. 6 — Prevention of Corruption Act, 1988 — S. 19*

The relevant Rules provide that the authority competent to appoint and to remove the respondent from his office is the Board of Directors. But, in the present case, the sanction order dated 2-1-1995 was issued under the signatures of the Company Secretary. There was no reference to the decision/ resolution being passed by the Board of Directors pursuant to which the sanction order was issued under the signatures of the Company Secretary. Further, the second sanction order dated 7-9-1997 issued by the Chairman and Managing Director of the Company also did not refer to any resolution/ decision taken by the Board collectively, pursuant to which the second sanction order was issued. (Paras 8 and 9)

Thus, the first sanction order was issued by an authority that was not a competent authority to have issued such order under the Rules. The second sanction order was also issued by an authority, which was not competent to issue the same under the relevant rules, apart from the fact that the same was issued retrospectively w.e.f. 14-9-1994, which is bad. Therefore, when the Special Judge took cognizance on 29-5-1995, there was no sanction order under the law authorising him to take cognizance. This is a fundamental error which invalidates the cognizance as without jurisdiction. The present is not the case where there has been mere irregularity, error or omission in the order of sanction as required under sub-section (1) of Section 19 of the Act. It goes to the root of the prosecution case. (Paras 12 and 11). *State of Goa* v. *Babu Thomas*, (2005) 8 SCC 130: 2005 SCC (Cri) 1995: 2005 Cri LJ 4379.

Bench Strength **2**. Coram: **H.K. Sema** and *G.P. Mathur*, JJ. [Date of decision: 29-9-2005]

State v. T. Venkatesh Murthy, (2004) 7 SCC 763: 2004 SCC (Cri) 2140; *Durga Dass v. State of H.P.*, (1973) 2 SCC 213: 1973 SCC (Cri) 762, distinguished

Distinguished in *Goa Shipyard Ltd. v. Babu Thomas*, (2007) 10 SCC 662

[2429] — S. 197 — Sanction for prosecution of employees of Corpn. — Special Officer competent to grant sanction — *Sanction granted by the Government itself which appointed the Special Officer not invalid*

The High Court was in error in its view that only the Special Officer appointed by the Corpn., when it was superseded, was competent to grant the sanction. It will be noticed that here the sanction had been given by the superior authority, namely the Government itself which appointed the Special Officer. Once the sanction is granted by the superior authority it does not get invalidated. It could be invalid if the sanction had been granted by the authority subordinate to the authority who had to grant the sanction and in that case would have been subject to challenge. *State of T.N. v. T. Thulasingam*, 1994 Supp (2) SCC 405: 1994 SCC (Cri) 1504: AIR 1995 SC 1314.

Bench Strength **2**. Coram: *Kuldip Singh* and **Yogeshwar Dayal**, JJ. [Date of decision: 13-5-1994]

[2430] — S. 197 — Sanction for prosecution of public servant — *Appellant while serving as Executive Engineer alleged to have paid Rs 2750 in excess to the contractor in respect of some work — Under the Rules of Business, all cases of defalcation, misappropriation or embezzlement of public funds involving more than Rs 10,000 required to be placed before the Chief Minister and cases involving lesser amount required to be placed before the minister in charge of the department concerned for sanction — Accordingly, the matter initially placed before the Minister of Law who refused to accord sanction after applying his mind to the entire materials — Subsequently, appellant retired in 1994 and only in 1997, the Chief Minister passed order according sanction for his prosecution — Held, no fresh materials were collected subsequent to the earlier order refusing to sanction prosecution and the appropriate authority (Minister of Law) having applied his mind and having passed the order refusing to accord sanction, the subsequent order of Chief Minister according sanction was unjustified and vitiated by non-application of mind — In view of the Rules of Business, neither was there any necessity for the authorities concerned to place the file before the Chief Minister nor had the Chief Minister any occasion to reconsider the matter and pass fresh order sanctioning prosecution particularly when taking into account the loss sustained to the exchequer to the tune of Rs 2750 — That apart, appellant having already retired in 1994, pursuing proceedings against him for a loss of Rs 2750 only were uncalled for* (Paras 5 and 6). *Gopikant Choudhary v. State of Bihar*, (2000) 9 SCC 53: 2000 SCC (Cri) 1158.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 6-1-2000]

[2431] — S. 197 — Sanction for prosecution of public servants — Conditions for applicability of S. 19, PC Act, 1988 — MP is a public servant but there is no authority competent to remove him from his office — *Held, per Agrawal and Anand, JJ. (Ray J, concurring) merely because there is no authority to remove an MP from his office, he does not cease to be a public servant for the purpose of the Act — In absence of authority competent to remove and grant sanction under S. 19(1) there is no limitation on the power of the court to take cognizance of offence under S. 190 CrPC of offences mentioned in S. 19(1) — But till provision is made by Parliament in that regard by suitable amendment in the law, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Ss. 7, 10, 11, 13 and 15 of the 1988 Act against an MP in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be — Held, per Bharucha and Rajendra Babu, JJ., S. 19 applicable only to public servant who is removable from his office by a competent authority — Hence, court must try to identify the authority competent to remove the public servant — If court fails to identify the competent authority to remove, the public servant would not be liable to be prosecuted under Ss. 7, 10, 11, 13 and 15 though he would be liable to be prosecuted for any other offence under the Act — If a person is found to be a public servant within the meaning of the definition under S. 2(c), he must be treated as such for the purpose of all the provisions of the Act where the expression is used including for the purposes of the sanction provision and the position cannot change even if it be found that there is no authority competent to remove him from his office — Prevention of Corruption Act, 1988 — S. 19*

Per Agrawal and Anand, JJ.

The definition of "public servant" in Section 2(*c*) of the 1988 Act includes persons who are public servants under that provision though the criterion of removability does not apply to them and there is no single individual authority which is competent to grant sanction for their prosecution under Section 19 of the 1988 Act. In respect of a Member

(8) Sanctioning authority *(contd.)*

of Parliament the Constitution does not confer on any particular authority the power to remove him. It is no doubt true that the House in exercise of its power of contempt can pass a resolution for expulsion of a Member who is found guilty of breach of privilege and acceptance of bribe by a Member in connection with the business of the House is regarded as breach of privilege. On that basis it may be possible to say that the House has the power to remove a Member who is found to have indulged in bribery and corruption. But in view of the decision in *Veeraswami* wherein Shetty, J. has said that the legislature while enacting clause (*c*) of Section 6 of the 1947 Act could not have intended Parliament to be the sanctioning authority, the House cannot be regarded as the authority competent to grant sanction under Section 19(1)(*c*) of the 1988 Act. On that view of the matter it must be held that there is no authority who can remove a Member of Parliament and who would be competent under clauses (*a*), (*b*) or (*c*) of Section 19(1) of the 1988 Act to grant sanction for his prosecution. This does not, however, lead to the conclusion that he cannot be treated as a "public servant" under Section 2(*c*)(*viii*) of the 1988 Act if, on a proper interpretation of the said provision he is found to be a public servant. Since on an interpretation of the provisions of Section 2(*c*)(*viii*) of the 1988 Act it has been held that a Member of Parliament is a public servant, a Member of Parliament has to be treated as a public servant for the purpose of the 1988 Act even though there is no authority who can grant sanction for his prosecution under Section 19(1) of the 1988 Act. (Para 93)

When there is an authority competent to remove a public servant and to grant sanction for his prosecution under Section 19(1) of the 1988 Act the requirement of sanction precludes a court from taking cognizance of the offences mentioned in Section 19(1) against him in the absence of such sanction, but if there is no authority competent to remove a public servant and to grant sanction for his prosecution under Section 19(1) there is no limitation on the power of the court to take cognizance under Section 190 CrPC of the offences mentioned in Section 19(1) of the 1988 Act. The requirement of sanction under Section 19(1) is intended as a safeguard against criminal prosecution of a public servant on the basis of malicious or frivolous allegations by the interested persons. The object underlying the said requirement is not to condone the commission of an offence by a public servant. The inapplicability of the provisions of Section 19(1) to a public servant would only mean that the intended safeguard was not intended to be made available to him. The rigour of the prohibition contained in sub-section (1) is now reduced by sub-section (3) of Section 19 because under clause (*a*) of sub-section (3) it is provided that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby. This would show that the requirement of sanction under sub-section (1) of Section 19 is a matter relating to the procedure and the absence of the sanction does not go to the root of the jurisdiction of the court. It must, therefore, be held that merely because there is no authority which is competent to remove a public servant and to grant sanction for his prosecution under Section 19(1) it cannot be said that a Member of Parliament is outside the purview of the 1988 Act. (Para 95)

In the absence of requirement of previous sanction for initiating proceedings in a court of law against a Member of Parliament in respect of an offence mentioned in Section 19(1) of the 1988 Act the possibility of a Member of Parliament being subjected to criminal prosecution on the basis of malicious or frivolous allegations made by interested persons cannot be excluded. It is hoped that Parliament will provide for an adequate safeguard in that regard by making suitable amendment in the 1988 Act. But till such safeguard is provided, it appears appropriate that protection from being subjected to criminal prosecution on the basis of malicious or frivolous allegations should be available to Members of Parliament. The Chairman of the Rajya Sabha/Speaker of the Lok Sabha by virtue of the position held by them are entrusted with the task of preserving the independence of the Members of the House. In order that Members of Parliament may not be subjected to criminal prosecution on the basis of frivolous or malicious allegations at the hands of interested persons, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 13 and 15 of the 1988 Act against a Member of Parliament in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be. (Paras 96 and 97)

Per Ray, J. (concurring)

I respectfully concur with the findings of Mr Justice Agrawal and agree with the reasoning for such findings that since there is no authority competent to grant sanction for the prosecution of a

Member of Parliament under Section 19(1) of the Prevention of Corruption Act, 1988, the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but before filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 12 and 15 of 1988 Act against a Member of Parliament in a criminal court, the prosecuting agency shall obtain the permission of the Chairman of the Rajya Sabha/ Speaker of the Lok Sabha, as the case may be. (Para 99)

Per Bharucha and Rajendra Babu, JJ.

Members of Parliament and the State Legislatures are public servants liable to be prosecuted for offences under the Prevention of Corruption Act but they cannot be prosecuted for offences under Sections 7, 10, 11 and 13 thereof because of want of an authority competent to grant sanction thereto. It is hoped that Parliament will address itself to the task of removing this lacuna with due expedition. (Para 182)

Sanction is not required in respect of all offences covered by the said Act; it is required only in respect of the offences that are punishable under Sections 7, 10, 11, 13 and 15. Secondly, the person charged must be a public servant at the point of time the court is asked to take cognizance; that is the material time for the purposes of the section. Thirdly, the sanction must precede cognizance; it must be prior sanction. Fourthly, and this from the point of view of this judgment is most material, the section covers all public servants. In other words, if any public servant is charged with an offence punishable under the aforesaid sections, the court shall not take cognizance in the absence of sanction. That the section applies to all public servants is also clear from the three clauses of sub-section (1). The question as to whether or not a person is a public servant within the meaning of the statute must be determined having regard to the definition of a public servant contained in the statute. If the person is found to be a public servant within the meaning of the definition, he must be taken to be a public servant for the purposes of all provisions in the statute in which the expression "public servant" occurs. If, therefore, a person is found to satisfy the requirements of the definition of a public servant, he must be treated as a public servant for the purposes of the sanction provision. (Paras 166 and 175)

It is not possible to accept the view that the provisions of Section 19 are applicable only to a public servant who is removable from his office by an authority competent to do so. It is correct to say that Section 19 contemplates that for every public servant there must be an authority competent to remove him from his office and that, therefore, the effort must be to identify that authority. But if no authority can be identified in the case of a public servant or a particular category of public servant, it cannot lead to the conclusion that he is not a public servant or this is not a category of public servant within the meaning of the said Act. The finding that the Members of Parliament are public servants, based upon the definition section, must apply to the phrase "public servant" wherever it occurs in the said Act. It cannot change if it be found that there is no authority competent to remove Members of Parliament from office. Members of Parliament would, then, not be liable to be prosecuted for offences covered by Sections 7, 10, 11, 13 and 15, the condition of prior sanction being incapable of being satisfied, but they would remain liable to prosecution for offences under the said Act other than those covered by Sections 7, 10, 11, 13 and 15. (Paras 167 and 169)

It is clear from Article 101 that the seat of a Member of Parliament becomes vacant immediately upon his becoming subject to the disqualifications mentioned in Article 102, without more. The removal of a Member of Parliament is occasioned by operation of law and is self-operative. Reference to the President under Article 103 is required only if a question arises as to whether a Member of Parliament has earned such disqualification; that is to say, if it is disputed. The President would then have to decide whether the Member of Parliament had become subject to the automatic disqualification contemplated by Article 101. His order would not remove the Member of Parliament from his seat or office but would declare that he stood disqualified. It would operate not with effect from the date upon which it was made but would relate back to the date upon which the disqualification was earned. Without, therefore, having to go into the connotation of the word "removal" in service law, it seems clear that the President cannot be said to be the authority competent to remove a Member of Parliament from his office. (Para 180)

In the light of the aforesaid position it is not necessary to consider the submission that the scheme of the 1988 Act, as compared to the 1947 Act, had undergone an important change by reason of the introduction of sub-section (3) in Section 19. (Para 181). *P.V. Narasimha Rao* v. *State (CBI/SPE)*, (1998) 4 SCC 626: 1998 SCC (Cri) 1108: AIR 1998 SC 2120.

Bench Strength 5. Coram: **S.C. Agrawal**[1], **G.N. Ray**[2], *Dr. A.S. Anand*[1], **S.P. Bharucha**[3] and *S. Rajendra Babu*[3], JJ. [Date of decision: 17-4-1998]

(8) Sanctioning authority *(contd.)*

K. Veeraswami v. Union of India, (1991) 3 SCC 655: 1991 SCC (Cri) 734, dissenting view overruled

S.A. Venkataraman v. State, AIR 1958 SC 107: 1958 SCR 1040: (1958) 2 LLJ 1; Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651, relied on

Habibulla Khan v. State of Orissa, 1993 Cri LJ 3604: (1993) 3 Crimes 198, overruled

[2432] — S. 197 — Sanction for prosecution of a Chief Minister — *Decision regarding, whether should be taken by Governor himself or on the basis of Council of Ministers' advice — Concession made by the counsel for the Chief Minister before High Court in favour of Governor's individual decision — High Court holding that Governor alone should take the decision — Concession, being in the interest of justice, not allowed to be resiled from in appeal before Supreme Court — In the circumstances held, advice of Council of Ministers, need not be taken by the Governor for taking the decision — S. 6, Prevention of Corruption Act, 1947 — Constitution of India, Arts. 74 and 163*

In the facts and circumstances of the present case, it is clear that when there is to be a prosecution of the Chief Minister, the Governor would, while determining whether sanction for such prosecution should be granted or not under S. 6 of the Prevention of Corruption Act, as a matter of propriety, necessarily act in his own discretion and not on the advice of the Council of Ministers.

In this case the cause of justice would in no way be advanced by permitting the State to now resile from the concession made before the High Court. On the other hand the concession was made to advance the cause of justice. Therefore, the Supreme Court cannot permit the State to resile from the concession.

The question regarding the High Court's competence to direct the Governor to himself decide the question of sanction under S. 6 of the Prevention of Corruption Act, no doubt is an important question worthy of serious consideration by the Supreme Court under Art. 136; but in the present case, special leave cannot be granted solely in order to consider this question firstly because the criminal revision application itself has been dismissed by the High Court and secondly — and this is important — There was an express concession made in the High Court. *State of Maharashtra* v. *Ramdas Shrinivas Nayak*, (1982) 2 SCC 463: 1982 SCC (Cri) 478: AIR 1982 SC 1249: 1982 Cri LJ 1581.

Bench Strength 2. Coram: **O. Chinnappa Reddy** and *A.P. Sen*, JJ. [Date of decision: 28-7-1982]

[2433] — S. 197 — Authority that may grant sanction — Order sanctioning prosecution — Validity of — *Govt. doctor taking bribe to alter autopsy report — Order of Secretary, Medical Education Department, sanctioning prosecution against appellant Doctor — Objection raised against on the ground that the Secretary was lacking authority to remove the appellant from office — Contention also raised that matter be dealt with by Law and Justice Department — Held, provision under S. 6(1)(b) only states that the State Govt. is the competent authority to pass the order of sanction and does not specify any particular officer in this respect — There being no evidence on record to show that the Governor authorised any other officer to pass the order of sanction, held, Secretary was competent to pass the said order — Secretary's competence to act on behalf of Governor having not been challenged in cross-examination, High Court rightly construed the sanction to be accorded by or on behalf of the Governor — Also pursuing the rules of business framed under Art. 166 of the Constitution, Law and Justice Department not competent to deal with the matter concerned — Besides, the High Court rightly held that the order did not suffer from non-application of mind — Prevention of Corruption Act, 1947, Ss. 6(1)(b), 5(1)(d) r/w S. 5(2) and Penal Code, 1860, S. 161 — Constitution of India, Art. 166* (Paras 11 to 13). *Shivendra Kumar* v. *State of Maharashtra*, (2001) 9 SCC 303: 2002 SCC (Cri) 564: AIR 2000 SC 3079.

Bench Strength 2. Coram: **D.P. Mohapatra** and *R.P. Sethi*, JJ. [Date of decision: 28-9-2000]

[2434] — S. 197 — S. 21 IPC — Minister of a State Government — Held, is a public servant and therefore, entitled to the protection of S. 197(1) — Word "Government" used in S. 197 means the Governor in the case of a Chief Minister or Minister — *General Clauses Act, 1897, S. 3(60) — Constitution of India, Arts. 164 and 167*

The Chief Minister is paid from public exchequer for performing a public duty and is, therefore, a public servant within the meaning of Section 197 of the Code. So also a Minister of a State is paid from its public exchequer. He is paid for doing the duty entrusted to him as a Minister and, therefore, the Minister must also be held to be a public servant. Since he is appointed or dismissed by the Governor, he would fall within the expression "a public servant not removable from his office save by or with the sanction of the Government". By virtue of Section 3(60) of the General Clauses Act, 1897 the expression 'Government' used in Section 197 would mean the Governor in the case of a Chief

Minister or a Minister. Therefore, a Minister would be entitled to the protection of Section 197(1) of the Code. *R. Balakrishna Pillai* v. *State of Kerala*, (1996) 1 SCC 478: 1996 SCC (Cri) 128: AIR 1996 SC 901: (1996) 1 KLT 250: (1996) 1 KLJ 112.

Bench Strength **2**. Coram: *A.M. Ahmadi, C.J.* and *S.C. Sen*, J. [Date of decision: 5-12-1995]

M. Karunanidhi v. Union of India, (1979) 3 SCC 431: 1979 SCC (Cri) 691, followed

Namdeo Kashinath Aher v. H.G. Vartak, AIR 1970 Bom 385: 1970 Cri LJ 1427: 1970 Mah LJ 662, approved

(9) Sanction/Sanction order if proper — Matters to be considered

[2435] — S. 197 — 'Sanction' — Meaning — Sanction implies application of mind. *Mansukhlal Vithaldas Chauhan* v. *State of Gujarat*, (1997) 7 SCC 622: 1997 SCC (L&S) 1784: 1997 SCC (Cri) 1120: AIR 1997 SC 3400: 1997 Cri LJ 4059.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S. Saghir Ahmad**, JJ. [Date of decision: 3-9-1997]

[2436] — S. 197 — Sanction for prosecution — Requisites of a valid sanction — Independent application of mind to the facts of the case as also material and evidence collected during investigation by the authority competent to grant sanction essential — *Sanction issued by an authority on the directions of the High Court, held, was invalid because there was no independent application of mind by that authority — High Court direction had taken away discretion of the authority not to grant sanction and it was left with no choice but to mechanically accord sanction in obedience of the mandamus issued by the High Court — Prevention of Corruption Act, 1947, S. 6 — Prevention of Corruption Act, 1988, S. 19(1)*

A trap against the appellant a Divisional Accountant in an irrigation project in the State was laid on 4-4-1983 on the complaint of partner of a firm having official dealings with the appellant. The appellant was alleged to have been caught accepting bribe. The Secretary, Gujarat Vigilance Commission, wrote to the Government to grant sanction for prosecution but the Government did not immediately grant sanction. Meanwhile, the partner of the complainant firm filed a petition under Article 226, for a direction to the State of Gujarat and others, to grant sanction for prosecution. The High Court directed the Secretary of the Department in which the appellant was working to accord sanction under the relevant provisions of the Prevention of Corruption Act to prosecute the appellant within one month from the receipt of the writ of the Court. In view of these directions of the High Court, sanction was granted and the appellant was prosecuted and convicted under Section 161 IPC and Section 5(2) of the Prevention of Corruption Act. He challenged his conviction on the ground that proceedings before the trial court and the High Court were vitiated because there was no valid sanction for prosecution under Section 6 of the Prevention of Corruption Act, 1947.

Held :

The Central or the State Government or any other authority (depending upon the category of the public servant) has the right to consider the facts of each case and to decide whether that public servant is to be prosecuted or not. Since Section 6 of the Prevention of Corruption Act, 1947, prohibits the Court from taking cognizance of the offences specified therein, it envisages that the Central or the State Government or the other authority, has not only the right to consider the question of grant of sanction, it also has the discretion to grant or not to grant sanction. The sanction is not intended to be, nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. One of the guiding principles for sanctioning authority is to keep in mind the public interest and, therefore, the protection available under Section 6 to a public servant cannot be said to be absolute. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty.

The validity of the sanction would, therefore depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material collected during investigation and placed before it. This fact can also be established by extrinsic evidence by placing relevant files before the Court to show that all relevant facts were considered by the sanctioning authority.

The sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a

(9) Sanction/Sanction order if proper — Matters to be considered *(contd.)*

decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution.

By issuing a direction to the Secretary (Respondent 7) to grant sanction, the High Court closed all other alternatives to the Secretary and compelled him to proceed only in one direction and to act only in one way, namely, to sanction the appellant's prosecution. The Secretary was not allowed to consider whether it would be feasible to prosecute the appellant; whether the complaint of illegal gratification which was sought to be supported by "trap" was false, and whether the prosecution would be vexatious particularly as it was in the knowledge of the Government that the complainant-firm had been black-listed once and there was a demand for some amount to be paid to the Government by the firm in connection with the contract. The discretion not to sanction the prosecution was thus taken away by the High Court.

The High Court put the Secretary in a piquant situation. While the Act gave him the discretion to sanction or not to sanction the appellant's prosecution, the judgment gave him no choice except to sanction the prosecution as any other decision would have exposed him to an action in contempt for not obeying the mandamus issued by the High Court. The High Court assumed the role of the sanctioning authority, considered the whole matter, formed an opinion that it was a fit case in which sanction should be granted and because it itself could not grant sanction, it directed the Secretary to sanction the prosecution so that the sanction order may be treated to be an order passed by the Secretary and not that of the High Court. This is a classic case where the brand name is changed to give a new colour to the package without changing the contents thereof. In these circumstances, the sanction order cannot but be held to be wholly erroneous having been passed mechanically at the instance of the High Court. *Mansukhlal Vithaldas Chauhan* v. *State of Gujarat*, (1997) 7 SCC 622: 1997 SCC (L&S) 1784: 1997 SCC (Cri) 1120: AIR 1997 SC 3400: 1997 Cri LJ 4059.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S. Saghir Ahmad**, JJ. [Date of decision: 3-9-1997]

[2437] — **S. 197 — Sanction power — Nature and scope — Matters to be considered for valid exercise of the same — Grant of sanction, by reviewing an earlier sanction order — Permissibility** — *Held, is permissible but serious application of mind on part of the authority concerned as to existence of fresh materials is imperative — Reviewing authority granting sanction (after a change in Government) without any fresh/new material, held, was improper — Prevention of Corruption Act, 1988, S. 19 — CrPC, 1973 — S. 197*

An FIR was lodged against the respondent under Sections 7 and 13(2), PC Act. By an order dated 15-12-2002, the competent authority refused to grant sanction for prosecution. The matter, however, was placed before the competent authority once again and on or about 14-9-2004 sanction to prosecute the respondent was granted. The High Court by the impugned order dismissed a writ petition thereagainst, holding that the State has no power to review an order granting sanction having exhausted its jurisdiction once.

Dismissing the appeal,

Held :

The respondent is a public servant. The Governor of the State is his appointing authority. He is, therefore, not removable from his office save by and with the sanction of the Government and in that view of the matter if he is accused in any offence alleged to have been committed by him while acting or purporting to act in discharging of his official duty, grant of prior sanction is imperative in character in terms of Section 197 CrPC. (Para 5)

Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction under Section 197, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. (Para 6)

Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and consideration of all the material facts and evidence collected during investigation and placed before it. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. While passing an order for grant of sanction, serious application of mind on the part of the authority concerned is imperative. (Paras 7 and 6)

In the present case there is no application to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise. Such application of mind does not appear from the order of sanction. The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. (Paras 21 and 7)

Only when a new Government came in, was a request made for reconsideration of the earlier order. It is not a case where fresh materials were placed before the sanctioning authority. The Government sent nine letters for obtaining the clarifications regarding false implications of the respondent, which were not replied to. If the clarification sought for by the Hon'ble Minister had been supplied, the same should have formed a ground for reconsideration of the order. Only a communication was received from the Director, Vigilance Bureau, which according to the High Court, was not a new material. (Paras 14 to 20 and 8). *State of Punjab* v. *Mohd. Iqbal Bhatti*, (2009) 17 SCC 92: 2010 Cri LJ 1436: (2010) 4 CTC 458 (SC): (2009) 4 CHN 65 (SC): (2009) 82 AIC 114 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 31-7-2009]

[2438] — S. 197 — Sanction for prosecution — Sanction order — Issuing authority — Conflicting evidence regarding validity of the order — *Under-Secretary who was also holding additional charge of Deputy Secretary at the material time claiming to have given the sanction — Secretary of the same Department also deposing that he had granted sanction for prosecution though signature on the order was of the said Under-Secretary as correspondence was usually done by him after passing of orders on file — On the date of issue of sanction, the relevant file was in the Chief Minister's office — It was therefore not clear how the sanction was issued when the relevant file was not available to the Secretary and the Under-Secretary — In view of the inconsistency of facts, the sanction, held, was void ab initio — Prevention of Corruption Act, 1947, S. 6(1) — Prevention of Corruption Act, 1988, S. 19(1). Mansukhlal Vithaldas Chauhan* v. *State of Gujarat*, (1997) 7 SCC 622: 1997 SCC (L&S) 1784: 1997 SCC (Cri) 1120: AIR 1997 SC 3400: 1997 Cri LJ 4059.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S. Saghir Ahmad**, JJ. [Date of decision: 3-9-1997]

[2439] — S. 197 — Policy and object underlying provisions for grant of sanction — Protection not absolute — *Sanctioning authority must keep in mind the public interest and the interest of law while deciding the question of grant of sanction. State* v. *Krishanchand Khushalchand Jagtiani*, (1996) 4 SCC 472: 1996 SCC (Cri) 755: AIR 1996 SC 1910.

Bench Strength 2. Coram: **B.P. Jeevan Reddy** and *K.S. Paripoornan*, JJ. [Date of decision: 25-4-1996]

[2440] — S. 197 — Grant or refusal of sanction — Proper mode and manner for — *Order of, held, must be preceded by application of mind on the part of the appropriate authority — If the complainant or the accused can demonstrate such an order to be suffering from non-application of mind, the same may be called in question before a competent court of law — Prevention of Corruption Act, 1947, S. 6 — Prevention of Corruption Act, 1988 — S. 19* (Para 14). *Romesh Lal Jain* v. *Naginder Singh Rana*, (2006) 1 SCC 294: (2006) 2 SCC (Cri) 593: AIR 2006 SC 336: 2005 Cri LJ 5068: (2005) 36 AIC 108 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

[2441] — S. 197 — Sanction for prosecution of public servant — Application of mind — Order granting sanction — *An administrative act and hence predecisional opportunity not required to be afforded to the public servant — But there must be proper application of mind to the existence of prima facie evidence of commission of the offence — Facts constituting the offence must be shown on the face of the sanction order — Presumption under S. 114(e) of Evidence Act is raised in favour of an order passed on proper application of mind — Burden lies on accused to rebut the presumption — If presumption is rebutted onus shifts on the prosecution to prove that the sanction was accorded on proper application of mind by the appropriate authority — Held on facts, sanction granted considering case diary, not vitiated by non-application of mind*

Per Kuldip Singh, J.

In the present case the investigation was complete on the date of sanction and police reports had been filed before the Magistrate. The sanctioning authority has specifically mentioned in the sanction order that the papers and the case diary were taken into consideration before granting the sanction. Case diary is a complete record of the police investigation. It contains total material in support or otherwise of the allegations. The sanctioning authority having taken the case diary into consideration before the grant of sanction it cannot be said that there was non-application of mind on the part of the sanctioning authority. It is nobody's case that the averment in the sanction order to the effect that case diary was taken into consideration by the competent authority, is incorrect.

(9) Sanction/Sanction order if proper — Matters to be considered *(contd.)*

The findings of the High Court that no offence is made out against the respondents under the Essential Commodities Act is also based on the appreciation of 'the annexures' and other disputed facts on the record and as such is untenable for the reasons already indicated.

Per K. Ramaswamy, J. (supplementing)

Before granting sanction the authority or the appropriate Government must have before it the necessary report and the material facts which prima facie establish the commission of offence charged for and that the appropriate Government would apply their mind to those facts. The order of sanction is only an administrative act and not a quasi-judicial one and does not involve any lis. Therefore, the order of sanction need not contain detailed reasons in support thereof. But the basic facts that constitute the offence must be apparent on the impugned order and the record must bear out the reasons in that regard. The question of giving an opportunity to the public servant at that stage does not arise. Proper application of mind to the existence of prima facie evidence of the commission of the offence is only a precondition to grant or refuse to grant sanction. When the Government accords sanction, S. 114(*e*) of the Evidence Act raises presumption that the official acts have been regularly performed. The burden is heavier on the accused to establish the contra to rebut that statutory presumption. Once that is done then it is the duty of the prosecution to produce necessary record to establish that after application of mind and consideration thereof to the subject the grant or refusal to grant sanction was made by the appropriate authority. *State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192: AIR 1991 SC 1260.

Bench Strength 2. Coram: **Kuldip Singh**[1] and **K. Ramaswamy**[2], JJ. [Date of decision: 2-4-1991]

[2442] — S. 197 — Sanction for prosecution — Validity — Held, valid — *Sanction to prosecute, alleged to be illegal for non-application of mind — Held on facts, sanction order has been issued in accordance with law — Prevention of Corruption Act, 1988, S. 19*

It would not be possible to conclude that the sanction order in the present case was not valid. A perusal of sanction order would show that the sanctioning authority has adverted to all the necessary facts which have been actually proved by the prosecution in the trial. Upon examination of the material facts, the sanctioning authority has certified that it is the authority competent to remove the appellant from the office. It is specifically stated that the statements of the witnesses have been duly examined. Sanction order also states that the other materials such as copy of the FIR as well as the other official documents such as the different mahazars were carefully examined. Upon examination of the statements of the witnesses as also the material on record, the sanctioning authority has duly recorded its satisfaction that the appellant should be prosecuted for the offences, as noticed above. Hence, there is no merit in the submissions of the accused that the sanctioning order to prosecute him was not legal. (Paras 12 to 16). *Kootha Perumal* v. *State*, (2011) 1 SCC 491.

Bench Strength 2. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 15-12-2010]

Jaswant Singh v. State of Punjab, AIR 1958 SC 124: 1958 Cri LJ 265, relied on

Basdeo Agarwala v. King Emperor, (1945) 7 FCR 93; Gokulchand Dwarkadas Morarka v. R., (1947-48) 75 IA 30; Yusofalli Mulla Noorbhoy v. R., (1948-49) 76 IA 158, referred to

[2443] — S. 197 — Non-application of mind and grant of sanction mechanically by sanctioning authority — Basis of acquittal by High Court — *High Court deeply influenced in its decision by the fact that a model sanction order was enclosed with the record sent to the sanctioning authority — Held, acquittal not justified — There was no infirmity in the order granting sanction — Prevention of Corruption Act, 1947, Ss. 5(1)(d) and 5(2) read with S. 161 IPC*. *State of T.N.* v. *Damodaran*, 1993 Supp (1) SCC 221: 1993 SCC (Cri) 272: AIR 1992 SC 563.

Bench Strength 2. Coram: *Kuldip Singh* and *Yogeshwar Dayal*, JJ. [Date of decision: 29-11-1991]

(10) Review of Sanction order

See also Section 197, '(9) Sanction/Sanction order if proper — Matters to be considered', above and

'(17) Judicial review of/interference with sanction', below

[2444] — S. 197 — Sanction power — Nature and scope — Matters to be considered for valid exercise of the same — Grant of sanction, by reviewing an earlier sanction order — Permissibility — *Held, is permissible but serious application of mind on part of the authority concerned as to existence of fresh materials is imperative — Reviewing authority granting sanction (after a change in Government) without any fresh/new material, held, was improper — Prevention of Corruption Act, 1988, S. 19 — CrPC, 1973 — S. 197*. *State of Punjab* v. *Mohd. Iqbal Bhatti*, (2009) 17 SCC 92: 2010 Cri LJ 1436: (2010) 4 CTC 458: (2009) 4 CHN 65: (2009) 82 AIC 114 .

Bench Strength 2. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 31-7-2009]

(11) Hearing/Disclosure of inculpatory material to accused before sanction

[2445] — S. 197 — Sanction for prosecution — Sanctioning authority not obliged to grant an opportunity of giving an explanation and hearing to the accused — *Prevention of Corruption Act, 1947 — S. 6* (Paras 6 and 7). *State Anti-Corruption Bureau, Hyderabad* v. *P. Suryaprakasam*, 1999 SCC (Cri) 373.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 2-5-1996]

State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; State of Maharashtra v. Ishwar Piraji Kalpatri, (1996) 1 SCC 542: 1996 SCC (Cri) 150; K. Veeraswami v. Union of India, (1991) 3 SCC 655: 1991 SCC (Cri) 734, followed

[2446] — S. 197 — Sanction for prosecution — Hearing — Sanctioning authority not obliged to grant an opportunity of giving an explanation and hearing to the accused — *Prevention of Corruption Act, 1947 — S. 6* (Paras 6 and 7) . *State Anti-Corruption Bureau* v. *P. Suryaprakasam*, (2008) 14 SCC 13.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 2-5-1996]

State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; State of Maharashtra v. Ishwar Piraji Kalpatri, (1996) 1 SCC 542: 1996 SCC (Cri) 150; K. Veeraswami v. Union of India, (1991) 3 SCC 655: 1991 SCC (Cri) 734, followed

[2447] — Ss. 197, 154 and 202 — Opportunity of hearing not required at the stage of sanction for prosecution, or filing of FIR or enquiry under S. 202 — *Natural justice — Hearing*

Section 5 deals only with the decision taken by the Central Govt. to prosecute and until that decision is notified, the prosecution does not start, and the question of an accused being heard at that stage, therefore, does not arise at all.

In cases where the laws requires sanction to be given by the appointing authority before a prosecution can be launched against a government servant, it has never been suggested that the accused must be heard before sanction is accorded. The question of sanction arises at a point of time when there is no danger to the liberty of the subject and the accused at that stage is not in the picture at all. It is only after sanction is accorded that an accused is brought to trial or proceedings are started against him when he is to be heard and can challenge the validity of the sanction. Similarly, when a first information report is filed before a police officer, the law does not require that the officer must hear the accused before recording it or submitting a charge-sheet to the court. Where a complaint is filed before a Magistrate who chooses to hold an inquiry under S. 202 Criminal Procedure Code, 1973 before issuing process or summons to the accused, the accused has got no locus to appear and file his objections to the inquiry at that stage. The right of the accused to be heard comes into existence only when an order summoning the accused is passed by the magistrate under S. 204 of the Code. *V.C. Shukla* v. *State (Delhi Admn.)*, 1980 Supp SCC 249: 1980 SCC (Cri) 849: AIR 1980 SC 1382 (Judgmen: 1980 Cri LJ 965.

Bench Strength **3**. Coram: **S. Murtaza Fazal Ali**, *P.S. Kailasam* and *A.D. Koshal*, JJ. [Date of decision: 11-4-1980]

[2448] — Ss. 197, 207, 169 and 170 — Challenge to sanction for prosecution — Privilege in respect of files relating to grant of sanction and notings of Minister in respect of grant of sanction, until evidence had been led in trial — Power of determination of, by court — *Propriety of permitting inspection of said materials on ground that the same had been adverted to in the affidavit filed by the investigating agency, and hence accused had therefor acquired the right of inspection in line with the principle under Or. 11 R. 15 Civil Procedure Code — Freedom of Information Act, 2002, S. 8 — Exemption from disclosure of information — Applicability of S. 8(1)(b) — CPC, 1908, Or. 11 R. 15 — Evidence Act, 1872, Ss. 123 and 124*

Disposing of the appeals in the terms below,

Held :

Challenges to sanction for prosecution and maintainability of the writ petition were pending consideration before the High Court. In remitting the matter to the High Court the Supreme Court had requested the High Court to consider the question of maintainability of the writ petition on the same date itself. However, in spite of the specific direction, the High Court failed to comply with it. Accordingly, the order of the High Court dated 21-2-2007 whereby the High Court directed inspection of records of the files relating to the grant of sanction for prosecution to the accused, Respondent 1 prior to the prosecution leading evidence in the trial court and granted inspection of the notings of the Finance Minister in respect of the grant of sanction to the accused also, is set aside. The High Court had permitted inspection on the ground that the materials in question had been adverted to in the affidavit filed by the appellant CBI. (Paras 10, 11, 2 and 4)

Since the writ petition is pending, the High Court is requested to peruse these notings and the observations made by the Finance Minister and thereafter issue appropriate directions to the parties to the action. Since the challenge is pending consideration before the High Court, it is requested to take up both the issues of maintainability and the validity of sanction for prosecution simultaneously and decide the same on merits and in accordance with law and after affording opportunity to the parties to the action, CBI is directed to place the notings and observations made by the Finance Minister in a sealed cover before the Judges of the High Court who hear the writ petition. Respondent 1 will have no right of inspection till the entire file is perused by the High Court and orders issued thereupon. (Paras 12 to 14). *CBI* v. *Ashok Kumar Aggarwal*, (2007) 10 SCC 736: (2007) 52 AIC 3 (SC).

Bench Strength **2**. Coram: **Dr. Ar. Lakshmanan** and *Altamas Kabir*, JJ. [Date of decision: 15-3-2007]

(12) Relative scope vis-à-vis S. 6, PC Act, 1947

See also Section 197, '(3) Retirement/Change in post of public servant, etc. — Effect on protection under S. 197', above

[2449] — S. 197 — Accused ceasing to be a public servant on the date of taking cognizance of offences under the PC Act, 1947 — Sanction not necessary — *Prevention of Corruption Act, 1947, S. 6*

An accused facing prosecution for offences under the PC Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. (Para 6). *State of Kerala* v. *V. Padmanabhan Nair*, (1999) 5 SCC 690: 1999 SCC (Cri) 1031: AIR 1999 SC 2405: 1999 Cri LJ 3696: (1999) 4 LLN 77.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 14-7-1999]

S.A. Venkataraman v. State, AIR 1958 SC 107: 1958 SCR 1040; C.R. Bansi v. State of Maharashtra, (1970) 3 SCC 537: 1970 SCC (Cri) 143; Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411: 1998 SCC (Cri) 1455, followed

[2450] — S. 197 — Precondition for sanction under S. 6, PC Act, 1947 — *Held, accused must continue to be a public servant on the date of taking cognizance of offence by court and not on the date of commission of the offence*

The relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by a public servant as required by S. 6 is the date on which the court is called upon to take cognizance of the offence of which he is accused. If, therefore, when the offence is alleged to have been committed, the accused was a public servant but by the time the court is called upon to take cognizance of the offence committed by him as public servant, he has ceased to be a public servant, no sanction would be necessary for taking cognizance of the offence against him. This approach is in accord with the policy underlying S. 6 in that a public servant is not to be exposed to harassment of a frivolous or speculative prosecution. *R.S. Nayak* v. *A.R. Antulay*, (1984) 2 SCC 183: 1984 SCC (Cri) 172: AIR 1984 SC 684: 1984 Cri LJ 613: (1984) 1 SLR 619: (1984) 86 Bom LR 365.

Bench Strength **5**. Coram: **D.A. Desai**, *R.S. Pathak, O. Chinnappa Reddy, A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

See also *K. Karunakaran v. State of Kerala, (2007) 1 SCC 59; Lalu Prasad v. State of Bihar, (2007) 1 SCC 49; Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1; Balakrishnan Ravi Menon v. Union of India, (2007) 1 SCC 45*

[2451] — S. 197 — Unavailability of protection of S. 6 of PC Act, 1947 or 197 CrPC — Effect — *Held, the effect is that the accused ceases to be a public servant and loses his protective cover under Section 6 of the PC Act, 1947 or Section 197 CrPC and is open to prosecution without sanction having to be obtained — Also, the Special Judge under the W.B. Special Courts Act, 1949, would cease to have jurisdiction — W.B. Criminal Law Amendment (Special Courts) Act, 1949 (21 of 1949), S. 4 and Paras 2 and 3 of Schedule*

It is no doubt true that the policy under Section 6 of the PC Act, 1947 is that there should not be unnecessary harassment of a public servant. But if the accused ceases to be a public servant and loses his protective cover under Section 6 of the PC Act, 1947 or Section 197 CrPC and is open to prosecution without sanction having to be obtained, it would also necessarily mean that the Special Judge under the Special Courts Act, 1949, would cease to have jurisdiction over the accused in terms of Section 4 of the Special Courts Act, 1949. (Para 27). *State of W.B.* v. *Shyamadas Banerjee*, (2008) 9 SCC 45: (2008) 3 SCC (Cri) 671: 2008 Cri LJ 4592.

Bench Strength **2**. Coram: **Altamas Kabir** and *Markandey Katju*, JJ. [Date of decision: 3-9-2008]

(13) Relative scope vis-à-vis S. 19, PC Act, 1988

See also Section 197, '(3) Retirement/Change in post of public servant, etc. — Effect on protection under S. 197', above

[2452] — **S. 197 — Grant of sanction under S. 19, PC Act and S. 197 CrPC — Distinction between** — *Held, in cases covered under the PC Act, 1988 sanction is of automatic nature and thus factual aspects are of little or no consequence — Conversely, in a case relatable to S. 197 CrPC, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus to the discharge of official duties — Prevention of Corruption Act, 1988, S. 19*

Section 197 CrPC and Section 19 of the Prevention of Corruption Act, 1988 operate in conceptually different fields. In cases covered under the 1988 Act, in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 CrPC, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus to the discharge of duties. Position is not so in case of Section 19 of the 1988 Act. (Para 10). *Paul Varghese* v. *State of Kerala*, (2007) 14 SCC 783: AIR 2007 SC 2618: (2007) 2 KLT 529.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-4-2007]

Lalu Prasad v. State of Bihar, (2007) 1 SCC 49: (2007) 1 SCC (Cri) 241, relied on

[2453] — **S. 197 — Contrasted with S. 19 of Prevention of Corruption Act, 1988 — Sanction for prosecution where accused has ceased to be public servant — Need for** — *Held, though not necessary under S. 19 of the 1988 Act, it is necessary under S. 197 of the Code* (Para 55). *State of M.P.* v. *Sheetla Sahai*, (2009) 8 SCC 617: (2009) 3 SCC (Cri) 901.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 4-8-2009]

[2454] — **S. 197 — Position obtaining under, in respect of those public servants not holding the same post/office — Contrasted with position under S. 19 — PC Act, 1988 — Sanction for prosecution in case public servant is no longer holding the same post/office during the currency of which the alleged offence was committed — Need for — Significance of the word "is" in S. 19(1) — Position obtaining under S. 19 contrasted with that obtaining under S. 197 CrPC in this regard** — *Object of immunity conferred under S. 19 — Held, following* A.R. Antulay, *(1984) 2 SCC 183, there is no need to obtain sanction for prosecution of a person, alleged to have committed offence(s) in the capacity of a public servant, where cognizance of such offence(s) is taken after he had already ceased to hold the office in question, though he may continue to be a public servant in any other capacity at the time of taking cognizance — S. 19(1) is time and offence related — In present case, it being found that public servant in question had ceased to be a public servant since he had ceased to hold the office where the alleged offence was committed, question as to non-application of mind, etc. in grant of sanction had become academic — Prevention of Corruption Act, 1988, S. 19*

The relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by a public servant as required by Section 19 is the date on which the court is called upon to take cognizance of the offence of which he is accused. (Para 16)

The use of the expression "is" in Section 19 of the Prevention of Corruption Act, 1988 ("the Act") vis-à-vis the expression "is" or "was" used in Section 197 CrPC, 1973 is indicative of the legislative intent. Though certain changes were incorporated while enacting Section 197 CrPC no corresponding change was made in the 1988 Act. (Paras 10 to 15)

The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity. So where the act performed under the colour of office is for the benefit of the officer or for his own pleasure Section 19(1) will come in. Therefore, Section 19(1) is time and offence related. (Paras 20 and 21)

It was contended that even if the offending act is committed by a public servant in his former capacity and even if such a public servant has not abused his subsequent office still such a public servant needs protection of Section 19(1) of the Act throughout, as long as he continues to be in public employment, and that the judgment of the Supreme Court in *R.S. Nayak case*, (1984) 2 SCC 183, holding that the subsequent position of the public servant to be unprotected, was erroneous. This contention is clearly untenable as Section 19(1) of the Act is time and offence related. (Paras 23 and 24)

(13) Relative scope vis-à-vis S. 19, PC Act, 1988 *(contd.)*

Protection to public servants under Section 19(1) has to be confined to the time-related criminal acts performed under the colour or authority for public servant's own pleasure or benefit as categorised under Sections 7, 10, 11, 13 and 15. This is the principle behind the test propounded by the Supreme Court, namely, the test of abuse of office. (Para 26)

So far as the question about the non-application of mind in the sanction or absence of sanction in the present case is concerned, this has been answered in the first question i.e. where the public servant has ceased to be a public servant since he has ceased to hold the office where the alleged offence is supposed to have taken place, the other questions really become academic. (Para 39)

The five clauses contained in Section 13(1) of the 1988 Act represent different types of infraction under which the offence can be said to have been committed. If there is material to show that the alleged offence falls in any of the aforesaid categories, it is not necessary at the stage of filing of the charge-sheet to specify as to which particular clause covers the alleged offence. It is the stand of the respondent State that clauses (*a*), (*b*), (*d*) and (*e*) are all attracted and not clause (*c*). Therefore, the sanctioning authority has rightly referred only to Section 13(1) and that does not make the sanction order vulnerable. (Para 46). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193: AIR 2007 SC 1274: (2007) 51 AIC 623 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183: 1984 SCC (Cri) 172; S.A. Venkataraman v. State, AIR 1958 SC 107: 1958 Cri LJ 254; P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626: 1998 SCC (Cri) 1108, followed

C.R. Bansi v. State of Maharashtra, (1970) 3 SCC 537: 1971 SCC (Cri) 143; K.S. Dharmadatan v. Central Govt., (1979) 4 SCC 204: 1979 SCC (Cri) 958; Habibulla Khan v. State of Orissa, (1995) 2 SCC 437: 1995 SCC (Cri) 382; Shreekantiah Ramayya Munipalli v. State of Bombay, (1955) 1 SCR 1177: AIR 1955 SC 287: 1955 Cri LJ 857; Balakrishnan Ravi Menon v. Union of India, (2007) 1 SCC 45; Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411: 1998 SCC (Cri) 1455; K.S. Dharmadatan v. Central Govt., (1979) 4 SCC 204: 1979 SCC (Cri) 1958; W. Devis & Sons Ltd. v. Atkins, 1977 ICR 662: (1977) 3 All ER 40, relied on

[2455] — S. 197 — Sanction for prosecution under S. 19, PC Act, 1988 — When not required — *Order of compulsory retirement passed against appellant on 10-1-1989 — Order set aside by CAT — Interim order passed by Supreme Court staying order of CAT — During operation of the interim stay, prosecution launched against appellant for offences under S. 13(1)(d) r/w S. 13(2) of the Prevention of Corruption Act, 1988 and S. 120-B IPC — Order of CAT ultimately set aside by Supreme Court on 11-1-1994 — Petition filed by appellant before Special Judge claiming that in absence of sanction under S. 19, prosecution could not be proceeded with — Petition dismissed and revision thereagainst also dismissed — Contention raised that effect of interim stay granted by Supreme Court was not that the order of CAT got quashed but was that it remained only inoperative and as such appellant continued to be in service requiring sanction for his prosecution — Held, contention not acceptable — As the order of CAT was not operative, order of compulsory retirement remained in force at the time of launching of prosecution and therefore sanction under S. 19 not required — Moreover, Supreme Court having quashed the order of CAT holding that appellant had been compulsorily retired w.e.f. 10-1-1989, on the day prosecution was launched no sanction was required — Question whether sanction under S. 197 CrPC would be required or not would depend upon facts and circumstances of the case, hence left open* (Paras 4 to 9). *V.P. Sheth* v. *State of M.P.*, (2004) 13 SCC 767.

Bench Strength 2. Coram: *S.N. Variava* and *B.N. Agrawal*, JJ. [Date of decision: 14-2-2003]

Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn. CSI Cinod Secretariat, (1992) 3 SCC 1, relied on

[2456] — S. 197 — Sanction for prosecution of public servant — When not necessary under PC Act, 1988 — *Held, not required when the accused public servant had already retired by the time the court was called upon to take cognizance of the offence — Ranbir Penal Code, 1932 (1989 Smvt.), Ss. 161, 164, 165 and 167-A — J&K Public Servants Prevention of Corruption Act, 1975', Ss. 6, 5(2) and 5(3)* (Para 4). *State of J&K* v. *Charan Dass Puri*, (1999) 5 SCC 738: 1999 SCC (Cri) 1050.

Bench Strength 2. Coram: *G.T Nanavati* and *S.N. Phukan*, JJ. [Date of decision: 29-4-1999]

Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411: 1998 SCC (Cri) 1455, followed

R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128, distinguished

[2457] — S. 197 — Sanction for prosecution in relation to offences under PC Act and IPC — When sanction accorded amounts to a "composite sanction" — Test to determine — *Held, for the sanction order to amount to a composite order there must be an immediate or proximate connection between PC Act and IPC offences for which accused is charged — The test to be applied in such a case would be whether the offences under IPC are also required to be proved in relation to the offences under the PC Act — Prevention of Corruption Act, 1947, S. 6 — Prevention of Corruption Act, 1988 — S. 19*

The accused *R* was charged with offences under Sections 409, 167, 218, 419, 420, 465, 463 and 471 IPC and under Section 13(*d*), Prevention of Corruption Act, 1988.

Held :

It is not in dispute that the Deputy Inspector General of Police was the competent authority for grant of sanction as against the respondent *R* in terms of the provisions of the 1988 Act. The State, thus, could not have interfered with that part of the said order whereby requisite sanction had been granted under the 1988 Act. The contention to the effect that the order of sanction passed by the Deputy Inspector General of Police was a composite one and, thus, the State could cancel the same, is unacceptable. Offences under the Penal Code and offences under the 1988 Act are different and distinct. On the face of the allegations made against R, they do not have any immediate or proximate connection. The test which is required to be applied in such a case is as to whether the offences for one reason or the other punishable under the Penal Code are also required to be proved in relation to offences punishable under the 1988 Act. If the answer to the said question is rendered in the negative, the same test can be applied in relation to a matter of sanction. (Para 12). *Romesh Lal Jain* v. *Naginder Singh Rana*, (2006) 1 SCC 294: (2006) 2 SCC (Cri) 593: AIR 2006 SC 336: 2005 Cri LJ 5068: (2005) 36 AIC 108 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

[2458] — S. 197 — Offence committed by a public servant — *He is liable to be prosecuted under the PC Act, 1988 even if he has ceased to be a public servant at the time of the trial or during pendency of the prosecution — However no sanction is required if he has ceased to be a public servant at the time of taking cognizance — Merely because under S. 197 of new CrPC requirement of sanction is made applicable to former public servants also it cannot be inferred that no prosecution can be launched against a public servant who ceases to be so subsequently — Prevention of Corruption Act, 1988, Ss. 19, 13(2) and 13(1)(e)*

A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 19 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time, the court can take cognizance of the offence without any such sanction. In other words, the public servant who committed the offence while he was a public servant, is liable to be prosecuted whether he continues in office or not at the time of trial or during the pendency of the prosecution.

There is no indication anywhere in the provisions of the Act that an offence committed by a public servant under the Act would vanish off from penal liability at the moment he demits his office as public servant. His being a public servant is necessary when he commits the offence in order to make him liable under the Act. He cannot commit any such offence after he demits his office.

If the interpretation now sought to be placed by the appellant is accepted, it would lead to the absurd position that any public servant could commit the offences under the Act soon before retiring or demitting his office and thus avert any prosecution for it or that when a public servant is prosecuted for an offence under the Act, he can secure an escape by protracting the trial till the date of superannuation.

In Section 197 of the new CrPC the necessity for previous sanction is made applicable to former public servants also by using the words "when any person who is *or was* a public servant". In spite of bringing such a significant change to Section 197 of the Code in 1973, Parliament was circumspect enough not to change the wording in Section 19 of the Act which deals with sanction. The reason is obvious. The sanction contemplated in Section 197 of the Code concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the PC Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC Act was materially imported in the new PC Act, 1988 without any change in spite of the change made in Section 197 of the Code. *Kalicharan Mahapatra* v. *State of Orissa*, (1998) 6 SCC 411: 1998 SCC (Cri) 1455: AIR 1998 SC 2595.

Bench Strength 2. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas**, J. [Date of decision: 4-8-1998]

[2459] — S. 197 — Grant of sanction under S. 19, PC Act, 1988 — Nature of exercise involved — Position contrasted with that obtaining under S. 197 CrPC — *Held, in cases covered under S. 19, PC Act, 1988 sanction is of automatic nature and thus factual aspects are of little or no consequence — Conversely, in a case relatable to S. 197 CrPC, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus with the discharge of official duties — Reason therefor, explained — Prevention of Corruption Act, 1988, S. 19*

(13) Relative scope vis-à-vis S. 19, PC Act, 1988 *(contd.)*

Section 197 CrPC and Section 19 of the PC Act, 1988 operate in conceptually different fields. In cases covered under the PC Act, 1988 in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 CrPC, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus with the discharge of duties. Position is not so in case of Section 19 of the PC Act, 1988. The reason is obvious. (Para 10). *Lalu Prasad* v. *State of Bihar*, (2007) 1 SCC 49: (2007) 1 SCC (Cri) 241: (2007) 1 KLT 47: (2007) 50 AIC 107 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[2460] — S. 197 — Grant of sanction under S. 197 CrPC and S. 19, Prevention of Corruption Act, 1988 — Distinction between the two — *Held, the former is to be granted by the State whereas the latter can be granted also by the authorities specified in S. 19 — Prevention of Corruption Act, 1947, S. 6 — Prevention of Corruption Act, 1988, S. 19* (Para 11). *Romesh Lal Jain* v. *Naginder Singh Rana*, (2006) 1 SCC 294: (2006) 2 SCC (Cri) 593: AIR 2006 SC 336: 2005 Cri LJ 5068: (2005) 36 AIC 108 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

(14) Relative scope vis-à-vis other provisions/statutes

[2461] — Ss. 197 and 132 — Difference between sanction under the two provisions

Six significant points of difference need to be highlighted:

(1) The two sanctions are addressed to altogether different persons. While sanction under S. 132 is addressed to the intending complainant, sanction under S. 197 is addressed to the Magistrate presiding over a court.

(2) The two sanctions serve two altogether different purposes. While the sanction under S. 132 clothes the intending complainant with authority to institute a complaint and set the machinery of the criminal court in action, the sanction under S. 197 clothes the court with the jurisdiction to take cognizance of the offence. Without the former, the intending complainant cannot trigger the proceedings, without the latter the Magistrate cannot have seisin over the matter or act in the matter.

(3) The absence of sanction in each case visits different persons with different consequences. absence of the former disables the intending complainant whereas absence of the latter disables the court.

(4) The disability operates in two different spheres. Want of sanction under S. 132 renders the complaint invalid. Want of sanction under S. 197 vitiates all the proceedings in the court. For want of the former, the complainant cannot complain, for want of the latter the court cannot try the case.

(5) The sanctioning authority has to address itself to different questions. In regard to a sanction under S. 132, CrPC the question to be answered is whether the intending complainant is a suitable person to be authorized for prosecuting the matter in good faith. In regard to the sanction under S. 197 the question to be answered is which particular court should be empowered to try the case. So also in granting sanction under S. 197 the sanctioning authority has to consider whether or not to exercise the powers under S. 197(4) to specify "the person by whom, the manner in which, and the offence or offences for which" the concerned public servant should be tried and "the court before which the trial is to be held". The authority seized of the matter in the context of sanction under S. 132 does not have to address himself to these questions and in fact has no competence in this behalf.

(6) One is an authority to an individual to '*prosecute*' the alleged offender, the other is an authority to '*try*' the alleged offender.

Therefore, a sanction under S. 132 is no substitute for a sanction under S. 197. *Ram Kumar* v. *State of Haryana*, (1987) 1 SCC 476: 1987 SCC (Cri) 190: AIR 1987 SC 735: 1987 Cri LJ 703.

Bench Strength 2. Coram: **M.P. Thakkar** and *B.C. Ray*, JJ. [Date of decision: 13-1-1987]

[2462] — S. 197 — Cognizance by Designated TADA Court — Precondition — Sanction of Inspector General of Police or Commissioner of Police — *Designated Court under TADA taking cognizance of offence under TADA and convicting the appellant for offences under S. 5 of Explosive Substances Act, 1908 without obtaining previous sanction under S. 20-A(2) — Held, in such situation the Designated Court had no jurisdiction to take cognizance of an offence or to proceed with the trial — TADA (Prevention) Act, 1987, S. 20-A(2)*

In absence of previous sanction required by Section 20-A(2) of TADA the Designated Court had no jurisdiction to take cognizance of the offence or to proceed with the trial of the appellant under TADA. The important feature which is to be noted is that the prosecution did not obtain sanction of the Inspector General of Police or of the Commissioner of Police for prosecution of the appellant under TADA at any stage as is required by Section 20-A(2) of TADA. The trial of the appellant before the Designated Court proceeded without such sanction. (Para 8). *Harpal Singh* v. *State of Punjab*, (2007) 13 SCC 387: AIR 2008 SC 743.

Bench Strength 2. Coram: **G.P. Mathur** and *G.S. Singhvi*, JJ. [Date of decision: 4-12-2007]

Rambhai Nathabhai Gadhvi v. State of Gujarat, (1997) 7 SCC 744: 1997 SCC (Cri) 1169, relied on

[2463] — S. 197 — **Designated Court has no jurisdiction to take cognizance of an offence without a valid sanction** — *Sanction is granted to the prosecuting agency to prosecute a particular person under TADA and not to the Designated Court to take cognizance of an offence — TADA, 1987, S. 20-A(2)*

Taking cognizance is the act which the Designated Court has to perform and granting sanction is an act which the sanctioning authority has to perform. Latter is a condition precedent for the former. Sanction contemplated in the sub-section is the permission to prosecute a particular person for the offence or offences under TADA. Sanction is not granted to the Designated Court to take cognizance of the offence, but it is granted to the prosecuting agency to approach the court concerned for enabling it to take cognizance of the offence and to proceed to trial against the persons arraigned in the report. Thus a valid sanction is sine qua non for enabling the prosecuting agency to approach the court in order to enable the court to take cognizance of the offence under TADA as disclosed in the report. The corollary is that, if there was no valid sanction the Designated Court gets no jurisdiction to try a case against any person mentioned in the report as the court is forbidden from taking cognizance of the offence without such sanction. If the Designated Court has taken cognizance of the offence without a valid sanction, such action is without jurisdiction and any proceedings adopted thereunder will also be without jurisdiction. *Rambhai Nathabhai Gadhvi* v. *State of Gujarat*, (1997) 7 SCC 744: 1997 SCC (Cri) 1169: AIR 1997 SC 3475: 1997 Cri LJ 4086.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 6-8-1997]

***Held to be per incuriam** in Prakash Kumar v. State of Gujarat, (2005) 2 SCC 409*

[2464] — S. 197 — **Sanction for prosecution of the President, executive authority or any member of a Panchayat** — *Held, if a person ceases to hold any of the said office on retirement or otherwise, no sanction is required for his prosecution — Prevention of Corruption Act, 1988, S. 19 — Kerala Panchayats Act, 1960 (32 of 1960), S. 122(1)*

Under Section 122(1) sanction to prosecute the President, executive authority or members of a Panchayat is necessary for prosecution of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. If a person ceases to hold the above office on retirement or otherwise no sanction for prosecution is necessary. The petitioner who retired from the service could not claim protection under this section as he ceased to hold the post under the Panchayat. (Paras 9 and 12). *State of Kerala* v. *M.M. Manikantan Nair*, (2001) 4 SCC 752: 2001 SCC (Cri) 808: AIR 2001 SC 2145: 2001 Cri LJ 2346.

Bench Strength 3. Coram: *K.T. Thomas, R.P. Sethi* and **S.N. Phukan**, JJ. [Date of decision: 25-4-2001]

State of Kerala v. V. Padmanabhan Nair, (1999) 5 SCC 690: 1999 SCC (Cri) 1031; R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128, relied on

[2465] — S. 197 — Prosecution of STO — Prior sanction of State Govt. required under S. 48 of M.P. General Sales Tax Act — Requirements are absolute — *Raid conducted by STO (Appellant 2) under S. 29 — According to respondent, in order to extract illegal gratification and to pressurise them, the STO conducted illegal search and seizure by misusing the office and also raised heavy demands of tax and penalty and got revocation of the sales tax registration certificate — Respondent also alleged that the STO lodged a report under S. 353 IPC with police resulting in his prosecution but he was later acquitted and that only on the basis of alleged fact that respondent had prevented the officials to make search and had abused the STO and his subordinates, S. 353 IPC was invoked — Held, STO having acted in discharge of duties entrusted under the Act, S. 48 attracted — M.P. General Sales Tax Act, 1958 (2 of 1959), S. 48*

It was contended by the respondents that the cause of action as has been shown in the plaint was based on malicious prosecution on the basis of the report of the STO under Section 353 IPC and, therefore, the question of seeking permission under Section 48 of the Act does not arise.

Allowing the appeal,

Held :

The language of Section 197 CrPC is somewhat different from that used in Section 48 of the M.P. General Sales Tax Act, 1958. Section 48 of the Act relates to acts done or intended to be done under the Act. Further sub-section (1-*a*) of Section 48 provides that no officer or servant of the State Government would be liable in respect of any such act referred to in sub-section (1) done in good faith in the course of execution of duty imposed on him or discharge of function entrusted to him by or

(14) Relative scope vis-à-vis other provisions/statutes *(contd.)*

under the Act, and the power relates both to civil and criminal proceedings. Undisputedly the raid was purportedly conducted under Section 29 of the Act. It is to be noted that the requirements are absolute in terms of Section 48 of the Act. It was highlighted by counsel for the respondent that a bare perusal of the order of acquittal passed shows that the acquittal was purportedly recorded on the basis of findings that the accused prevented the officials to make search and he abused the Sales Tax Officer and his subordinates. Only on the basis of alleged abuse and threat to him, Section 353 IPC was invoked. The reasoning related to non- recording of reasons before the search. Correctness of such a view is open to doubt but that has really no relevance so far as present dispute is concerned. Undisputedly the acts done were in discharge of duties entrusted under the Act. That being so the trial court was justified in holding that Section 48 of the Act is clearly applicable. The High Court has not considered the relevant provisions of law in the proper perspective. The judgment of the High Court is accordingly set aside. (Para 14) . *State of M.P.* v. *Bachha Lal*, (2007) 6 SCC 52: (2007) 56 AIC 253 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 21-6-2007]

[**Ed.**: The decision though supported by the statute does raise the question: What is the remedy for a citizen against misuse of power in purported discharge of official duties?]

[2466] — Ss. 197 and 190(1)(b) & (c) — Requirement of sanction for prosecution under S. 279(1) IT Act — Object of such sanction and procedure for grant thereof, restated — Affording prior opportunity, held, not necessary — However, on facts held, such opportunity was given — *Income Tax Act, 1961, S. 279(1) — Prevention of Corruption Act, 1988, S. 19 — Prevention of Food Adulteration Act, 1954, S. 20*

Per curiam

In the order passed by the CIT granting sanction under Section 279(1) of the Act, it is mentioned that in response to the show-cause notice as to why the provisions of Sections 276-C, 277 read with Section 278 should not be invoked, the assessee filed its explanation. It is further mentioned that the explanation offered by the assessee Company was not satisfactory. The respondents have not disputed the correctness of that statement. The High Court has misread that order and erred in quashing the proceedings. (Para 4)

There are provisions similar to Section 279 of the Act, in many other statutes which put an embargo on the power of the court to take cognizance of the offence except with the previous sanction of the competent authority in the statute like Section 197 of CrPC, Section 19 of the Prevention of Corruption Act or Section 20 of the Prevention of Food Adulteration Act. The Magistrate can take cognizance of the offence under Section 190(1)(*b*) CrPC in the former case if the police, after investigation, submits a charge-sheet and in the latter case under Section 190(1)(*c*) CrPC. It is in order to protect persons from unnecessary prosecution and consequent harassment that a provision for sanction is made. The sanction to prosecute is undoubtedly an important matter and it constitutes a condition precedent to the institution of the prosecution. It is desirable that the facts should be referred to on the face of the sanction, but this is not essential. If the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must, in the course of the trial, prove by extraneous evidence that those facts were placed before the sanctioning authority and the authority after applying his mind to the relevant facts had accorded the sanction. The authority giving the sanction should prima facie consider the evidence and all other attending circumstances before he comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. But he is not required to hold any inquiry to satisfy himself as to the truth of facts alleged. An order of sanction, by itself, does not have the effect of a conviction or imposing a penalty causing any injury of any kind on the accused. The accused will get full opportunity to defend himself in the trial and the trial will take place in accordance with the procedure established by law. The grant of sanction is purely an administrative act and affording of opportunity of hearing to the accused is not contemplated at that stage. The legal position is, therefore, clear that no opportunity of hearing was required to be afforded to the respondents before grant of sanction. (Paras 5, 7, 8, 8.1, 25 and 53). *Asstt. Commr.* v. *Velliappa Textiles Ltd.*, (2003) 11 SCC 405: (2003) 263 ITR 550.

Bench Strength **3**. Coram: **S. Rajendra Babu**^{3}, **B.N. Srikrishna**^{2} and **G.P. Mathur**^{1}, JJ. [Date of decision: 6-9-2003]

Supdt. of Police (CBI) v. Deepak Chowdhary, (1995) 6 SCC 225: 1995 SCC (Cri) 1095, followed

P.V. Pai v. R.L. Rinawma, ILR 1993 Kant 709, overruled on this point

[2467] — Ss. 197 and 482 — Bar of prior sanction — Applicability — *Appellant, an Assistant Commissioner of Commercial Tax passed assessment order after inspecting the business premises and after giving adequate opportunity to the proprietor to file explanation — No explanation filed and instead a criminal complaint filed against the appellant for offences under Ss. 448, 380, 384 and 506 IPC — Petition filed under S. 482 CrPC dismissed by High Court — Held, facts clearly prove that there was abuse of process of law since S. 37 of the Andhra Pradesh General Sales Act provides protection of acts done in good faith and makes previous sanction of State Government mandatory — Andhra Pradesh General Sales Tax Act, 1957 (6 of 1957), Ss. 37, 27 and 28*

The appellant, at the relevant time was working as Assistant Commissioner of Commercial Taxes. He along with his subordinate staff went to the business premises belonging to Respondent 2 for carrying out an inspection during business hours. The premises were registered business premises of M/s *RF* whose proprietor was the son of Respondent 2. In the same business premises, the documents and business stocks relating to *KSB* were also noticed. During the inspection, the son of Respondent 2 along with one *KS*, said to be one of the partners of *KSB* was available.

A statement of inspection was recorded by the appellant on a request of the son of Respondent 2 and *KS* on their business letter pad. The statement was written by the son of Respondent 2 and *KS* on their own, wherein they duly declared that till the date of such inspection, they had not written any of the books of accounts relating to their business and that they did not even give the returns for the year 1993-1994. The stock book was signed and returned. No cash was recovered. Thereafter the matter was taken up and best-judgment assessment was completed.

After a period of three months after the inspection, Respondent 2 herein who was not the owner of the business filed a complaint for alleged commission of offences punishable under Sections 448, 380, 384 and 506 of the Penal Code, 1860 (in short "IPC") before the Judicial Magistrate, First Class stating that the appellant along with his subordinate, had taken away the bill books, chequebooks, records and also Indira Vikas Patras (for short "IVPs") worth Rs 2 lakhs forcibly without giving any acknowledgment and without conducting panchnama, intimidating his son and forcibly taking the signatures of his son on white papers with an intention to extract Rs 3 lakhs.

The above complaint was referred by the Magistrate to the police which after enquiry filed a final report stating that the complaint itself was a false complaint. However, the police report was objected to by the complainant as wrong and incorrect and that it is without any proper investigation. Without giving any reasons whatsoever and without recording any defect in the final report of the police and without any sufficient additional materials, the said objection was taken into cognizance and the Magistrate issued notice and process to the appellant and his subordinate and the officials were asked to appear before the court for trial of offences under Sections 448, 380, 384 and 506 IPC.

A petition under Section 482 CrPC was filed before the High Court praying for quashing of the proceedings. It was pointed out that the said complaint itself was false and in any case process ought not to have been issued since there was specific bar contained under Section 37 of the Andhra Pradesh General Sales Tax Act, 1957 (in short "the Act") read with Section 197 CrPC. The High Court dismissed the petition under Section 482 CrPC.

Allowing the appeal,

Held :

Section 37 like Section 197 CrPC aims at preventing vexatious prosecution and proceedings against public servants. Section 37 puts embargo on institution of suits, prosecution or other proceedings against any officer or any servant of the State Government for any act done or purported to be done under the Act without previous sanction of the State Government. There is a further embargo i.e. no such suit, prosecution or proceeding shall be instituted after the expiry of six months from the date of the act complained of. Sub-section (2) affords protection to the officer referred to above in respect of an act if the same was done in good faith in the course of execution of duties imposed or the discharge of functions entrusted by or under the Act. (Paras 20 and 21)

"Good faith" according to the definition in the General Clauses Act means a thing, which is in fact done honestly whether it is done negligently or not. Anything done with due care and attention which is not mala fide is presumed to have been done in "good faith". Section 197 CrPC provides for protection to public servants in discharge of official duties. There is a need to balance between protection to officers and protection to citizens. (Paras 22 to 24)

(14) Relative scope vis-à-vis other provisions/statutes *(contd.)*

As the factual scenario goes to show the proceedings were nothing but abuse of the process of law. In view of what is stated in Section 37 of the Act and the ratio in *Bhajan Lal case*, 1992 Supp (1) SCC 335 the appeal deserves to be allowed. (Paras 27 and 28). *Goondla Venkateswarlu* v. *State of A.P.*, (2008) 9 SCC 613: (2008) 3 SCC (Cri) 829: (2008) 230 ELT 202.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-8-2008]

Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

Madhav Rao Jivaji Rao Scindia v. Union of India, (1971) 1 SCC 85; Madhavrao Narayanrao Patwardhan v. Ram Krishna Govind Bhanu, AIR 1958 SC 767: 1959 SCR 564, relied on

[2468] — S. 197 — Scope of S. 64(3), Kerala Police Act, 1960 — Provision different from S. 197(1) CrPC — While S. 64(3) imposes absolute ban against taking cognizance of offence, S. 197(1) CrPC does not impose any absolute ban — *Expressions offence committed by a police officer "on account of any act done in pursuance of any duty" in S. 64(3) and "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" in S. 197(1) CrPC — Distinction — Expression used in S. 197(1) CrPC is of wider import — Kerala Police Act, 1960 (5 of 1961), S. 64(3)*

The context envisaged in Section 197(1) CrPC or the purpose of providing a filter therein is demonstrably different from the object of Section 64(3) of the KP Act. Section 197(1) CrPC does not impose any absolute ban against taking cognizance of the offence, but it only says that the sanction contemplated therein is a condition precedent for taking such cognizance. It obviously is for preventing public servants from being subjected to frivolous prosecutions for discharging their official duties. On the other hand, Section 64(3) of the KP Act incorporates an absolute ban against taking cognizance of the offences of the type mentioned therein on the expiry of the period specified therein. (Para 16)

That apart the words used in Section 197(1) CrPC for qualifying the offence are seemingly wider. The commission of an offence, while acting or purporting to act in the discharge of his official duty is of a wider radius when compared with an offence committed on account of an act done in pursuance of any duty or authority. In the latter, the act done itself should be an exercise in discharge of his duty or authority and that act should amount to an offence. It is not enough that the act complained of was only purported to be in exercise of his duty though it may be sufficient under the former. So the scope under Section 64(3) of the KP Act is much narrower than the amplitude of Section 197(1) CrPC for a public servant to claim protection. (Paras 17 and 18). *P.P. Unnikrishnan* v. *Puttiyottil Alikutty*, (2000) 8 SCC 131: 2000 SCC (Cri) 1460: AIR 2000 SC 2952.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 5-9-2000]

K.K. Patel v. State of Gujarat, (2000) 6 SCC 195, distinguished

Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: 1956 Cri LJ 140: (1955) 2 SCR 925; H.H.B. Gill v. R., AIR 1948 PC 128: 49 Cri LJ 503; Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944, relied on

P.P. Unnikrishnan v. Puttiyottil Alikutty, 1999 Cri LJ 4261 (Ker), affirmed

(15) Quashment of proceedings for want of sanction

See also CrPC, 1973 Section 482 p. 1260 in Vol. 2

[2469] — Ss. 197 and 482 — Application for quashing of FIR for want of sanction prior to finding as to whether acts done were in the capacity of official duty — Prematurity of — *Proceeding against appellant and others for offences punishable under S. 120-B r/w S. 420 IPC and Ss. 11, 12, and 13(2) r/w S. 13(1)(d), PC Act — Appellant by filing S. 482 CrPC petition taking stand that being the Chairman and MD of Indian Bank he was an employee connected with the affairs of the Union in terms of S. 197(1)(a) — Appellant-accused further disputing his direct involvement in the sanction of credit facility — No finding as to whether acts done were in the capacity of official duty having been made, held, the matter should be left open to be decided later — Dismissal of quashment petition by High Court, upheld — Penal Code, 1860, S. 120-B r/w S. 420 — Prevention of Corruption Act, 1988, Ss. 11, 12 and 13(2) r/w S. 13(1)(d)* (Paras 20, 21 and 23). *M. Gopalakrishnan* v. *State*, (2009) 3 SCC 681.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-2-2009]

P.K. Pradhan v. State of Sikkim, (2001) 6 SCC 704: 2001 SCC (Cri) 1234; Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193, relied on

Mohd. Hadi Raja v. State of Bihar, (1998) 5 SCC 91: 1998 SCC (Cri) 1265, referred to

[2470] — S. 197 — Quashing of complaint on the ground that sanction under S. 197 CrPC not obtained — *In certain cases, depending on the nature of the acts complained of, the complaint cannot be quashed at the initial stage itself — Question* *of sanction can be raised at any time after the cognizance of offence is taken, maybe even at the time of conclusion of trial — Where respondent police officer falsely implicated the appellant and his brother by showing recovery of illegal weapon and cartridges from them because the appellant did not pay anything out of his earnings to him, held, High Court erred in quashing the complaint on the ground that even if these facts were true then also the case would come within the purview of S. 197 — In cases like the present one, question whether accused acted in the course of performance of his duties and/or whether the defence was pretended or fanciful could only be examined during the course of trial after giving an opportunity to both the parties to establish their case — On facts, question of sanction in the instant case left open to be decided in the main judgment after the conclusion of trial*

There can be no dispute on the point that the bar under Section 197 CrPC is mandatory where the act has been done by the public servant in the course of his service or in the discharge of his duty. But, under the said section, no protection has been granted to the public servant if the act complained of is not in connection with the discharge of his duty or in exercise of his duty. (Paras 7 and 10)

However, in certain cases, depending on the nature of the acts complained of, the complaint cannot be quashed at the initial stage itself. (Para 9)

In *P.K. Pradhan* v. *State of Sikkim*, the Supreme Court held that the question of sanction under Section 197 of the Code can be raised at any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. In the present case the 1st respondent had falsely implicated the appellant and his brother in order to teach them a lesson for not paying anything to him. The complaint was that the 1st respondent had brought an illegal weapon and cartridges and falsely shown them to have been recovered from the appellant and his brother. The High Court was not right in saying that even if these facts are true then also the case would come within the purview of Section 197 CrPC. The question whether these acts were committed and/or whether the 1st respondent acted in discharge of his duties could not have been decided in this summary fashion. This is the type of case where the prosecution must be given an opportunity to establish its case by evidence and an opportunity must be given to the defence to establish that he had been acting in the official course of his duty. The question whether the 1st respondent acted in the course of performance of duties and/or whether the defence is pretended or fanciful can only be examined during the course of trial. Therefore, in this case the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of trial. (Paras 8 and 11). *Raj Kishor Roy* v. *Kamleshwar Pandey*, (2002) 6 SCC 543: 2002 SCC (Cri) 1423: AIR 2002 SC 2861.

Bench Strength **2**. Coram: *S.S.M. Quadri* and **S.N. Variava**, JJ. [Date of decision: 5-8-2002]

P.P. Unnikrishnan v. Puttiyottil Alikutty, (2000) 8 SCC 131: 2000 SCC (Cri) 1460; P.K. Pradhan v. State of Sikkim, (2001) 6 SCC 704: 2001 SCC (Cri) 1234, relied on

Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: (1955) 2 SCR 925: 1956 Cri LJ 140, limited to its facts and relied on

[2471] — S. 197 — Sanction for prosecution — Quashment of — When permissible — Accused being charged for offences under IPC and Prevention of Corruption Act (PC Act) — *Entire sanction quashed by State where competent authority specified in PC Act granted sanction under PC Act and also under S. 197 CrPC for offences under IPC, wherefor the State was the competent authority — Propriety of — Held, said quashment by State not proper — State could not have interfered with that part of the order whereby requisite sanction was granted under PC Act — Plea that said sanction was a composite one and, thus, State could cancel the same, held, not sustainable — Prevention of Corruption Act, 1988, S. 19 — Prevention of Corruption Act, 1947, S. 6*

The first respondent *R*, who was a Sub-Inspector at the relevant time, lodged an FIR under the Essential Commodities Act against the agency of the son of the appellant. In that FIR it was alleged that on an inspection made in the office and the godown of the agency, several irregularities were found and some gas cylinders were found to have been sold in black market. The appellant in a letter addressed to the Inspector General of Police alleged that the case registered was false, that while seizing the cylinders, *R* misappropriated 24 cylinders and that *R* had demanded and taken a sum of Rs 20,000 in cash from the appellant by way of illegal gratification by putting pressure and the said amount was paid to him in order to avoid maltreatment at his hands. The prosecution against the agency was found to be false and a final report under Section 173 CrPC was submitted for cancellation of the case which was accepted on 11-8-1993.

On the basis of the said allegations contained in the appellant's letter, an FIR was lodged. *R* was charged with offences under Sections 409, 167, 218, 419, 420, 465, 463 and 471 IPC and under Section 13(*d*), Prevention of Corruption Act, 1988. However, upon investigation an untraced report

(15) Quashment of proceedings for want of sanction *(contd.)*

was sent to the Court of Special Judge, who did not agree therewith and by an order dated 23-5-1998 opined that the statements of the witnesses recorded during investigation supported the case of the complainant and the matter required judicial verdict. The Special Judge, therefore, directed the investigating officer to obtain sanction for prosecution against *R* and submit a final report. The said order was challenged in revision wherein it was observed that no cognizance could be taken by the Special Judge without obtaining proper sanction and it would be open to the sanctioning authority to consider the same. In the meanwhile, *R* was promoted as Inspector. The Deputy Inspector General of Police issued an order granting sanction under Section 197 CrPC and under Section 19 of the Prevention of Corruption Act, 1988 so that the competent court could take legal action against *R*. However, the said order of sanction was withdrawn by the State vide order dated 10-12-1999. The State observed that under Section 197 CrPC only the Government was competent to accord prosecution sanction. Therefore, the prosecution accorded by the Deputy Inspector General of Police was cancelled by the State. Thereafter, the Special Judge observed that sanction was required only under Section 19 of the Prevention of Corruption Act, and not under Section 197 CrPC. Even otherwise, the sanction had already been granted by the competent authority. Thus, it was held that there being sanction and statements of the witnesses supporting the case of the complainant, it was desirable that the judicial verdict should come. Therefore, the Special Judge by an order dated 18-4-2000 directed the investigating officer to submit a final report within one month.

The aforesaid judgment was challenged before the High Court. The High Court vide order dated 23-7-2001 set aside the time-bound directions of the Special Judge. The investigating agency was given liberty to continue the investigation and proceed in accordance with law.

Thereafter, a charge-sheet was filed and cognizance of the offence was taken. *R* filed an application under Section 482 CrPC for quashing of FIR and subsequent proceedings. The High Court observed that (*i*) the said order dated 23-7-2001 attained finality and, thus, any contention contrary thereto or inconsistent therewith would amount to reviewing thereof which was impermissible in law; (*ii*) the State having refused to grant a sanction and as the accusations made against *R* related to discharge of his duties as investigating officer, sanction of prosecution was mandatory; (*iii*) the first information report could not be quashed as it could not be said that the allegations made therein did not disclose any offence against him. Thus, the High Court held that the order taking cognizance and summoning *R* without sanction of the competent authority was liable to be quashed. Hence the present appeal.

Allowing the appeal,

Held :

Sanction required under Section 197 CrPC and sanction required under the 1988 Act stand on different footings. Whereas sanction under the Penal Code in terms of the Code of Criminal Procedure is required to be granted by the State; under the 1988 Act it can be granted also by the authorities specified in Section 19 thereof. (Para 11)

It is not in dispute that the Deputy Inspector General of Police was the competent authority for grant of sanction as against the respondent *R* in terms of the provisions of the 1988 Act. The State, thus, could not have interfered with that part of the said order whereby requisite sanction had been granted under the 1988 Act. The contention to the effect that the order of sanction passed by the Deputy Inspector General of Police was a composite one and, thus, the State could cancel the same, is unacceptable. Offences under the Penal Code and offences under the 1988 Act are different and distinct. On the face of the allegations made against *R*, they do not have any immediate or proximate connection. The test which is required to be applied in such a case is as to whether the offences for one reason or the other punishable under the Penal Code are also required to be proved in relation to offences punishable under the 1988 Act. If the answer to the said question is rendered in the negative, the same test can be applied in relation to a matter of sanction. (Para 12)

The High Court in its impugned order, however, does not appear to have taken that aspect of the matter into consideration. It failed to make a distinction between an order of sanction required for prosecuting a person for commission of an offence under the Penal Code and an order of sanction required for commission of an offence under the 1988 Act. (Para 13). *Romesh Lal Jain* v. *Naginder Singh Rana*, (2006) 1 SCC 294: (2006) 2 SCC (Cri) 593: AIR 2006 SC 336: 2005 Cri LJ 5068: (2005) 36 AIC 108 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

Naginder Singh Rana v. State of Punjab, 2002 Cri LJ 3124 (P&H), reversed

[2472] — Ss. 197, 220, 221, 227, 239 and 245 — Necessity of sanction for prosecution found to not exist for some charges and unclear for others — Piecemeal discharge or quashment of charges if warranted (Para 16). *State of Maharashtra* v. *Devahari Devasingh Pawar*, (2008) 2 SCC 540: (2008) 1 SCC (Cri) 502: AIR 2008 SC 1375: 2008 Cri LJ 1593.

Bench Strength 2. Coram: *G.P. Mathur* and *Aftab Alam*, JJ. [Date of decision: 18-1-2008]

(16) Invalid/void/improper sanction — When material to overturn conviction

[2473] — S. 197 — Sanction for prosecution — Absence or invalidity of, held, becomes immaterial once the unchallenged trial has ended in conviction — *Effort to save the public servant from frivolous or vindictive or mala fide prosecution becomes meaningless if on trial he is in fact found guilty. CBI* v. *V.K. Sehgal*, (1999) 8 SCC 501: 1999 SCC (Cri) 1494: AIR 1999 SC 3706.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 8-10-1999]

Kalpnath Rai v. State (through CBI), (1997) 8 SCC 732: 1998 SCC (Cri) 134, relied on

[2474] — Ss. 197 and 465 — Want of valid sanction for prosecution — Condition precedent for reversal of conviction, in appeal on the ground of — *After recording the finding of error or irregularity in the sanction, the appellate court (High Court in this case), held, should have decided: (i) whether the same had occasioned a failure of justice; and (ii) whether the objection regarding the validity of sanction had been taken before the trial court — Having not done so, acquittal of the convict by the appellate court on the ground of want of a valid sanction for prosecution, held, wholly unjustified — Penal Code, 1860, S. 161 — Prevention of Corruption Act, 1947, Ss. 5(2) & 5(1)(d). State of Orissa* v. *Mrutunjaya Panda*, (1998) 2 SCC 414: 1998 SCC (Cri) 644: AIR 1998 SC 715: 1998 Cri LJ 782.

Bench Strength 3. Coram: **M.K. Mukherjee**, *S.P. Kurdukar* and *K.T. Thomas*, JJ. [Date of decision: 13-1-1998]

[2475] — S. 197 — Sanction for prosecution — Void sanction — *Remission of the case back to the sanctioning authority — When not warranted — Held, after a lapse of fourteen years it would not be just and fair to direct initiation of fresh proceedings from the stage of reconsideration by the sanctioning authority and to expose the appellant to a fresh round of litigation for an indefinitely long period — Further held, right to life under Article 21 philosophises early end of criminal proceedings through a speedy trial. Mansukhlal Vithaldas Chauhan* v. *State of Gujarat*, (1997) 7 SCC 622: 1997 SCC (L&S) 1784: 1997 SCC (Cri) 1120: AIR 1997 SC 3400: 1997 Cri LJ 4059.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S. Saghir Ahmad**, JJ. [Date of decision: 3-9-1997]

(17) Judicial review of/Interference with sanction

[2476] — S. 197 — Sanction — Judicial review of — Scope — *Held, an order refusing to grant sanction may attract judicial review by the superior courts*

The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the superior courts. It is also well settled that the superior courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. The authority concerned cannot also pass an order of sanction subject to ratification of a higher authority. (Paras 6 and 7). *State of Punjab* v. *Mohd. Iqbal Bhatti*, (2009) 17 SCC 92: 2010 Cri LJ 1436: (2010) 4 CTC 458: (2009) 4 CHN 65: (2009) 82 AIC 114 .

Bench Strength 2. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 31-7-2009]

Mansukhlal Vithaldas Chauhan v. State of Gujarat, (1997) 7 SCC 622: 1997 SCC (L&S) 1784: 1997 SCC (Cri) 1120; State v. Dr. R.C. Anand, (2004) 4 SCC 615: 2004 SCC (Cri) 1380, relied on

[2477] — S. 197 — Issue of orders and directions by High Court under, at premature stage — *Writ petition filed by Uttarakhand Sangharsh Samity for directions to State authorities in connection with confrontation between the agitators and the administration which resulted in human rights violation (death, injuries and molestation of women) — Held, High Court was not justified in going into the question of sanction for prosecution of the public servants involved in the offences in such writ petition — High Court was also not justified in issuing directions regarding territorial jurisdiction of court and venue of trial — Constitution of India — Art. 226*

It was not necessary to decide the question regarding the offences to be included in the charge which may be framed against the accused persons because that work has to be done by the Sessions Judges concerned after hearing both sides, as provided under Section 228 of the Code. The appellants can raise their arguments regarding what

(17) Judicial review of/Interference with sanction *(contd.)*

offences can be included in the charge at the appropriate stage. (Para 23)

The question of necessity of sanction need be considered by the Sessions Judge if and when raised by the accused. The High Court should not have embarked upon a discussion regarding sanction at such a premature stage, that too in the writ petition filed by the Samity. If the finding of the High Court is that no sanction is required such a finding has to be treated as bad mainly because that question has to be decided after taking into account various considerations including the fact situation in each case. (Para 24)

The jurisdiction of the Court can be decided on the factual foundation in each case. The High Court should not have pre-empted the Court before which each case would come up in the normal course, to determine the question of jurisdiction, if it is raised by any of the parties. It is difficult for the Supreme Court to comprehend what the learned Judges would have meant by "Special Court" to be established by the State Government. There is no suggestion in the impugned judgment as to what are the offences alleged to have been committed by the officials under any special enactment. The aforesaid direction (extracted above) if allowed to remain in force would create only confusion and provide room for procrastination of the trials. (Para 25). *A.K. Singh* v. *Uttarakhand Jan Morcha*, (1999) 4 SCC 476: 1999 SCC (Cri) 580: AIR 1999 SC 2193.

Bench Strength 3. Coram: **K.T. Thomas**, *D.P. Mohapatra* and *U.C. Banerjee*, JJ. [Date of decision: 13-5-1999]

[2478] — S. 197 — Police atrocities — Direction issued by High Court to State Government to grant sanction under S. 197 CrPC — Adequacy and validity of — *Interim compensation awarded — Nature of — Interpreting the direction given by High Court in respect of sanction under S. 197 CrPC, Supreme Court finding it not necessary to consider the question whether it was open to High Court to direct the Govt. to grant sanction under S. 197 CrPC in any given situation — Without expressing any opinion on interim compensation awarded by High Court, held, High Court's direction in this regard would not be construed as its finding — Question of grant of compensation arises after the liability on the delinquent officers is fixed by the trial court — Constitution of India — Art. 226. State of Punjab* v. *Vinod Kumar*, (2000) 9 SCC 742: 2001 SCC (Cri) 695.

Bench Strength 3. Coram: *K.T. Thomas, D.P. Mohapatra* and *R.C. Lahoti*, JJ. [Date of decision: 4-5-2000]

[2479] — Ss. 197, 190 and 173 — Sanction for prosecution subsequent to investigation directed by Supreme Court — Apprehension that prosecuting agencies would not pursue matter (due to prevailing political dispensation) — Effect — *PIL relating to protection of cultural heritage of India (Taj Mahal) and surrounding ecology* — Taj Corridor Scam case *involving the Chief Minister — Maintainability — Certain criminal/corruption matters affecting monument in question directed to be investigated by CBI by this Bench in previous orders — Thereupon authority concerned not granting sanction for prosecution — Scope of interference therewith by this Ecology PIL Bench seized of the said matter — Apprehension that prosecuting agencies would not pursue matter (due to prevailing political dispensation) — Effect — Held, jurisdiction of writ court is only to see that proper criminal investigation is carried out — It cannot take over functions of the Magistrate or interfere with the Magistrate's functions — Once a final report has been filed in terms of S. 173 CrPC, it is the Magistrate alone who can take an appropriate decision in the matter, which would be subject to judicial review — Possibility of prosecuting agencies not approaching the higher forum against Magistrate's order by itself would not confer jurisdiction on this Ecology PIL Bench to step in — In case of such an eventuality however, an independent PIL could be filed — Prevention of Corruption Act, 1988, S. 19 — Constitution of India — Arts. 32, 49 and 51-A(g)*

A public interest litigation (PIL) had been entertained by the Supreme Court in the writ petition out of which this interim application had arisen. The said PIL had been entertained with a view to ensure proper maintenance of the cultural heritage of India as also the ecology in the surrounding areas i.e. Taj Mahal and its environs, and the Court had been passing orders in the said writ petition from time to time. The question that arose before the Supreme Court in this interim application was whether the Bench seized of the said PIL (PIL Bench) should consider the correctness of an order passed by the Governor of the State where the cultural heritage of India and the ecology were being threatened i.e. the State of U.P. refusing to grant sanction for prosecution of Chief Minister Mayawati and the Environment Minister of that State for alleged criminal offences committed during an earlier tenure as Chief Minister and Minister, related to the threats to Taj Mahal and its environs.

It was submitted in support of the application that the task of protection of cultural heritage having been undertaken by the Supreme Court and keeping in view the provisions of Article 49 of the Constitution, the Court should interfere in the matter and set aside the order of the Governor of U.P.

refusing to accord sanction for prosecution keeping in view the political scenario extant at the time of filing of in the country, as CBI may not show any further interest in the matter at all.

Dismissing the application,

Held :

While entertaining a public interest litigation in a given case, the Supreme Court may exercise a jurisdiction to set aside the decision of a constitutional authority, but this application does not concern such a situation. (Para 14)

In exercise of its jurisdiction under Article 32 and having regard to Article 49 and Article 51-A(*g*) of the Constitution, the Supreme Court while entertaining the *Taj Corridor Scam* public interest litigation at the instance of the writ petitioner had been taking all steps which have been thought necessary and proper in the matter. No doubt, a first information report has been lodged at the instance of the Supreme Court. Yet again the Supreme Court thought it fit to issue requisite directions in *Taj Corridor Scam case*, (2007) 1 SCC 110, directing the Special Judge to apply its mind on the materials collected during investigation by CBI into *Taj Corridor Scam* and pass appropriate orders thereupon. The Supreme Court has been exercising its jurisdiction in public interest. It has been exercising its jurisdiction to issue a writ of continuous mandamus. (Para 8)

The parameters within which the Supreme Court should function in the field of crime detection and crime punishment are well defined. Unless a proper investigation is made, followed by a proper prosecution under the general law applicable to such investigation, the rule of law will lose its significance. Therefore, the judiciary may step in where it finds the actions on the part of the legislature or the executive are illegal or unconstitutional but the same by itself would not mean that public interest litigation, in a case of this nature, should be converted into an adversarial litigation. (Paras 9 to 11)

The jurisdiction of the Court to issue a writ of continuous mandamus is only to see that proper investigation is carried out. Once the Court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with the Magistrate's judicial functions. The constitutional scheme of this country envisages a dispute resolution mechanism with an independent and impartial tribunal. No authority, save and except a superior court in the hierarchy of judiciary, can issue any direction which otherwise takes away the discretionary jurisdiction of any court of law. Once a final report has been filed in terms of Section 173(1) CrPC, it is the Magistrate and Magistrate alone who can take an appropriate decision in the matter one way or the other. If he errs while passing a judicial order, the same may be a subject-matter of appeal or judicial review. (Paras 9 to 11)

There may be a possibility of the prosecuting agencies not approaching the higher forum against an order passed by the Magistrate, but the same by itself would not confer a jurisdiction on the Supreme Court to step in. A judicial order passed by a Magistrate may be right or wrong, but having regard to the hierarchy of the courts, the matter which would fall for consideration before the higher court should not be a subject-matter of a decision of this PIL Bench. In an unlikely event of the interested parties in not questioning such orders before the higher forum, an independent public interest litigation may be filed. Instances are not unknown where the Supreme Court has entertained public interest litigation in cases involving similar question under Article 32 of the Constitution. (Paras 9 to 11)

Though the Supreme Court may exercise its jurisdiction for the protection of the cultural heritage and the ecology and environment; but then in discharge of the said duty, the Supreme Court should not take upon itself the task of determining the guilt or otherwise of an individual involved in the criminal proceeding. It should not embark upon an enquiry in regard to the allegations of criminal misconduct so as to form an opinion one way or the other so as to prima facie determine guilt of a person or otherwise. Any direction which could be issued has already been issued in *Taj Corridor Scam case*, (2007) 1 SCC 110. This PIL Bench need not go further than what it has already directed in the said judgment to go into the correctness or otherwise of the order of the Governor. If no sanction of the Governor was required or if he has committed an error in passing the said order, the appropriate court would be entitled to deal therewith, but not this PIL Bench. (Paras 12 and 14). *M.C. Mehta* v. *Union of India*, (2008) 1 SCC 407: (2008) 1 SCC (Cri) 216: AIR 2008 SC 180: (2007) 6 All LJ 627: (2007) 60 AIC 215 (SC): 2008 Cri LJ 360: (2008) 1 CHN 27 (SC).

Bench Strength 3. Coram: **S.B. Sinha**, *S.H. Kapadia* and *D.K. Jain*, JJ. [Date of decision: 10-10-2007]

Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307; Rajiv Ranjan Singh 'Lalan' (VIII) v. Union of India, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125; Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195: 2003 SCC (Cri) 1314, relied on

(18) Discharge of official duty by members of Armed Forces — Ss. 197(2), (3) or (3-A)

[2480] — S. 197(2) — Central Reserve Police Force falls within the expression 'Armed Forces of the Union' under — *CrPC, 1898, S. 197(2) — Central Reserve Police Force Act, 1949, S. 3(1) — Constitution of India, Schedule VII, List I, Entry 2. Akhilesh Prasad* v. *UT, Mizoram*, (1981) 2 SCC 150: 1981 SCC (Cri) 337: AIR 1981 SC 806: (1981) 2 SCR 789: 1981 Cri LJ 407.

Bench Strength 2. Coram: **A.D. Koshal** and *A.N. Sen*, JJ. [Date of decision: 11-2-1981]

[2481] — Ss. 197(2) & (3) and 132 — Sanction to prosecute accorded by appropriate Government under S. 132 does not amount to sanction to take cognizance of offence under S. 197 — *Even if sanction under S. 132 accorded Court cannot take cognizance of offence in absence of sanction under S. 197. Ram Kumar* v. *State of Haryana*, (1987) 1 SCC 476: 1987 SCC (Cri) 190: AIR 1987 SC 735: 1987 Cri LJ 703.

Bench Strength 2. Coram: **M.P. Thakkar** and *B.C. Ray*, JJ. [Date of decision: 13-1-1987]

— S. 197(3) *See* Ss. 197(2) & (3) and 132

[2482] — S. 197(3) — Notification under, directing that provisions of sub-section (2) shall apply to police officers, as defined in Bombay Police Act, charged with maintenance of public order — Expression "public order" — Meaning of — *In the context should be understood in the wider sense so as to include law and order also, unlike the narrower meaning ascribed in the context of preventive detention — Police officers do discharge duties relating to maintenance of public order — Finding in each case, whether a particular act of a police officer pertained to maintenance of public order or not is not a correct approach for determining applicability of the notification — By virtue of the notification, all public officers as defined in Bombay Police Act, save the excepted categories, if any specified in the notification, would be entitled to protection of sub-section (2) if the offence alleged had been committed "while acting or purporting to act in the discharge of his official duty"*

Pursuant to complaint lodged by one *F* against the appellants alleging that they had gathered dangerous weapons and abducted and assaulted him, the police registered offences punishable under Sections 142, 144, 147, 148, 365, 368, 324/149 IPC against the appellants and commenced investigation. Respondent 1, a Sub-Inspector of Police along with other policemen put up the appellants in police lock-up at about 8.30 p.m. on 28-3-1986. Next day at about 2 a.m. they were shifted to another police station and were placed there in the lock-up. Next day i.e. on 30-3-1986 the appellants were produced before a Magistrate who ordered them to be produced before the regular court on 31-3-1986. Later on they were released on bail. On 16-7-1986 the appellant filed a complaint before the Metropolitan Magistrate impleading the respondent police officers complaining of offences under Sections 220, 342 IPC and Sections 147(*c*), (*d*) and 148 of the Bombay Police Act, 1951. The Magistrate in the enquiry held under Section 202 CrPC recorded the statement of the complainant and one witness, took cognizance under Sections 220 and 342 IPC and Sections 147 and 148 of the Bombay Police Act and directed the accused to be summoned. The accused-respondents appeared before the learned Magistrate and raised an objection as to the maintainability of the complaint under Section 197(2) CrPC relying on a notification dated 2-6-1979 which was as follows:

> "No. CRPO/78/9845/POL-3
>
> In exercise of the power conferred by sub-section (3) of Section 197 of the Code of Criminal Procedure, 1973 (2 of 1974), the Government of Maharashtra hereby directs that the provisions of sub-section (2) of that section shall apply to the following categories of the members of the force in the State charged with the maintenance of public order wherever they may be serving, namely:
>
> (*1*) all police officers as defined in the Bombay Police Act, 1951 (Bom 22 of 1951), other than the Special or Additional Police Officers appointed under Section 21 or 22 of that Act;
>
> (*2*) all Reserve Police Officers as defined in the Bombay State Reserve Police Force Act, 1951 (Bom 38 of 1951)."

The Magistrate formed an opinion that the complaint could not have been filed without the requisite sanction and therefore directed the accused-respondents to be discharged. The appellants preferred a petition under Section 482 CrPC and Article 226 of the Constitution before the High Court of Bombay which was dismissed. The appellants then filed the present appeal by special leave. It was submitted before the Supreme Court on behalf of the appellants that in order to claim protection under the notification it is necessary that the accused must be a police officer as defined in the Bombay Police Act, 1951 and must be charged with the maintenance of public order at the relevant time. In other words, if a police officer is discharging a duty referable to law and order only as distinguished from "the maintenance of public order" he cannot claim protection under the notification. In the case at hand the police officers had arrested the appellants, kept them in confinement and assaulted them which are acts referable at the most to the duty of a police officer related to "maintenance of law and order" but not "the maintenance of public order" and therefore the benefit of the notification is not available to the respondents. Dismissing the appeal,

Held :

The submission confuses the issue as to applicability of the notification with the span of protective umbrella or the purview or compass of sub-section (2) of Section 197 of the Code. The person on whom the protection is sought to be conferred by the State Government notification is to be determined by reading the notification and once it is found that the State Government notification applies to a member of the force which the accused is, the scope, purview or compass of the protection has to be determined by reading sub-section (2) of Section 197 of the Code i.e. by asking a question whether the act alleged to be an offence was done or purported to have been done in the discharge of the official duty of the accused. Such official duty need not necessarily be one related to the maintenance of public order. The accused-respondents are undisputedly members of Bombay Police Force governed by the Bombay Police Act, 1951. It is an empty truism to state that the members of the police force are persons charged with the maintenance of public order. This is the general duty of every member of the police force, styled as "police officer" in the Bombay Police Act. The phrase "maintenance of public order" in the present context need not be assigned a narrow meaning as is assigned to it in preventive detention matters. The police officers do discharge duties relating to maintenance of public order in their wider sense. Therefore, the members of Bombay Police Force are the persons to whom the notification issued under Section 197(3) of the Code applies. (Paras 9, 10, 12 and 13)

The real test to be applied to attract the applicability of Section 197(3) is whether the act which is done by a public officer and is alleged to constitute an offence was done by the public officer whilst acting in his official capacity though what he did was neither his duty nor his right to do as such public officer. The act complained of may be in exercise of the duty or in the absence of such duty or in dereliction of the duty; if the act complained of is done while acting as a public officer and in the course of the same transaction in which the official duty was performed or purported to be performed, the public officer would be protected. (Para 15). *Rizwan Ahmed Javed Shaikh* v. *Jammal Patel*, (2001) 5 SCC 7: AIR 2001 SC 2198: 2001 Cri LJ 2897.

Bench Strength 2. Coram: **R.C. Lahoti** and *N. Santosh Hegde*, JJ. [Date of decision: 12-5-2001]

Bhikhaji Vaghaji v. L.K. Barot, (1981) 22 Guj LR 956: 1981 Guj LH 157, approved

Jethmal v. Khusal Singh, 1984 RLW 545: 1984 RLR 786; K.K.S. Mohd. v. Sasi, 1985 KLJ 403, overruled

Madhu Limaye v. S.D.M., Monghyr, (1970) 3 SCC 746: AIR 1971 SC 2486; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939: AIR 1979 SC 1841, relied on

[2483] — S. 197(3) — Provisions of sub-section (2) applicable to all members of Delhi Police Force in view of notification issued under sub-section (3) — *Constitution of India, Art. 239(1) — Noti. No. S.C. 183(E), dated March 20, 1974 issued under Art. 239(1) and Noti. F. 10/77/78-HP-II, dated April 7, 1980. Balbir Singh* v. *D.N. Kadian*, (1986) 1 SCC 410: 1986 SCC (Cri) 80: AIR 1986 SC 345: 1986 Cri LJ 314: (1986) 1 PLR 296.

Bench Strength 2. Coram: *A.P. Sen* and **B.C. Ray**, JJ. [Date of decision: 10-12-1985]

[2484] — Ss. 197(5) and (6) [as *ins.* by Assam Amendment Act, 1983 (3 of 1984)] — Requirement of sanction from Government for prosecuting public servant — Effect of Assam Repealing Act, repealing Assam Amendment Act, on vested or accrued right of accused to be discharged, if any — *Appellant-accused and co-accused, police personnel, involved in a case related to death of 7 alleged miscreants — Sanction to prosecute appellant-accused refused in police case, however, granted in complaint case without taking into consideration the certificate granted previously by Government under S. 197(6)(i) that appellant-accused and co-accused were acting in discharge of their official duty — Appellant's prayer for quashing proceedings, refused by High Court — Sustainability — Held, once such a certificate is given, court has no other option but to dismiss the complaint — Under S. 197(6)(ii), accused derives a vested or accrued right to be discharged as soon as said certificate is issued — However, said right is brought into effect only when the same is actually communicated — Herein, presumption is that State did send said communication — Further, by reason of S. 3, Assam Repealing Act, right of accused, accrued to him to be discharged, is not taken away — When the Act is repealed, S. 6, Assam General Clauses Act, subject to just exception, shall come into force — State in enacting Repealing Act, did not have any intention to deprive a person of his accrued or vested right — Moreover,* *doctrine of eclipse has no application — By its application, a vested or accrued right cannot be taken away — Therefore, impugned judgment, held, unsustainable — Hence, set aside — Criminal Procedure Code (Assam Repealing) Act, 1986 (6 of 1986), S. 3 — Assam General Clauses Act, 1915 (2 of 1915), S. 6* (Paras 19, 13, 16, 20, 18, 29 and 23). *Mohan Raj* v. *Dimbeswari Saikia*, (2007) 15 SCC 115.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-11-2006]

State of Punjab v. Mohar Singh, AIR 1955 SC 84: 1955 Cri LJ 254: (1955) 1 SCR 893; Pannalal Bansilal Pitti v. State of A.P., (1996) 2 SCC 498; Milkfood Ltd. v. GMC Ice Cream (P) Ltd., (2004) 7 SCC 288; Pitta Naveen Kumar v. Raja Narasaiah Zangiti, (2006) 10 SCC 261: (2007) 1 SCC (L&S) 92; U.P. Raghavendra Acharya v. State of Karnataka, (2006) 9 SCC 630: 2006 SCC (L&S) 1948; Saurabh Chaudri (Dr.) v. Union of India, (2004) 5 SCC 618; Prafulla Kumar Das v. State of Orissa, (2003) 11 SCC 614: 2004 SCC (L&S) 121; Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group, (2006) 3 SCC 434; Nathi Devi v. Radha Devi Gupta, (2005) 2 SCC 271; Lalit Mohan Pandey v. Pooran Singh, (2004) 6 SCC 626; Indian Handicrafts Emporium v. Union of India, (2003) 7 SCC 589; Balram Kumawat v. Union of India, (2003) 7 SCC 628, relied on

State of Punjab v. Khemi Ram, (1969) 3 SCC 28, considered

G.P. Singh: Principles of Statutory Interpretation, 10th Edn., 2006, p. 631, relied on

— S. 198 *See also* Ss. 198, 198-B & 199, Criminal Procedure Code, 1898, pp. 1075 et seq. in Vol.2

— S. 198 *See also* Ss. 155(4), 157 and 198

See also Ss. 156 and 198

See also Ss. 157 to 172 and 198

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193 and 195 to 199 & 204

See also Ss. 195 to 199

[2485] — S. 198 — Cognizance of offence of bigamy under S. 494 IPC is taken only on complaint of person aggrieved as specified in S. 198 CrPC— *Therefore, held, person having right to make complaint would have to be identified on basis of the personal law applicable to the complainant and respondent accused*

S and the respondent underwent a Hindu marriage in 1984. In May 1992 the respondent informed *S* that he had converted to Islam and that he intended to remarry; he advised *S* to agree to a divorce by mutual consent. *S* contended that her husband's conversion was entirely fraudulent, carried out with the sole aim of solemnising a second marriage; she contended that he had no real faith in Islam, that the conversion was not even remotely connected to a spiritual quest and that it was not an exercise of the freedom of religion guaranteed under the Constitution. She pointed out that there was no change in his way of living at all since the conversion. He had not even changed his name. She submitted documents including the birth certificate of his child from the second marriage, copies of relevant entries of the electoral list and an application for a visa to enter Bangladesh, all showing the respondent's name as "G.C. Ghosh" and "Hindu" as his religion. The second wife was entered as "Vanita Ghosh" in all the documents and also described as "Hindu".

In view of the pleadings in *S*'s petition, the Court formulated the following question: "In order to avoid the clutches of S. 17 of the Hindu Marriage Act, 1955, if a person renounces his 'Hindu' religion and converts to another religion and marries a second time, what would be the effect on his criminal liability?"

Held :

Per curiam:

Since taking of cognizance of the offence under Section 494 is limited to the complaints made by the persons specified in Section 198 CrPC, it is obvious that the person making the complaint would have to be decided in terms of the personal law applicable to the complainant and the respondent (accused), since mere conversion does not dissolve the marriage automatically and they continue to be "husband and wife". (Para 25). *Lily Thomas* v. *Union of India*, (2000) 6 SCC 224: 2000 SCC (Cri) 1056: AIR 2000 SC 1650: 2000 Cri LJ 2433.

Bench Strength **2**. Coram: **S. Saghir Ahmad**[1] and **R.P. Sethi**[2], JJ. [Date of decision: 5-5-2000]

Bhaurao Shankar Lokhande v. State of Maharashtra, (1965) 2 SCR 837: AIR 1965 SC 1564; Kanwal Ram v. H.P. Admn., AIR 1966 SC 614: (1966) 1 SCR 539: 1966 Cri LJ 472; Priya Bala Ghosh v. Suresh Chandra Ghosh, (1971) 1 SCC 864: 1971 SCC (Cri) 362; Gopal Lal v. State of Rajasthan, (1979) 2 SCC 170, relied upon

[2486] — Ss. 198(1) proviso (c) and 482 — Sustainability of prosecution under S. 494 IPC — Statement of subsequent wife — Relevance — *Complaint against husband for offence of bigamy filed by father of subsequent wife allegedly on her behalf but against her express desire stated in her sworn written statement — She was a major when she married of her own free will and that she was living happily and peacefully thereafter — Initiation of prosecution in such circumstances, held, was improper — Magistrate was not justified in taking cognizance of the said offence — Since husband and his wife staying together happily, further prosecution would only harass the accused — Hence, proceedings quashed — Penal Code, 1860, Ss. 494 and 420* (Para 4). *Manish Das (Dr.)* v. *State of U.P.*, (2006) 6 SCC 536: (2006) 3 SCC (Cri) 113.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *D.K. Jain*, JJ. [Date of decision: 14-7-2006]

[2487] — S. 198(2) — Provision disentitling wife to file complaint against her husband for the offence of adultery under S. 497, IPC, held, not discriminatory and unconstitutional — *Provision meant to promote social good — Penal Code, 1860, S. 497 — Constitution of India, Arts. 14 and 32*

Section 497, IPC and S. 198(1) r/w S. 198(2), CrPC constitute a legislative packet to deal with the offence committed by an outsider to the matrimonial unit. The community punishes such an 'outsider' subject to the rider that the erring 'man' alone can be punished and not the erring woman. The law does not envisage the punishment of any of the spouses at the instance of each other. A husband is not permitted to prosecute his disloyal wife because the wife is not treated as an offender in the eye of the law. The wife is also not so permitted as S. 198(1) r/w S. 198(2) does not permit her to do so. In the ultimate analysis the law has meted out even-handed justice to both of them in the matter of prosecuting each other or securing the incarceration of each other. The philosophy underlying the scheme of these provisions appears to be that as between the husband and the wife social goodwill be promoted by permitting them to 'make up' or 'break up' the matrimonial tie rather than to draw each other to the criminal court. Thus no discrimination has been practised in circumscribing the scope of S. 198(2) and fashioning it so that the right to prosecute the adulterer is restricted to the husband of the adulteress but has not been extended to the wife of the adulterer. Section 198(2), CrPC is, therefore, not vulnerable to the charge of hostile discrimination against a woman. *V. Revathi* v. *Union of India*, (1988) 2 SCC 72: 1988 SCC (Cri) 308: AIR 1988 SC 835: (1988) 1 KLT 771: (1988) 2 HLR 39: (1988) 1 Punj LR 649.

Bench Strength **2**. Coram: **M.P. Thakkar** and *M.M. Dutt*, JJ. [Date of decision: 25-2-1988]

Sowmithri Vishnu v. Union of India, 1985 Supp SCC 137: 1985 SCC (Cri) 325, relied on

— S. 198-A *See* Ss. 190, 198-A, 209, 239, 240, 242 and 323

— S. 199 *See also* Ss. 198-B and 199, Criminal Procedure Code, 1898, pp. 1076 et seq. in Vol. 2

— S. 199 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193 and 195 to 199 & 204

See also Ss. 195 to 199

See also Ss. 257, 199 and 482

[2488] — S. 199 — Complaint — Proper person — Defamation — *Plea that imputation being against father of the complainant, the father ought to have made the complaint — Not tenable when the same imputation was against the complainant also* (Para 3). *Ram Swarup* v. *Mohd. Javed Razack*, (2005) 10 SCC 393: 2005 SCC (Cri) 1549: AIR 2005 SC 2005: 2005 Cri LJ 1725.

Bench Strength **2**. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 23-2-2005]

[2489] — S. 199 — Requirement of taking cognizance of offence of defamation only upon receiving complaint by a person aggrieved — Object of, held, is to discourage filing of frivolous complaints — *Penal Code, 1860, S. 499*

In respect of the offence of defamation, Section 199 CrPC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrates' Courts. In the given facts of the present case, the complainants cannot be properly described as "persons aggrieved" within the meaning of Section 199(1) CrPC as there was no specific legal injury caused to any of them. (Para 37). *S. Khushboo* v. *Kanniammal*, (2010) 5 SCC 600.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and *Deepak Verma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 28-4-2010]

[2490] — S. 199 — Defamation — Locus standi to file complaint — "Some person aggrieved by the offence" — *Even if the libellous imputations are not made directly against a person but he has reasons to feel hurt on account of the same, he has locus standi to file a complaint — Where defamatory publications are made against a private limited company, its Director can file the complaint — Penal Code, 1860, S. 499, Expln. 2*

The collocation of the words "by some persons aggrieved" in Section 199 definitely indicates that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of the publication is a matter to be determined by the court depending upon the facts of each case. If a company is described as engaging itself in nefarious activities, its impact would certainly fall on every Director of the company and hence he can legitimately feel the pinch of it. Similarly, if a firm is described in a publication as carrying on offensive trade, every working partner of the firm can reasonably be expected to feel aggrieved by it. As the hospital against which imputations were published in the present case is a private limited company, it is too far-fetched to rule out any one of its Directors, feeling aggrieved on account of pejoratives hurled at the Company. (Para 13). *John Thomas* v. *K. Jagadeesan (Dr.)*, (2001) 6 SCC 30: 2001 SCC (Cri) 974: AIR 2001 SC 2651: (2001) 106 Comp Cas 619.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 12-7-2001]

K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88, distinguished

[2491] — S. 199(1) — Defamation — Acts prima facie not amounting to defamation — Complaint of such acts if mala fide — Determination of — *Accused in response to survey conducted by news magazine on subject of sexual habits of people residing in big cities, making a statement endorsing in general premarital sex and posing a question as to whether people in Tamil Nadu were not aware of incidence of sex or premarital sex — Statement not directed at any individual or even at a company or association or collection of persons — Such statement, held, did not constitute prima facie case of defamation of Tamil-speaking women — Moreover, complainants not having suffered any specific legal injury by said statement, held, were not "persons aggrieved" within the meaning of S. 199(1) CrPC, 1973 — Hence, complaints filed by them, held, mala fide — More so when most of them were associated with a particular political party — Penal Code, 1860, S. 499. S. Khushboo* v. *Kanniammal*, (2010) 5 SCC 600.

Bench Strength 3. Coram: *K.G. Balakrishnan, C.J.* and *Deepak Verma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 28-4-2010]

— S. 199(2) *See also* Ss. 397, 401, 204 and 199(2)

[2492] — S. 199(2) — "Public servant" — Chief Minister or Minister, held, is a public servant — *Expression "in the pay of the Government" — Meaning of — Contextual construction and dictionary meaning resorted to — Constitution of India, Arts. 52(1), 164 and 167 — Penal Code, 1860, S. 21(12)*

Although the first part of S. 21(12)*(a)*, Indian Penal Code, viz., 'in the service of the Government' signifies a relationship of master and servant where the employer employs the employee on the basis of a salary or remuneration, the second limb 'in the pay of the Government' is of a much wider amplitude so as to include within its ambit even public servant who may not be a regular employee receiving salary from his master. The expression 'in the pay of' connotes that a person is getting salary, compensation, wages or any amount of money.

Reference to Arts. 52(1), 164 and 167 makes it clear that a Minister is appointed or dismissed by the Governor and is, therefore, subordinate to him whatever be the nature and status of his constitutional functions. Moreover the holder of a public office such as the Chief Minister is a public servant in respect of whom the Constitution provides that he will get his salary from the Government Treasury so long as he holds his office on account of the public service that he discharges. The salary given to the Chief Minister is coterminus with his office and is not paid like other constitutional functionaries such as the President and the Speaker. These facts, therefore, point to the only conclusion that the Chief Minister is in the pay of the Government and is, therefore, a public servant within the meaning of S. 21(12) of the Penal Code.

Section 199(2), Criminal Procedure Code also supports the above conclusion inasmuch as the use of the words "other public servants" following "a Minister of the Union or of a State" clearly show that a Minister would also be a public servant. *M. Karunanidhi* v. *Union of India*, (1979) 3 SCC 431: 1979 SCC (Cri) 691: AIR 1979 SC 898: 1979 Cri LJ 773.

Bench Strength 5. Coram: *Y.V. Chandrachud, C.J.* and *P.N. Bhagwati, N.L. Untwalia*, **S. Murtaza Fazal Ali** and *R.S. Pathak*, JJ. [Date of decision: 20-2-1979]

— Ch. XV *See* Ss. 256, 249, 2(y) and Ch. XV

See also S. 378(4) and Ch. XV

See also S. 482 and Ch. XV

— S. 200 *See also* S. 220, Criminal Procedure Code, 1898, p. 1096 in Vol. 2

— S. 200 *See* Ss. 154, 190, 195, 196, 197 and 200

See also Ss. 154, 190 and 200

See also Ss. 154(1), 154(2), 154(3), 157(1), 190(1)(a) and 200

See also Ss. 154(3) & 36, 156(3), 200 and 482

See also Ss. 156 & 157 and 190 & 200 to 203

See also Ss. 156 & 157 and 190, 200, 203

See also Ss. 156, 190 and 200

See also Ss. 156(3), 157(1) proviso (b) & (2), 190, 200 and 154

See also Ss. 156(3), 173(8), 190, 200 and 204

See also Ss. 156(3), 190 and 200

See also Ss. 156(3), 190(1), 200 and 4

See also Ss. 156(3) and 200

See also Ss. 173, 190(1)(b), 156(3), 200, 203 and 204

See also Ss. 173, 200 and 2(d) Expln.

See also Ss. 173(2), 169, 190, 200 and 203

See also Ss. 190, 154, 173 and 200

See also Ss. 190, 154, 173, 200 and 204

See also Ss. 190, 173, 200 and 202

See also Ss. 190, 173(2), 169, 200, 202 and 204

See also Ss. 190 to 210, 225 and 238 to 250

See also Ss. 190, 200 and 157

See also Ss. 190 and 200 to 203, 154 and 156

See also Ss. 190 & 200 to 203 and 156 & 157

See also Ss. 190 (Ch. XIV), 200, 202 (Ch. XV) and 204 (Ch. XVI)

See also Ss. 190, 200, 202 and 482

See also Ss. 190, 200, 203 and 156 & 157

See also Ss. 190, 200, 204 and 156(3)

See also Ss. 190, 200, 204, 173 and 482

See also Ss. 190(1), 173(2), 169, 200 and 202

See also Ss. 190(1) and 200 & 154, 156

See also Ss. 190(1) & 200 and 204

See also Ss. 190(1)(a) & (b) and 173(2), 200 & 202

See also Ss. 190(1)(a) and 200

See also Ss. 190(1)(a) & 200 and 173

See also Ss. 190(1)(a), 200 and 204

See also Ss. 190(1)(a), 200, 204, 173 and 482

See also Ss. 190(1)(b), 200, 202 and 204

See also Ss. 190(1)(b) & 204, 200, 156(3), 468 and 401

See also Ss. 202(2) proviso, 200, 203, 204, 208, 209, 313, 208, 226 to 228, 460, 461 and 465

See also Ss. 204, 190(1)(a) and 200

See also Ss. 204, 200 and 190

See also Ss. 204, 200 and 202

See also Ss. 204, 200, 202, 203 and 482

See also Ss. 204, 200 and 482

See also Ss. 204 & 203, 202 and 200

See also Ss. 204 & 203, 202, 200, 239 and 362 & 482

See also Ss. 204 & 203, 202, 200 and 482

See also Ss. 256 and 200

See also Ss. 397, 401, 91, 311 and 200

See also Ss. 397 & 401 and Ss. 156(3) & 200

See also Ss. 475, 190, 200 to 204

See also Ss. 482 and 2(d), 154, 155 and 190, 200

See also Ss. 482, 190 and 200

See also Ss. 482, 200 and 196

See also Ss. 482, 200, 202, 203 and 204

See also Ss. 482, 204, 200 and 202

[2493] — S. 200 — Examination of complainant — Object of — *Held, is to satisfy itself about the existence of a prima facie case against the person accused of the offence and to ensure that such person is not harassed by false and vexatious complaints by issue of process — Further held, where the proprietor of the proprietary concern has personal knowledge of the transaction and the proprietor has signed the complaint, he has to be examined under S. 200 — But where the attorney holder of the complainant is in charge of the business of the complainant payee and the attorney holder alone is personally aware of the transactions, and the complaint is signed by the attorney holder on behalf of the complainant payee, then such attorney holder is to be examined as complainant — Moreover, where the cheque is drawn in the name of the proprietor of a proprietary concern, but an employee of such concern (who is not an attorney holder) has knowledge of the transaction, the payee as complainant and the employee who has knowledge of the transaction, may both have to be examined* (Paras 14, 15 and 16). *Shankar Finance & Investments* v. *State of A.P.*, (2008) 8 SCC 536: (2008) 3 SCC (Cri) 558.

Bench Strength 2. Coram: **R.V. Raveendran** and *P. Sathasivam*, JJ. [Date of decision: 26-6-2008]

Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521; Janki Vashdeo Bhojwani v. Indusind Bank Ltd., (2005) 2 SCC 217, relied on

[2494] — S. 200 — Statutory requirements under — *Held, the complainant is bound to make statements on oath as to how the offence was committed and how the accused persons were responsible therefor — In the event of frivolous or mala fide prosecution of the accused, the court may direct registration of case against the complainant for the same — Accused would also be entitled to file a suit for damages — Negotiable Instruments Act, 1881, Ss. 138, 139 and 141* (Para 7). *Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya*, (2006) 10 SCC 581: AIR 2006 SC 3086: 2006 Cri LJ 4602.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 13-9-2006]

[2495] — Ss. 200 and 202 — Court has discretion either to issue process after examining complaint and witnesses, if any, or to hold inquiry or direct investigation

Upon a complaint being received and the court records the verification, it is open to the court to apply its mind to the facts disclosed and to judicially determine whether process should or should not be issued. It is not a condition precedent to the issue of process that the court of necessity must hold the inquiry as envisaged by S. 202 or direct investigation as therein contemplated. The power to take cognizance without holding inquiry or directing investigation is implicit in S. 202 when it says that the Magistrate may "if he thinks fit, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer..., for the purpose of deciding whether or not there is sufficient ground for proceeding". Therefore, the matter is left to the judicial discretion of the court whether on examining the complainant and the witnesses if any as contemplated by S. 200 to issue process or to postpone the issue of process. This discretion which the court enjoys cannot be circumscribed or denied by making it mandatory upon the court either to hold the inquiry or direct investigation. Such an approach would be contrary to the statutory provision. Therefore, there is no merit in the contention that by entertaining a private complaint, the purpose of speedy trial would be thwarted or that a pre-process safeguard would be denied. *A.R. Antulay* v. *Ramdas Sriniwas Nayak*, (1984) 2 SCC 500: 1984 SCC (Cri) 277: AIR 1984 SC 718: 1984 Cri LJ 647: 1984 Bom LR 228.

Bench Strength 5. Coram: **D.A. Desai**, *R.S. Pathak*, *O. Chinnappa Reddy*, *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

[2496] — Ss. 200 & 202 (Ch. IV), 156(3), 190(1)(b) and 173 — Cognizance taken by Magistrate or merely direction for investigation given — Determination of (Paras 15 to 24)

The Magistrate only ordered investigation under Section 156(3) CrPC. The Magistrate perused the complaint without examining the merits of the claim that there is sufficient ground for proceeding or not and directed the police officer concerned for investigation under Section 156(3) CrPC. As rightly observed by the Single Judge of the High Court, the Magistrate did not bring into motion the machinery of Chapter XV CrPC. He did not examine the complainant or his witnesses under Section 200 CrPC which is the first step in the procedure prescribed under the said Chapter. The question of taking the next step of the procedure envisaged in Section 202 did not arise. Instead of taking cognizance of the offence, the Magistrate has merely allowed the application filed by the complainant/SEPCO under Section 156(3) CrPC and sent the same along with its annexure for investigation by the police officer concerned. (Para 22)

To proceed under Section 156(3) CrPC, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation. In the case on hand, the Single Judge and the Division Bench of the High Court rightly pointed out that the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding and, therefore, the Magistrate has not committed any illegality in directing the police for investigation. As a matter of fact, even after receipt of a report under Section 173, the Magistrate under Section 190(1)(*b*) may or may not take cognizance of offence. In other words, he is not bound to take cognizance upon submission of the police report by the investigating officer, hence, by directing the police to file charge-sheet or final report and to hold investigation, it cannot be construed that the Magistrate has exceeded his power as provided in Section 156(3). (Para 23). *Srinivas Gundluri* v. *SEPCO Electric Power Construction Corpn.*, (2010) 8 SCC 206.

Bench Strength 2. Coram: **P. Sathasivam** and *Anil R. Dave*, JJ. [Date of decision: 30-7-2010]

Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380; Tula Ram v. Kishore Singh, (1977) 4 SCC 459: 1977 SCC (Cri) 621, relied on

Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234, distinguished on facts

Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521, cited

[2497] — Ss. 200 and 202 to 204 — Duty of Magistrate under S. 200, restated — *Words "sufficient ground" occurring in S. 203, held, mean the satisfaction that a prima facie case is made out and not that there is sufficient ground for conviction*

In case of a complaint under Section 200 CrPC a Magistrate can take cognizance of the offence made out and then has to examine the complainant and his witnesses, if any, to ascertain whether a prima facie case is made out against the accused to issue process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass. Such examination is provided in order to find out whether there is or not sufficient ground for proceeding. The words "sufficient ground" used under Section 203 have to be construed to mean the satisfaction that a prima facie case is made out against the accused and not sufficient ground for the purpose of conviction. (Para 15). *S.W. Palanitkar* v. *State of Bihar*, (2002) 1 SCC 241: 2002 SCC (Cri) 129: AIR 2001 SC 2960: 2002 Cri LJ 548.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 18-10-2001]

[2498] — **S. 200 — Mandatory examination of complainant — Object of — Exemption of public servant from — Rationale behind, explained**

The object of Section 200 CrPC requiring the complainant and witnesses to be examined, is to find out whether there are sufficient grounds for proceeding against the accused and to prevent issue of process on complaints which are false or vexatious or intended to harass the persons arrayed as accused. Where the complainant is a public servant or court, clause (*a*) of the proviso to Section 200 CrPC raises an implied statutory presumption that the complaint has been made responsibly and bona fide and not falsely or vexatiously. On account of such implied presumption, where the complainant is a public servant, the statute exempts examination of the complainant and the witnesses, before issuing process. (Para 12). *National Small Industries Corpn. Ltd.* v. *State (NCT of Delhi)*, (2009) 1 SCC 407.

Bench Strength **2**. Coram: **R.V. Raveendran** and *Dalveer Bhandari*, JJ. [Date of decision: 17-11-2008]

[2499] — **Ss. 200, 204, 244(1), 244(2), 245 and 246(1) — Complaint on behalf of court — Examination of complainant — Official complaint filed by Registrar General of High Court** — *Held, neither was any affidavit required nor complainant required to be examined on oath — Further held, Magistrate could at this stage also discharge accused under S. 245(2) by recording reasons*

Since this was a complaint made by the court, there is no question of there being any examination of the complainant or his witnesses on oath. The Magistrate simply issued the process under Section 204 CrPC. The Magistrate could have proceeded under Section 245(2) CrPC, on the basis of the discharge application and discharged him. However, he would have been required to give reasons for discharging at that stage, when no evidence or no material, whatsoever, was available with him, excepting a bare complaint. (Paras 33, 34, 38 and 40). *Ajoy Kumar Ghose* v. *State of Jharkhand*, (2009) 14 SCC 115: AIR 2009 SC 2282: 2009 Cri LJ 2824.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 18-3-2009]

[2500] — **Ss. 200 to 204 and 154(3) — Remand by Supreme Court — Order of forum below not clear** — *Order of Magistrate (that was set aside by High Court) was not clear as to nature of action taken by Magistrate on a complaint against police inaction — Three alternative actions against police inaction can be taken as per* Minu Kumari case, *(2006) 4 SCC 359 — Either Magistrate can take cognizance, or direct police investigation or may even dismiss the complaint case based on the guidelines laid down in* Minu Kumari case — *Since the order of the Magistrate was not very clear and High Court had also not dealt with it, case remanded to trial court to decide the matter afresh as per the directions contained in* Minu Kumari case — *Penal Code, 1860, Ss. 406, 420, 465, 467, 468 and 120-B — Constitution of India, Arts. 136 and 141* (Paras 12 and 11). *Ketankumar Babulal Patel* v. *Kesarben Jesangji*, (2008) 14 SCC 605.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 23-9-2008]

Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310, relied on

[2501] — **S. 200 — Accused has no right to be heard at this stage or cross-examine the witnesses.** *State of H.P.* v. *Surinder Mohan*, (2000) 2 SCC 396: 2000 SCC (Cri) 400: AIR 2000 SC 1862: 2000 Cri LJ 1429.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 7-2-2000]

[2502] — **Ss. 200, 190(1)(a), 204, 300 and 482 — Second complaint on same facts — Circumstances in which it is maintainable, stated** — *Appellant lodged FIR against respondent alleging therein that the sale deed and acknowledgement purported to have been executed by him were forged and fabricated documents — On being not satisfied with the investigation carried out by the police, appellant filed a criminal complaint in that matter — IO concluded that the dispute between the parties was a civil dispute and that it was appellant who executed the acknowledgement — Case disposal report based on said conclusion, accepted by the Magistrate — Complaint case also closed — Another complaint filed by appellant whereupon summons issued to respondent — High Court holding that having regard to the police report and the dismissal of the protest petition filed by the appellant, a fresh complaint on the selfsame allegations was barred — Setting aside the High Court's order, held on facts, matter was liable to be remitted back to the Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not*

It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 CrPC may take cognizance of an offence and issue process if there is sufficient ground for proceeding. But the second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. The second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. (Para 19)

In the present case, the matter should have been remitted back to the Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not. (Para 19). *Mahesh Chand* v. *B. Janardhan Reddy*, (2003) 1 SCC 734: 2003 SCC (Cri) 425: AIR 2003 SC 702.

Bench Strength **3**. Coram: *M.B. Shah, D.M. Dharmadhikari* and **S.B. Sinha**, JJ. [Date of decision: 4-12-2002]

Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876: 1962 Supp (2) SCR 297: (1962) 1 Cri LJ 770; Bindeshwari Prasad Singh v. Kali Singh, (1977) 1 SCC 57: 1977 SCC (Cri) 33, relied on

Munilal Thakur v. Nawal Kishore Thakur, 1985 Cri LJ 437: 1984 Pat LJR 774; District Manager, Food Corporation of India v. Jayashankar Mund, 1989 Cri LJ 1578: (1989) 67 Cut LT 426, considered and distinguished

[2503] — Ss. 200, 190, 204, 300 and 482 — Second complaint petition on same facts and similar allegations — Maintainability of — *Following the decision in* Mahesh Chand case, *(2003) 1 SCC 734, circumstances in which a second complaint petition could be filed, stated — In the present case, a complaint petition filed by respondent rejected by a reasoned order — A revision application filed thereagainst also dismissed — Respondent filing another application under S. 156(3) CrPC alleging selfsame facts on which the first complaint rejected — Held, in the facts of the case, a second complaint petition could not have been filed — Hence, it was not a fit case where cognizance of offence could have been taken or any summons could have been issued*

Respondent 3 filed a complaint petition in the Court of the ACJM, under Sections 420, 462, 467, 468 and 471 IPC, contending that the will dated 1-8-2002 purported to have been executed by *T* in favour of his daughter was a forged and fabricated document. The ACJM, dismissed the said complaint petition. A revision application was filed thereagainst by Respondent 3 which was dismissed. Respondent 3 thereafter filed another application under Section 156(3) CrPC making similar allegations. However, in the said complaint petition even the execution of the bainamas was alleged to be fraudulent acts on the part of the respondent-accused. The ACJM by his order issued summons. The appellants filed an application under Section 482 CrPC which has been dismissed. The High Court in its judgment refused to go into the merits of the matter that the defence of the accused cannot be considered at that stage and they can raise all contentions at the time of framing of the charges.

Allowing the appeal,

Held :

A complaint petition filed by the third respondent has been rejected. A revision application filed thereagainst has also been dismissed. The order dated 2-4-2003 of the learned ACJM is not a cryptic one. Reasons have been assigned in support thereof. In a situation of this nature, a second complaint petition could not have been filed. The Supreme Court in *Mahesh Chand case*, (2003) 1 SCC 734 itself held that the second complaint can lie only on fresh facts and/or if a special case is made out therefor. The second complaint petition filed by the third respondent does not disclose any such exceptional case. It reiterated the same allegations as were made in the first complaint petition. No fresh fact was brought to the notice of the court. The core contention raised in both the complaint petitions was alleged execution of a forged will by *T*. It was not a fit case where cognizance of the offence could have been taken or any summons could have been issued. (Paras 13 and 18 to 20). *Hira Lal* v. *State of U.P.*, (2009) 11 SCC 89: (2009) 3 SCC (Cri) 1247: AIR 2009 SC 2380: 2009 Cri LJ 2849: (2009) 4 All LJ 520: (2009) 78 AIC 134 (SC): (2009) 2 APLJ 42 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 8-4-2009]

Mahesh Chand v. B. Janardhan Reddy, (2003) 1 SCC 734: 2003 SCC (Cri) 425, followed

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567, relied on

[2504] — Ss. 200, 190 and 202 to 204 — Second complaint, on dismissal of first complaint on merit, which dismissal had attained finality, on identical facts — Maintainability — *Held, though there is no statutory bar to filing second complaint* *on same facts, but same can be entertained only in exceptional circumstances enumerated in* Pramatha Nath Talukdar case, *AIR 1962 SC 876 — In the instant case, second complaint was on almost identical facts raised in first complaint, which was dismissed on merit — Hence, second complaint not maintainable — Penal Code, 1860, Ss. 420, 120-B and 426* (Paras 14 to 21). *Poonam Chand Jain* v. *Fazru*, (2010) 2 SCC 631.

Bench Strength 2. Coram: *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision: 28-1-2010]

Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876: (1962) 1 Cri LJ 770; Jatinder Singh v. Ranjit Kaur, (2001) 2 SCC 570: 2001 SCC (Cri) 354; Mahesh Chand v. B. Janardhan Reddy, (2003) 1 SCC 734: 2003 SCC (Cri) 425; Hira Lal v. State of U.P., (2009) 11 SCC 89: (2009) 3 SCC (Cri) 1247, discussed and applied

[**Ed.**: See also *Poonam Chand Jain* v. *Fazru*, (2004) 13 SCC 269.]

[2505] — Ss. 200, 203, 202, 190, 204(1) and 362 — Filing of second complaint on same cause of action and between same parties, when earlier complaint dismissed for non-filing of process fees, but not on merits — Maintainability — *Held, even if a complaint is dismissed under S. 203, a second complaint would still lie under exceptional circumstances e.g. where previous order was passed on an incomplete record or on misunderstanding of nature of complaint or it was manifestly absurd, unjust, fallacious or false or where new facts, which could not, with reasonable diligence, have been brought on record in a previous proceeding, have been adduced — Although prayer for recalling order of dismissal would not be maintainable before Magistrate in view of S. 362, but such is not the case here — Herein, neither was complaint dismissed on merits nor at stage of S. 203, but was dismissed for failure of complainant to put in process fees for effecting service — In fact, only on being satisfied of prima facie case, Magistrate issued process on complaint — Therefore, held, in absence of any provision in CrPC barring a second complaint being filed on same allegation, there would be no bar to a second complaint being filed on same facts, if first complaint did not result in conviction or acquittal or even discharge of accused, and if dismissal was not on merits but on account of a default by complainant — Penal Code, 1860, Ss. 420/34 — Prevention of Corruption Act, 1988, Ss. 22 and 19* (Paras 23 to 29)

In the instant case, the complainant (Respondent 2) filed a complaint on 1-7-1999 against the petitioner under Sections 420/34 IPC, on allegations of payment having been received by him to perform certain favours for the complainant's son-in-law by making use of his official position, on which process was issued by the trial court, which matter is still pending.

Another complaint was filed by Respondent 2 on 8-4-2002 under the provisions of Prevention of Corruption Act, 1988, against the petitioner, which was entertained by trial court and process was issued. However, this complaint came to be dismissed on 24-7-2003, for non-filing of the process fees. An application filed by the complainant on 18-9-2003, for recall of the order dated 24-7-2003, was dismissed. Thereafter, yet another complaint was filed by Respondent 2 on 29-9-2003, on the same grounds, under the provisions of the Prevention of Corruption Act, 1988, on which process was issued on 8-1-2004.

The petitioner filed two criminal revision cases for quashing the aforesaid complaints dated 1-7-1999 and 29-9-2003, before the High Court, which were dismissed by a common judgment and order. The same is assailed in present special leave petitions.

As far as the first complaint dated 1-7-1999 under Sections 420/34 IPC was concerned, the petitioner did not seriously question the order of the High Court rejecting the petitioner's prayer for quashing the same. He confined his case mainly to the complaint dated 29-9-2003, wherein the trial court took cognizance and issued process under the provisions of Prevention of Corruption Act, 1988, despite an earlier complaint on the same ground and on the same set of facts having been dismissed earlier for non-filing of the process fees.

Dismissing the special leave petitions, the Supreme Court held as above. *Ranvir Singh* v. *State of Haryana*, (2009) 9 SCC 642.

Bench Strength 2. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 1-9-2009]

Jatinder Singh v. Ranjit Kaur, (2001) 2 SCC 570: 2001 SCC (Cri) 354; Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876, followed

[2506] — Ss. 200, 203, 204 and 245 — Second complaint on same facts after dismissal of first one — Maintainability — *Decision by High Court that second complaint maintainable and further observation that if the accused had any grievance they could seek review of the summoning order with a view to get discharged in view of the provision of S. 245 CrPC — Legality of — Earlier decisions by Supreme Court laying down that second complaint maintainable only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in* *the previous proceedings, have been adduced — Held, High Court had not considered the legality of the order directing issuance of process in second complaint keeping in view the law laid down by the Supreme Court — Correctness of the law laid down in* K.M. Mathew case, *(1992) 1 SCC 217 doubted — Matter remitted to High Court to record positive findings on the relevant issues* (Paras 6 to 12 and 14). *Poonam Chand Jain* v. *Fazru*, (2004) 13 SCC 269: 2005 SCC (Cri) 190: AIR 2005 SC 38: 2005 Cri LJ 100.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 15-10-2004]

Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876: 1962 Supp (2) SCR 297: (1962) 1 Cri LJ 770; Bindeshwari Prasad Singh v. Kali Singh, (1977) 1 SCC 57: 1977 SCC (Cri) 33; Mahesh Chand v. B. Janardhan Reddy, (2003) 1 SCC 734: 2003 SCC (Cri) 425; Subramanium Sethuraman v. State of Maharashtra, 2005 SCC (Cri) 242; Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927, relied on

K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88, held, overruled

[2507] — Ss. 200, 204 and 190 — Mere expectation of success in a pending proceeding cannot bar a criminal prosecution if ingredients of the offence charged are prima facie fulfilled. *P. Jayappan* v. *S.K. Perumal, Ist ITO*, 1984 Supp SCC 437: AIR 1984 SC 1693: 1984 Tax LR 1197: (1984) 149 ITR 696.

Bench Strength 3. Coram: *O. Chinnappa Reddy*, *A.P. Sen* and **E.S. Venkataramiah**, JJ. [Date of decision: 17-8-1984]

[2508] — S. 200 — Industrial unit of a company itself responsible for causing technical defect of not impleading the main accused company in the complaint — *It is not open to the Chairman, Vice-Chairman, MD etc. of the company to later challenge the prosecution against them on ground of such defect in the complaint. U.P. Pollution Control Board* v. *Modi Distillery*, (1987) 3 SCC 684: 1987 SCC (Cri) 632: AIR 1988 SC 1128.

Bench Strength 2. Coram: **A.P. Sen** and *S. Natarajan*, JJ. [Date of decision: 6-8-1987]

[2509] — Ss. 200, 203 and 204 — Complaint — Remedy of arbitration, held, no bar to criminal prosecution — *Agreement in relation to commercial transaction containing an arbitration clause — Criminal prosecution for breach of such contract, if such breach even prima facie constituted a criminal offence, held, not barred merely because of the presence of the arbitration clause in the agreement — Arbitration and Conciliation Act, 1996, Ss. 7 and 8 — Availability of the remedy of arbitration in case of breach of agreement, held, no bar to criminal prosecution if such breach constitutes a criminal offence even prima facie — Penal Code, 1860, Ss. 405, 406 and 420*

For the alleged breach of the agreement in relation to commercial transaction, it is open to Respondent 2 to proceed against the appellants for his redressal for recovery of money by way of damages for the loss caused, if any. Merely because there is an arbitration clause in the agreement, that cannot prevent criminal prosecution against the accused if an act constituting a criminal offence is made out even prima facie. (Para 22). *S.W. Palanitkar* v. *State of Bihar*, (2002) 1 SCC 241: 2002 SCC (Cri) 129: AIR 2001 SC 2960: 2002 Cri LJ 548.

Bench Strength 2. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 18-10-2001]

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47, followed

[2510] — Ss. 200, 202, 203 and 204 — Complaint under by stockist against his principals — Earlier notice claiming payment of Rs 15 lakhs — Issuance of summons, if on facts proper — *Neither the complaint nor the statement of witnesses showing that any property was entrusted to any of the accused or that the accused had domain over any property of the complainant which the accused converted to their own use — In such circumstances, the ingredients of S. 405, held, were not even prima facie satisfied — Hence, the Magistrate was in serious error in issuing process — Penal Code, 1860, Ss. 405 and 406*

Under an agreement dated 21-2-1995, Appellant 1 (the Company) appointed Respondent 2 as its consignment stockist subject to certain terms and conditions. The agreement remained in operation up to 31-3-1997. On 3-10-1997, Respondent 2 served a notice on Appellant 1 requesting him to pay a certain amount or in the alternative refer the dispute to arbitration under the arbitration clause contained in the agreement. The notice went in vain. Thereafter, Respondent 2 filed a complaint against the appellants under Sections 406, 420 and 120-B IPC alleging that the appellants, in connivance of each other, had committed the offences of criminal breach of trust and cheating against him. The Magistrate issued summons against the appellants. The appellants filed before the High Court a petition under Section 482 CrPC for quashing the said order of the Magistrate. The High Court dismissed that petition. The appellants contended that the essential ingredients of Sections 405, 415 and 120-B IPC had not been satisfied and, therefore, the Magistrate erred in issuing the process. They added that High Court also failed to exercise its jurisdiction under Section 482 IPC to correct that error. They added that at any rate no case was made out against Appellants 1 to 6 and 8. Partly allowing the appeal

In the present case, there is nothing either in the complaint and/or in the sworn statements of the complainant and the witnesses that any property was entrusted to any of the appellants at all or the appellants had domain over any of the properties of Respondent 2 which they dishonestly converted to their own use so as to satisfy the ingredients of Section 405 IPC punishable under Section 406 IPC. Further, the agreement also did not require entrustment of any property to the appellants. Taking the complaint and the statements of the witnesses as they are, it cannot be said even prima facie that the appellants committed any offence punishable under Section 406 IPC, since the ingredients of that offence were not satisfied. Hence the Magistrate committed a serious error in issuing process against the appellants for the said offence. (Para 20). *S.W. Palanitkar* v. *State of Bihar,* (2002) 1 SCC 241: 2002 SCC (Cri) 129: AIR 2001 SC 2960: 2002 Cri LJ 548.

Bench Strength **2.** Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 18-10-2001]

Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521; Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; Punjab National Bank v. Surendra Prasad Sinha, 1993 Supp (1) SCC 499: 1993 SCC (Cri) 149, followed

[2511] — **S. 200 — Complaint for dishonour of cheque — Complainant — Who is, in case of incorporeal body — In proceedings by whom and how represented** — *Held, "complainant" is not defined under CrPC — NI Act requires a complaint to be made by the payee or by the holder in due course — Procedure relating to initiation of proceedings, trial and disposal of such complaints, is governed by the Code — If the payee is a company, necessarily the complaint should be filed in the name of the company — S. 142 of the NI Act does not specify who should represent the company, if a company is the complainant — A company can be represented by an employee or even by a non-employee authorised and empowered to represent the company either by a resolution or by a power of attorney — Negotiable Instruments Act, 1881, Ss. 142 and 138*

The term "complainant" is not defined under CrPC. Section 142 of the NI Act requires a complaint under Section 138 of that Act to be made by the payee (or by the holder in due course). It is thus evident that in a complaint relating to dishonour of a cheque (which has not been endorsed by the payee in favour of anyone), it is the payee alone who can be the complainant. The NI Act only provides that dishonour of a cheque would be an offence and the manner of taking cognizance of offences punishable under Section 138 of that Act. However, the procedure relating to initiation of proceedings, trial and disposal of such complaints, is governed by the Code. Section 200 CrPC requires that the Magistrate, on taking cognizance of an offence on complaint, shall examine upon oath the complainant and the witnesses present and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses. The requirement of Section 142 of the NI Act that the payee should be the complainant, is met if the complaint is in the name of the payee. If the payee is a company, necessarily the complaint should be filed in the name of the company. Section 142 of the NI Act does not specify who should represent the company, if a company is the complainant. A company can be represented by an employee or even by a non-employee authorised and empowered to represent the company either by a resolution or by a power of attorney. (Para 14)

Section 138 of the NI Act mandates that the payee alone, whether a corporeal person or incorporeal person, shall be the complainant. Section 200 CrPC contemplates only a corporeal person being a complainant. It mandatorily requires the examination of the complainant and the sworn statement being signed by the complainant. If the payee is a company, an incorporeal body, the said incorporeal body can alone be the complainant. The mandatory requirement of Section 200 CrPC is that a Magistrate taking cognizance of an offence on complaint, shall examine upon oath the *complainant* and that the substance of such examination reduced to writing shall be signed by the *complainant*. An incorporeal body can obviously neither give evidence nor sign the deposition. If literal interpretation is applied, it would lead to an impossibility as an incorporeal body is incapable of being examined. A harmonious and purposive interpretation of Section 142 of the NI Act and Section 200 CrPC becomes necessary. Section 142 only requires that the complaint should be in the name of the payee. Where the complainant is a company, who will represent the company and how the company will be represented in such proceedings, is not governed by the Code but by the relevant law relating to companies. Section 200 CrPC mandatorily requires an examination of the complainant; and where the complainant is an incorporeal body, evidently only an employee or representative can be examined on its behalf. As a result, the company becomes a *de jure* complainant and its employee or other representative, representing it in the criminal proceedings, becomes the *de facto* complainant. Thus in every complaint, where the complainant is an incorporeal body, there is a complainant-*de jure*, and a complainant-*de facto*. Where the complainant is an incorporeal body represented by one of its employees, the employee who is a public servant is the *de facto* complainant and in signing and presenting the complaint, he acts in the discharge of his official duties. Therefore, it follows that in such cases, the exemption under clause (*a*) of the first proviso to Section 200 CrPC will be available. (Paras 15 and 16)

When in a complaint in regard to dishonour of a cheque issued in favour of a company or corporation, for the purpose of Section 142 of the NI Act, the company will be the complainant, and for purposes of Section 200 CrPC, its employee who represents the company or corporation, will be the *de facto* complainant. In such a complaint, the *de jure* complainant, namely, the company or corporation will remain the same but the *de facto* complainant (employee) representing such *de jure* complainant can change, from time to time. And if the *de facto* complainant is a public servant, the benefit of exemption under clause (*a*) of the proviso to Section 200 CrPC will be available, even though the complaint is made in the name of a company or corporation. (Para 19)

Thus, the answer to the question raised is: where an incorporeal body is the payee and the employee who represents such incorporeal body in the complaint is a public servant, he being the *de facto* complainant, clause (*a*) of the proviso to Section 200 CrPC will be attracted and consequently, the Magistrate need not examine the complainant and the witnesses. Summoning order of the Magistrate stands restored. (Paras 20 and 21). *National Small Industries Corpn. Ltd.* v. *State (NCT of Delhi)*, (2009) 1 SCC 407.

Bench Strength 2. Coram: **R.V. Raveendran** and *Dalveer Bhandari*, JJ. [Date of decision: 17-11-2008]

Associated Cement Co. Ltd. v. Keshvanand, (1998) 1 SCC 687: 1998 SCC (Cri) 475; MCD v. Jagdish Lal, (1969) 3 SCC 389, relied on

[2512] — S. 200 — Filing of complaint by payee alone under — Mandatory examination of complainant under CrPC — Incorporeal person — Examination of — Method — *Held, if a literal interpretation is applied, it would lead to an impossibility as an incorporeal body is incapable of being examined — A harmonious and purposive interpretation of S. 142 of NI Act and S. 200 of the Code becomes necessary — S. 200 of the Code mandatorily requires an examination of the complainant; and where the complainant is an incorporeal body, evidently only an employee or representative can be examined on its behalf — Company becomes a de jure complainant and its employee or other representative, representing it in the criminal proceedings, becomes the de facto complainant — Where the complainant is an incorporeal body represented by one of its employees, the employee who is a public servant is the de facto complainant and in signing and presenting the complaint, he acts in the discharge of his official duties — In such cases, the exemption under clause (a) of the first proviso to S. 200 of the Code will be available — Negotiable Instruments Act, 1881, S. 138*

The appellant a "government company" lodged a complaint against the second respondent Company alleging that they had issued a cheque drawn in favour of the appellant towards discharge of its liability, which was dishonoured when presented for payment. The appellant prayed for summoning and punishing the second respondent and its Directors (Respondents 3 and 4). The Metropolitan Magistrate took cognizance and summoned the accused but did not examine the complainant and its witnesses, under Section 200 CrPC as he held that as the complaint was filed by a public servant in discharge of his public duties; his examination was dispensed with. The respondents challenged the summoning order on the basis that as the complainant was a government company and not a public servant, the exemption under clause (*a*) of the proviso to Section 200 CrPC was not available; and that the Magistrate could not have dispensed with the mandatory requirement of examining the complainant on oath, under Section 200 CrPC. The High Court accepted this contention and allowed the petition and quashed the summoning order.

The appellant has thus filed the present appeal.

Allowing the appeal,

Held :

The object of Section 200 CrPC requiring the complainant and witnesses to be examined, is to find out whether there are sufficient grounds for proceeding against the accused and to prevent issue of process on complaints which are false or vexatious or intended to harass the persons arrayed as accused. Where the complainant is a public servant or court, clause (*a*) of the proviso to Section 200 CrPC raises an implied statutory presumption that the complaint has been made responsibly and bona fide and not falsely or vexatiously. On account of such implied presumption, where the complainant is a public servant, the statute exempts examination of the complainant and the witnesses, before issuing process. (Para 12)

When an employee of a government company or statutory corporation, who is a public servant, acts or purports to act in the discharge of his official duties, it necessarily refers to doing acts done or duties discharged by such public servant, for and on behalf of his employer, namely, the government company/statutory corporation. Any complaint by a public servant (if he happens to be an employee of a government company) acting or purporting to act in the discharge of his official duties, can only be in regard to the transactions or affairs of the employer company. When an offence is committed in regard to a transaction of the government company, it will be illogical to say that a complaint regarding such offence, if made by an employee acting for and on behalf of the company will have the benefit of exemption under clause (*a*) of the proviso to Section 200 CrPC, but a complaint in regard to very same offence, if made in the name of the company represented by the said employee, will not have the benefit of such exemption. (Para 13)

The term "public servant" is not defined in the Code of Criminal Procedure. However, Section 2(*y*) CrPC provides that words and expressions used but not defined in the Code will have the meaning assigned to them under the Penal Code, 1860. Having regard to the aforesaid definition, it is clear that the appellant which is a government company is not a "public servant", but every employee of the appellant is a "public servant". (Para 11). *National Small Industries Corpn. Ltd.* v. *State (NCT of Delhi)*, (2009) 1 SCC 407.

Bench Strength 2. Coram: **R.V. Raveendran** and *Dalveer Bhandari*, JJ. [Date of decision: 17-11-2008]

Associated Cement Co. Ltd. v. Keshvanand, (1998) 1 SCC 687: 1998 SCC (Cri) 475; MCD v. Jagdish Lal, (1969) 3 SCC 389, relied on

[2513] — **Ss. 200 and 203 — Complaint offshoot of dismissal of ejectment suit and appeals filed by the complainant against the present appellants — But no allegation made in the complaint against the appellants** — *Held, proceedings against the appellants on the basis of such complaint would be abuse of process of the court. Nathi Rai* v. *State of U.P.*, (1981) 3 SCC 575: 1981 SCC (Cri) 757.

Bench Strength 2. Coram: *A.C. Gupta* and *Baharul Islam*, JJ. [Date of decision: 23-2-1981]

[2514] — **Ss. 200 proviso (a) and 190 — Cognizance of an offence upon complaint — Examination of complainant — Necessity of** — *Complaint in writing made by Deputy Chief Controller of Imports and Exports in respect of offences under IPC and Imports and Exports (Control) Act — The said complainant was a public servant who had filed the complaint in discharge of his official duty — Therefore, in view of S. 200 proviso (a), held, the Magistrate was fully justified in taking cognizance of the offences without recording the statement of the said complainant — Penal Code, 1860, S. 21, Twelfth clause* (Para 11). *Chief Controller of Imports & Exports* v. *Roshanlal Agarwal*, (2003) 4 SCC 139: 2003 SCC (Cri) 788: AIR 2003 SC 1900: 2003 Cri LJ 1698: (2003) 155 ELT 216.

Bench Strength 2. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 5-3-2003]

[2515] — **Ss. 200 proviso (a) and 204 — Complaint filed by Dy. Chief Controller of Imports and Exports under, against a company and its MD** — *Clear allegations made in the complaint that MD committed the offence acting on behalf of the licensee company — Since the company by itself could not act and had acted through the MD, held, the complaint against the MD could not be quashed on ground that offence under S. 5, Import and Export (Control) Act, 1947 must be principally done by licensee — If allegations prima facie established the offence, issue of process against the MD not vitiated by non-application of mind — Import and Export (Control) Act, 1947, S. 5. T.J. Stephen* v. *Parle Bottling Co. (P) Ltd.*, 1988 Supp SCC 458: 1988 SCC (Cri) 690: AIR 1988 SC 994: (1988) 16 ECC 185: (1988) 64 Comp Cas 151.

Bench Strength 2. Coram: *Ranganath Misra* and *M.M. Dutt*, JJ. [Date of decision: 22-3-1988]

[2516] — **Ss. 200 proviso (a) and 204 — Complaint filed by public servant — If facts alleged in the complaint prima facie show commission of offence, held, complaint cannot be quashed in absence of statement of witnesses or copies of documents etc.** — *Records of investigation are not evidence in such case — Issue of process in the circumstances not vitiated by non-application of mind — Import and Export (Control) Act, 1947, S. 5. T.J. Stephen* v. *Parle Bottling Co. (P) Ltd.*, 1988 Supp SCC 458: 1988 SCC (Cri) 690: AIR 1988 SC 994: (1988) 16 ECC 185: (1988) 64 Comp Cas 151.

Bench Strength 2. Coram: *Ranganath Misra* and *M.M. Dutt*, JJ. [Date of decision: 22-3-1988]

— S. 200 first proviso *See also* Ss. 482 and 200 first proviso, 190(1)(a) & 204

[2517] — **S. 200 first proviso (a) — Complaint for dishonour of cheque under S. 138, NI Act, 1881 — Complainant government company or statutory corporation — Complaint filed by officer on behalf of — Mandatory examination**

dispensed with by Magistrate — Whether deemed to be "public servant in the discharge of his official duties" — Availability of exemption from examination — *Held, when an employee of a government company or statutory corporation, who is a public servant, acts or purports to act in the discharge of his official duties, it necessarily refers to doing acts done or duties discharged by such public servant, for and on behalf of his employer, namely, the government company/statutory corporation — When an offence is committed in regard to a transaction of the government company, it will be illogical to say that a complaint regarding such offence, if made by an employee acting for and on behalf of the company, will have the benefit of exemption under S. 200 first proviso (a), but a complaint in regard to very same offence, if made in the name of the company represented by the said employee, will not have the benefit of such exemption — Where the complainant is an incorporeal body represented by one of its employees, the employee who is a public servant is the de facto complainant and in signing and presenting the complaint, he acts in the discharge of his official duties — Exemption under clause (a) of the first proviso to S. 200 will be available — Negotiable Instruments Act, 1881, Ss. 142 and 138 — Complaint on behalf of government company or statutory corporation — Exemption to officer filing the complaint from examination under S. 200 CrPC, 1973. National Small Industries Corpn. Ltd.* v. *State (NCT of Delhi)*, (2009) 1 SCC 407.

Bench Strength 2. Coram: **R.V. Raveendran** and *Dalveer Bhandari*, JJ. [Date of decision: 17-11-2008]

Associated Cement Co. Ltd. v. Keshvanand, (1998) 1 SCC 687: 1998 SCC (Cri) 475; MCD v. Jagdish Lal, (1969) 3 SCC 389, relied on

— S. 201 *See* Ss. 70 and 201 to 204

See also Ss. 156 & 157 and 190 & 200 to 203

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190 and 200 to 203, 154 and 156

See also Ss. 190 & 200 to 203 and 156 & 157

See also Ss. 200 to 204 and 154(3)

See also Ss. 204, 201 to 203 and 70

See also Ss. 475, 190, 200 to 204

[2518] — Ss. 201, 203 and 173 — Case registered under Ss. 161 and 165 IPC and S. 5(2) of Prevention of Corruption Act — Held, offences exclusively triable by a Special Court — *When police submitted cancellation report under S. 173 CrPC before Magistrate, the Magistrate had no power to pass order discharging the accused on the basis of that report — Magistrate should have instead forwarded the report to the Special Judge — Hence, Magistrate's order set aside directing him to transmit all the papers along with the cancellation report to the Special Judge having jurisdiction — Prevention of Corruption Act, 1947 — Ss. 6(1) and 5(2) — Penal Code, 1860, Ss. 161 and 165 — Criminal Law (Amendment) Act, 1952 — S. 7(1). Sampat Singh* v. *State of Haryana*, (1993) 1 SCC 561: 1993 SCC (Cri) 376.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 18-12-1992]

A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602: 1988 Supp (1) SCR 1: 1988 SCC (Cri) 372, followed

K. Siva Kanchi Reddy v. State of A.P., 1991 APLJ 1, approved

— S. 202 (Ch. XV) *See* Ss. 190 (Ch. XIV), 200, 202 (Ch. XV) and 204 (Ch. XVI)

— S. 202 *See also* S. 202, Criminal Procedure Code, 1898, pp. 1080 et seq. in Vol. 2

See also Ss. 155 to 159, Criminal Procedure Code, 1898, pp. 998 et seq. in Vol. 2

— S. 202 *See* Ss. 70 and 201 to 204

See also Ss. 156 & 157 and 190 & 200 to 203

See also Ss. 156 and 202

See also Ss. 156(3) and 202

See also Ss. 190, 173, 200 and 202

See also Ss. 190, 173(2), 169, 200, 202 and 204

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190 and 200 to 203, 154 and 156

See also Ss. 190 & 200 to 203 and 156 & 157

See also Ss. 190, 200, 202 and 482

See also Ss. 190(1), 173(2), 169, 200 and 202

See also Ss. 190(1)(a) & (b) and 173(2), 200 & 202

See also Ss. 190(1)(b), 200, 202 and 204

See also Ss. 197, 154 and 202

See also Ss. 200 to 204 and 154(3)

See also Ss. 200 and 202

See also Ss. 200, 202, 203 and 204

See also Ss. 203 and 202

See also Ss. 204, 200 and 202

See also Ss. 204, 200, 202, 203 and 482

See also Ss. 204, 201 to 203 and 70

See also Ss. 204 & 203, 202 and 200

See also Ss. 204 & 203, 202, 200, 239 and 362 & 482

See also Ss. 204 & 203, 202, 200 and 482

See also Ss. 300, 319, 202 and 203

See also Ss. 303, 300, 202 and 319
See also Ss. 475, 190, 200 to 204
See also Ss. 482, 200, 202, 203 and 204
See also Ss. 482 and 202
See also Ss. 482 and 202, 203 & 245
See also Ss. 482, 204, 200 and 202

[2519] — S. 202 — Enquiry under — Accused has no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not. *Nagawwa* v. *V.S. Konjalgi*, (1976) 3 SCC 736: 1976 SCC (Cri) 507: AIR 1976 SC 1947: 1976 Cri LJ 1533.

Bench Strength **2**. Coram: *A.C. Gupta* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 23-4-1976]

***Distinguished** in Prabha Mathur v. Pramod Aggarwal, (2008) 9 SCC 469*

[2520] — S. 202 [as amended by Act 25 of 2005 w.e.f. 23-6-2006] — Enquiry before issue of process under, held, is mandatory (w.e.f. 23-6-2006) — *Code of Criminal Procedure (Amendment) Act, 2005, S. 19* (Paras 2 to 4). *K.T. Joseph* v. *State of Kerala*, (2009) 15 SCC 199: (2009) 2 KLT 873: (2009) 80 AIC 151 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 8-5-2009]

[2521] — S. 202 — Inquiry under — Nature of and standard of scrutiny of evidence therein — *Per Shah, J., such inquiry, held, is a limited one and the standard of Magistrate's scrutiny of the evidence is not the same as that applied while framing charges. Rosy* v. *State of Kerala*, (2000) 2 SCC 230: 2000 SCC (Cri) 379: AIR 2000 SC 637: 2000 Cri LJ 930: (2000) 1 KLT 494.

Bench Strength **2**. Coram: **K.T. Thomas**[2] and **M.B. Shah**[1], JJ. [Date of decision: 10-1-2000]

[2522] — S. 202 — Magistrate, after examining the complainant and his witnesses, finding that matter requiring further probe — *Hence, directing police to investigate the matter — Thereafter on submission of police report hearing the matter afresh and directing issue of summons — Validity of said action taken by Magistrate — Challenge to, on the ground that having once taken cognizance and proceeded to hold the inquiry under S. 202 CrPC the Magistrate could not have referred the matter for investigation by police at all and he should have proceeded in the matter himself — Rejecting the challenge, held, procedure adopted by the Magistrate was perfectly in order — Proceedings before the Magistrate, restored*

It is clear from a perusal of the order made by the learned Magistrate that he has not done anything other than to comply with the provisions of Section 202(1) proviso (*b*) CrPC. The procedure adopted by the learned Magistrate is perfectly in order. (Para 4). *Bhagat Ram* v. *Surinder Kumar*, (2004) 11 SCC 622.

Bench Strength **3**. Coram: *S. Rajendra Babu, B.N. Agrawal* and *G.P. Mathur*, JJ. [Date of decision: 13-2-2004]

Suresh Chand Jain v. State of M.P., (2001) 2 SCC 628: 2001 SCC (Cri) 377, distinguished on facts

[2523] — S. 202 — Object and scope of inquiry under — *The object, held, is to ascertain whether there is a prima facie case against the accused — At that stage the Magistrate examines whether there is sufficient ground for proceeding with the matter and not whether there is sufficient ground for conviction*

The expression "cognizance" has not been defined in CrPC. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone. (Para 19)

"Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance. (Para 20)

The underlying object of the inquiry under Section 202 is to ascertain whether there is *prima facie* case against the accused. It thus allows a Magistrate to form an opinion whether the process should or should not be issued. The scope of inquiry under Section 202 is extremely limited. At that stage, what a Magistrate is called upon to see is whether there is *sufficient ground for proceeding with the matter* and not whether there is *sufficient ground for conviction of the accused.* (Para 22)

Chapter XVI (Commencement of proceedings before Magistrates) containing Section 204, whereunder process can be issued, will apply only after cognizance of an offence has been taken by a

Magistrate under Chapter XIV containing Section 190 which empowers a Magistrate to take cognizance of an offence in certain circumstances. (Paras 23 and 21)

Thus, from the scheme of CrPC it is clear that "Initiation of proceedings", dealt with in Chapter XIV, is different from "Commencement of proceedings" covered by Chapter XVI. For commencement of proceedings, there must be initiation of proceedings. In other words, initiation of proceedings must precede commencement of proceedings. Without initiation of proceedings under Chapter XIV, there cannot be commencement of proceedings before a Magistrate under Chapter XVI. The High Court was not right in equating initiation of proceedings under Chapter XIV with commencement of proceedings under Chapter XVI. (Para 24). *Chief Enforcement Officer* v. *Videocon International Ltd.*, (2008) 2 SCC 492: (2008) 1 SCC (Cri) 471: AIR 2008 SC 1213: 2008 Cri LJ 1636.

Bench Strength 2. Coram: **C.K. Thakker** and *P.P. Naolekar*, JJ. [Date of decision: 25-1-2008]

R.R. Chari v. State of U.P., AIR 1951 SC 207: 1951 SCR 312; Narayandas Bhagwandas Madhavdas v. State of W.B., AIR 1959 SC 1118: (1960) 1 SCR 93; Ajit Kumar Palit v. State of W.B., AIR 1963 SC 765: 1963 Supp (1) SCR 953; Hareram Satpathy v. Tikaram Agarwala, (1978) 4 SCC 58: 1978 SCC (Cri) 496; Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986; Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521; Darshan Singh Ram Kishan v. State of Maharashtra, (1971) 2 SCC 654: 1971 SCC (Cri) 628; Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380; M.L. Sethi v. R.P. Kapur, AIR 1967 SC 528: (1967) 1 SCR 520, relied on

Supdt. & Remembrancer of Legal Affairs v. Abani Kumar Banerjee, AIR 1950 Cal 437, approved

[2524] — S. 202 — Scope of inquiry under — Accused has no right to participate and cross-examine any prosecution witness

The scope of inquiry under Section 202 CrPC is a very limited one and that is to find out whether there are sufficient grounds for proceeding against the accused who has no right to participate therein much less a right to cross-examine any witness examined by the prosecution, but he may remain present only with a view to be informed of what is going on. As during the course of inquiry under Section 202 CrPC an accused has no right much less opportunity to cross-examine a prosecution witness, statement of such a witness recorded during the course of the inquiry is not admissible in evidence under Section 33 of the Evidence Act and, consequently, the same cannot form the basis of conviction of an accused. (Paras 9 and 10). *Sashi Jena* v. *Khadal Swain*, (2004) 4 SCC 236: 2004 SCC (Cri) 1077: AIR 2004 SC 1492: 2004 Cri LJ 1394: (2004) 15 AIC 19 (SC).

Bench Strength 2. Coram: *Y.K. Sabharwal* and **B.N. Agrawal**, JJ. [Date of decision: 10-2-2004]

Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430: (1963) 2 Cri LJ 397, relied on

Distinguished in Prabha Mathur v. Pramod Aggarwal, (2008) 9 SCC 469

[2525] — Ss. 202, 190 and 173 — Complaint case — Magistrate not accepting final form submitted by the police which investigated the matter on the basis of the FIR, held, can still take cognizance of the complaint under S. 202 — Gopal Vijay Verma case, *(1982) 3 SCC 510, affirmed. Kishore Kumar Gyanchandani* v. *G.D. Mehrotra*, AIR 2002 SC 483.

Bench Strength 3. Coram: *G.B. Pattanaik, S.N. Phukan* and *B.N. Agrawal*, JJ. [Date of decision: 28-2-2001]

[2526] — Ss. 202, 190 and 204 — No additional material placed on record after investigation directed under — However IO reporting that prima facie case made out — Cognizance if permissible — *Officer making investigation under S. 202 merely reporting that prima facie case made out against the accused, but neither mentioning details of the investigation, nor referring to the statements of witnesses examined, nor producing any document — Magistrate, having no additional material before him except what was already existing at the time of making the investigation order, held, not justified in taking cognizance of the case and ordering issue of process only on the basis of the opinion expressed by the officer. Mohd. Ataullah* v. *Ram Saran Mahto*, (1981) 2 SCC 266: 1981 SCC (Cri) 419: AIR 1981 SC 1155: 1981 Cri LJ 616.

Bench Strength 2. Coram: **O. Chinnappa Reddy** and *Baharul Islam*, JJ. [Date of decision: 23-2-1981]

[2527] — Ss. 202 and 203 — Issue of process — When not proper — Ingredients of the offence under Ss. 405 and 406 IPC — *Where the accused company supplied to its consignment stockist goods in a quantity less than that postulated in the agreement but there was no entrustment of any property to the company or any of the other accused persons at all nor had the accused persons domain over any property of the complaint consignment stockist which the accused persons might have dishonestly converted to their own use, held, the ingredients of the offence punishable under Section 406 were not satisfied — Hence, in such a case, the Magistrate ought not to have issued process — Penal Code, 1860, Ss. 405 and 406. S.W. Palanitkar* v. *State of Bihar*, (2002) 1 SCC 241: 2002 SCC (Cri) 129: AIR 2001 SC 2960: 2002 Cri LJ 548.

Bench Strength 2. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 18-10-2001]

[2528] — Ss. 202 and 245 — Mere pendency of a civil suit would not be a bar to institute or proceed with a criminal complaint. *Maratt Rubber Ltd.* v. *J.K. Marattukalam*, (2000) 9 SCC 547: 2001 SCC (Cri) 646.

Bench Strength 2. Coram: *G.B. Pattanaik* and *R.P. Sethi*, JJ. [Date of decision: 27-1-2000]

[2529] — Ss. 202 and 482 — Scope of inquiry by High Court under S. 202 — Court must be satisfied, on evidence adduced by prosecution, about existence of a prima facie case for regular trial — *Where on a complaint filed alleging bigamy, CJM on being prima facie satisfied that offence of bigamy under S. 494 and Ss. 494/109 IPC made out, issued process to respondents, held, High Court under S. 482 CrPC not justified in quashing the proceedings by taking the view that there was no allegation in the complaint about first and second marriages by performance of religious rites*

The scope of enquiry under S. 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under S. 204 of the Code or whether the complaint should be dismissed by resorting to S. 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full-dress trial which can only take place after process is issued under S. 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under S. 202 of the Code. Thus during the course of the enquiry under S. 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry.

In the present case the High Court exceeded the scope of the enquiry contemplated under S. 202 of the Code and has gone into the question of sufficiency of evidence for conviction of the offence of bigamy.

The submission that the first marriage having been celebrated in accordance with the custom dispensing with the requisite ceremonies and usage applicable to the parties, the alleged first marriage should be held to have been not proved in the eye of the law is not available to be raised before the Supreme Court because that could be determined only at the stage of trial of the case. *Mohinder Singh* v. *Gulwant Singh*, (1992) 2 SCC 213: 1992 SCC (Cri) 361: AIR 1992 SC 1894.

Bench Strength 3. Coram: *S. Ratnavel Pandian*, *M. Fathima Beevi* and *Yogeshwar Dayal*, JJ. [Date of decision: 17-12-1991]

Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker, AIR 1960 SC 1113: (1961) 1 SCR 1: 1960 Cri LJ 1499; Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar, 1962 Supp 2 SCR 297: AIR 1962 SC 876: (1962) 1 Cri LJ 770, relied on

State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404, distinguished

[2530] — S. 202 — All the three pre-requisites under S. 33 second proviso, Evidence Act, 1872 must be satisfied to attract S. 33 — *Accused's "right and opportunity to cross-examine" in first proceeding — Statement of prosecution witness recorded during course of inquiry under S. 202 CrPC — Since the accused had no right and opportunity to cross-examine any prosecution witness at the stage of inquiry under S. 202 CrPC, held, such statement would not be relevant and admissible under S. 33 in later stage of the proceedings before trial court so as to form basis of his conviction — Penal Code, 1860, Ss. 302 and 34 — Evidence Act, 1872, S. 33 second proviso*

Under Section 33 of the Evidence Act, evidence given by a witness in a judicial proceeding or before any person authorized to take it is admissible for the purpose of proving in a subsequent judicial proceeding or in a later stage of the same judicial proceeding, the truth of the facts which it stated in its evidence given in earlier judicial proceeding or earlier stage of the same judicial proceeding; but under proviso there are three prerequisites for making the said evidence admissible in subsequent proceeding or later stage of the same proceeding and they are: (*i*) that the earlier proceeding was between the same parties; (*ii*) that the adverse party in the first proceeding had the right and opportunity to cross-examine; and (*iii*) that the questions in issue in both the proceedings were substantially the same. In the absence of any of these three prerequisites, Section 33 of the Act would not be attracted. (Para 8). *Sashi Jena* v. *Khadal Swain*, (2004) 4 SCC 236: 2004 SCC (Cri) 1077: AIR 2004 SC 1492: 2004 Cri LJ 1394: (2004) 15 AIC 19 (SC).

Bench Strength 2. Coram: *Y.K. Sabharwal* and **B.N. Agrawal**, JJ. [Date of decision: 10-2-2004]

V.M. Mathew v. V.S. Sharma, (1995) 6 SCC 122, relied on

[2531] — S. 202 — Statement of prosecution witness recorded during course of inquiry under S. 202 CrPC cannot be proved under S. 157, Evidence Act, 1872 to corroborate evidence of other witnesses examined during trial — *Previous statement of a particular witness can be used to* *corroborate only his own evidence during trial and not evidence of other witnesses — Evidence Act, 1872, S. 157* (Para 11). *Sashi Jena* v. *Khadal Swain*, (2004) 4 SCC 236: 2004 SCC (Cri) 1077: AIR 2004 SC 1492: 2004 Cri LJ 1394: (2004) 15 AIC 19 (SC).

Bench Strength 2. Coram: *Y.K. Sabharwal* and **B.N. Agrawal**, JJ. [Date of decision: 10-2-2004]

Moti Singh v. State of U.P., AIR 1964 SC 900: (1964) 1 Cri LJ 727, relied on

[2532] — S. 202 — On a complaint regarding offence under Ss. 7(1)/16(1)(a), Prevention of Food Adulteration Act, 1954, Magistrate holding enquiry under S. 202, CrPC — *Act containing inter alia specific allegation that Sales Managers of Delhi branch of a company having its factory at Bombay were in charge of and responsible for conduct of the company's business at Delhi — Held, the allegation constitutes a prima facie case against the Sales Managers and therefore, Magistrate not justified in dismissing the complaint against them while issuing summons against the company and other accused — Prevention of Food Adulteration Act, 1954, Ss. 17, 7(1) & 16(1)(a). State (Delhi Admn.)* v. *I.K. Nangia*, (1980) 1 SCC 258: 1980 SCC (Cri) 220: AIR 1979 SC 1977: 1980 Cri LJ 834: 1980 MLJ (Cri) 343.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and **A.P. Sen**, JJ. [Date of decision: 23-10-1979]

[2533] — S. 202 — Application, scope and implications of S. 22 TOHO — Whether a bar to applicability of S. 202 CrPC — *Transplantation of Human Organs Act, 1994, S. 22*

A case was lodged against the appellants (medical practitioners) in the police station for offences under IPC and Transplantation of Human Organs Act, 1994 (TOHO). The matter was transferred to CBI and it lodged a fresh FIR on 8-2-2008. A-2 was arrested on 10-2-2008 and produced before the Magistrate on 11-2-2008. A-1 surrendered on 17-2-2008 and was produced before the Magistrate on 18-2-2008. Government authorisation was accorded under Section 22 TOHO vide order dated 11-4-2008. A complaint was filed by CBI before the Magistrate for taking cognizance against the appellant medical practitioners for commission of the offences under Section 120-B r/w Sections 326, 342, 417, 465, 473, 506 and 307 IPC and Sections 18, 19 and 20, Transplantation of Human Organs Act, 1994 (TOHO).

Applicability of Section 167(2) CrPC for cognizance taken by the Magistrate under Section 22 TOHO was the question involved in this appeal. A-2 filed a bail application under Section 167(2) CrPC on 9-5-2008. The High Court by the impugned order held that as the complaint was filed within 90 days, even if the Magistrate had delayed in taking cognizance, the petitioners were not entitled to protection under Section 167(2) CrPC.

Dismissing the appeals,

Held :

Section 167(2) CrPC would not apply to provisions under TOHO. Ordinarily although in terms of CrPC, CBI upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded from doing so by reason of the provisions contained in Section 22 TOHO. Section 22 TOHO prohibits taking of cognizance except on a complaint made by an appropriate authority. By reason of Section 22 TOHO, Section 173(2) CrPC by implication is necessarily not applicable. Thus when the question of submitting a report in terms of Section 173(2) would not arise, Section 167(2) CrPC would also not be attracted. (Paras 32 and 25 to 28)

It is one thing to say that the court could take recourse to the procedure laid down in Section 202 CrPC or even reject the complaint but then only because such a course of action could be resorted to by the Magistrate, the same, by itself, would not lead to a conclusion that the complaint petition should have been treated to be a police report; the logical corollary whereof being to invoke the provisions of Section 167(2) CrPC. (Para 29)

Even assuming for the sake of argument that Section 167(2) CrPC requires filing of a report within 90 days and the complaint petition having been filed within the said period, the requirements thereof stood satisfied. Appellant 2 having been arrested on 10-2-2008 and Appellant 1 having surrendered on 17-2-2008 as also the complaint petition having been filed on 29-4-2008, the requirement of Section 167(2) stood satisfied. Only because the court itself took a long time in taking cognizance of the offence i.e. after the expiry of the period of 90 days, the same would not mean that any new right would be created in favour of the appellants thereby. (Paras 32 and 33)

A distinction between a remand of an accused at pre-cognizance stage vis-à-vis the post-cognizance stage is apparent. Whereas the remand to custody at a pre-cognizance stage is to be made in terms of Section 167(2) CrPC, an order of remand of an accused at post-cognizance stage can be effected only in terms of Section 309(2) thereof. (Para 34). *Jeewan Kumar Raut* v. *CBI*, (2009) 7 SCC 526: (2009) 3 SCC (Cri) 475: (2009) 80 AIC 243 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 7-7-2009]

Madhu Bala v. *Suresh Kumar, (1997) 8 SCC 476: 1998 SCC (Cri) 111; Dinesh Dalmia* v. *CBI, (2007) 8 SCC 770: (2008) 1 SCC (Cri) 36, Sanjay Dutt* v. *State, (1994) 5 SCC 410: 1994 SCC (Cri) 1433; Mithabhai Pashabhai Patel* v. *State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047, relied on*

Moosakoya v. State of Kerala, 2008 Cri LJ 2388 (Ker), approved

[2534] — **S. 202 — Issuance of process in respect of alleged offence under S. 10, CMR Act, 1929 without holding preliminary inquiry under S. 202 CrPC — Legality** — *Issuance of summons merely on the basis of the complaint and a sworn statement made by the complainant, held, illegal — However, liberty granted to the Magistrate to conduct afresh the statutory preliminary inquiry and on being satisfied prima facie as to the justification for issue of process, to proceed against the accused persons — Child Marriage Restraint Act, 1929, S. 10* (Paras 4 and 5). *Muzaffar Ali Sajjad* v. *State of A.P.*, (2004) 4 SCC 764: 2004 SCC (Cri) 1399: (2004) 3 Mah LJ 496: (2004) 3 MPLJ 334.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *B.N. Srikrishna*, JJ. [Date of decision: 9-3-2004]

— **Ss. 202 and 156(3)** *See also* Ss. 155 to 159, pp. 998 et seq. in Vol. 2

— **S. 202(1)** *See also* Ss. 167, 202(1), 204, 273 Expln. and 319

[2535] — **Ss. 202(1) and 156(3) — Distinction between** — *Complaint disclosing on offence exclusively triable by Court of Session — Request by magistrate to police to further investigate under S. 156(3) not improper when no cognizance of the offence taken — S. 156(3) independent of S. 202*

When a magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The magistrate has discretion in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under S. 156(3) will be conducive to justice and save the valuable time of the magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence himself.

Now whether the magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action if any, taken by the magistrate. Broadly speaking when on receiving a complaint, the magistrate applies his mind for the purposes of proceeding under S. 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of S. 190(1)(*a*). If, instead of proceeding under Chapter XV, he has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under S. 156(3), he cannot be said to have taken cognizance of any offence.

The position under the Code of 1898 with regard to the powers of a magistrate having jurisdiction, to send a complaint disclosing a cognizable offence — whether or not triable exclusively by the Court of Session — to the police for investigation under S. 156(3), remains unchanged under the Code of 1973. The distinction between a police investigation ordered under S. 156(3) and the one directed under S. 202, has also been maintained under the new Code; but a rider has been clamped by the first proviso to S. 202(1) that if it appears to the magistrate that an offence triable exclusively by the Court of Session has been committed, he shall not make any direction for investigation.

The power to order police investigation under S. 156(3) is different from the power to direct investigation conferred by S. 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the magistrate is in seisin of the case.

Therefore in the case of a complaint regarding the commission of a cognizable offence, the power under S. 156(3) can be invoked by the magistrate before he takes cognizance of the offence under S. 190(1)(*a*). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV he is not competent to switch back to the pre-cognizance stage and avail of S. 156(3). *Devarapally Lakshminarayana Reddy* v. *V. Narayana Reddy*, (1976) 3 SCC 252: 1976 SCC (Cri) 380: AIR 1976 SC 1672: 1976 Cri LJ 1361.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *Jaswant Singh*, JJ. [Date of decision: 4-5-1976]

[2536] — **S. 202(2) proviso — Appellant along with co-accused committed to the Court of Session for trial** — *Appellant discharged at the time of framing of charges and trial proceeded against the co-accused — On conclusion of the trial entire trial held void ab initio and the case remanded to the Magistrate for a fresh commitment against both the accused — Held, order of discharge passed in favour of the appellant having not been challenged* *by the State, Sessions Judge was not justified in directing a fresh trial of the appellant also. M. Babu* v. *State of Kerala*, 1998 SCC (Cri) 1355.

Bench Strength 2. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 22-11-1996]

[2537] — S. 202(2) proviso — Determination of legislative intent behind — Proper course — *Per Thomas, J., placement of the proviso below S. 202(2) and not below S. 200, held, not the only criterion for the said purpose — Indications can be gathered from other connected provisions for taking a contrary view — Taking into consideration Ss. 204, 208 and 41st Report of Law Commission, the said proviso, held, mandatory. Rosy* v. *State of Kerala*, (2000) 2 SCC 230: 2000 SCC (Cri) 379: AIR 2000 SC 637: 2000 Cri LJ 930: (2000) 1 KLT 494.

Bench Strength 2. Coram: **K.T. Thomas**^{2} and **M.B. Shah**^{1}, JJ. [Date of decision: 10-1-2000]

[2538] — Ss. 202(2) proviso, 200, 203, 204, 208, 209, 313, 208, 226 to 228, 460, 461 and 465 — Provision in proviso to S. 202(2) requiring the Magistrate to hold inquiry in cases exclusively triable by Sessions Court — Nature of the said provision — *Per Shah, J., is discretionary and omission to follow it would not vitiate further trial unless it is established that prejudice was caused to the accused — Per Thomas, J., is mandatory but omission to follow it is not by itself vitiative of the proceedings and if objection is raised at a belated stage, decision has to be taken in the light of S. 465 CrPC — In the instant case since the objection was raised only at the stage of arguments after the Sessions Court had recorded the evidence of prosecution witnesses and also the statements of the accused under S. 313, both the Judges holding bad the High Court's direction to the Magistrate to conduct afresh the inquiry and thereafter to recommit the case to Sessions Court — Hence, Supreme Court directing the Sessions Court to complete the hearing and dispose of the case on merits — Kerala Abkari Act, 1077 (NE 1 of 1077), Ss. 57-A and 56(b)*

The Excise Inspector filed a complaint under Sections 57-A and 56(*b*) of the Kerala Abkari Act before a Judicial Magistrate on 16-11-1989. In the list of witnesses appended to the complaint names of ten persons were included. As the offences were exclusively triable by the Court of Session, the Magistrate committed the case to the Court of Session on 26-5-1990 albeit without examining any witness. Neither at the time of commencement of proceedings in the Sessions Court in 1993 nor when charges were framed on 2-9-1996 nor even thereafter the accused raised any objection that the order of committal was wrong due to non-examination of any witness in the committal court. After the witnesses had been examined and the accused had been questioned under Section 313 CrPC certain witnesses were recalled by the Sessions Court and after their examination further statements of the accused under Section 313 CrPC were recorded. Thereafter the accused examined the defence witnesses. Even at that stage no objection as to the validity of the committal order was raised by the accused. Hence, the Sessions Court passed over to the next stage envisaged in Section 233 CrPC and directed the accused to enter upon his defence. The accused availed themselves of that opportunity and examined four witnesses on the defence side. It was when arguments were being heard that the defence counsel raised the objections that the Magistrate erred in not following the procedure prescribed in the proviso to Section 202(2) CrPC before passing the committal order. The Sessions Judge made a reference to the High Court under Section 395(2) CrPC while the accused filed a criminal revision petition against the reference. The High Court heard both the matters together and directed the Magistrate to conduct a fresh inquiry in terms of the proviso to Section 202(2) by examining all the witnesses and thereafter to commit the case to the Sessions Court. Challenging that order the accused-appellants contended that the proviso to Section 202(2) CrPC was mandatory and that therefore, the High Court ought to have rather discharged them. Setting aside the High Court's order and remitting the matter to the Sessions Court unanimously but differing in their views in respect of the mandatory or discretionary nature of the proviso to Section 202, the members of a two-Judge Bench of the Supreme Court

Held :

Per Shah, J.

Under Section 200 read with Section 202 CrPC, it is only at the discretion of the Magistrate to decide whether to hold an inquiry or not before issue of process to the accused. In view of the provisions of Sections 200, 203 and 204, the question of complying with the proviso to Section 202(2) would arise only in cases where the Magistrate before taking cognizance of the case decides to hold the inquiry and further decides to take evidence of witnesses on oath. But the object and purpose of holding inquiry or investigation under Section 202 is to find out whether there is sufficient ground for proceeding against the accused or not and that holding of inquiry or investigation is not an indispensable course before the issue of process against the accused or dismissal of the complaint. It is an enabling provision to form an opinion as to whether or not process should be issued and to remove from the Magistrate's mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath. (Paras 7 and 10)

Further, the inquiry under Section 202 is of a limited nature. Firstly, to find out whether there is a prima facie case for issuing process against the person accused of the offence in the complaint and secondly, to prevent the issue of process in the complaint which is either false or vexatious or intended only to harass such a person. At that stage, the evidence is not to be meticulously appreciated, as the limited purpose is to find out "whether or not there is sufficient ground for proceeding against the accused". The standard to be adopted by the Magistrate in scrutinising the evidence is also not the same as the one which is to be kept in view at the stage of framing charges. At the stage of inquiry under Section 202 CrPC the accused has no right to intervene and it is the duty of the Magistrate while making an inquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. (Para 11)

Therefore, it is apparent that the High Court erred in holding that there was breach of the mandatory provisions of the proviso to Section 202(2) CrPC and that the committal order was vitiated. The High Court failed to consider the proviso to Section 200, particularly proviso (*a*) to the said section and also the fact that inquiry under Section 202 is discretionary for deciding whether to issue process (under Section 204) or to dismiss the complaint (under Section 203). Under Section 200, on receipt of the complaint, the Magistrate can take cognizance and issue process to the accused. If the case is exclusively triable by the Sessions Court, he is required to commit the case to the Court of Session. (Para 13)

In cases where an inquiry is held, failure to comply with the statutory direction to examine all the witnesses would not vitiate further proceeding in all cases for the reasons, inter alia, that in view of Section 465 CrPC it would also depend upon the facts of each case depending upon the prejudice caused to the accused by non-compliance with the said proviso (Section 465), and that the person complaining of such irregularity should raise objection at the earliest stage and he should point out how prejudice was caused or was likely to be caused by not following the proviso. If he fails to raise such objection at the earliest stage, he is precluded from raising such objection later. (Paras 16 and 20)

It is no doubt true that by the use of the word "shall", it appears that the language used in the proviso is of a mandatory nature. At the same time, it is a procedural law and it is to be read in the context of Section 200 which enables the Magistrate to issue process without holding any inquiry and that inquiry under Section 202 is itself a discretionary one, giving the option to examine or not to examine witnesses on oath. Hence, the proviso to Section 202(2) is required to be read accordingly. Normally, the procedure prescribed therein should be followed, but non-observance of the said procedure may not vitiate further proceedings in all cases. A case where a complaint is filed not by the public servant and where the offence is exclusively triable by the Court of Session, the Magistrate should follow the proviso to Section 202(2) and call upon the complainant to produce all his witnesses and examine them on oath. However, in a case where a complaint is filed by a public servant after holding an inquiry and recording the statements, question of recording of such evidence may not arise. Hence, compliance with the proviso by the Magistrate in all sessions triable cases is not a must and would not vitiate further trial unless prejudice caused to the accused is established. (Para 17)

Further, the aforesaid interpretation would be in consonance with Chapter XXXV CrPC (Ss. 460 to 466), which deals with irregularities in the proceedings, which may or may not vitiate the proceedings. Sections 460 and 461 provide which irregularities would or would not vitiate the proceedings. In these sections, there is no mention of Section 202. Moreover in view of the provisions of Section 465, during inquiry under Section 202 when the Magistrate examines the witnesses on oath, as far as possible the proviso is to be complied with but the mandate is not absolute. (Para 18)

Moreover, this part of holding an inquiry is a procedural one and, therefore, even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time. (Para 19)

The High Court failed to notice the provisions of Section 465 CrPC as the objection with regard to such error, omission or irregularity in the committal order was required to be raised at the earliest stage. After the committal order in the case, the trial was almost over as the evidence of the prosecution witnesses was recorded by the Sessions Court, statements of the accused under Section 313 of the Code were also recorded, thereafter witnesses were recalled and examined, further statements were recorded and only at the stage of arguments the contention with regard to the so-called irregularity was raised, which was upheld by the Sessions Court and the High Court. In the background of these facts, it has to be held that holding of a fresh inquiry under Section 202 and thereafter committing the case again to the Sessions Court would be unnecessary. Therefore the Sessions Court should complete the hearing and dispose of the case on merits. (Paras 21 and 22)

Per Thomas, J. (partly concurring)

From Section 202(2) CrPC it may appear, prima facie, that the question of examining all witnesses would arise only when the Magistrate opts to hold an 'inquiry, otherwise not. In order to determine whether the provision in the proviso is mandatory or discretionary, if one goes by the placement of the proviso, one might say that the inquiry was not a must. Nonetheless the placement of the proviso is not the only criterion in discerning the legislative intent. Indications can be gathered from other connected provisions for taking a contrary view. (Paras 35 and 36)

Three categories of documents are mentioned in Section 208 the copies of which the Magistrate, who proceeds from the stage in Section 204, has to supply to the accused free of cost (in a complaint case involving an offence triable exclusively by a Court of Session). As the words used here are "shall furnish", it is almost a compelling duty on the Magistrate to supply the said documents to the accused. The Magistrate cannot comply with the requirements of Section 208 where he failed to examine the witnesses before issuing the process to the accused. So the intention is not to indicate that the inquiry is only optional in the cases mentioned in Section 208. (Paras 38 and 39)

Moreover, Section 209 CrPC enjoins on the Magistrate to commit the case to the Court of Session after complying with the provisions in Section 208 of the Code. In the Sessions Court a Public Prosecutor alone can conduct prosecution, whether the case was instituted on a police report or on a complaint. Section 226 requires the Public Prosecutor to open his case in the court by stating the evidence by which he proposes to prove the guilt of the accused. If a case instituted on a complaint is committed to the Court of Session without complying with the requirements in clause (*i*) of Section 208, it would not be possible for the Public Prosecutor to know in advance what evidence he can adduce to prove the guilt of the accused. If no inquiry under Section 202 is to be conducted a Magistrate who decides to proceed only on the averments contained in the complaint filed by a public servant (who is not a witness to the core allegation) and such a case is committed to the Court of Session, its inevitable consequence would be that the Sessions Judge would have to axe down the case at the stage of Section 226 itself. (Paras 40 and 41)

The Supreme Court has already taken the stand that it would be advantageous to look into the deliberations made in the legislature, the objects and reasons for the enactments including recommendations of the Law Commission for the purpose of discerning the legislative idea behind inclusion of any particular provision. (Para 45)

Regarding Section 202 CrPC, Parliament has taken the cue from the Law Commission recommendation and introduced all the parameters in accordance with the recommendations contained in the 41st Report of the Law Commission. That is yet another factor which lends support to the interpretation given herein. (Para 46)

Thus, the proviso to Section 202(2) is not merely to confer a discretion on the Magistrate, but imposes a compelling duty on him to perform in such cases; albeit the Magistrate in such a situation is not obliged to examine the witnesses who could not be produced by the complainant when asked to produce such witnesses. (Para 47)

In the instant case, the stage had passed long ago for the accused or the prosecution to have raised objections that the committal order was vitiated due to non-examination of witnesses before the Magistrate issued process to the accused. Even if there was any such omission before process was issued, in view of Section 465 CrPC, the accused cannot raise such an objection for the first time at the fag end of a long-drawn trial in the Sessions Court. (Para 28)

When the accused had chosen not to raise objection on the premise of omission to examine witnesses before process was issued by the Magistrate, it must be taken that they had no grievance that such omission had occasioned failure of justice. Even if they had taken such objection after committal of the case to the Sessions Court there was no need to turn the switchboard backwards as there is no scope for believing that such omission had occasioned failure of justice. This is because no evidence of any witness would be used in the trial court unless such witness was examined in the trial court and the accused is afforded reasonable opportunity to cross-examine him. (Paras 31 and 48)

Therefore the impugned order passed by the High Court is to be set aside and the Sessions Judge is to be directed to dispose of the case on merits. (Para 49). *Rosy* v. *State of Kerala*, (2000) 2 SCC 230: 2000 SCC (Cri) 379: AIR 2000 SC 637: 2000 Cri LJ 930: (2000) 1 KLT 494.

Bench Strength **2**. Coram: **K.T. Thomas**^{2} and **M.B. Shah**^{1}, JJ. [Date of decision: 10-1-2000]

Ranjit Singh v. State of Pepsu (now Punjab), AIR 1959 SC 843: 1959 Cri LJ 1124; State of Punjab v. Shamlal Murari, (1976) 1 SCC 719: 1976 SCC (L&S) 118, followed

Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430: (1963) 2 Cri LJ 397: (1964) 1 SCR 639; Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar, AIR 1960 SC 1113: 1960 Cri LJ 1499: (1961) 1 SCR 1; Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876: (1962) 1 Cri LJ 770: 1962 Supp (2) SCR 297; Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521; Mohinder Singh v. Gulwant Singh, (1992) 2 SCC 213: 1992 SCC (Cri) 361; Kewal Krishan v. Suraj Bhan, 1980 Supp SCC 499: 1981 SCC (Cri) 438; Santa Singh v. State of Punjab, (1976) 4 SCC 190: 1976 SCC (Cri) 546; Mithilesh Kumari v. Prem Behari Khare, (1989) 2 SCC 95; Kalpnath Rai v. State, (1997) 8 SCC 732, relied on

Moideenkutty Haji v. Kunhikoya, (1987) 1 KLT 635: 1987 Cri LJ 1106 (FB), considered

M. Govindaraja Pillai v. Thangavelu Pillai, 1983 Cri LJ 917: 1983 MLW (Cri) 23 (Mad), partly approved and partly overruled

[2539] — **S. 202(2) proviso and Ss. 200 to 210, 226, 227 and 465 — Non-examination of some witnesses cited in protest petition-cum-complaint — Effect — Word "shall" occurring in S. 202(2) proviso — Effect** — *Held, said occurrence of word "shall" is prima facie indicative of mandatory character of S. 202(2) proviso — However, non-examination of any or some of the witnesses cited by complainant is, by itself, not sufficient to denude Magistrate of jurisdiction to take cognizance and issue process provided he is satisfied that prima facie case is made out for doing so — Word "all" appearing in S. 202(2) proviso is qualified by word "his" which implies that complainant is not bound to examine all witnesses named in the complaint or whose names are disclosed in response to order passed by the Magistrate — Only those witnesses are required to be examined whom complainant considers material to make out prima facie case for issue of process — Choice being of complainant, he may choose not to examine other witnesses — Consequence of such non-examination is to be considered at trial and not at the stage of issuing process when Magistrate is not required to enter into detailed discussions on merits of case — Magistrate has only to see whether there exists sufficient ground for proceeding against accused — Hence, High Court erred in directing CJM to conduct further enquiry and pass fresh order in terms of S. 202(2) proviso* (Paras 22 to 33). *Shivjee Singh* v. *Nagendra Tiwary*, (2010) 7 SCC 578.

Bench Strength **2**. Coram: **G.S. Singhvi** and *A.K. Ganguly*, JJ. [Date of decision: 6-7-2010]

Rosy v. State of Kerala, (2000) 2 SCC 230: 2000 SCC (Cri) 379, relied on

Abdul Wahab Ansari v. State of Bihar, (2000) 8 SCC 500: 2001 SCC (Cri) 18, considered

Ranjit Singh v. State of Pepsu, AIR 1959 SC 843: 1959 Cri LJ 1124; Moideenkutty Haji v. Kunhikoya, (1987) 1 KLT 635; M. Govindaraja Pillai v. Thangavelu Pillai, 1983 Cri LJ 917 (Mad), referred to

Birendra K. Singh v. State of Bihar, (2000) 8 SCC 498: 2001 SCC (Cri) 17, held, overruled

[2540] — **S. 202(2) proviso — Provisions, held, mandatory**. *Birendra K. Singh* v. *State of Bihar*, (2000) 8 SCC 498: 2001 SCC (Cri) 17.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 7-4-2000]

Rosy v. State of Kerala, (2000) 2 SCC 230, followed

[2541] — **Ss. 202(2) proviso, 209 and 465 — Complaint case — Order of Magistrate committing the case to Sessions Court without holding inquiry under the proviso to S. 202(2)** — *Objection against such omission, held, should be taken at the earliest — If taken at a later stage decision should be taken keeping in view the provisions of S. 465. Rosy* v. *State of Kerala*, (2000) 2 SCC 230: 2000 SCC (Cri) 379: AIR 2000 SC 637: 2000 Cri LJ 930: (2000) 1 KLT 494.

Bench Strength **2**. Coram: **K.T. Thomas**^{2} and **M.B. Shah**^{1}, JJ. [Date of decision: 10-1-2000]

— S. 203 *See also* S. 203, Criminal Procedure Code, 1898, pp. 1082 et seq. in Vol. 2

— S. 203 *See* Ss. 2(d), 203 and 204
See also Ss. 4(2) r/w 190, 203 and 204
See also Ss. 70 and 201 to 204
See also Ss. 156 & 157 and 190 & 200 to 203
See also Ss. 156 & 157 and 190, 200 & 203
See also Ss. 173, 190(1)(b), 156(3), 200, 203 and 204
See also Ss. 173(2), (8), 190 and 203
See also Ss. 173(2), 169, 190, 200 and 203
See also Ss. 173(2), 169 and 203 & 190(1)
See also Ss. 190 to 210, 225 to 235 and 238 to 250
See also Ss. 190 and 200 to 203, 154 and 156
See also Ss. 190 & 200 to 203 and 156 & 157
See also Ss. 190, 200, 203 and 156 & 157
See also Ss. 200, 202, 203 and 204
See also Ss. 200 and 203
See also Ss. 200, 203 and 204
See also Ss. 200 to 204 and 154(3)
See also Ss. 200, 203, 204 and 245
See also Ss. 201, 203 and 173
See also Ss. 202 and 203

See also Ss. 202(2) proviso, 200, 203, 204, 208, 209, 313, 208, 226 to 228, 460, 461 and 465

See also Ss. 204, 200, 202, 203 and 482

See also Ss. 204, 201 to 203 and 70

See also Ss. 204 and 203

See also Ss. 204 & 203, 202 and 200

See also Ss. 204 & 203, 202, 200, 239 and 362 & 482

See also Ss. 204 & 203, 202, 200 and 482

See also Ss. 204, 203, 227, 228 and 190

See also Ss. 300, 319, 202 and 203

See also Ss. 475, 190, 200 to 204

See also Ss. 482, 190, 203, 211, 227, 239 and 245

See also Ss. 482, 200, 202, 203 and 204

See also Ss. 482 and 202, 203 & 245

See also Ss. 482, 203 and 227

See also Ss. 482, 203, 227 and 245

[2542] — S. 203 — Dismissal of complaint by Magistrate vide a cryptic and non-speaking order — Interference with, by High Court — *Proper mode and approach in relation to — Held, the High Court should have remitted the case to the Magistrate for re-decision with a direction to apply his mind and decide the matter in accordance with law — It should not have proceeded to determine as to whether a case under the relevant provisions of IPC was made out against the appellants or not — Thus, the order of High Court directing the Magistrate to take cognizance of the offences, issue process and proceed with the trial, not sustainable — Matter remitted to Magistrate for fresh decision with a direction to pass a speaking order* (Paras 6 to 8). *Maikaal Fibres Ltd.* v. *ICICI Bank Ltd.*, (2005) 12 SCC 229.

Bench Strength **2**. Coram: *Ashok Bhan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 11-2-2005]

[2543] — Ss. 203, 173(1) and 190(1) — Recording of reasons — *Police report submitted before Magistrate recommending discharge of accused — Complainant raising objection that case for taking cognizance made out — While rejecting such objection, court must record reasons — In absence of reasons, order of the court liable to be set aside*

Since at the time of taking cognizance the Court has to exercise its judicial discretion it necessarily follows that if in a given case — as the present one — the complainant, as the person aggrieved, raises objections to the acceptance of a police report which recommends discharge of the accused and seeks to satisfy the Court that a case for taking cognizance was made out, but the Court overrules such objections, it is just and desirable that the reasons therefor be recorded. Necessity to give reasons which disclose proper appreciation of the issues before the Court needs no emphasis. Reasons introduce clarity and minimise chances of arbitrariness. That necessarily means that recording of reasons will not be necessary when the Court accepts such police report without any demur from the complainant. As the order of the Magistrate in the instant case does not contain any reason whatsoever, even though it was passed after hearing the objections of the complainant, it has got to be set aside. (Para 28). *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*, (1995) 6 SCC 194: 1995 SCC (Cri) 1059: AIR 1996 SC 309.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 12-10-1995]

Abhinandan Jha v. Dinesh Mishra, (1985) 2 SCC 537: 1985 SCC (Cri) 267, relied on

[2544] — Ss. 203, 204 and 209 — "Sufficient ground" — Import of — *Held, means satisfaction that a prima facie case is made out against the accused and not sufficient ground for securing his conviction* (Para 18). *Shivjee Singh* v. *Nagendra Tiwary*, (2010) 7 SCC 578.

Bench Strength **2**. Coram: **G.S. Singhvi** and *A.K. Ganguly*, JJ. [Date of decision: 6-7-2010]

Ramgopal Ganpatrai Ruia v. State of Bombay, AIR 1958 SC 97: 1958 Cri LJ 244: 1958 SCR 618; Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar, AIR 1960 SC 1113: 1960 Cri LJ 1499: (1961) 1 SCR 1; Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430: (1963) 2 Cri LJ 397: (1964) 1 SCR 639; Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521; Kewal Krishan v. Suraj Bhan, 1980 Supp SCC 499: 1981 SCC (Cri) 438; Mohinder Singh v. Gulwant Singh, (1992) 2 SCC 213: 1992 SCC (Cri) 361; Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492: (2008) 1 SCC (Cri) 471, relied on

[2545] — Ss. 203, 204, 209 and 227 — In a case exclusively triable by Sessions Court, Magistrate at the stage of Ss. 203 and 204 has only to see if a prima facie case is made out against the accused — *However, if instead, the Magistrate passes an order by meticulously appreciating the evidence, he merely commits an irregularity by exceeding his powers — In absence of any gross miscarriage of justice Supreme Court will not interfere with such order under Art. 136*

At the stage of Ss. 203 and 204 in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Ss. 200 and 202 there is prima facie evidence in support of the charge levelled against the accused. All that he has to see is whether or not there is 'sufficient ground for proceeding' against the accused. If there is prima facie evidence, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. At this stage of S. 203 and 204, the Magistrate is not to weigh the evidence meticulously as if he were the trial court.

However, where the Magistrate does not lack inherent jurisdiction to pass the order, he, in meticulously appreciating the evidence, only oversteps the limits of his direction and commits only an irregularity, if not illegality, in the exercise of his jurisdiction. Where the error committed by the Magistrate has not occasioned a gross failure of justice, the Supreme Court will not interfere with the impugned orders of the courts below in the exercise of its discretionary jurisdiction under Art. 136 of the Constitution. *Kewal Krishan* v. *Suraj Bhan*, 1980 Supp SCC 499: 1981 SCC (Cri) 438: AIR 1980 SC 1780: 1980 Cri LJ 1271.

Bench Strength 2. Coram: **R.S. Sarkaria** and *R.S. Pathak*, JJ. [Date of decision: 1-8-1980]

[2546] — Ss. 203 and 202 — Dismissal of complaint not on merits but on default of complainant to be present in court — *Held, no bar for the complainant to file a fresh complaint on the same facts*

Under Section 202 of the Code a Magistrate conducts an inquiry before issuing the process to the accused, for the purpose of determining whether "there is sufficient ground for proceeding". Section 203 of the Code empowers him to dismiss a complaint after holding such inquiry if he is of the opinion that "there is no sufficient ground for proceeding". In that event he has to record the reasons as to why he held that there is no sufficient ground for proceeding, though he need not write an elaborate order. But there is no provision in the Code or in any other statute which debars a complainant from preferring a second complaint on the same allegations if the first complaint did not result in a conviction or acquittal or even discharge. If the dismissal of the complaint was not on merit but on default of the complainant to be present, there is no bar in the complainant moving the Magistrate again with a second complaint on the same facts. But if the dismissal of the complaint under Section 203 of the Code was on merits the position could be different. When a Magistrate conducts an inquiry under Section 202 of the Code and dismisses the complaint on merits, a second complaint on the same facts cannot be made unless there are very exceptional circumstances. Even so, a second complaint is permissible depending upon how the complaint happened to be dismissed at the first instance. (Paras 10, 9 and 12)

There is no force in the contention that the complainant lacked bona fides as she suppressed the fact of dismissal of the first complaint when the second complaint was filed before the same Magistrate who dismissed the first complaint, and that too was done within a short interval. Even otherwise, nothing would turn out from the mere fact that the complaint did not contain an averment that the first complaint was dismissed for default. (Para 13)

As in this case the Magistrate did not consider the materials on record when he dismissed the first complaint, instead the said course was adopted by him only as a consequence of the default of the complainant presenting herself when the case was called, there is no reason to shut the door before her once and for all. (Para 14). *Jatinder Singh* v. *Ranjit Kaur*, (2001) 2 SCC 570: 2001 SCC (Cri) 354: AIR 2001 SC 784.

Bench Strength 2. Coram: **K. T. Thomas** and *R. P. Sethi*, JJ. [Date of decision: 30-1-2001]

Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430: (1963) 2 Cri LJ 397; Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876: (1962) 1 Cri LJ 770, relied on

[2547] — Ss. 203 and 482 — Application under S. 203 for review of order of subordinate criminal court, held, not maintainable — Proper course would be invocation of S. 482 (Para 22). *N.K. Sharma* v. *Abhimanyu*, (2005) 13 SCC 213: (2006) 2 SCC (Cri) 135: AIR 2005 SC 4303: 2005 Cri LJ 4529: (2005) 4 KLT 738.

Bench Strength 2. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 7-10-2005]

Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927, relied on

Followed in Bholu Ram v. State of Punjab, (2008) 9 SCC 140

— Ch. XVI *See* S. 319 and Ch. XVI

— S. 204 (Ch. XVI) *See* Ss. 190 (Ch. XIV), 200, 202 (Ch. XV) and 204 (Ch. XVI)

— S. 204 *See also* S. 204, Criminal Procedure Code, 1898, p.1084 in Vol. 2

— S. 204 *See* Ss. 2(d), 203 and 204

See also Ss. 4(2) r/w 190, 203 and 204

See also Ss. 70 and 201 to 204

See also Ss. 73, 167, 204, 82, 83 and 155

See also Ss. 156(3), 173(8), 190, 200 and 204

See also Ss. 167, 202(1), 204, 273 Expln. and 319

See also Ss. 167(5) (as amended by S. 4 of W.B. Act 24 of 1988), 436, 437, 204, 205, 206 and 161

See also Ss. 173, 190(1)(b), 156(3), 200, 203 and 204

See also Ss. 190, 154, 173, 200 and 204

See also Ss. 190, 173(2), 169, 200, 202 and 204

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193 and 195 to 199 & 204

See also Ss. 190, 200, 204 and 156(3)

See also Ss. 190, 200, 204, 173 and 482

See also Ss. 190, 204, 173(2), 154, 162 and 319

See also Ss. 190(1) & 200 and 204

See also Ss. 190(1)(a), 200 and 204

See also Ss. 190(1)(a), 200, 204, 173 and 482

See also Ss. 190(1)(b), 200, 202 and 204

See also Ss. 190(1)(b) & 204, 200, 156(3), 468 and 401

See also Ss. 200, 190(1)(a), 204, 300 and 482

See also Ss. 200 to 204 and 154(3)

See also Ss. 200, 202, 203 and 204

See also Ss. 200, 203 and 204

See also Ss. 200, 203, 204 and 245

See also Ss. 200, 204 and 190

See also Ss. 200 proviso (a) and 204

See also Ss. 202, 190 and 204

See also Ss. 202(2) proviso, 200, 203, 204, 208, 209, 313, 208, 226 to 228, 460, 461 and 465

See also Ss. 203, 204, 209 and 227

See also Ss. 227, 193, 204, 211

See also Ss. 319, 154, 156, 173, 190, 204, 209

See also Ss. 319 and 204

See also Ss. 397, 401, 204 and 199(2)

See also Ss. 397(2), 190 and 204

See also Ss. 397(2) and 204

See also Ss. 399 and 204

See also Ss. 401, 397 and 204

See also Ss. 401(2), 402, 204 and 482

See also Ss. 475, 190, 200 to 204

See also Ss. 482, 156, 190(1)(b) & 204

See also Ss. 482, 190 & 204

See also Ss. 482, 190(1) & 204

See also Ss. 482, 190(1), 204, 233 & 243

See also Ss. 482, 190(1)(b), 204, 173, 169 and 362

See also Ss. 482 and 200 first proviso, 190(1)(a) & 204

See also Ss. 482, 200, 202, 203 and 204

See also Ss. 482 & 204

See also Ss. 482, 204, 200 and 202

See also Ss. 482, 204 and 205

[2548] — S. 204 — Adverse observations — No notice — Impacting issue of process — Permissibility — Natural justice — Adverse observations imputing mens rea and commission of offence by a party — Need to issue notice prior to making of — *Held, such observations could not be made against appellants without issuing notice to them — High Court order had the effect of virtually directing lower court to issue process to appellants — Held, this was not permissible without giving opportunity of show cause to appellants — Allahabad High Court Rules, 1952, Ch. XXII R. 2 — Constitution of India, Arts. 226 and 227*

There was a dispute between the appellants and the respondents relating to transfer of certain property. The respondents filed a criminal case against the appellants under Sections 420, 467, 468, 471 read with Sections 34 and 120-B IPC. The complaint was dismissed by lower courts on the ground that the matter was of civil nature and there was no ground for proceeding criminally against the appellants. However, the High Court set aside the orders of lower courts and issued certain directions which virtually had the effect of compelling the trial court to issue process to the appellants. The High Court while doing so did not issue any notice to the appellants though the appellants were arrayed as the respondents in the criminal writ petition. While setting aside the orders of lower courts, the High Court also made certain observations imputing criminal intention on the part of the appellants, and also observed that it was a "clear case of cheating".

Question was whether the High Court should have done this without issuing notice to the appellants and affording them opportunity of making their submissions. It was argued on behalf of the respondents that the appellants had no *locus standi* till summons or process was issued to them, and therefore the High Court, prior to this stage, could issue appropriate directions to lower court without affording any opportunity to the appellants.

Rejecting this argument and allowing the appeal,

Held:

The complainants approached the High Court by joining the appellants as the respondents. Writ petitions were not dismissed in limine. Notices ought to have been issued to the appellants under Rule 2 of Chapter XXII of the Allahabad High Court Rules, 1952, before the writ petitions were heard and finally decided. Even otherwise, issue of notice to the appellants was necessary and was in consonance with the principles of natural justice and fair play. (Para 20)

Observations regarding *mens rea* and "clear case of cheating" could not have been made without issuing notice to the appellants, and without affording opportunity of being heard. Though final direction to the trial court was to hold further inquiry and to make appropriate order, yet in view of observations made by the High Court, no option has been left with the trial court but to issue process. It is thus a case of *fait accompli*. The High Court could not have set aside the judgments of lower courts and could not have made the observations against the appellants without observing principles of natural justice. (Paras 22 to 24). *Prabha Mathur* v. *Pramod Aggarwal*, (2008) 9 SCC 469: (2008) 3 SCC (Cri) 787: (2008) 4 KLT 385.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 26-9-2008]

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430: (1964) 1 SCR 639; Sashi Jena v. Khadal Swain, (2004) 4 SCC 236: 2004 SCC (Cri) 1077, distinguished

[2549] — S. 204 — Before issuing summons court should insist upon strict compliance with the statutory requirements (Para 7). *Sabitha Ramamurthy* v. *R.B.S. Channaba- savaradhya*, (2006) 10 SCC 581: AIR 2006 SC 3086: 2006 Cri LJ 4602.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 13-9-2006]

Monaben Ketanbhai Shah v. State of Gujarat, (2004) 7 SCC 15: 2004 SCC (Cri) 1857; Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd., (2002) 7 SCC 655: 2003 SCC (Cri) 151; S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975, followed

K.P.G. Nair v. Jindal Menthol India Ltd., (2001) 10 SCC 218: 2002 SCC (Cri) 1038, relied on

[2550] — S. 204 — Issue of process — Concept of

When it is said that court issues process, it means the court has taken cognizance of the offence and has decided to initiate the proceedings and as a visible manifestation of taking cognizance, process is issued which means that the accused is called upon to appear before the court. This may either take the form of a summons or a warrant, as the case may be. *A.R. Antulay* v. *Ramdas Sriniwas Nayak*, (1984) 2 SCC 500: 1984 SCC (Cri) 277: AIR 1984 SC 718: 1984 Cri LJ 647: 1984 Bom LR 228.

Bench Strength 5. Coram: **D.A. Desai**, *R.S. Pathak*, *O. Chinnappa Reddy*, *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

[2551] — S. 204 — Issue of process — Need for detailed order, if any — *Held, there is no legal requirement for trial court to pass a detailed order while issuing process, whether summons or warrant, under S. 204 — Further, where Sessions Judge has doubts as to propriety of process issued by Magistrate, held, he ought to look into the complaint to form his own opinion instead of relegating the work to the trial Magistrate. U.P. Pollution Control Board* v. *Mohan Meakins Ltd.*, (2000) 3 SCC 745: AIR 2000 SC 1456: 2000 Cri LJ 1799: 2000 All LJ 872.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 27-3-2000]

[2552] — S. 204 — Issue of process — Recording of reasons by the Magistrate at this stage, held, not required (Para 10). *Jagdish Ram* v. *State of Rajasthan*, (2004) 4 SCC 432: 2004 SCC (Cri) 1294: AIR 2004 SC 1734.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *Arijit Pasayat*, JJ. [Date of decision: 9-3-2004]

[2553] — S. 204 — Issue of process — Whether offence made out and what defences are open to him, not to be considered at this stage

Whether the offence has been made out, whether he is liable and what are the defences open to him are not matters at this stage for consideration. It is for the learned Magistrate to proceed with the trial and to deal with according to law. *Anil Saran* v. *State of Bihar*, (1995) 6 SCC 142: 1995 SCC (Cri) 1051: AIR 1996 SC 204.

Bench Strength 2. Coram: *K. Ramaswamy* and *B.L. Hansaria*, JJ. [Date of decision: 24-8-1995]

[2554] — S. 204 — Summoning of accused — Order must show that Magistrate applied his mind to the facts of the case and law applicable thereto — *He should carefully scrutinise the evidence brought on record and may himself put questions to the complainant and his witnesses to find out the allegations*

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. *Pepsi Foods Ltd.* v. *Special Judicial Magistrate*, (1998) 5 SCC 749: 1998 SCC (Cri) 1400: AIR 1998 SC 128: 1998 Cri LJ 1.

Bench Strength **2**. Coram: *Sujata V. Manohar* and **D.P. Wadhwa**, JJ. [Date of decision: 4-11-1998]

Limited by Everest Advertising (P) Ltd. v. State (Govt. of NCT of Delhi), (2007) 5 SCC 54

[2555] — S. 204 — Order issuing process — Nature of — Whether an interim order — *Question not gone into* (Para 17). *Adalat Prasad* v. *Rooplal Jindal*, (2004) 7 SCC 338: 2004 SCC (Cri) 1927: (2004) 113 DLT 356: (2004) 4 Mah LJ 274: (2004) 3 KLT 382: (2004) 4 MPLJ 1 (SC).

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 25-8-2004]

[2556] — Ss. 204, 70, 72, 73, 78 and 79 — Non-bailable warrant (NBW) — Issuance of, when justified — Duty of court in such cases — *Held, courts should be extremely careful before issuing non-bailable warrants as issuance of these warrants involves interference with personal liberty — Enumerating the circumstances in which NBW should be issued, further held, though there cannot be any straitjacket formula for issuance of warrants, generally issuance of NBW should be avoided unless the accused is charged with a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law — Since personal liberty is paramount, courts cautioned that at the first and the second instance they must refrain from issuing NBWs — If the court is of the opinion that a summons will be sufficient in getting the appearance of the accused in the court, the summons or the bailable warrants should be preferred — Constitution of India, Art. 21*

The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment mean deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants. (Para 51)

Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued. (Para 52)

Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when: it is reasonable to believe that the person will not voluntarily appear in court; or the police authorities are unable to find the person to serve him with a summons; or it is considered that the person could harm someone if not placed into custody immediately. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. (Paras 53 and 56)

Since personal liberty is paramount, courts are cautioned that at the first and second instance they must refrain from issuing non-bailable warrants. As far as possible, if the court is of the opinion that a summons will suffice in getting the appearance of the accused in the court, the summons or the bailable warrants should be preferred. (Paras 55 and 54). *Inder Mohan Goswami* v. *State of Uttaranchal*, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259: AIR 2008 SC 251: (2007) 144 DLT 257: (2008) 1 All LJ 40.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *R.V. Raveendran* and **Dalveer Bhandari**, JJ. [Date of decision: 9-10-2007]

Omwati v. State of U.P., (2004) 4 SCC 425: 2004 SCC (Cri) 1287; State of U.P. v. Poosu, (1976) 3 SCC 1: 1976 SCC (Cri) 368, relied on

[2557] — Ss. 204, 70, 72, 73, 78 and 79 — Power to issue warrants — Exercise of — Mode of — *Held, said power being discretionary must be exercised judiciously with extreme care and caution — Court should properly balance both personal liberty and societal interest before issuing warrants — Warrants should never be issued without proper scrutiny of facts and complete application of mind — Court must carefully examine whether the criminal complaint/FIR has not been filed with an oblique motive*

The power of issuing warrants being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive. (Paras 56, 57 and 54). *Inder Mohan Goswami* v. *State of Uttaranchal*, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259: AIR 2008 SC 251: (2007) 144 DLT 257: (2008) 1 All LJ 40.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *R.V. Raveendran* and **Dalveer Bhandari**, JJ. [Date of decision: 9-10-2007]

Omwati v. State of U.P., (2004) 4 SCC 425: 2004 SCC (Cri) 1287; State of U.P. v. Poosu, (1976) 3 SCC 1: 1976 SCC (Cri) 368, relied on

[2558] — Ss. 204, 190(1)(a) and 200 — Power to issue bailable warrant, non-bailable warrant or summons in complaint cases — Stages for — *Held, in complaint cases, at the first instance the court should direct service of summons — At the second instance it should issue bailable warrant — And then at the third instance, on being satisfied that the accused is avoiding court's proceeding intentionally, it should resort to issuance of non-bailable warrant* (Para 55). *Inder Mohan Goswami* v. *State of Uttaranchal*, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259: AIR 2008 SC 251: (2007) 144 DLT 257: (2008) 1 All LJ 40.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *R.V. Raveendran* and **Dalveer Bhandari**, JJ. [Date of decision: 9-10-2007]

[2559] — Ss. 204, 200 and 190 — Issue of process — Court should be circumspect and judicious in its approach — Process should not be an instrument of oppression and harassment — *Court on consideration of facts and circumstances should be satisfied that accused legally responsible for the offence charged — Frivolous complaint — Bank loan — Default in repayment — Amount due adjusted by Bank in terms of security bond from the FDR pledged by guarantor — Complaint lodged by the guarantor alleging commission of offences under Ss. 409, 109 and 114 IPC impleading Chairman, M.D. of the Bank by name as also several other officers — Held, complaint an abuse of process of the court to harass the Bank authorities — Magistrate not justified in issuing process without applying mind to existence of prima facie case against the accused*

The judicial process should not be an instrument of oppression or needless harassment. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle the respondent had abused the process and laid complaint against all the appellants without any prima facie case to harass them for vendetta. *Punjab National Bank* v. *Surendra Prasad Sinha*, 1993 Supp (1) SCC 499: 1993 SCC (Cri) 149: AIR 1992 SC 1815: (1993) 1 An WR 104 (SC).

Bench Strength **2**. Coram: **K. Ramaswamy** and *B.P. Jeevan Reddy*, JJ. [Date of decision: 20-4-1992]

[2560] — Ss. 204, 200 and 202 — Issue of process — Condition precedent for — *Held, is the satisfaction of the Magistrate either by examination of complainant and witnesses under S. 200 or by inquiry contemplated under S. 202 that there is sufficient ground for proceeding with the complaint — There is no requirement of hearing the summoned accused at any of the above stages*

The accused-appellant, after issuance of summons against him by the trial Magistrate, filed an application purported to be under Section 203 CrPC before the said Magistrate. The Magistrate after hearing the parties recalled the said summons. The order of the Magistrate recalling the summons was challenged in revision petition before the High Court on the ground that the Magistrate had no jurisdiction to recall the said summons. The High Court allowed the revision petition. Hence the present appeal by the accused.

The present matter was directed to be placed before a three-Judge Bench in view of the doubt regarding correctness of the law laid down by the Supreme Court in *K.M. Mathew* v. *State of Kerala*, (1992) 1 SCC 217, wherein it was held that it was open to the court issuing summons to recall the same on being satisfied that the issuance of summons was not in accordance with law.

Dismissing the appeal and expressing disagreement with the law laid down in *Mathew case*,

Held :

A condition precedent for issuing process under Section 204 is the satisfaction of the Magistrate, either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 that there is sufficient ground for proceeding with the complaint. In none of these stages the Code of Criminal Procedure, 1973 has provided for hearing the summoned accused, because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provisions in the Code. The only stage of dismissal of the complaint arises under Section 203 CrPC at which stage the accused has no role to play, therefore, the question of the accused on receipt of summons approaching the court and making an application for dismissal of the complaint under Section 203 CrPC for a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage. (Para 14). *Adalat Prasad* v. *Rooplal Jindal*, (2004) 7 SCC 338: 2004 SCC (Cri) 1927: (2004) 113 DLT 356: (2004) 4 Mah LJ 274: (2004) 3 KLT 382: (2004) 4 MPLJ 1 (SC).

Bench Strength 3. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 25-8-2004]

K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88, overruled

[2561] — Ss. 204, 203, 227, 228 and 190 — Magistrate to issue process where there is strong suspicion about commission of offence by the accused — *Magistrate holding enquiry under S. 202 on a complaint regarding offence under Ss. 7(i)/16(1)(a) — Food Adulteration Act containing inter alia specific allegation that Sales Managers of Delhi branch of a company having its factory at Bombay were in charge of and responsible for conduct of the company's business at Delhi — Held, the allegation constitutes a prima facie case against the Sales Managers and, therefore, Magistrate not justified in dismissing the complaint against them while issuing summons against the company and other accused. State (Delhi Admn.)* v. *I.K. Nangia*, (1980) 1 SCC 258: 1980 SCC (Cri) 220: AIR 1979 SC 1977: 1980 Cri LJ 834: 1980 MLJ (Cri) 343.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and **A.P. Sen**, JJ. [Date of decision: 23-10-1979]

[2562] — Ss. 204 and 87 — Issue of warrants on alleged payment of bribe — *Charge-sheet filed and warrant issued against the President of India, the Hon'ble the Chief Justice of India, a sitting Judge of the Supreme Court and the President of the Supreme Court Bar Association — Allegation that summons issued pursuant to payment of bribes at the instance of a journalist who wanted to show corruption in the lower judiciary — Notices issued to the offending Metropolitan Magistrate who issued the summons and the advocates through whom the bribe paid — Matter handed over to the CBI to investigate. Vijay Shekhar* v. *Union of India*, (2004) 3 SCC 263: 2004 SCC (Cri) 811.

Bench Strength 3. Coram: *V.N. Khare, C.J.* and *S.B. Sinha* and *S.H. Kapadia*, JJ. [Date of decision: 29-1-2004]

[2563] — Ss. 204 and 167 — Reasoned order not needed while issuing process, remanding the accused to custody and passing over to next stages in trial — It would burden the trial courts with extra work and add to delay in disposal of cases

If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, there is no need to further burden the already burdened trial courts with such extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. A detailed order may be passed for culminating the proceedings before them, but it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. (Para 12). *Kanti Bhadra Shah* v. *State of W.B.*, (2000) 1 SCC 722: 2000 SCC (Cri) 303: AIR 2000 SC 522: 2000 Cri LJ 746.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 5-1-2000]

[2564] — Ss. 204 and 190(1)(a) — Issue of process by the Magistrate — Necessary considerations required therein, explained — *Further held, the Magistrate is not required to record reasons at the stage of issuing the process to the accused — Thus, on facts, the High Court erred in holding that the Magistrate did not apply his judicial mind before taking cognizance of the offences in question*

In the instant case, the learned Magistrate passed the order stating that: "Cognizance taken. Register the case. Issue summons to the accused." The High Court held that the order passed by the Special Court taking cognizance of the offence did not show that the learned Magistrate had even perused the complaint or that he had applied his judicial mind before taking cognizance of the offences.

Held:

In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. (Para 9)

Thus, the order passed by the learned Magistrate could not be faulted on the ground given by the High Court. (Para 10). *Chief Controller of Imports & Exports* v. *Roshanlal Agarwal*, (2003) 4 SCC 139: 2003 SCC (Cri) 788: AIR 2003 SC 1900: 2003 Cri LJ 1698: (2003) 155 ELT 216.

Bench Strength 2. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 5-3-2003]

U.P. Pollution Control Board v. Mohan Meakins Ltd., (2000) 3 SCC 745; Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722: 2000 SCC (Cri) 303, relied on

[2565] — Ss. 204 and 195(1)(a) — Issue of process — Suspension of proceedings — Controversy relating to election of Board of Directors of an education society registered under Bombay Public Trusts Act, 1950 — *Order of Judicial Magistrate issuing process under S. 463 r/w S. 34 IPC, against appellants on the private complaint alleging that appellants got affixed bogus/fake signature/thumb impressions of members of the educational institution to show that a resolution was passed to set up a new executive body wherein Accused 1 assumed post of Executive President and that the accused got a "no-objection certificate" for deleting their names from Managing Committee — However, matter was pending before Assistant Charity Commissioner who was to determine validity or otherwise of change report submitted by appellants — In the proceeding relating to the confirmation or otherwise of the change report a contention had been raised that the documents on the basis of which the report had been submitted had been forged and fabricated by the appellants — In all probability that question would also arise for consideration by the authority — In the facts and circumstances of the case, held, in the interest of justice and for a fair trial the proceedings in the criminal case should remain suspended till the proceeding pending before the Assistant Charity Commissioner is disposed of by him — Penal Code, 1860, Ss. 177, 181, 193, 406, 465, 474 r/w S. 34* (Paras 10 and 11). *Tukaram Annaba Chavan* v. *Machindra Yeshwant Patil*, (2001) 3 SCC 33: 2001 SCC (Cri) 430: AIR 2001 SC 994: 2001 Cri LJ 1164.

Bench Strength 2. Coram: **D.P. Mohapatra** and *Shivaraj V. Patil*, JJ. [Date of decision: 6-2-2001]

[2566] — Ss. 204 and 203 — Issue of process — Necessary considerations prior to — Dismissal of complaint before issuing process — Condition for — *Held, before issuing the process the Magistrate has to apply his mind and see whether the complaint contains material/ground to proceed against the accused — Where allegations in complaint or charge-sheet do not constitute an offence against the accused, the complaint is liable to be dismissed — Negotiable Instruments Act, 1881, Ss. 138 and 141*

It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed. Section 203 CrPC empowers a Magistrate to dismiss a complaint without even issuing a process. It uses the words "after considering" and "the Magistrate is of opinion that there is no sufficient ground for proceeding". These words suggest that the Magistrate has to apply his mind to a complaint at the initial stage itself and see whether a case is made out against the accused persons before issuing process to them on the basis of the complaint. For applying his mind and forming an opinion as to whether there is sufficient ground for proceeding, a complaint must make out a prima facie case to proceed. This, in other words, means that a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 CrPC starts with the words "if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding". The words "sufficient ground for proceeding" again suggest that ground should be made out in the complaint for proceeding against the respondent. (Para 5). *S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2005) 8 SCC 89: 2005 SCC (Cri) 1975: AIR 2005 SC 3512: (2005) 127 Comp Cas 563: (2005) 123 DLT 275: (2005) 4 KLT 209: (2005) 4 Mah LJ 731.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, **Arun Kumar** and *B.N. Srikrishna*, JJ. [Date of decision: 20-9-2005]

***Distinguished on facts** in Som Mittal v. Govt. of Karnataka, (2008) 3 SCC 753*

[2567] — Ss. 204 & 203, 202, 200, 239 and 362 & 482 — Issuance of process under S. 204 — Nature of — Remedy available against — *Review, reconsideration or recall of, by Magistrate — Discharge from summons case — Permissibility — Held, issuance of process under S. 204 is a preliminary step in trial contemplated in Ch. 20 (Ss. 251 to 259) CrPC, and is therefore an interlocutory order — Same cannot be reviewed, reconsidered or recalled by the Magistrate, there being no provision therefor in the Code — Only remedy available to an aggrieved accused is the extraordinary remedy under S. 482 and not by way of application to recall the summons or to seek discharge, the latter not being contemplated in trial of a summons case —* Adalat Prasad case, *(2004) 7 SCC 338, affirmed*

The issuance of process under Section 204 is a preliminary step in the stage of trial contemplated in Chapter 20 CrPC. Such an order made at a preliminary stage being an interlocutory order, the same cannot be reviewed or reconsidered by the Magistrate, there being no provision under CrPC for review of an order by the same court. Hence, it is impermissible for the Magistrate to reconsider his decision to issue process in the absence of any specific provision to recall such order. It is true that the case of *Adalat Prasad*, (2004) 7 SCC 338, pertained to a warrant case whereas *Mathew case*, (1992) 1 SCC 217, pertained to a summons case. To this extent, there is some difference in the two cases, but that does not, in any manner, make the law laid down by the Supreme Court in *Adalat Prasad case* bad law. (Paras 14 and 12). *Subramanium Sethuraman* v. *State of Maharashtra*, (2004) 13 SCC 324: 2005 SCC (Cri) 242: AIR 2004 SC 4711: 2004 Cri LJ 4609: (2005) 1 Mah LJ 626.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *Tarun Chatterjee*, JJ. [Date of decision: 17-9-2004]

***Followed** in Bholu Ram v. State of Punjab, (2008) 9 SCC 140*

[2568] — Ss. 204 and 200 — Cancellation of order of summons by High Court on ground that the said order was passed after examining only two witnesses and the complainant — Validity — *Submission by appellant that he had examined all the relevant witnesses including eyewitnesses, Police Constable, who took him to the hospital for examination of the injuries and the Medical Officer who examined him — Held, in view of such submission, impugned order of High Court unsustainable* (Paras 4 and 6). *Babu Ram Sharma* v. *State of U.P.*, (2009) 16 SCC 326.

Bench Strength **2**. Coram: *M.B. Shah* and *D.M. Dharmadhikari*, JJ. [Date of decision: 2-9-2002]

Rosy v. State of Kerala, (2000) 2 SCC 230: 2000 SCC (Cri) 379, relied on

[2569] — Ss. 204, 200 and 202 — Issue of process — Conditions precedent for — Hearing to accused, if contemplated — *Held, following* Adalat Prasad case, *(2004) 7 SCC 338, summoned accused has no right to lead evidence in defence at the stage of framing charge. Suresh Kumar Tekriwal* v. *State of Jharkhand*, (2005) 12 SCC 278.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision: 3-2-2005]

Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927, followed

[2570] — Ss. 204, 228 and 240 — Right of accused to produce any documents or evidence in defence at the stage of issuance of process or at the stage of framing of charge, if any — *Held, the accused has no such right — Magistrate cannot be asked to look into the documents produced by an accused at that stage* (Para 7). *S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2005) 8 SCC 89: 2005 SCC (Cri) 1975: AIR 2005 SC 3512: (2005) 127 Comp Cas 563: (2005) 123 DLT 275: (2005) 4 KLT 209: (2005) 4 Mah LJ 731.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, **Arun Kumar** and *B.N. Srikrishna*, JJ. [Date of decision: 20-9-2005]

State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568: 2005 SCC (Cri) 415, relied on

[2571] — Ss. 204 & 203, 202, 200 and 482 — Power of court to recall process issued against an accused — *Held, in absence of such power being conferred by the Code, court has no power to recall the process issued — Observation in* Mathew case, *(1992) 1 SCC 217 that for recalling an erroneous order, no specific provision of law is required held, runs counter to the scheme of the Code which has not provided for review and prohibits interference at interlocutory stages*

It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 CrPC because the Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 CrPC. The view of the Supreme Court in *Mathew case*, (1992) 1 SCC 217 that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law. (Paras 15 and 16). *Adalat Prasad* v. *Rooplal Jindal*, (2004) 7 SCC 338: 2004 SCC (Cri) 1927: (2004) 113 DLT 356: (2004) 4 Mah LJ 274: (2004) 3 KLT 382: (2004) 4 MPLJ 1 (SC).

Bench Strength 3. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 25-8-2004]

Followed in Bholu Ram v. State of Punjab, (2008) 9 SCC 140

[2572] — **Ss. 204 & 203, 202 and 200 — Power of court to recall process issued against the accused** — *Reiterated, in the absence of such power expressly bestowed by the Code, court has no power to recall the process issued*

It is clear and well settled that once an order is passed by a competent court issuing summons or process, it cannot be recalled. In absence of express provision in the Code, the court has no power to recall the process issued. In the instant case, the Magistrate ordered to join Respondent 2 as an accused on applications filed by the appellant and summons was issued to him. A revision filed by the State against that order was dismissed by the Additional Sessions Judge. The Judicial Magistrate, on the facts and in the circumstances, was right in dismissing recall application filed by Respondent 2. The Revisional Court, however, was not correct to hold that the Magistrate had power to recall the earlier order passed by him. The Additional Sessions Judge ought to have considered the material fact in its proper perspective that the order passed by the Magistrate was legal and proper and because of that, the revision filed against that order by the State was also dismissed by the Revisional Court. (Paras 41 and 44 to 46)

If the act of taking cognizance, issuance of process or joining of an innocent person as an accused is totally uncalled for or ex facie bad in law, it is open to the aggrieved party to invoke inherent jurisdiction of the High Court under Section 482 CrPC. If the High Court is satisfied that the order passed by the Magistrate was illegal, improper or arbitrary, it can exercise inherent powers and quash criminal proceedings initiated against the party. But that power is independent and has nothing to do with recalling of an earlier order by the court which passed it. (Para 48). *Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927; Nilamani Routray v. Bennett Coleman & Co. Ltd., (1998) 8 SCC 594: 1998 SCC (Cri) 1551; Subramanium Sethuraman v. State of Maharashtra, (2004) 13 SCC 324: 2005 SCC (Cri) 242; N.K. Sharma v. Abhimanyu, (2005) 13 SCC 213: (2006) 2 SCC (Cri) 135; Everest Advertising (P) Ltd. v. State (Govt. of NCT of Delhi), (2007) 5 SCC 54: (2007) 2 SCC (Cri) 444, followed

K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88, held overruled

[2573] — **S. 204 — Whether Court has power to recall the process issued against an accused and drop the proceedings** — *In view of contrary view expressed in* K.M. Mathew case *matter directed to be placed before a Bench of three Judges. Nilamani Routray* v. *Bennett Coleman & Co. Ltd.*, (1998) 8 SCC 594: 1998 SCC (Cri) 1551.

Bench Strength 2. Coram: *M.K. Mukherjee* and *B.N. Kirpal*, JJ. [Date of decision: 30-1-1996]

Matter finally decided in Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338 which overruled (1992) 1 SCC 217

Followed in Bholu Ram v. State of Punjab, (2008) 9 SCC 140

[2574] — **Ss. 204, 200, 202, 203 and 482 — Summons — Recall of, after issuing, held, is beyond the jurisdiction of Magistrate** — *Further held, Magistrate does not have and therefore, cannot exercise any inherent jurisdiction*

Summons were issued by the learned Magistrate by reason of an order. He recalled the said order. He did not have any jurisdiction in that behalf. A Magistrate does not have and, thus, cannot exercise any inherent jurisdiction. (Para 10). *Everest Advertising (P) Ltd.* v. *State (Govt. of NCT of Delhi)*, (2007) 5 SCC 54: (2007) 2 SCC (Cri) 444: AIR 2007 SC 1650: (2007) 137 Comp Cas 32: 2007 Cri LJ 2442: (2007) 6 Mah LJ 49: (2007) 3 KLT 821.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 10-4-2007]

Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927; Subramanium Sethuraman v. State of Maharashtra, (2004) 13 SCC 324: 2005 SCC (Cri) 242; N.K. Sharma v. Abhimanyu, (2005) 13 SCC 213: (2006) 2 SCC (Cri) 135, followed

Followed in Bholu Ram v. State of Punjab, (2008) 9 SCC 140

[2575] — **S. 204 — Even after issue of process in summons case accused can plead absence of any triable case against him and Magistrate, on being satisfied on reconsideration of the complaint, has discretionary power to order dropping of the**

proceedings against the accused instead of proceeding under Chapter XX — *Order dropping the proceedings is an interim order which can be varied or recalled — Complaint lodged against Chief Editor of a newspaper alleging offences under Ss. 500 r/w 34 on the basis of presumption under S. 7 of Press and Registration of Books Act, 1867 — Magistrate on examination of the complainant on oath, taking the complaint on file and issuing summons to the accused — Accused Chief Editor on entering appearance pleading not guilty on ground that no allegation had been made that he was responsible for selection of the news item and publication thereof — While Chief Editor responsible for general policy of the newspaper, Editors based at different centres of publication of the newspaper responsible for selection and publication of news items — Having regard to absence of positive averments against the accused in the complaint, held, Magistrate justified in dropping proceedings against him*

The appellant is the Chief Editor of a daily newspaper. He is responsible for general policy of the daily. Separate editions of the newspaper are published from different centres. At each of these centres, there is a separate Editor who is responsible for selection and publication of the news items. Respondent 2, an advocate, being aggrieved by a news item published in the daily, lodged a complaint before Magistrate against the Chief Editor, the Printer and Publisher of the newspaper alleging commission of offence under Ss. 500/34 IPC. The Magistrate examined the complainant on oath, took the complaint on file and issued summons to the accused. The Chief Editor on appearance requested the Magistrate to drop the proceedings against him on the ground that there was no allegation that he was responsible for selection and publication of the news item or that he had perused the material or edited before its publication or that it was published with his consent or knowledge. The Magistrate accepted the plea and directed that the complaint so far as it related to the Chief Editor could not be proceeded with. The High Court allowed the revision preferred by the complainant against the order of the Magistrate. Allowing the appeal of the Chief Editor

Held :

Section 204 of the Code indicates that the proceedings before the Magistrate commences upon taking cognizance of the offence and the issue of summons to the accused. When the accused enters appearance in response to the summons, the Magistrate has to take proceedings under Chapter XX of the Code. But the need to try the accused arises when there is allegation in the complaint that the accused has committed the crime. If there is no allegation in the complaint involving the accused in the commission of the crime, it is implied that the Magistrate has no jurisdiction to proceed against the accused. It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused.

Section 7 of the Press and Registration of Books Act raises the presumption in respect of a person who is named as the Editor and printed as such on every copy of the newspaper. The Act does not recognise any other legal entity for raising the presumption. Even if the name of the Chief Editor is printed in the newspaper, there is no presumption against him under S. 7 of the Act.

In the instant case there is no averment against the Chief Editor except the motive attributed to him. Even the motive alleged is general and vague. For a Magistrate to take cognizance of the offence as against the Chief Editor, there must be positive averments in the complaint of knowledge of the objectionable character of the matter. The complaint in the instant case does not contain any such allegation. In the absence of such allegation, the Magistrate was justified in directing that the complaint so far as it relates to the Chief Editor could not be proceeded with. To ask the Chief Editor to undergo the trial of the case merely on the ground of the issue of process would be oppressive. No person should be tried without a prima facie case. *K.M. Mathew* v. *State of Kerala*, (1992) 1 SCC 217: 1992 SCC (Cri) 88: AIR 1992 SC 2206: (1992) 1 KLT 1: (1992) 1 MWN (Cr) 36: (1992) 2 Punj LR 35

Bench Strength 2. Coram: **K. Jagannatha Shetty** and *Yogeshwar Dayal*, JJ. [Date of decision: 19-11-1991]

Overruled *in Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338*

Held overruled *in Subramanium Sethuraman v. State of Maharashtra, (2004) 13 SCC 324: 2005 SCC (Cri) 242; Poonam Chand Jain v. Fazru, (2004) 13 SCC 269: 2005 SCC (Cri) 190 and Everest Advertising (P) Ltd. v. State (Govt. of NCT of Delhi), (2007) 5 SCC 54; Bholu Ram v. State of Punjab, (2008) 9 SCC 140*

[2576] — Ss. 204 and 397 — Summons issued by Magistrate to accused — Quashment — *Sessions Court in revision as well as High Court not justified in quashing the Magistrate's order — Magistrate could discharge or acquit the accused if no offence made out. Khacheru Singh* v. *State of U.P.*, (1982) 3 SCC 218: 1982 SCC (Cri) 696: AIR 1982 SC 784(2): 1982 Cri LJ 629(2).

Bench Strength **3**. Coram: *Y.V. Chandrachud, C.J.* and *A.D. Koshal* and *E.S. Venkataramiah*, JJ. [Date of decision: 23-2-1981]

[2577] — Ss. 204, 406 and 482 — Quashing criminal proceedings — *Summoning order issued by CJM against appellant and 3 others in connection with offence under S. 406 IPC — Miscellaneous criminal application filed by A-1 and A-2 challenging that order dismissed by High Court — SLP also dismissed by Supreme Court — Thereafter appellant challenging the summoning order in revision before Addl. Sessions Judge — Additional Sessions Judge after examining the facts in detail and taking note of the fact that similar petition by Accused 1 and 2 was dismissed by the High Court and the special leave petition filed against that order of the High Court was also dismissed, not interfering with the order issuing summons — High Court taking note that it was only after two years (in fact it was more than 3 years) of dismissal of challenge by A-1 and A-2, the appellant filed revision before Addl. Sessions Judge and having regard to all the facts and circumstances, considering it inappropriate to interdict the proceedings — Held, there was no illegality in the order of the High Court — It is not appropriate, at this stage, to examine the facts to find out whether prima facie case under Section 406 IPC is made out to issue a summons against the appellant — Constitution of India, Art. 226* (Para 5). *Narender Kumar Jain* v. *State of Gujarat*, (2000) 10 SCC 322: 2000 SCC (Cri) 85: AIR 1999 SC 3218: 1999 Cri LJ 4075.

Bench Strength **2**. Coram: *K. Venkataswami* and **S.S.M. Quadri**, JJ. [Date of decision: 24-8-1999]

[2578] — S. 204 — Lapse of very long time — Effect — *Held, no reason to absolve the accused (here under Environment Protection Act) from trial (17 years in this case) — On the other hand, is a good reason for expediting the trial — Environment (Protection) Act, 1986, S. 16. U.P. Pollution Control Board* v. *Mohan Meakins Ltd.*, (2000) 3 SCC 745: AIR 2000 SC 1456: 2000 Cri LJ 1799: 2000 All LJ 872.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 27-3-2000]

[2579] — S. 204 — Offence under S. 304 IPC — Invocation of — Ingredients to be satisfied for, reiterated — *Death of deceased* **F** *within half an hour after he was administered 3 injections by appellant medical practitioner — Neither could it be said that the death of F had been caused by doing the act of giving injections with intention to cause his death or to cause such bodily injury as is likely to cause death nor was it possible to think that the purported act was done with the knowledge that in all probability, it would result into the death of* **F** *— Hence, held, the act in question did not fall under S. 304 IPC — No summons could have been issued against the appellant in relation to the alleged offence — Penal Code, 1860, S. 304*

Summons were issued against the appellant medical practitioner in relation to the commission of offences punishable under Sections 304, 504 and 506 IPC. The case of Respondent 2 complainant was that due to pain in the body of his father *F*, he was brought to the clinic of the appellant for treatment. The appellant administered three injections to *F*. Within half an hour, *F* died. The appellant asked the complainant to remove the dead body of *F* immediately and also threatened the complainant not to take any action against him.

It was further alleged that when the complainant went to the police station to lodge a report against the appellant, the police refused to register any case. Hence, a criminal complaint was filed before the Magistrate concerned alleging the said facts. According to the complainant, the appellant also took out a revolver and threatened him to withdraw the complaint otherwise he would kill him.

An order was passed by the Magistrate under Section 156(3) CrPC, directing investigation in the matter by the police authorities. The police submitted a final report under Section 169 CrPC stating therein that no offence had been committed by the appellant. The complainant filed a protest petition stating that the final report submitted by the police should not be accepted and the case be decided in accordance with law. After perusing the complaint and recording statements under Section 200 CrPC, the Magistrate observed that the allegation of the complainant was supported by eyewitnesses. The Court also noted that newspaper reports revealed that the Chief Medical Officer and District Collector passed orders pursuant to which the clinic of the appellant was closed. The Magistrate, therefore, opined that there was sufficient evidence to call upon the accused as to what he had to say in the case. In the revision petition, the High Court confirmed the said order. Hence, the present appeal.

Partly allowing the appeal,

Held :

Before Section 304 IPC can be invoked, the ingredients which must be satisfied are: (*i*) the death of the person must have been caused; (*ii*) such death must have been caused by the act of the accused by causing bodily injury; (*iii*) there must be an *intention* on the part of the accused (*a*) to cause death; or (*b*) to cause such bodily injury which is likely to cause death (Part I); or (*iv*) there must be *knowledge* on the part of the accused that the bodily injury is such that it is likely to cause death (Part II). (Para 22)

By no stretch of imagination, can it be said that the appellant while administering injections to deceased *F* committed an offence punishable under Section 304 IPC. It can never be said that the death of *F* had been caused by the appellant by doing the act of giving injections with *intention* to cause his death or to cause such bodily injury as is likely to cause death. Likewise, it is impossible to think that the purported act has been done by the appellant with the *knowledge* that in all probability, it would result into the death of *F*. Even if the averments made in the complaint are accepted in their entirety, the act in question of giving injections to the deceased would not fall within the mischief of Section 304 IPC. Therefore, no process could have been issued against the appellant for commission of an offence punishable under the said section. (Paras 27, 28 and 38). *Mahadev Prasad Kaushik* v. *State of U.P.*, (2008) 14 SCC 479.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 17-10-2008]

[2580] — Ss. 204, 200 and 482 — Issue of process — Prerequisites as to — *Issuance of summons in relation to offences under Ss. 504 and 506 IPC, in absence of any reference or prima facie finding as to alleged threat in impugned order, held, not justified — Proceedings initiated in relation to those offences, quashed — Penal Code, 1860, Ss. 504 and 506*

In the order passed by the Magistrate, there is no whisper about the threat alleged to have been given by the appellant to the complainant nor the Magistrate recorded even a prima facie finding as to such threat. The High Court also, in the impugned order, does not refer to such intimidation. On the contrary, the High Court observed that the allegations were sufficient to summon the appellant for causing death of *F* under Section 304 IPC. Thus, on the facts and in the circumstances of the case, no summons could have been issued to the appellant for the commission of offences punishable under Sections 504 and 506 IPC. Hence, the proceedings initiated against the appellant for the offences punishable under Sections 504 and 506 IPC are quashed. (Paras 18, 19 and 38). *Mahadev Prasad Kaushik* v. *State of U.P.*, (2008) 14 SCC 479.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 17-10-2008]

[2581] — S. 204 — Causing death by negligence — Summons that can be issued — Summons under S. 304-A, IPC — Death of *F* within half an hour after the appellant medical practitioner administered 3 injections to him — *F was taken to clinic of appellant for treatment as he had pain in his body — Ailment of* **F** *prima facie was not of such a serious nature which would result in death during his treatment — Considering the facts and circumstances, held, although no summons could have been issued against the appellant for offence under S. 304 IPC, summons ought to have been issued against him for offence under S. 304-A IPC — Penal Code, 1860, S. 304-A*

On the facts of the case, ailment of *F* prima facie could not be said to be of such a serious nature which would result in death during his treatment. The allegation of the complainant which has been corroborated by the statements of other eyewitnesses is that immediately after administration of three injections, the colour of the body of *F* turned into blue and within half an hour he died. In these facts and circumstances, although no summons could have been issued by the trial court against the appellant for an offence punishable under Section 304 IPC, summons for an offence under Section 304-A IPC ought to have been issued. (Paras 37, 35 and 38). *Mahadev Prasad Kaushik* v. *State of U.P.*, (2008) 14 SCC 479.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 17-10-2008]

Khusaldas Pammandas (Dr.) v. State of M.P., AIR 1960 MP 50, approved

Jacob Mathew v. State of Punjab, (2005) 6 SCC 1: 2005 SCC (Cri) 1369; State of Punjab v. Shiv Ram, (2005) 7 SCC 1, clarified and relied on

[2582] — S. 204 — Issue of process — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 47, 24 and 43 — Offence by company of pollution of streams and rivers by trade effluents — During stage of issuing process, held, what has to be looked at is whether there are allegations in the complaint on the basis of which Managers or Directors of the company can also be proceeded against, when the company is alleged to be guilty of the offence — *Appellant Pollution Control Board initiating proceedings in 1983 against respondent liquor-processing Company for continually discharging pollutants into*

River Gomti and raising pollution level beyond permissible limits — Complaint alleging that Company Directors and Managers, who were included in array of accused, were responsible for the contamination of the river water — Trial court issuing process against accused — In review jurisdiction Sessions Court quashing the order of issuing process on the reasoning that no specific role had been assigned to any of such Managers or Directors — Held, High Court erred in upholding the order of the Sessions Court and holding that appellant Board had not shown that the Directors were in charge of or responsible to the Company for the conduct of its business

The pollution of the River Gomti, in Lucknow reached impermissible levels as the result of the continuous discharge into it of trade effluents from an industrial unit of the respondent liquor-manufacturing Company. In 1983 the appellant Pollution Control Board initiated proceedings against the Company under Sections 47, 24 and 43 of the Water (Prevention and Control of Pollution) Act, 1974. The trial court issued process at the first instance. The Sessions Court, however, quashed the trial court's order on the ground that it was not a speaking order. The CJM then passed a detailed order on 25-4-1984, again issuing process to the accused. On 25-8-1984 the Sessions Court in revision quashed this order also, holding that no specific role had been assigned in the complaint to the Directors and Managers in the discharge of the pollutant effluents. The averments in the complaint clearly referred to the discharge and resulting rise in pollution levels of the river water; also detailed were the results of the analysis, by the Industrial Toxicology Research Centre, Lucknow, of samples of the trade effluents collected from the drain "just outside the plant inside the factory" and from the irrigation plant which pumped the effluents into the Gomti. The results clearly showed that the norms laid down regarding river water had been violated. The complaint unambiguously stated that the Chairman, Managing Director and Directors of the Company were responsible for the pollution of the river.

The appellant Board then filed a revision petition before the High Court, which confirmed the order of the Sessions Court fifteen years later on 27-7-1999, holding that the Directors had not been shown to have been in charge of or responsible to the Company for the conduct of its business.

Allowing the appeal by the Board,

Held :

In the complaint filed by the appellant before the Chief Judicial Magistrate, the Company (M/s Mohan Meakins Ltd.) has been arrayed as the first accused and the other persons who were arrayed as Accused 2 to 10 were described as the Directors of the said Company. The 11th person arrayed in the complaint as accused is described as the Manager of the Company. The averments in the complaint show that the Distillery Unit of the Company at Daliganj, Lucknow, has been discharging noxious trade effluents into River Gomti and causing continuous pollution of the river. It was further averred in the complaint that on 19-9-1982, samples of trade effluents were collected by the officers empowered in this behalf, from the drain "just outside the plant inside the factory", and from the irrigation plant out of which the effluents were pumped into the river. When the samples were analysed in the Industrial Toxicology Research Centre, Lucknow, it was revealed that the quality of effluents was beyond the standard laid down for the purpose. (Para 10)

Where an offence under the Act has been committed by a company every person who was in charge of and was responsible to the company for the conduct of the business of the company is also made guilty of the offence by the statutory creation. Any director, manager or other officer of the company, who has consented to or connived in the commission of the said offence, is made liable for the punishment of the offence. This is clearly discernible from Section 47 of the Act. (Para 11)

In this context what is to be looked at during the stage of issuing process is whether there are allegations in the complaint by which the Managers or Directors of the Company can also be proceeded against, when the Company is alleged to be guilty of the offence. (Para 12)

The Sessions Judge was in error for quashing the process at the first round merely on the ground that the Chief Judicial Magistrate had not passed a speaking order. (Para 5)

The Supreme Court has earlier pointed out that the legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. (Para 6)

It was unfortunate that the Sessions Judge himself did not look into the complaint at that stage to form his own opinion whether process could have been issued by the Chief Judicial Magistrate on the basis of the averments contained in the complaint. Instead the Sessions Judge relegated the work to the trial Magistrate for doing the exercise over again. (Para 7)

A lapse of a long period cannot be a reason to absolve the respondents from the trial. It must reach its logical culmination. Courts cannot afford to lightly deal with cases involving pollution of air and water. The message must go to all concerned. The courts will share the parliamentary concern on the escalating pollution level of our environment. Those who discharge noxious polluting effluents into streams may be unconcerned about the enormity of the injury which it inflicts on the public health at large, the irreparable impairment it causes on the aquatic organisms, the deleteriousness it imposes on the life and health of animals. So the courts should not deal with the prosecution for offences under the Act in a casual or routine manner. Parliamentary concern in the matter is adequately reflected in strengthening the measures prescribed by the statute. The court has no justification for ignoring the seriousness of the subject. (Para 13). *U.P. Pollution Control Board* v. *Mohan Meakins Ltd.*, (2000) 3 SCC 745: AIR 2000 SC 1456: 2000 Cri LJ 1799: 2000 All LJ 872.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 27-3-2000]

Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722: 2000 SCC (Cri) 303, followed

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; MCD v. Purshotam Dass Jhunjunwala, (1983) 1 SCC 9: 1983 SCC (Cri) 123, distinguished

[2583] — Ss. 204, 190(1)(a) and 178 — Absence of jurisdiction to issue summons — Dishonour of cheques — *Cheques issued by accused at place AJ where he resided — Subsequent statement of accused that he issued fabricated cheques knowingly with an intention to cheat the complainant and grab his money, was allegedly also made at place* ***AJ*** *— Hence held, the Magistrate at place* ***RP*** *(where the complainant resided) had no jurisdiction to issue the summons as there was nothing on record to show that any part of cause of action arose within its jurisdiction — Negotiable Instruments Act, 1881, S. 138 — Penal Code, 1860, Ss. 405, 406, 409, 415, 420 and 417*

Whereas the accused is a resident of the district *AJ*, the complainant is a resident of the district *RP*. Cheques were admittedly issued by the accused at his place. There is nothing on record to show that any part of the cause of action arose within the jurisdiction of the court concerned. Even if the alleged statements had been made by the accused, the same admittedly had been made only at the place where the accused resides. The Magistrate at place *RP*, therefore, had no jurisdiction to issue the summons. (Para 16). *Vir Prakash Sharma* v. *Anil Kumar Agarwal*, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370: 2007 Cri LJ 3735: (2007) 57 AIC 32 (SC): (2007) 5 All LJ 321.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 1-8-2007]

Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd., (2006) 3 SCC 658: (2006) 2 SCC (Cri) 98, relied on

[2584] — Ss. 204, 201 to 203 and 70 — Framing of charges and arrest of doctors for criminal medical negligence — Prosecution of — Guidelines for, laid down — *Prosecution of criminal offences against doctors — Detailed guidelines laid down to protect interest of doctors, and to save them from unwarranted and malicious proceedings — Rationale for, discussed in detail — Penal Code, 1860, Ss. 304-A, 88, 92 and 93*

The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to a rash or negligent act within the domain of criminal law under Section 304-A IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered to his reputation cannot be compensated by any standards. Many a complainant prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against. The service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. (Paras 50 and 51)

Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, the following guidelines will be in force which shall govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the *Bolam test*, (1957) 2 All ER 118, at p. 121 D-F [set out in para 19 herein], to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld. (Para 52). *Jacob Mathew* v. *State of Punjab*, (2005) 6 SCC 1: 2005 SCC (Cri) 1369: AIR 2005 SC 3180: (2005) 3 CPR 70 (SC): (2005) 122 DLT 83: (2005) 3 CPJ 9 (II) (SC): 2005 Cri LJ 3710.

Bench Strength 3. Coram: **R.C. Lahoti, C.J.** and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-8-2005]

— **S. 205** *See also* S. 205, Criminal Procedure Code, 1898, p. 1084 in Vol. 2

— **S. 205** *See* Ss. 167(5) [as amended by S. 4 of W.B. Act 24 of 1988], 436, 437, 204, 205, 206 and 161

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 251 and 205

See also Ss. 302 and 205

See also Ss. 302, 205 and 2(q)

See also Ss. 303 and 2(q), 205, 273

See also Ss. 317 and 205

See also Ss. 317 and 273, 251 & 205

See also Ss. 482, 204 and 205

[2585] — **S. 205 — Dispensing with personal attendance of accused — Application for — Necessary considerations while dealing with** — *Held, court has to consider whether any useful purpose would be served by requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on account of his absence — Supreme Court directing the trial court to take needful action accordingly, in the instant case — Negotiable Instruments Act, 1881, S. 138* (Para 13). *S.V. Muzumdar* v. *Gujarat State Fertilizer Co. Ltd.*, (2005) 4 SCC 173: 2005 SCC (Cri) 1020: AIR 2005 SC 2436: (2005) 3 MPLJ 271: (2005) 3 Guj LR 2052: (2005) 125 Comp Cas 188: (2005) 3 Mah LJ 754.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 25-4-2005]

[2586] — **Ss. 205, 204 and 482 — Issue of process — Manner of exercise of discretionary jurisdiction by Magistrate — Power of High Court regarding exemption from personal attendance of accused — Limitations on High Court's inherent jurisdiction under S. 482** — *High Court citing reasons of old age, sex, etc. as valid grounds for exemption from personal attendance of accused in terms of S. 205 and accordingly directing Magistrate to consider the same — Legality — Held, it was improper of High Court to pass said direction — It is ordinarily for Magistrate to consider the matter — Magistrate must exercise jurisdiction under Ss. 205/204 in a fair and judicious manner* (Paras 32, 34, 41, 43 and 44)

It is ordinarily for the Magistrate to consider as to whether a case for grant of bail has been made out or not, the High Court, therefore, may not be correct in observing, that valid grounds exist for granting bail to the petitioners. Similarly, the High Court should not have, for all intent and purport, issued the direction for grant of exemption from personal appearance. Such a matter undoubtedly shall be left for consideration before the Magistrate. The Magistrate is expected to exercise his jurisdiction in a fair and judicious manner. The impugned directions are set aside and the matters are remitted to the High Court for consideration of the application filed before it by the parties afresh on merit. (Paras 43 and 44)

The jurisdiction of the High Court under Section 482 is limited. It can interfere with an order of summoning an accused by the Magistrate inter alia in the event if a finding is arrived at that the accused were being prosecuted mala fide and/or even if the allegations contained in the FIR are given face value and taken to be correct in their entirety, no case has been made out for taking cognizance of the offence. It is furthermore made clear that the parties hereto may approach the High Court in Criminal Miscellaneous Application No. 518 of 2008. Allegations of mala fide made against the State may also be gone into. The High Court can pass any such interim order as it may think fit and proper. (Paras 32, 34 and 41). *Manoj Narain Agrawal* v. *Shashi Agrawal*, (2009) 6 SCC 385.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 15-4-2009]

Arun Shankar Shukla v. State of U.P., (1999) 6 SCC 146: 1999 SCC (Cri) 1076; Hamida v. Rashid, (2008) 1 SCC 474: (2008) 1 SCC (Cri) 234; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Ruchi Agarwal v. Amit Kumar Agrawal, (2005) 3 SCC 299: 2005 SCC (Cri) 719, relied on

[2587] — S. 205 — Proceedings for offences under Ss. 376, 417 and 506 IPC — Dispensation of personal attendance on ground of accused being social worker and known to the village people untenable — *Accused directed to appear before the trial court on all hearings — In extreme and exceptional circumstances his personal attendance on any particular hearing may be dispensed with — However, accused must make his appearance before the trial court on all the hearings when material witnesses are examined. Lily Begum* v. *Joy Chandra Nagbanshi*, (1994) 2 SCC 39: 1994 SCC (Cri) 303.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *R.M. Sahai*, JJ. [Date of decision: 20-9-1993]

[2588] — Ss. 205, 206 and 382 — Filing of vakalatnama without an affidavit — Effect — *Held, the same can still constitute a statement of the person filing the vakalatnama — Civil Procedure Code, 1908, Or. 3 R. 4 and Or. 12 R. 1* (Para 16). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694: (2006) 2 Guj LR 1493.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[2589] — Ss. 205 and 313 — Power of High Court under — Approach to be followed in exercise of such power — *Held, while it is true that power of superintendence conferred on High Court under Art. 227 is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases, in order to keep subordinate courts within bounds of their authority — In any event, power of superintendence cannot be exercised to influence subordinate judiciary to pass any order or judgment in a particular manner — Herein, High Court exceeded its jurisdiction under Art. 227, by laying down general directions for lower courts, regarding dispensing with personal attendance of accused and personal examination of accused by court, which were inconsistent with clear language of Ss. 205 and 313 CrPC — Constitution of India — Art. 227* (Paras 13, 14 and 21). *TGN Kumar* v. *State of Kerala*, (2011) 2 SCC 772.

Bench Strength **3**. Coram: **D.K. Jain**, *A.K. Ganguly* and *H.L. Dattu*, JJ. [Date of decision: 14-1-2011]

Jasbir Singh v. State of Punjab, (2006) 8 SCC 294: (2006) 3 SCC (Cri) 470; Trimbak Gangadhar Telang v. Ramchandra Ganesh Bhide, (1977) 2 SCC 437; Mohd. Yunus v. Mohd. Mustaqim, (1983) 4 SCC 566; State v. Navjot Sandhu, (2003) 6 SCC 641: 2003 SCC (Cri) 1545, affirmed

[2590] — Ss. 205 and 313 — Personal appearance of accused dispensed with by trial court — After conclusion of trial accused directed to appear personally for recording statement under S. 313 — *In view of accused's statement before Supreme Court that he would not make any statement under S. 313 and would not raise any question of prejudice, if any, caused to him due to non-examination under S. 313 at any subsequent stage of trial, appeal or revision, accused-appellant's request for exemption from personal appearance before trial court for recording statement under S. 313 accepted and directions issued accordingly. Chandu Lal Chandraker* v. *Puran Mal*, 1988 Supp SCC 570: 1988 SCC (Cri) 907: AIR 1988 SC 2163.

Bench Strength **2**. Coram: *K.N. Singh* and *M.H. Kania*, JJ. [Date of decision: 22-3-1988]

Held per incuriam in Keya Mukherjee v. Magma Leasing Ltd., (2008) 8 SCC 447

[2591] — Ss. 205 and 317 — Personal appearance — Exemption from — *Criminal proceedings against women — Trial court directed to exempt them from personal appearance subject to certain conditions* (Para 7). *R. Annapurna* v. *Ramadugu Anantha Krishna Sastry*, (2002) 10 SCC 401.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 9-8-2000]

[2592] — S. 205 — Offences by companies — Personal attendance of accused Directors before Magistrate during criminal trial — Issuance of direction to trial court to dispense with, refused — *Further held, trial court could be approached for that purpose — Income Tax Act, 1961, Ss. 276-B and 278-B*

It would not be appropriate to issue a direction as sought in the last submission of the appellants. However, if such a prayer is made by the appellants, the court would consider the prayer in its proper perspective and will pass an appropriate order. (Para 53). *Madhumilan Syntex Ltd.* v. *Union of India*, (2007) 11 SCC 297: (2008) 1 SCC (Cri) 143: AIR 2007 SC 1481: (2007) 210 ELT 484: (2007) 290 ITR 199.

Bench Strength **2**. Coram: **C.K. Thakker** and *P.K. Balasubramanyan*, JJ. [Date of decision: 23-3-2007]

[2593] — Ss. 205 and 313 — Dispensing with personal attendance of accused and personal examination of accused by court — General directions by High Court, for lower courts, regarding — Requirement of recording "specific reasons" by Magistrate for deviating therefrom — Propriety — Held, such requirement is tantamount to putting fetters on jurisdiction of

Magistrate, which is not warranted in law — Impugned order containing such directions, set aside (Para 20). *TGN Kumar* v. *State of Kerala*, (2011) 2 SCC 772.

Bench Strength **3**. Coram: **D.K. Jain**, *A.K. Ganguly* and *H.L. Dattu*, JJ. [Date of decision: 14-1-2011]

Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10, relied on

[2594] — Ss. 205 and 482 — Dispensing with personal attendance of accused — Considerations for — Duties of Magistrate enumerated — *Discretion of Magistrate under S. 205, held, cannot be circumscribed by laying down any general direction — While considering application under S. 205, Magistrate has to bear in mind nature of case as also conduct of person summoned — He shall examine whether any useful purpose would be served by requiring personal attendance of accused or whether progress of trial is likely to be hampered on account of his absence — Therefore, satisfaction, whether or not an accused deserves to be exempted from personal attendance, has to be of Magistrate, who is the master of court insofar as progress of trial is concerned and none else — However, order of Magistrate should be such, which does not result in unnecessary harassment to accused and at the same time does not cause any prejudice to complainant — Court must ensure that exemption from personal appearance granted to accused is not abused to delay trial — In instant case, general direction by High Court to all criminal courts, particularly in cases involving offence under S. 138, NI Act, as also in all other cases involving offences which are technical in nature and do not involve any moral turpitude, that only summons under S. 205 shall be issued by courts at first instance, is clearly erroneous, inasmuch as discretion of Magistrate under S. 205 cannot be circumscribed by laying down any general directions in that behalf — Hence, impugned order containing aforesaid general direction to lower courts, set aside — Negotiable Instruments Act, 1881, Ss. 138 and 143 to 145 — Blanket direction by High Court dispensing with personal appearance of accused in S. 138, NI Act cases, set aside* (Paras 7 to 11 and 22). *TGN Kumar* v. *State of Kerala*, (2011) 2 SCC 772.

Bench Strength **3**. Coram: **D.K. Jain**, *A.K. Ganguly* and *H.L. Dattu*, JJ. [Date of decision: 14-1-2011]

Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401: 2001 SCC (Cri) 1254; S.V. Muzumdar v. Gujarat State Fertilizer Co. Ltd., (2005) 4 SCC 173: 2005 SCC (Cri) 1020; Manoj Narain Agrawal v. Shashi Agrawal, (2009) 6 SCC 385: (2009) 2 SCC (Cri) 1096, affirmed

Saseendran Nair v. General Manager, (1996) 2 KLT 482; Kerala SRTC v. Abdul Latheef, (2005) 3 KLT 955; Raman Nair v. State of Kerala, (1999) 3 KLT 714; Noorjahan v. Moideen, (2000) 2 KLT 756; Helen Rubber Industries v. State of Kerala, 1972 KLT 794, referred to

Jain Babu v. Joseph, (2008) 4 KLT 16, reversed

[2595] — S. 205 — Dispensing with personal attendance of accused — Proceedings under S. 138, Negotiable Instruments Act, 1881 — *Considering the nature of the controversy, held, in case application in terms of S. 205 was filed, the trial court would dispense with the personal attendance of the petitioners — But, if any attempt was made to prolong the proceedings by taking advantage with the said order, it would be open to the court to pass such order as was felt necessary* (Para 3). *Gajanand Goyal* v. *Asiya Begum*, (2005) 12 SCC 331.

Bench Strength **2**. Coram: *Arijit Pasayat* and *S.H. Kapadia*, JJ. [Date of decision: 29-4-2005]

[2596] — S. 205 — Dispensing with personal attendance of accused — Held, permissible if application for dispensing with personal attendance is made before Special Court — *Water (Prevention and Control of Pollution) Act, 1974, Ss. 47, 44, 25 and 26*

If Respondent 1 applies for dispensing with his personal presence in the court, after making the first appearance, the Special Court can exempt him from continuing to appear in the court by imposing any condition which the court deems fit. (Para 42). *U.P. Pollution Control Board* v. *Dr. Bhupendra Kumar Modi*, (2009) 2 SCC 147.

Bench Strength **2**. Coram: *K.G. Balakrishnan*, *C.J.* and **P. Sathasivam**, J. [Date of decision: 12-12-2008]

— S. 205(1) *See* Ss. 313(1)(b) proviso and 2(w) & (x), 205(1) and 317

— S. 206 *See* Ss. 167(5) [as amended by S. 4 of W.B. Act 24 of 1988], 436, 437, 204, 205, 206 and 161

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 205, 206 and 382

— S. 207 *See* Ss. 161, 162, 91, 172 and 207

See also Ss. 161, 172, 173(6) and 207

See also Ss. 161 and 207

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 197, 207, 169 and 170

See also Ss. 363(5) and 207

[2597] — S. 207 — Presumption as to the supply of copy of a document to accused — *Drawn by High Court merely on the ground that the said document was mentioned in charge-sheet — Said document not produced during the trial and proved* *according to law — In the absence of anyone affirming the correctness of the contents of the said document, held, presumption drawn by High Court not proper* (Para 7). *Jitendra* v. *State of M.P.*, (2004) 10 SCC 562: 2004 SCC (Cri) 2028: AIR 2003 SC 4236: 2003 Cri LJ 4985.

Bench Strength 2. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 18-9-2003]

[2598] — Ss. 207, 208, 161 and 438 — Police papers (documents) — Object of supply of, to accused — Stage(s) at which to be supplied — Which documents to be supplied — *Effect of unauthorised access to case diary — Held, object of supply of the said documents is to enable the accused to defend himself properly — Non-supply of is not necessarily prejudicial to the accused — At the stage the bail applications were heard by the High Court, legally accused could not have been in a position to have access to the same — Therefore the courts should take serious note when the accused or the informant refers to the case diary to buttress a stand — Natural justice — Supply of documents*

Sections 207 and 208 CrPC Code deal with documents which are commonly known as police papers, which are to be supplied to the accused to make the accused aware of the materials which are sought to be utilised against him. The object is to enable the accused to defend himself properly. The idea behind the supply of copies is to put him on notice of what he has to meet at the trial. Non-supply is not necessarily prejudicial to the accused. The court has to give a definite finding about the prejudice or otherwise. The papers which are to be supplied to the accused have been statutorily prescribed. Both the accused and the informant referred to several portions in the case diary. At the stage the bail applications were heard by the High Court, legally they could not have been in a position to have access to the same. (Paras 11, 12, 13 and 14)

When the parties make reference to the supervision notes, the inevitable conclusion is that they have unauthorised access to the official records. The courts should take serious note when the accused or the informant refers to the case diary to buttress a stand. (Paras 13 and 14). *Naresh Kumar Yadav* v. *Ravindra Kumar*, (2008) 1 SCC 632: (2008) 1 SCC (Cri) 277: AIR 2008 SC 218: (2008) 1 KLT 839.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 23-10-2007]

[2599] — Ss. 207, 208 and 209 — Submission that evidence of each witness must be put to accused — Held, only circumstances need to be put to accused and not entire testimony (Paras 270 to 273). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength 2. Coram: **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision: 19-4-2010]

State of Punjab v. Swaran Singh, (2005) 6 SCC 101: 2005 SCC (Cri) 1359, relied on

Ranvir Yadav v. State of Bihar, (2009) 6 SCC 595: (2009) 3 SCC (Cri) 92; Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 SC 468: 1953 Cri LJ 1933, distinguished

[2600] — Ss. 207, 209, 309, 170, 190 and 2(g) — Where case instituted upon police report exclusively triable by Session Court, held, Magistrate has jurisdiction and power to remand the accused to custody under S. 309(2) any time from the time the accused is produced before him along with the police report till the order committing the accused to the Sessions Court is made under S. 209 — *Magistrate's function under S. 207 read with S. 209 is judicial and in the nature of 'inquiry' within the meaning of S. 2(g)*

The statutory obligation imposed by S. 207 read with S. 209 on the Magistrate to furnish free of costs copies of documents is a judicial obligation. Section 207 is cast in a mandatory language. No order committing the accused to the Court of Session can be made under S. 209 unless the Magistrate fully complies with the provisions of S. 207. And if it is shown that the copies of relevant documents or some of them are not supplied, the matter will have to be adjourned to get the copies prepared and supplied to the accused. This is implicit in S. 207 r/w S. 209. The Magistrate can proceed to commit the accused for trial to the Court of Session only after he judicially discharges the function imposed upon him by S. 207. This conclusion is fortified by the provisions contained in Chapter XVIII.

The Magistrate's function under S. 207 is not a trial but something other than a trial and being judicial function it would necessarily be an enquiry. The making of an order committing the accused to the Court of Session will equally be a stage in the enquiry and the enquiry culminates in making the order of commitment. Thus, from the time the accused appears or is produced before the Magistrate with the police report under S. 170 and the Magistrate proceeds to enquire whether S. 207 has been complied with and then proceeds to commit the accused to the Court of Session, the proceeding before the Magistrate would be an inquiry as contemplated by S. 2(*g*). That being so, S. 309 would enable the Magistrate to remand the accused to the custody till the inquiry to be made is complete. *State of U.P.* v. *Lakshmi Brahman*, (1983) 2 SCC 372: 1983 SCC (Cri) 489: AIR 1983 SC 439: 1983 Cri LJ 839: 1983 ALJ 419.

Bench Strength 2. Coram: **D.A. Desai** and *R.B. Misra*, JJ. [Date of decision: 11-3-1983]

[2601] — Ss. 207, 208, 161, 162, 91 & 243 r/w S. 173 — Right of accused to receive documents/statements submitted before court — Scope — *Held, said right is absolute — Liberty of accused cannot be interfered with except by "due process of law" which includes fairness in trial — Documents submitted before court should be disclosed giving accused fair chance of defence, particularly when non-production or non-disclosure of such document would affect administration of criminal justice and defence of accused prejudicially — Accused has a statutory right to confront witnesses with statements recorded under S. 161 — He can also move an application for production of any record or witness in support of his case — Constitution of India, Article 21* (Paras 190 to 222). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength 2. Coram: **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision: 19-4-2010]

R. v. Ward (Judith), (1993) 1 WLR 619: (1993) 2 All ER 577 (CA); R. v. Preston, (1994) 2 AC 130: (1993) 3 WLR 891: (1993) 4 All ER 638 (HL), distinguished

[2602] — Ss. 207, 238, 228 & 240 and S. 227 — Framing of charge — Non-compliance with S. 207 — Whether Magistrate has jurisdiction to recall his order — Whether the non-compliance rendered framing of the charge void — Whether that violated concept of fair and speedy trial under Art. 21 — *Held, once charges have been framed and accused pleads not guilty, Magistrate is required to proceed with the trial to its logical end — Magistrate has no power under the Code to discharge the accused — He can, thereafter either convict or acquit the accused — Further held, submissions advanced with regard to denial of natural justice and a fair and speedy trial as contemplated under Art. 21 of the Constitution, have no application whatsoever to the instant case* (Paras 2, 6 and 17). *Bharat Parikh* v. *CBI*, (2008) 10 SCC 109: (2008) 3 SCC (Cri) 609: 2008 Cri LJ 3540.

Bench Strength 2. Coram: **Altamas Kabir** and *Dr. M.K. Sharma*, JJ. [Date of decision: 14-7-2008]

Ratilal Bhanji Mithani v. State of Maharashtra, (1979) 2 SCC 179: 1979 SCC (Cri) 405; State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522: 2004 SCC (Cri) 1805; State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568: 2005 SCC (Cri) 415, followed

Satish Mehra v. Delhi Admn., (1996) 9 SCC 766: 1996 SCC (Cri) 1104, held overruled

P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578: 2002 SCC (Cri) 830; Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93; Dhananjay Kumar Singh v. State of Rajasthan, 2006 Cri LJ 3873 (Raj), distinguished

[2603] — Ss. 207 and 154 — Non-production of report despite being summoned — Effect — Applicability — *Written report made by deceased's father to the police, which was the first contemporaneous document putting on record the true facts pertaining to the incident not produced by the prosecution despite direction by the Sessions Court for its production — Held, raised a doubt against the prosecution case — Accused entitled to benefit of doubt — Evidence Act, 1872, S. 114 Ill. (g)* (Paras 5, 6 and 7). *Sk. Meheboob* v. *State of Maharashtra*, (2005) 10 SCC 387: 2005 SCC (Cri) 1544: AIR 2005 SC 1805: 2005 Cri LJ 2136.

Bench Strength 2. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 10-3-2005]

[2604] — Ss. 207 and 208 — Non-supply of copies of record — *Normally where material evidence is necessary the case is adjourned to enable the party to get the entire record prepared — However, where evidence is not material for the purpose of the case the court can refuse to adjourn the case — Supreme Court Rules, 1966, Or. XX-E R. 1(v). State of Gujarat* v. *Anirudhsing*, (1997) 6 SCC 514: 1997 SCC (Cri) 946: AIR 1997 SC 2780: 1997 Cri LJ 3397.

Bench Strength 2. Coram: *K. Ramaswamy* and *D.P. Wadhwa*, JJ. [Date of decision: 10-7-1997]

[2605] — Ss. 207 and 208 — Papers to be supplied to accused — Notes of supervision of supervisory police officers — *Held, are not part of papers supplied to accused in terms of Ss. 207 and 208 — Only those documents need to be supplied which are sought to be utilised against him — Non-supply of documents not necessarily prejudicial to the accused — A definite finding about prejudice or otherwise is required to be given by the court — Supervision notes should not be supplied to accused, nor can they be referred to by accused nor can they be taken into account by court if reference thereof is made before any court — Notes of supervision cannot be utilised by prosecution as a piece of material or evidence against the accused — Directions issued to ensure confidentiality of supervision notes*

The supervision notes are not a part of the papers which are supplied to the accused. Moreover, the informant is not entitled to the copy of the supervision notes. The supervision notes are recorded by the supervising officer. The documents in terms of Sections 207 and 208 are supplied to make the accused aware of the materials which are sought to be utilised against him. The object is to enable the accused to defend himself properly. The idea behind the supply of copies is to put him on notice of what he has to meet at the trial. Non-supply is not necessarily prejudicial to the accused. The court has to give a definite finding about the prejudice or otherwise. The supervision notes cannot be utilised by the prosecution as a piece of material or evidence against the accused. At the same time the accused cannot make any reference to them for any purpose. If any reference is made before any court to the supervision notes, they are not to be taken note of by the court concerned. As many instances have come to light when the parties, as in the present case, make reference to the supervision notes, the inevitable conclusion is that they have unauthorised access to the official records. Therefore the Chief Secretary of each State and Union Territory and the Director General of Police concerned are directed to ensure that the supervision notes are not made available to any person and to ensure that confidentiality of the supervision notes is protected. If it comes to light that any official is involved in enabling any person to get the same, appropriate action should be taken against such official. Due care and caution should be taken to see that while supplying police papers supervision notes are not given. (Para 27). *Sunita Devi* v. *State of Bihar,* (2005) 1 SCC 608: 2005 SCC (Cri) 435: AIR 2005 SC 498: (2004) 115 DLT 517: (2005) 2 Guj LR 1096: (2005) 1 KLT 748: (2005) 2 Mah LJ 534.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2004]

Noor Khan v. State of Rajasthan, AIR 1964 SC 286: (1964) 1 Cri LJ 167: (1964) 4 SCR 521; Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble, (2003) 7 SCC 749: 2003 SCC (Cri) 1918, relied on

[2606] — Ss. 207 and 311 — Contempt petition filed before Supreme Court against prosecution agency (Administrator, Delhi Administration, I.G. Police and D.C. Police) on ground of non-compliance with Supreme Court's directions to "take every steps and summon every witnesses and have the case disposed of" — *But the stage of summoning the witnesses did not reach as final orders could not be passed on the applications made on behalf of the petitioners under Ss. 207 and 311, CrPC as a result of which charge could not be framed — Moreover, D.C. Police concerned was transferred to a different place even prior to issuance of the directions by Supreme Court — Held, no case for initiating proceedings for contempt made out — Contempt of Courts Act, 1971, S. 2(b). Diwan Naubat Rai* v. *State (Delhi Admn.)*, (1989) 1 SCC 297: 1989 SCC (Cri) 142: AIR 1989 SC 542: 1989 Cri LJ 802.

Bench Strength **2**. Coram: *B.C. Ray* and **N.D. Ojha**, JJ. [Date of decision: 2-12-1988]

— S. 208 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 202(2) proviso, 200, 203, 204, 208, 209, 313, 208, 226 to 228, 460, 461 and 465

See also Ss. 207 and 208

See also Ss. 207, 208, 161 and 438

[2607] — S. 208 — Non-supply of documents — Held, not necessarily prejudicial to the accused — *Court should give a definite finding about the prejudice or otherwise* (Para 27). *Shakila Abdul Gafar Khan* v. *Vasant Raghunath Dhoble*, (2003) 7 SCC 749: 2003 SCC (Cri) 1918: AIR 2003 SC 4567.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-9-2003]

Noor Khan v. State of Rajasthan, AIR 1964 SC 286: (1964) 4 SCR 521: (1964) 1 Cri LJ 167, relied on

[2608] — S. 208 — Provision requiring the Magistrate to furnish to the accused, free of cost, a copy of the documents specified therein — Nature of — *Per Thomas, J., is mandatory. Rosy* v. *State of Kerala*, (2000) 2 SCC 230: 2000 SCC (Cri) 379: AIR 2000 SC 637: 2000 Cri LJ 930: (2000) 1 KLT 494.

Bench Strength **2**. Coram: **K.T. Thomas**[2] and **M.B. Shah**[1], JJ. [Date of decision: 10-1-2000]

— S. 209 *See* Ss. 167, 209 and 309

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 198-A, 209, 239, 240, 242 and 323

See also Ss. 190(1), 209, 216 and 223

See also Ss. 193, 209 and 319

See also Ss. 196, 190, 193 and 209

See also Ss. 202(2) proviso, 200, 203, 204, 208, 209, 313, 208, 226 to 228, 460, 461 and 465

See also Ss. 202(2) proviso, 209 and 465

See also Ss. 203, 204, 209 and 227

See also Ss. 207, 209, 309, 170, 190 and 2(g)

See also Ss. 227 and 209

See also Ss. 227, 228 and 209

See also Ss. 319, 154, 156, 173, 190, 204, 209

See also Ss. 319 and 190, 193 & 209

See also Ss. 319, 193 and 209

See also Ss. 323 and 209

[2609] — S. 209 — Committing Magistrate performs judicial function. *Rajender Kumar Jain* v. *State*, (1980) 3 SCC 435: 1980 SCC (Cri) 757: AIR 1980 SC 1510: 1980 Cri LJ 1084: (1980) 17 ACC 201.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and **O. Chinnappa Reddy**, JJ. [Date of decision: 2-5-1980]

[2610] — S. 209 — On committal, the restriction on the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted

On the Magistrate committing the case under S. 209 to the Court of Session the bar of S. 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record. *Kishun Singh* v. *State of Bihar*, (1993) 2 SCC 16: 1993 SCC (Cri) 470: 1993 Cri LJ 1700: (1993) 1 Crimes 494: (1993) 1 BLJR 309.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *N.P. Singh*, JJ. [Date of decision: 11-1-1993]

[2611] — Ss. 209, 193, 26 and 306 — Committal to Sessions cannot be stayed for the purpose of cross-examination etc. except in case of approvers — *Change in the scheme under the new Code — Committal court no longer required to find a prima facie case before committal — Function is now non-discretionary — Plea for further time for inspection of records etc., on facts, disallowed*

In view of the changes made in respect of committal proceedings by the new Code, it is no longer open to the committal Court to launch on a process of satisfying itself that a prima facie case has been made out on the merits. The jurisdiction once vested in him under the earlier Code but has been eliminated now under the present Code. Therefore, to hold that he can go into the merits even for a prima facie satisfaction is to frustrate Parliament's purpose in remoulding S. 207-A (old Code) into its present non-discretionary shape. Expedition was intended by this change and this will be defeated successfully if interpretatively it is held that a dress rehearsal of a trial before the Magistrate is in order. The narrow inspection hole through which the committing Magistrate has to look at the case limits him merely to ascertain whether the case, as disclosed by the police report, appears to the Magistrate to show an offence triable solely by the Court of Session. Assuming the facts to be correct as stated in the police report, if the offence is plainly one under S. 201, Indian Penal Code (an offence triable by Sessions Court only), the Magistrate has simply to commit for trial before the Court of Session. If, by error, a wrong section of the Penal Code is quoted, he may look into that aspect. Even if made-up facts unsupported by any material are reported by the police and a sessions offence is made to appear, it is perfectly open to the Sessions Court under S. 227, Criminal Procedure Code to discharge the accused. The grievance on this count is unfounded. *Sanjay Gandhi* v. *Union of India*, (1978) 2 SCC 39: 1978 SCC (Cri) 172: AIR 1978 SC 514: 1978 Cri LJ 642: 1978 MLJ (Cri) 320: (1978) 2 SCR 861.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision: 14-2-1978]

[2612] — Ss. 209, 319, 2(g), 227 and 228 — Magistrate has no jurisdiction, while committing a case under S. 209 to associate another person as accused in exercise of power under S. 319 or under any other provision — *Consequently the Court of Session in purported exercise of revisional power cannot obligate the Magistrate to do so — Proceeding under S. 209 before a Magistrate is not an inquiry and material before him is not evidence — On committal the Court of Session can exercise jurisdiction under S. 319 and add a new accused on the basis of evidence recorded by it — However, Court of Session must provide the accused the necessary safeguards envisaged under S. 319(4) particularly when expressions on merit have been extensively made by the Magistrate, the Court of Session and the High Court*

When after concluding the investigation the police submitted papers before the Chief Judicial Magistrate the first informant made an application requiring the Magistrate to exercise his powers to summon the appellant so as to send him to stand trial alongside the accused sent up by the police, before the Court of Session. The Chief Judicial Magistrate dismissed the application of the first informant which led to a revision petition by the first informant before the Court of Session. The Court of Session allowed the revision petition and directed the Chief Judicial Magistrate to issue warrant of arrest of the appellant to face trial. The appellant moved the High Court under Section 482 CrPC praying for quashing of the orders of the Court of Session but the same was dismissed. Allowing the appeal by special leave

Held :

Sub-section (1) of Section 319 makes it clear that it operates in an ongoing inquiry into, or trial of, an offence. In order to apply Section 319, it is thus essential that the need to proceed against the person other than the accused, appearing to be guilty of offence, arises only on evidence recorded in the course of any inquiry or trial. Proceedings before a Magistrate under Section 209 CrPC are patently not trial proceedings and were never considered so at any point of time historically. Before the amendment of the Code of Criminal Procedure in the present form, commitment proceedings had the essential attributes of an inquiry and were termed as such. If proceedings under Section 209 CrPC continue to be an inquiry, Section 319 CrPC would be obviously attracted.

Under the new Code the functions left to be performed by the Magistrate, such as granting copies, preparing the records, notifying the public prosecutor etc. are thus preliminary or ministerial in nature. The role of the Magistrate thus is only to see that the package sent to the Court of Session is in order, so that it can proceed straightaway with the trial and that nothing is lacking in content, as per requirements of Sections 207 and 208 of the Code of Criminal Procedure. Such proceedings thus do not fall squarely within the ambit of 'inquiry' as defined in Section 2(*g*) of the Code of Criminal Procedure. Therefore it would be legitimate to conclude that the Magistrate at the stage of Section 209 CrPC is forbidden to apply his mind to the merit of the matter and determine as to whether any accused need be added or subtracted to face trial before the Court of Session.

In stricto sensu, Section 319 of the Code cannot be invoked in a case where no evidence had been led at a trial, wherefrom it can be said that the accused, other than the one facing trial, appears to have been involved in the commission of the crime.

Addition of an accused by summoning or resummoning a discharged accused, and that too without hearing the accused, has only been permitted in the manner provided by Section 319 CrPC on evidence adduced during the course of trial, and in no other way.

The power under Section 209 CrPC to summon a new offender was not vested with a Magistrate on the plain reading of its text as well as proceedings before him not being an 'inquiry' and material before him not being 'evidence'. When such power was not so vested, his refusal to exercise it cannot be corrected by a Court of Revision, which may be the Court of Session itself awaiting the case on commitment, merely on the specious ground that the Court of Session can, in any event, summon the accused to stand trial, along with the accused meant to be committed for trial before it. Presently it is plain that the stage for employment of Section 319 CrPC has not arrived. The order of the Court of Session requiring the Magistrate to arrest and logically commit the appellant along with the accused proposed to be committed to stand trial before it, is patently illegal and beyond jurisdiction. Since the Magistrate has no such power to add a person as accused under Section 319 CrPC when handling a matter under Section 209 CrPC, the Court of Session, in purported exercise of revisional powers cannot obligate it to do so. When the case comes after commitment to the Court of Session and evidence is recorded, it may then in exercise of its powers under Section 319 CrPC on the basis of the evidence recorded by it, if circumstances warranting, proceed against the appellant, summon him for the purpose, to stand trial along with the accused committed, providing him the necessary safeguards envisaged under sub-section (4) of Section 319. Such course is all the more necessary in the instant case when expressions on merit have extensively been made in the orders of the Magistrate, the Court of Session and that of the High Court. Any other course would cause serious prejudice to the appellant. *Raj Kishore Prasad* v. *State of Bihar*, (1996) 4 SCC 495: 1996 SCC (Cri) 772: AIR 1996 SC 1931.

Bench Strength 2. Coram: **M.M. Punchhi** and *K.T. Thomas*, JJ. [Date of decision: 1-5-1996]

State of U.P. v. Lakshmi Brahman, (1983) 2 SCC 372: 1983 SCC (Cri) 489: AIR 1983 SC 439, held per incuriam

Kishun Singh v. State of Bihar, (1993) 2 SCC 16: 1993 SCC (Cri) 470; Nisar v. State of U.P., (1995) 2 SCC 23: 1995 SCC (Cri) 306, doubted

[2613] — Ss. 209 and 26 and Sch. I — Committal to Sessions Court is ordered by Magistrate when offence is exclusively triable by that court — *Where accused charged under S. 307 IPC for inflicting several injuries on complainant, but doctor opining that all the injuries were of simple nature, held, Magistrate did not err in trying the case instead of committing it to Sessions Court. Rizwan* v. *Waqar Ahmad*, 1993 Supp (2) SCC 121: 1993 SCC (Cri) 455.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 8-10-1992]

[2614] — Ss. 209, 323 and 465(1) — Committal proceedings — Effect of not following procedure — Held, is only an irregularity covered by S. 465(1) — *Remedial measures are possible where objection is taken at the earliest occasion*

It is an uphill task for the accused in this case to show that failure of justice had in fact occasioned merely because the specified Sessions Court took cognizance of the offences without the case being committed to it. The normal and correct procedure, of course, is that the case should have been committed to the Special Court because that court being essentially a Court of Session can take cognizance of any offence only then. But if a specified Sessions Court, on the basis of the legal position then felt to be correct on account of a decision adopted by the High Court, had chosen to take cognizance without a committal order, what is the disadvantage of the accused in following the said course? (Para 17)

After enactment of the Code of Criminal Procedure 1973, the committal court, in police charge-sheeted cases, cannot examine any witness at all. The Magistrate in such cases has only to commit the cases involving offences exclusively triable by the Court of Session. Therefore, after commencement of the 1973 Code it is not possible for an accused to raise a contention that skipping committal proceedings had deprived him of the opportunity to cross-examine witnesses in the committal court and that had caused prejudice to his defence. (Para 18)

There is no substance in the contention that Section 465 is restricted to any findings, sentence or order passed by "a court of competent jurisdiction" and that a Special Court under the SC/ST Act which is essentially a Sessions Court would have remained incompetent until the case is committed to it. The expression "a court of competent jurisdiction" envisaged in Section 465 is to denote a validly constituted court conferred with jurisdiction to try the offence or offences. Such a court will not get denuded of its competence to try the case on account of any procedural lapse and the competence would remain unaffected by the non-compliance with the procedural requirement. The inability to take cognizance of an offence without a committal order does not mean that a duly constituted court became an incompetent court for all purposes. If an objection was raised in that court at the earliest occasion on the ground that the case should have been committed by a Magistrate, the same specified court has to exercise a jurisdiction either for sending the records to a Magistrate for adopting committal proceedings or return the police report to the Public Prosecutor or the police for presentation before the Magistrate. Even this could be done only because the court has competence to deal with the case. Sometimes that court may have to hear arguments to decide that preliminary issue. (Paras 19 and 21)

The bar against taking cognizance of certain offences or by certain courts cannot govern the question whether the court concerned is "a court of competent jurisdiction", e.g. courts are debarred from taking cognizance of certain offences without sanction of certain authorities. If a court took cognizance of such offences, which were later found to be without valid sanction, it would not become the test or standard for deciding whether that court was "a court of competent jurisdiction". It is now well settled that if the question of sanction was not raised at the earliest opportunity the proceedings would remain unaffected on account of want of sanction. This is another example to show that the condition precedent for taking cognizance is not the standard to determine whether the court concerned is "a court of competent jurisdiction". (Para 22). *State of M.P.* v. *Bhooraji*, (2001) 7 SCC 679: 2001 SCC (Cri) 1373: AIR 2001 SC 3372.

Bench Strength **2**. Coram: **K.T. Thomas** and *K.G. Balakrishnan*, JJ. [Date of decision: 24-8-2001]

Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, relied on

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: 1955 Cri LJ 526; Ballabhdas Agarwala v. J.C. Chakravarty, AIR 1960 SC 576: 1960 Cri LJ 752, distinguished

[2615] — S. 209 — Invocation of S. 18, TADA — Stage for — *Held, not true that words "after taking cognizance" employed in S. 18, TADA would include any stage of trial including the stage when the judgment is to be delivered — Said section would be attracted only at the stage where the Designated Court takes cognizance of offence i.e. after the investigation is complete and charge-sheet is filed — S. 18 distinguished from S. 209 CrPC — TADA, 1987, S. 18*

It is contended that the words "*after taking cognizance*" employed in Section 18 of the Act would include any stage of trial including the stage when the judgment is to be delivered. This submission is misconceived. If it ought to have been the intention of the legislature they could have said so. The legislature deliberately uses the words "after taking cognizance of any offence" to mean that Section 18 would be attracted only at the stage where the Designated Court takes cognizance of offence i.e. after the investigation is complete and charge-sheet is filed. The provisions of Section 209 CrPC on which the counsel for the appellants sought to rely are not in *pari materia* with Section 18. In Section 209 CrPC the words "after taking cognizance" are absent conspicuously. Section 18 is a filtered provision. The section is attracted only at a stage the Designated Court takes cognizance of the offence. It is at the stage of taking cognizance, the Designated Court is expected to scan the documents and evidence collected therewith. If the Designated Court is of the opinion that the offence is not triable by it, it shall then, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence. There is no ambiguity in the language used in Section 18. If the submissions of the counsel for the appellant are accepted, it would amount to reading something into the statute which is not there. (Para 42). *Prakash Kumar* v. *State of Gujarat*, (2005) 2 SCC 409: 2005 SCC (Cri) 518: AIR 2005 SC 1075: 2005 Cri LJ 929.

Bench Strength 5. Coram: *R.C. Lahoti, C.J.* and *B.N. Agrawal*, **H.K. Sema**, *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 12-1-2005]

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899, relied on

— S. 209(b) *See* Ss. 437, 441(3) and 209(b)

— S. 210 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 401(3), 378 and 210

See also Ss. 482 and 154, 211 & 210

[2616] — S. 210 — Cross-cases — Procedure to be adopted by the trial court in the event of — *Held, the cross-cases should be tried together by the same court irrespective of the nature of the offences involved — Further held, the rationale behind this is to avoid conflicting judgments over the same incident — Duty of the investigating officer in situation of cross-cases, explained*

The cross-cases should be tried together by the same court irrespective of the nature of the offence involved. The rationale behind this is to avoid the conflicting judgments over the same incident because if cross-cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments. (Para 8)

In the instant case, the investigating officer submitted the challan against both the parties. Both the complaints cannot be said to be right. Either one of them must be false. In such a situation, legal obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice. (Para 8)

Thus, when the investigating officer submitted the challan on the basis of the complaint lodged by the accused *M* in respect of the same incident, it would have been just, fair and proper to decide both the cases together by the same court. (Para 8). *State of M.P.* v. *Mishrilal*, (2003) 9 SCC 426: 2003 SCC (Cri) 1829: AIR 2003 SC 4089: 2003 Cri LJ 2312.

Bench Strength 2. Coram: *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision: 2-4-2003]

Nathi Lal v. State of U.P., 1990 Supp SCC 145: 1990 SCC (Cri) 638, followed

[2617] — S. 210 — Procedure to be followed when there is complaint case and police investigation in respect of same offence — *Magistrate to stop proceeding in the complaint case and call for police report, whereafter he is to take up the matter together — Held, non-compliance with the provisions of Section 210 CrPC, is not ipso facto fatal to the prosecution unless error, omission or irregularity has also caused failure of justice — While determining the said fact regard should be had to the fact whether the objection could and should have been raised at an earlier stage in the proceedings — In the instant case, complaint was alleged to have been filed before Magistrate after police failed to take any action on complainant's report — But police records not produced to substantiate the claim — Hence, appellant held to be prejudiced* (Paras 13 and 14). *Dilawar Singh* v. *State of Delhi*, (2007) 12 SCC 641: (2008) 3 SCC (Cri) 330: AIR 2007 SC 3234: 2007 Cri LJ 4709.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 5-9-2007]

Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460, relied on

[2618] — S. 210 — Provision under, regarding stay of complaint case where there is complaint case and police investigation in respect of same offence — Object and conditions to be satisfied for invocation of — Restated — *In the present case no contention regarding the said conditions raised before High Court — Magistrate proceeded with complaint on being satisfied with the materials placed on record — No illegality therein — Further, High Court in an earlier order observed that S. 210 could not arrest the proceedings of complaint case as the basic tenor of the said case and police investigation was different — SLP against the said order already dismissed by Supreme Court — On these facts, held (per C.K. Thakker, J.), S. 210 not attracted to the present case*

Per Thakker, J.

Section 210 CrPC has no application to the facts of the case on hand. (Para 75)

A bare reading of the above provision makes it clear that during an inquiry or trial relating to a complaint case, if it is brought to the notice of the Magistrate that an investigation by the police is in progress in respect of the same offence, he shall stay the proceedings of the complaint case and call for the record of the police officer conducting the investigation. (Para 76)

The object of Section 210 is threefold:

(*i*) it is intended to ensure that private complaints do not interfere with the course of justice;

(*ii*) it prevents harassment to the accused twice; and

(*iii*) it obviates anomalies which might arise from taking cognizance of the same offence more than once. (Para 77)

Before Section 210 can be invoked, the following conditions must be satisfied.

(*i*) there must be a complaint pending for inquiry or trial;

(*ii*) investigation by the police must be in progress in relation to the same offence;

(*iii*) a report must have been made by the police officer under Section 173; and

(*iv*) the Magistrate must have taken cognizance of an offence against a person who is accused in the complaint case. (Para 79)

In the impugned order passed by the High Court, no such contention appears to have been raised by the appellant. On the basis of the complaint filed by the complainant and on being satisfied on the material placed on record, the learned Chief Judicial Magistrate had proceeded with the case which cannot be said to be illegal. (Para 80)

It may also be stated here that the High Court in its order dated 20-6-2003 considered this contention and observed that Section 210 could not arrest the proceedings initiated by the complainant, since the "basic tenor of the two cases was different". The special leave petition against the order of the High Court was dismissed by the Supreme Court on 28-7-2003. Even this ground, therefore, cannot take the case of the appellant anywhere. (Para 81). *Sankaran Moitra* v. *Sadhna Das*, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358: AIR 2006 SC 1599.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.*[1] and **C.K. Thakker**[2] and **P.K. Balasubramanyan**[1], JJ. [Date of decision: 24-3-2006]

[2619] — Ss. 210 and 223 — Complaint case against three persons in respect of same offence for which police challan filed only against one person — *Cases cannot be consolidated and tried together — Evidence be recorded separately in both cases unless witnesses common and they be tried one after another — Principles laid down in* Harjinder Singh case *be followed. Manikandan* v. *Pandian*, 1989 Supp (2) SCC 648: 1990 SCC (Cri) 203.

Bench Strength **2**. Coram: **K. Jagannatha Shetty** and *L.M. Sharma*, JJ. [Date of decision: 23-8-1989]

[2620] — S. 210 — Complaint case and police case in respect of same offence — Cases consolidated and tried together — *Two sets of witnesses produced — Trial court and High Court taking two conflicting views — Version given by two sets of eyewitnesses contradicting each other — Held, benefit of the same should go to the accused. Hardip Singh* v. *State of Punjab*, 1994 Supp (1) SCC 183: 1994 SCC (Cri) 384.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 21-9-1993]

[2621] — Ss. 210(1) & (3) and 482 — Complaint case and police case — Quashing of complaint case — *Complaint filed under S. 200 — FIR also filed in respect of the same case and police making investigation pursuant thereto — Magistrate in the complaint case taking cognizance finding sufficient reasons to proceed against two accused persons under S. 304-A IPC and directing issuance of summons — In the police case, police filing final form under S. 173 and the complainant appearing and protesting before the Magistrate — High Court on being moved under S. 482 quashing the complaint proceedings on ground that Magistrate had erred in not staying the complaint proceedings under S. 210(1) — Held, in view of S. 210(3), High Court committed serious error in quashing the complaint merely because of Magistrate's failure to stay the complaint case* (Paras 4 and 5). *R.K. Khanna* v. *State*, (2003) 11 SCC 758.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U. C. Banerjee*, JJ. [Date of decision: 3-11-2000]

[2622] — S. 210(1) — Applicability — Cognizance of offence under Wild Life (Protection) Act, 1972 — *Complaint lodged against accused-respondents by competent officer alleging commission of offence under S. 9(1) r/w S. 51 1972 Act for killing elephant and removing its tusks — Held, cognizance of the offence against the accused can be taken under S. 55 1972 Act notwithstanding pendency of police investigation for offence under Ss. 447, 429 and 379 IPC r/w Ss. 54 and 39 of the 1972 Act against the same accused for the same act — S. 210(1) CrPC, 1973 inapplicable — Wild Life (Protection) Act, 1972, Ss. 55, 51, 2(16), 2(36) and 9(1)*

Cognizance of offence under S. 55 of the Act can be taken by a court only on the complaint of the officer mentioned in S. 55. Even if the jurisdictional police purported to register a case for an alleged offence against the Act, S. 210(1) would not be attracted as cognizance of such an offence can only be taken on the complaint of the officer mentioned in that section. Even where a Magistrate takes cognizance of an offence instituted otherwise than on a police report and an investigation by the police is in progress in relation to the same offence, the two cases do not lose their separate identities. The section seeks to obviate the anomalies that might arise from taking cognizance of the same offence more than once. But, where, as here, cognizance can be taken only in one way and that on the complaint of a particular statutory functionary, there is no scope or occasion for taking cognizance more than once and, accordingly, S. 210 has no role to play. *State of Bihar* v. *Murad Ali Khan*, (1988) 4 SCC 655: 1989 SCC (Cri) 27: AIR 1989 SC 1.

Bench Strength **2**. Coram: *Ranganath Misra* and **M.N. Venkatachaliah**, JJ. [Date of decision: 10-10-1988]

[2623] — Ss. 210(2) & (3), 223, 300 and 482 — Clubbing and consolidating two cases — When permissible — Complaint case and case arising out of police investigation in respect of same offence — None of accused in said two cases common — *Accused in one of the cases witnesses in the other and vice versa — Prosecution versions in the two cases were materially different, contradictory and mutually exclusive — Held, clubbing of such cases was not permissible — Such cases may be ordered to be tried together but not consolidated — Evidence is to be recorded separately in both cases — They should be disposed of simultaneously so that procedure does not infringe provisions of Art. 20(2) of the Constitution r/w S. 300 CrPC — Further held, trial court shall proceed to hear two cases simultaneously, but separately, and dispose of the same simultaneously — Constitution of India, Art. 20(2) — Penal Code, 1860, Ss. 147, 323 and 302* (Paras 12, 18 and 27 to 32)

Although it will appear from Section 210 CrPC that the Magistrate may try two cases arising out of a police report and a private complaint together, the same contemplates a situation where having taken cognizance of an offence in respect of an accused in a complaint case, in a separate police investigation such a person is again made an accused, then the Magistrate may inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. That, however, is not the fact situation in the instant case, since the accused are different in the two separate proceedings and the situation has, in fact, arisen where prejudice in all possibility is likely to be caused in a single trial where a person is both an accused and a witness in view of the two separate proceedings out of which the trial arises. (Para 28)

The versions in the complaint case and the police report are totally different, though arising out of the same incident. This is a case where the two trials should be held simultaneously but not as a single trial. (Para 29)

The facts of the case also warrant that the two trials should be conducted by the same Presiding Officer in order to avoid conflict of decisions. (Para 30). *Pal* v. *State of U.P.*, (2010) 10 SCC 123: (2010) 4 UPLJ 58.

Bench Strength **2**. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 22-9-2010]

Harjinder Singh v. State of Punjab, (1985) 1 SCC 422: 1985 SCC (Cri) 93; Kewal Krishan v. Suraj Bhan, 1980 Supp SCC 499: 1981 SCC (Cri) 438, followed

Khetrabasi Samual v. State of Orissa, (1969) 2 SCC 571; Dilawar Singh v. State of Delhi, (2007) 12 SCC 641: (2008) 3 SCC (Cri) 330, referred to

— S. 210(3) *See* Ss. 210(1) & (3) and 482

— Ch. XVII (Ss. 211 to 224) *See* S. 2(b) and Ch. XVII (Ss. 211 to 224)

— S. 211 *See also* S. 221, Criminal Procedure Code, 1898, p. 1096 in Vol. 2

— S. 211 *See* Ss. 154, 156, 173(2) & (8) and 211

See also Ss. 190, 211 and 228
See also Ss. 215, 211, 465 and 464
See also Ss. 216 and 211
See also Ss. 216, 211 and 215
See also Ss. 227, 193, 204, 211
See also Ss. 228 and 211
See also Ss. 238 to 240 and 211
See also Ss. 240(1), 246(1) and 211
See also Ss. 464, 211 and 216
See also Ss. 464, 211, 216 and 228
See also Ss. 482 and 154, 211 & 210
See also Ss. 482, 190, 203, 211, 227, 239 and 245
See also Ss. 482, 211, 215 and 216

[2624] — Ss. 211 to 224 — Chapter XVII — Charge — Validity — *Held, it is the allegations that are material and not the proof that is material for establishing the validity of the charge. Bhagwan Das Jagdish Chander* v. *Delhi Admn.*, (1975) 1 SCC 866: 1975 SCC (Cri) 410: AIR 1975 SC 1309: 1975 Cri LJ 1091.

Bench Strength **3**. Coram: **M.H. Beg**[1], **A. Alagiriswami**[2] and *N.L. Untwalia*[1], JJ. [Date of decision: 25-3-1975]

[2625] — Chs. XVII and XVIII — Framing of appropriate/correct charge — Need of, stressed — Benefit of doubt when may be given — *Arms Act, 1959, Ss. 25 and 27*

An unidentified body with firearm injury on the forehead on the left eye was detected by the police and an FIR was lodged. There were 26 accused.

The appellant-Accused 1 was convicted for commission of offences punishable under Sections 302, etc. In the absence of any direct evidence, the conviction was based solely on circumstantial evidence. The bullet taken out by the doctor from the dead body of the deceased was fired from the revolver recovered nine months later at the instance of Accused 1. The revolver was kept and concealed in such a place that knowledge of the same could not be attributed to any person other than Accused 1. The opinion of ballistic expert was that the bullet removed from the deceased could only be fired from the revolver recovered from the appellant-Accused 1's house. The appellant could not offer any satisfactory account/explanation as to how he came to be in possession of the said revolver (weapon). On this basis Sessions Court held that Accused 1 fired a shot from his revolver on the deceased. The shot hit on the vital part i.e. head. Under the circumstances, the Sessions Judge held that Accused 1 intended to cause a fatal injury to the vital part of the deceased, which was later on found sufficient in the ordinary course of nature to cause his death. Thus, the act of Accused 1 was held by Sessions Judge to be punishable under Section 302 IPC. The impugned judgment of the Division Bench of the High Court confirmed the conviction and sentence imposed by the Sessions Judge.

Allowing the appeal,

Held :

Proper charges should have been framed. The murder of the deceased as alleged to have been committed by all the accused persons by hatching a conspiracy was not proved. But the accused was charged with Section 302 read with Section 34 IPC and also under Section 302 read with 120-B IPC. (Paras 25 and 37)

The trial court while framing charges should have been more careful. It is a matter of serious concern that despite the recovery of weapon, the appellant had not been charged for commission of offence punishable under Sections 25 and 27 of the Arms Act. The helplessness expressed by the trial Judge in this behalf may be noticed. (Para 39). *Abdulwahab Abdulmajid Baloch* v. *State of Gujarat*, (2009) 11 SCC 625: (2009) 3 SCC (Cri) 1507: (2009) 2 Guj LR 1426.

Bench Strength 3. Coram: **S.B. Sinha**, *B. Sudershan Reddy* and *Dr. M.K. Sharma*, JJ. [Date of decision: 23-3-2009]

[2626] — S. 211 — Charge-sheet — Object of — Should not prejudice the accused — *Non-compliance with the Rules alleged — All details mentioned in the charge-sheet and trial continued in which accused participated — Even though the tentative charge-sheet was not signed, the final charge-sheet was duly signed — Held, accused was not prejudiced and charge-sheet valid. Major G.S. Sodhi* v. *Union of India*, (1991) 2 SCC 382: 1991 SCC (Cri) 357: AIR 1991 SC 1617: (1991) 1 LLN 365: 1991 Cri LJ 1947.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 30-11-1990]

[2627] — S. 211 — Charge-sheet — Must be filed if there is sufficient material — Minor irregularities or inconsistencies in respect of charge-sheet not significant. *Major G.S. Sodhi* v. *Union of India*, (1991) 2 SCC 382: 1991 SCC (Cri) 357: AIR 1991 SC 1617: (1991) 1 LLN 365: 1991 Cri LJ 1947.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 30-11-1990]

[2628] — S. 211 — At the stage of framing of charges, meticulous consideration of evidence and materials by court not required — *Where both trial court which framed the charges as well as High Court briefly surveyed the evidence adduced and High Court after perusing statement of witnesses under S. 161 satisfied itself that the charges were not groundless, held, Supreme Court's interference not called for — Constitution of India, Article 136. Mohd. Akbar Dar* v. *State of J&K*, 1981 Supp SCC 80: 1982 SCC (Cri) 148: AIR 1981 SC 1548: 1981 Cri LJ 1135.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 28-1-1981]

[2629] — Ss. 211 and 154 — Framing of charges — *Even if a wrong section is mentioned in the FIR, that does not prevent the court from framing appropriate charges — Thus, mentioning of a particular section in the FIR is not by itself conclusive*

The mentioning of a particular section in the FIR is not by itself conclusive as it is for the court to frame charges having regard to the material on record. Even if a wrong section is mentioned in the FIR, that does not prevent the court from framing appropriate charges. (Para 23). *CBI* v. *Tapan Kumar Singh*, (2003) 6 SCC 175: 2003 SCC (Cri) 1305: AIR 2003 SC 4140: 2003 Cri LJ 2322.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 10-4-2003]

[2630] — Ss. 211 and 240 — Framing of charges — Court should not undertake detailed analysis and evaluation of material at that stage — *It has only to find whether the material adduced by prosecution was sufficient to proceed further — In case of offence under S. 13(2) r/w S. 13(1)(e) of Prevention of Corruption Act, 1988 it is not necessary that* *charge can be framed only on failure of public servant to explain the excess or surplus assets — Prevention of Corruption Act, 1988, S. 13(2) r/w S. 13(1)(e)*

At the stage of framing charge the court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence is sufficient for the court to proceed further. No doubt the prosecution has to establish that the pecuniary assets acquired by the public servant are disproportionately larger than his known sources of income and then it is for the public servant to account for such excess. The offence becomes complete on the failure of the public servant to account for or explain such excess. It does not mean that the court could not frame charge until the public servant fails to explain the excess or surplus pointed out to be the wealth or assets of the public servant concerned. This exercise can be completed only in the trial. In the present case the materials which the prosecution enumerated are sufficient to frame the charge for the offence under Section 13(2) read with Section 13(1)(*e*) of the Act. (Paras 21, 23 and 22). *State* v. *S. Bangarappa*, (2001) 1 SCC 369: 2001 SCC (Cri) 152: AIR 2001 SC 222: 2001 Cri LJ 111.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 20-11-2000]

Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722: 2000 SCC (Cri) 303; State of M.P. v. Dr. Krishna Chandra Saksena, (1996) 11 SCC 439: 1997 SCC (Cri) 35; M. Krishna Reddy v. State Dy. Supdt. of Police, Hyderabad, (1992) 4 SCC 45: 1992 SCC (Cri) 801; P. Nallammal v. State, (1999) 6 SCC 559: 1999 SCC (Cri) 1133; K. Veeraswami v. Union of India, (1991) 3 SCC 655: 1991 SCC (Cri) 734; State of Maharashtra v. Ishwar Piraji Kalpatri, (1996) 1 SCC 542: 1996 SCC (Cri) 150, relied on

S. Bangarappa v. State by CBI, (2000) 3 Kant LJ 432, reversed

[2631] — S. 211 — Accused convicted under S. 302 IPC — Conviction under Ss. 307/34 IPC also in connection with same murder improper. *Jagtar Singh* v. *State of Punjab*, 1994 Supp (1) SCC 65: 1994 SCC (Cri) 226: AIR 1993 SC 2448: 1993 Cri LJ 2886.

Bench Strength 2. Coram: *P.B. Sawant* and *S. Mohan*, JJ. [Date of decision: 7-1-1993]

[2632] — S. 211 — Prevention of Corruption Act, 1988 — Ss. 7, 13(2) r/w S. 13(1) — New Plea — Suspicion regarding framing of proper charges/manipulation of framed charges, raised before the Supreme Court for the first time — *Held, the appropriate forum in such case would have been the trial court — The appellant having failed to raise the issue either before the trial court or the first appellate court, cannot be permitted to agitate it in the Supreme Court* (Para 8). *Varada Rama Mohana Rao* v. *State of A.P.*, (2004) 4 SCC 427: 2004 SCC (Cri) 1289.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 25-3-2004]

[2633] — S. 211 — Supreme Court's interference not called for at the stage of framing of charges. *Dhanraj Jain* v. *B.N. Biswas*, 1984 Supp SCC 646: 1983 SCC (Cri) 394.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and *O. Chinnappa Reddy*, JJ. [Date of decision: 2-2-1983]

[2634] — Ss. 211, 213, 214, 216 and 223 — Reading of the charge — Charge clearly that of conspiracy to cheat by impersonation, though only conspiracy to cheat mentioned — *Accused could not have been misled about charge. Yash Pal Mittal* v. *State of Punjab*, (1977) 4 SCC 540: 1978 SCC (Cri) 5: AIR 1977 SC 2433: 1978 Cri LJ 189.

Bench Strength 3. Coram: **P.K. Goswami**, *N.L. Untwalia* and *D.A. Desai*, JJ. [Date of decision: 3-11-1977]

See for details 'Penal Code, 1860', Ss. 419, 120A & 120B

[2635] — Ss. 211, 215 and 221 — Framing of alternative charges — Effect — *Trial court framing charges under Ss. 302/34 IPC and in the alternative under Ss. 304-B/34 IPC besides under Ss. 498-A/34 IPC — Held, effect of framing of alternative charges varies from case to case — In absence of any grievance being raised by the appellants on that behalf at any stage of trial and in absence of any prejudice being caused to them appellants prohibited from raising the same before the Supreme Court* (Paras 35 to 38). *Balbir Singh* v. *State of Punjab*, (2006) 12 SCC 283: (2007) 1 SCC (Cri) 715: AIR 2006 SC 3221: 2006 Cri LJ 4646: (2006) 47 AIC 600 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 26-9-2006]

Soni Devrajbhai Babubhai v. State of Gujarat, (1991) 4 SCC 298: 1991 SCC (Cri) 959; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, distinguished

[2636] — Ss. 211, 215, 216, 218, 221 and 464 — Framing of charge — Error/Omission in — Effect, if any in present case — No charge framed under S. 34 IPC — Conviction of appellant-accused by High Court with the aid of S. 34, if permissible — *Whether non-framing of charge fatal to prosecution — Held, absence of charge under one or other or various heads of criminal liability for the offence cannot be said to be by itself prejudicial to accused — Before conviction for substantive offence without charge can be set aside,* *case of prejudice to accused will have to be made out — Hence, submission of appellants for acquittal on aforesaid ground of non-framing of charge under S. 34, unsustainable — Penal Code, 1860 — S. 34* (Paras 41, 45 and 47). *Abdul Sayeed* v. *State of M.P.*, (2010) 10 SCC 259.

Bench Strength 2. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 14-9-2010]

Malhu Yadav v. State of Bihar, (2002) 5 SCC 724: 2002 SCC (Cri) 1190; Dhaneswar Mahakud v. State of Orissa, (2006) 9 SCC 307: (2006) 2 SCC (Cri) 505; Annareddy Sambasiva Reddy v. State of A.P., (2009) 12 SCC 546: (2010) 1 SCC (Cri) 630, relied on

Dalip Singh v. State of Punjab, AIR 1953 SC 364: 1953 Cri LJ 1465, clarified on this point

[2637] — Ss. 211 and 215 — After framing charge for offence under Ss. 302/149, accused cannot be convicted for substantive offence under Ss. 302 simpliciter. *Subran* v. *State of Kerala*, (1993) 3 SCC 32: 1993 SCC (Cri) 583: 1993 Cri LJ 1387: (1993) 2 Crimes 15.

Bench Strength 3. Coram: *M.N. Venkatachaliah, C.J.* and *B.P. Jeevan Reddy* and **Dr. A.S. Anand**, JJ. [Date of decision: 24-2-1993]

[2638] — Ss. 211 & 215 and 464 & 465 — Errors and omissions in charge — Charge under S. 148 IPC — *Allegation that accused were members of unlawful assembly but common object of the assembly not mentioned in the charge — Besides, charge under S. 302 IPC simpliciter framed against all the accused persons but convicted with the aid of S. 149 — Point not raised in courts below — In their examination under S. 313 accused persons specifically told of their having committed offences under Ss. 148 and 302/149 IPC — Held, in the circumstances, no prejudice caused to the accused and therefore, trial not vitiated. State of A.P.* v. *Thakkidiram Reddy*, (1998) 6 SCC 554: 1998 SCC (Cri) 1488: AIR 1998 SC 2702.

Bench Strength 2. Coram: **M.K. Mukherjee** and *D.P. Wadhwa*, JJ. [Date of decision: 11-8-1998]

[2639] — Ss. 211, 212, 215 & Ills. (e) & (d) thereto and S. 464 — Framing of charge — Error/Omission in — Charge for offence against *Y* but conviction for offence against *X* — Permissibility — Prejudice caused to accused, occasioning failure of justice — New trial, after proper framing of charge, directed — *Appellant-accused came into house of P at night, touched/caught hand of her sleeping daughter-in-law S, and when S raised an alarm, he ran away — But, appellant charged with having trespassed into house of P with intent to assault P and having assaulted her by outraging her modesty — However, appellant convicted on ground that though he did not assault or outrage modesty of P, he had outraged modesty of S, also present at time of alleged incident — Held, when appellant defended himself in regard to aforesaid charge and concentrated on proving that said charges were not true vis-à-vis P, he cannot be convicted for having assaulted and outraging modesty of someone else, namely, S — Appellant was clearly misled by error in charge which caused prejudice to appellant, thereby occasioning failure of justice — Therefore, direction for new trial after charging appellant with offence of outraging modesty of S, issued — Hence, conviction of appellant set aside and matter remitted to trial court with aforesaid direction — Penal Code, 1860, Ss. 452 and 354*

In the instant case, the charge was that the appellant committed trespass into the house of *P* for assaulting *P*, and assaulted the said *P* and outraged her modesty. The accused concentrated his cross-examination with reference to the said charge and elicited answers showing that he did not assault or outrage the modesty of *P*. He did not try to challenge the evidence let in to show that he had tried to outrage the modesty of *S* (*P's* daughter-in-law), as he was not charged with such an offence. The evidence of PWs 1 and 2 (*P* and *S*) was that the appellant did not touch or tease or abuse *P*. Their evidence was that he touched/caught the hand of *S* and when she raised an alarm he ran away. When the charge was that the accused attempted to commit trespass into the house of *P* with intent to outrage the modesty of *P*, the conclusion of the appellate court and the High Court that there was no failure of justice if he is punished for the offence of having assaulted *S* and outraging her modesty, is opposed to principles of fair play and natural justice embodied in Sections 211, 212, 215 and 464 CrPC. (Para 19)

When the accused is charged with having entered the house of *P* and assaulted the said *P* with intent to outrage her modesty and when the accused defended himself in regard to the said charge and concentrated on proving that the said charges were not true, he cannot be convicted for having assaulted and outraging the modesty of someone else, namely, *S*. The accused did not have any opportunity to meet or defend himself against the charge that he assaulted *S* and outraged her modesty. Nor did he proceed with his defence on the understanding that he was being charged with having committed the offence with reference to *S*. One of the fundamental principles of justice is that an accused should know what is the charge against him so that he can build his defence in regard to that charge. An accused cannot be punished for committing an offence against *Y* when he is charged with having committed the offence against *X* and the entire defence of the accused was with reference to charge of having committed offence against *X*. (Para 20)

Applying the guidance offered by Illustration (*e*) under Section 215 CrPC, as contrasted from Illustration (*d*) under that section, and legal principles evolved by the Supreme Court, the position will be as follows: If *S* alone had been present at the house at the time of the incident and the accused had assaulted and outraged the modesty of the said *S*, but in the charge the name of the victim had been erroneously mentioned, say as *S* or *P* (though there was no person by such name), and the inquiry exclusively referred to the assault and outraging the modesty of *S*, the court could infer that the accused was not misled and the error in the charge was immaterial. On the other hand, if two persons were present in the house at the time of the incident, namely, *P* and *S* and the accused is charged with trespassing into the house of *P*, and assaulting and outraging the modesty of the said *P*, and the witnesses refer only to the assault and outraging the modesty of *S*, the court will have to infer that the accused was prejudiced, if the accused had solely concentrated and focused his defence and entire cross-examination to show that he did not commit the offences against *P*. (Para 22)

The court having charged the accused with the offence of having trespassed into the house of *P* with the intent to assault her and having further charged him for having assaulted the said *P* by outraging her modesty, convicts him on the ground that though he did not assault or outrage the modesty of *P*, he had outraged the modesty of *S*, that would lead to failure of justice. There was a material error in the charge as it violated the requirement of Section 212(1) CrPC, that the charge shall contain particulars as to the person against whom the offence was committed. (Para 23)

There were two women present at the house at the time of the alleged incident, namely, *P* and her daughter-in-law *S*. In view of the specific charge, the accused concentrated on showing that the charge was false. He did not attempt to meet the case made out in the trial that the offence was against *S*. The accused was thus clearly misled by the error in the charge which caused prejudice to the accused thereby occasioning failure of justice. Therefore, there should be a new trial after charging him with the offence of outraging the modesty of *S*. (Para 24)

Hence, the conviction of the accused is set aside and the matter is remitted to the trial court with a direction for a new trial after framing a charge by substituting the words "her daughter-in-law *S*" for the words "abovenamed *P*", in the second part of the charge. (Para 25). *Main Pal* v. *State of Haryana*, (2010) 10 SCC 130: AIR 2010 SC 3292: 2010 Cri LJ 4450: (2010) 94 AIC 9: (2010) 4 UPLJ 14.

Bench Strength 2. Coram: **R.V. Raveendran** and *H.L. Gokhale*, JJ. [Date of decision: 7-9-2010]

State of H.P. v. Gita Ram, (2000) 7 SCC 452: 2000 SCC (Cri) 1390, distinguished on facts

[2640] — Ss. 211 and 216 — Charge — Quashing of — *Supreme Court cannot convert itself into a trial court to consider whether there was evidence or not justifying framing of charges. Raghubir Singh* v. *State of Bihar*, (1986) 4 SCC 481: 1986 SCC (Cri) 511: AIR 1987 SC 149.

Bench Strength 2. Coram: **O. Chinnappa Reddy** and *M.M. Dutt*, JJ. [Date of decision: 19-9-1986]

[2641] — Ss. 211 and 313 — Framing of charge and examination of accused under S. 313 CrPC — Duty of court — Role of Judge — Laxity, especially in State of Bihar — *Strongly deprecated and High Court concerned directed to take corrective measures — Directed that a copy of this order be placed before the Hon'ble Judge of the Patna High Court, in charge of the State's Judicial Academy* (Paras 14 and 26). *Sajjan Sharma* v. *State of Bihar*, (2011) 2 SCC 206.

Bench Strength 2. Coram: **Aftab Alam** and *R.M. Lodha*, JJ. [Date of decision: 7-1-2011]

[2642] — Ss. 211 and 223 — Framing of charge — Confession of an accused, who has been discharged, is not admissible against a co-accused — *Court not justified in taking into consideration such confession for framing charges against the co-accused on ground that the prosecution could examine him as a witness for establishing the facts disclosed in his confession — Evidence Act, 1872, S. 30 — TADA, 1987, Ss. 3(3), 3(4) and 14*

Under Section 30 of the Evidence Act, 1872, a confession of an accused is relevant and admissible against a co-accused if both are jointly facing trial for the same offence. Where the accused has been discharged from the case and would not be facing trial with the co-accused his confession cannot be used against the co-accused. In the instant case the Designated Court decided to rely upon the confession on the specious ground that the prosecution was not in any way precluded from examining him as a witness in the trial for establishing the facts disclosed in his confession. This was a perverse approach of the Designated Court while dealing with the question of framing charges. At that stage, the court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (dehors those materials) that the prosecution may adduce in the trial which would commence only after the charges are framed and the accused denies the charges. *Suresh Budharmal Kalani* v. *State of Maharashtra*, (1998) 7 SCC 337: 1998 SCC (Cri) 1625: AIR 1998 SC 3258.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 15-9-1998]

[2643] — Ss. 211 to 213, 215 and 313 — Care to be taken in framing of and questioning of accused — Consequence of improper/incorrect framing of charge — *Appellants charged for causing death by setting deceased on fire after pouring kerosene oil on her — Such charge framed despite medical evidence that death was due to smothering and burns on deceased's person were post-mortem — While examining accused persons under S. 313 CrPC, two questions put to them which supported their defence rather requiring them to "explain circumstances appearing in evidence against" them — Such casual approach in framing charge and questioning the accused under S. 313, deprecated — Conviction set aside*

In the post-mortem report also the doctor, PW 7 has categorically stated that the death was due to smothering. The evidence of the doctor clearly shows that the burns were not ante-mortem in nature and were post-mortem. This part of the evidence of the doctor has not been shaken. In fact, it is dismaying to find that the charges were framed on totally unfounded premises and even in the examination under Section 313 of the Code, with reference to the evidence of PW 7 it was stated that the death was due to smothering. If that be so, the question of the accused persons having caused the death by burning does not arise. Such casual framing of charge and examination under Section 313 of the Code is a disturbing feature. (Paras 14 to 16). *Basavaraja* v. *State of Karnataka*, (2008) 9 SCC 329: (2008) 3 SCC (Cri) 767.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *V.S. Sirpurkar* and *G.S. Singhvi*, JJ. [Date of decision: 22-9-2008]

[2644] — Ss. 211, 215 and 228 — Defect in charge — Effect — *Held, mere defect in language, or in narration, or in form of charge, would not render conviction bad, if accused had not been prejudiced thereby* (Para 34). *Mohd. Ankoos* v. *High Court of A.P.*, (2010) 1 SCC 94.

Bench Strength 2. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 6-11-2009]

[2645] — Ss. 211 and 217 — Charge — Need for specificity in — Need for correction by court on appreciation of evidence — *Accused charged under S. 302 IPC substantively and also with aid of S. 149 — A-2 inflicting blows with sharp-edged weapon, while A-1 assaulting deceased with lathi on head — High Court without discussing any of these aspects merely confirming their conviction under S. 302 with aid of S. 149 — Held, High Court ought to have given a specific finding — Appellants had come together, abused the deceased and thereafter acted along with each other — Hence, they were liable to be convicted under S. 302, not with aid of S. 149 but S. 34 — Penal Code, 1860, S. 302 r/w Ss. 149/34* (Paras 40 and 41). *Murli* v. *State of Rajasthan*, (2009) 9 SCC 417: (2009) 81 AIC 43 (SC).

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 18-8-2009]

— S. 211(4) *See* Ss. 464, 218 and 211(4)

— S. 212 *See also* S. 222, Criminal Procedure Code, 1898, pp. 1097 et seq. in Vol. 2

— S. 212 *See* Ss. 211 to 224
See also Ss. 211 to 213, 215 and 313

[2646] — Ss. 212 & 213 — Undue Influence — Specific pleading with full particulars regards undue influence necessary — *Ss. 123 and 83(1)(c), Representation of the People Act, 1951, CPC, Or. 6 R.4*

In order that a pleading may be sufficient to make out a case of undue influence, it must set out full particulars of it under the provisions of S. 83(1)(*c*) of the Act which may be compared with Or. 6 R. 4 of the Code of Civil Procedure. The said provisions of the Act read with S. 123(2) makes it obligatory on a party setting up a case of corrupt practice by exercise of under influence as suggested, to give full particulars thereof by stating inter alia who attempted to induce electors to believe that voting for a particular person would render them objects of divine displeasure or spiritual censure and in what manner such attempts were made.

The real charge in para 4(*c*) of the petition in that the pamphlet complained of misled the electors by false statements. Such a pleading falls far short of an allegation of undue influence by an attempt to make electors exercise their franchise in a particular manner. Para 4(*c*) does not even mention Muslim voters and does not contain any averment to the effect that they were sought to be influenced by the opinion of the religious heads. *Lakhi Prasad* v. *Nathmal Dokania*, AIR 1969 SC 583, 585: (1969) 2 SCR 41,43-44: 1969 BLJR 612: 1969 MPWR 458.

Bench Strength 2. Coram: *M. Hidayatullah, C.J.* and **G.K. Mitter**, J. [Date of decision: 6-9-1968]

[2647] — Ss. 212, 215 and 464 — Framing of charge — Principles relating to, summarised

Principles relating to Sections 212, 215 and 464 CrPC can be summarised as follows:

(*i*) The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(*ii*) The accused is entitled to know with certainty and accuracy, the exact nature of the charge against him, and unless he has such knowledge, his defence will be prejudiced. Where an accused is charged with having committed offence against one person but on the evidence led, he is convicted for committing offence against another person, without a charge being framed in respect of it, the accused will be prejudiced, resulting in a failure of justice. But there will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the defence, that is, if the [illegible] the accused showed that he was defending himself against the real and actual charge and not the erroneous charge.

(*iii*) In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself. (Paras 12 to 17). *Main Pal* v. *State of Haryana*, (2010) 10 SCC 130: AIR 2010 SC 3292: 2010 Cri LJ 4450: (2010) 94 AIC 9: (2010) 4 UPLJ 14.

Bench Strength **2**. Coram: **R.V. Raveendran** and *H.L. Gokhale*, JJ. [Date of decision: 7-9-2010]

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: 1956 Cri LJ 291; Gurbachan Singh v. State of Punjab, AIR 1957 SC 623: 1957 Cri LJ 1009; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358; State of W.B. v. Laisal Haque, (1989) 3 SCC 166: 1989 SCC (Cri) 513; State of A.P. v. Thakkidiram Reddy, (1998) 6 SCC 554: 1998 SCC (Cri) 1488; Dalbir Singh v. State of U.P., (2004) 5 SCC 334: 2004 SCC (Cri) 1592; Dumpala Chandra Reddy v. Nimakayala Balireddy, (2008) 8 SCC 339: (2008) 3 SCC (Cri) 493; Sanichar Sahni v. State of Bihar, (2009) 7 SCC 198: (2009) 3 SCC (Cri) 347, relied on

[2648] — Ss. 212 and 240 — Persons against whom charge may be framed — Company contravening order made under S. 3, Essential Commodities Act, 1955 — Persons who may be prosecuted jointly or severally — *Held, the persons in charge, or the officers of the company or the company itself may be prosecuted jointly or severally for contravention of such order — Further held, there is no statutory compulsion that the person in charge or an officer of the company may not be prosecuted unless he be ranged alongside the company itself — Directors of company seeking to have the charge for violation of the order against themselves quashed, on ground that the Production Manager, one* **T** *alone was liable to be proceeded against — Held, the High Court was not justified in quashing the charge framed as far as the said Directors were concerned — Essential Commodities Act, 1955, Ss. 10 and 3*

Allowing the appeal to the extent below,

Held :

If the contravention of the order made under Section 3 is by a company, the persons who may be held guilty and punished are: (*1*) the company itself, (2) every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, whom for short shall be described as the person in charge of the company, and (*3*) any director, manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom the offence has been committed, whom for short shall be described as an officer of the company. Any one or more or all of them may be prosecuted and punished. The company alone may be prosecuted. The person in charge only may be prosecuted. The conniving officer may individually be prosecuted. One, some or all may be prosecuted. There is no statutory compulsion that the person in charge or an officer of the company may not be prosecuted unless he be ranged alongside the company itself. Naturally, before the person in charge or an officer of the company is held guilty in that capacity it must be established that there has been a contravention of the order by the company. (Para 7)

Therefore the High Court was not justified in quashing the charge framed so far as the present respondents were concerned. (Para 14). *State of Punjab* v. *Kasturi Lal*, (2004) 12 SCC 195: AIR 2004 SC 4087: 2004 Cri LJ 3866.

Bench Strength **2**. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 28-7-2004]

Sheoratan Agarwal v. State of M.P., (1984) 4 SCC 352: 1984 SCC (Cri) 620, relied on

[**Ed.**: *See also* (2003) 11 SCC 405 and (2004) 6 SCC 531 on the controversy regarding requirement of mens rea against persons in charge of the company: *See also* five-Judge Bench decision in *Standard Chartered Bank* v. *Directorate of Enforcement*, (2005) 4 SCC 530]

— S. 213 *See* Ss. 211 to 224
See also Ss. 211 to 213, 215 and 313
See also Ss. 211, 213, 214, 216 and 223
See also Ss. 212 & 213

[2649] — **Ss. 213, 231 and 232 — Charge not stating the circumstances under which the offence committed** — *Held on facts, the charge vague — No evidence produced to prove the charge even when oral evidence was adduced — Held, accused should be acquitted — Penal Code, 1860, S. 467. Hasan Ali* v. *State of M.P.*, (1983) 2 SCC 66: 1983 SCC (Cri) 340: AIR 1983 SC 352(2): 1983 Cri LJ 691(2).

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *O. Chinnappa Reddy*, JJ. [Date of decision: 2-2-1983]

— S. 214 *See* Ss. 211 to 224
See also Ss. 211, 213, 214, 216 and 223

—**S. 215** *See also* S. 225, Criminal Procedure Code, 1898, pp. 1099 et seq. in Vol. 2

— S. 215 *See* Ss. 211 to 224
See also Ss. 211 to 213, 215 and 313
See also Ss. 211 and 215
See also Ss. 211, 215 and 221
See also Ss. 211 & 215 and 464 & 465
See also Ss. 216, 211 and 215
See also Ss. 221, 215 and 218
See also Ss. 221, 218 and 215
See also Ss. 221 & 218 and 215 & 464
See also Ss. 235 to 215
See also Ss. 464 & 215, 386, 399 and 401
See also Ss. 464, 216, 221 and 215
See also Ss. 464, 222, 215 and 216
See also Ss. 482, 211, 215 and 216

[2650] **— S. 215 — Absence of charge under S. 34 IPC** — *Held, not fatal by itself unless prejudice to the accused established — Penal Code, 1860, S. 34*

The legality of conviction by applying Section 34 IPC in the absence of such charge was held to be not fatal by itself. Before conviction for a substantive offence without a charge can be set aside, prejudice will have to be established. (Para 21). *Anil Sharma* v. *State of Jharkhand*, (2004) 5 SCC 679: 2004 SCC (Cri) 1706: AIR 2004 SC 2294: 2004 Cri LJ 2527.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 30-4-2004]

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: 1956 Cri LJ 291; Dhanna v. State of M.P., (1996) 10 SCC 79: 1996 SCC (Cri) 1192: AIR 1996 SC 2478, relied on

[2651] — Ss. 215, 216, 218, 221 and 464 — Absence of charge under S. 149 IPC — Effect — Absence of charge under S. 149 — Conviction with aid of S. 149 — Sustainability — *Submission that in absence of specific charge under S. 149, accused persons cannot be convicted under S. 302 r/w S. 149 as S. 149 creates a distinct and separate offence — On facts held, non-framing of charge under S. 149, on face of charges framed against appellants would not vitiate their conviction in absence of any prejudice caused to them — Appellants had assembled together armed with axes and sickle and were parties to assault on D-1 & D-2 and in inflicting grievous injuries on three others — Penal Code, 1860, S. 149 [Ss. 302/149 and 307/149] and S. 148. Annareddy Sambasiva Reddy* v. *State of A.P.*, (2009) 12 SCC 546: AIR 2009 SC 2661: (2009) 78 AIC 222 (SC).

Bench Strength **2**. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 21-4-2009]

[2652] — S. 215 — Accused not put on trial on proper charge under S. 2(ia)(f) or (1) of Prevention of Food Adulteration Act — *Possibility that he was prejudiced in his defence because of ambiguity, held, cannot be ruled out — Accused, therefore, cannot be convicted under Ss. 7 and 16 of that Act, even though his offence under S. 2(ia)(f) was proved — Prevention of Food Adulteration Act, 1954, Ss. 2(ia)(f), 7 and 16. MCD* v. *Ram Sarup*, (1980) 1 SCC 580: 1980 SCC (Cri) 137: AIR 1980 SC 174.

Bench Strength **3**. Coram: *R.S. Sarkaria*, **P.N. Shinghal** and *O. Chinnappa Reddy*, JJ. [Date of decision: 1-8-1979]

[2653] — S. 215 — Technical defect immaterial if no prejudice caused. *Chaturdas Bhagwandas Patel* v. *State of Gujarat*, (1976) 3 SCC 46: 1976 SCC (Cri) 351: AIR 1976 SC 1497: (1976) 3 SCR 1052: 1976 Cri LJ 1180.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *P.N. Shinghal*, JJ. [Date of decision: 16-4-1976]

[2654] — Ss. 215, 173, 220 and 228 — Charge-sheet and police report — Nature of police report — *Information supplied in police report and description of how the various offences were made out on the facts in charge-sheet — Detail, specificity and clarity required — Duty of court at stage of framing charge, reiterated — Penal Code, 1860, S. 72*

A plea has been taken that charge-sheet is a bundle of confusions and no definite material is placed on record to substantiate the allegation of commission of any offence. This assertion has been adequately refuted by the respondent State with regard to various definite materials indicating commission of offence, which have been pointed out. (Para 40)

The report in terms of Section 173 CrPC is in the nature of information to the Magistrate. Statutory requirement is complied with if the requisite information is given. It purports to be an opinion and therefore elaborate details are not necessary. Mere non-description of the offences in detail is really not material. (Paras 43 and 44)

It would not be desirable to analyse minutely the materials at the stage when the charge is framed. At this stage the court is primarily concerned with the question as to whether a charge is to be framed in respect of any offence and whether prima facie there appears existence of any material and not the sufficiency of the materials. Therefore, the appellants' stand that the charge-sheet does not refer to any particular material cannot be accepted, more particularly, in view of the specific materials referred to by the respondent State. (Para 45). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193: AIR 2007 SC 1274: (2007) 51 AIC 623 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

K. Veeraswami v. Union of India, (1991) 3 SCC 655: 1991 SCC (Cri) 734, relied on

[2655] — Ss. 215, 211, 465 and 464 — Word "illegality" — Meaning of — *Appellants charged under Ss. 148 and 302 r/w S. 149, IPC, but convicted under S. 302 r/w S. 34 — Whether the irregularity amounts to an illegality and vitiates the trial — "Illegality" meaning of in this context — Trial when vitiated — Test — CrPC, 1898, Ss. 225, 221, 537 and 535*

The Code does not use the word 'illegality', nor defines 'irregularity' and illegality can only mean an incurable illegality, incurable because of prejudice leading to a failure of justice.

The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the trial is not invalidated by the mere fact that the charge was not formally reduced to writing. The essential part of this part of the law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. *Bhoor Singh* v. *State of Punjab*, (1974) 4 SCC 754: 1974 SCC (Cri) 664: AIR 1974 SC 1256: 1974 Cri LJ 929.

Bench Strength 2. Coram: *V.R. Krishna Iyer* and **R.S. Sarkaria**, JJ. [Date of decision: 28-2-1974]

[2656] — Ss. 215, 221 and 464 — Error, omission in charge — Determination of question of prejudice — *Test of Slaney's case applied*

In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself. That test is clearly fulfilled in the facts and circumstances of the present case. The principles laid down in *Slaney case* have throughout been followed by this Court. *State of W.B.* v. *Laisal Haque*, (1989) 3 SCC 166: 1989 SCC (Cri) 513: AIR 1989 SC 129: 1989 Cri LJ 865.

Bench Strength 2. Coram: **A.P. Sen** and *L.M. Sharma*, JJ. [Date of decision: 12-9-1988]

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: (1955) 2 SCR 1140: 1956 Cri LJ 291, followed

[2657] — Ss. 215 and 465 — Charges — Defects in, alleged — Powers of Reference Court are wide — What has to be seen is whether there was any irregularity in the charge which prejudiced the accused — *TADA, 1987, S. 11 (Per Wadhwa, J.)* (Para 540). *State* v. *Nalini*, (1999) 5 SCC 253: 1999 SCC (Cri) 691: AIR 1999 SC 2640: 1999 Cri LJ 3124.

Bench Strength 3. Coram: **K.T. Thomas**[1], **D.P. Wadhwa**[2] and **S.S.M. Quadri**[3], JJ. [Date of decision: 11-5-1999]

[2658] — Ss. 215, 220 and 221 — Defect in charge — Effect — No prejudice caused to accused nor question argued before trial court — *Accused charged for conspiracy but convicted for offence under S. 302 RPC simpliciter — Held, the way appellant had worked in success of the conspiracy, handled guns and accompanied two other assailants to house of deceased and manner in which the plan was executed amply prove that his conviction under S. 302 RPC was justifiable — Penal Code, 1860, S. 302 simpliciter and S. 120-B r/w S. 302 — Ranbir Penal Code, 1989 Smvt., S. 302 simpliciter and S. 120-B r/w S. 302* (Paras 76, 14 and 17). *Mohd. Ayub Dar* v. *State of J&K*, (2010) 9 SCC 312: AIR 2010 SC 2864: (2010) 93 AIC 88.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Dr. M.K. Sharma*, JJ. [Date of decision: 21-7-2010]

[2659] — Ss. 215, 216, 218, 221 & 222 — Charges framed only under Ss. 415 & 420 IPC — No charge framed under S. 409, though offence, if any, was that under S. 409 — Effect

Appellant was a Branch Manager of State Bank of India. He and some of his colleagues were prosecuted under Sections 415 and 420 read with Section 120-B IPC, and Section 13(1)(*d*) of the Prevention of Corruption Act, 1988, for permitting discounting of local cheques to some customers of the Bank. Accused 4 and 5 were bank officials while Accused 1 to 3 were private parties having account with the Bank.

The issues involved were whether the bank officials and the customers had entered into criminal conspiracy to commit the offence of cheating against the Bank under Sections 415 and 420 IPC, and whether the accused persons had obtained any illegitimate advantage, warranting punishment under the Prevention of Corruption Act.

Trial court convicted the accused persons. High Court upheld their conviction. The Supreme Court however took note of the fact that there was no evidence on record to prove that there was an intention to cheat the Bank. On the other hand, there was evidence on record that appellant had stopped cheque discounting facility and he had resumed it only after verbal instructions from a superior officer, PW 20. Moreover, the bank officials appeared to have acted in the overall interest of the Bank for the purpose of promoting its business, though there might have been some irregularity in doing so.

Allowing the appeals,

Held :

One of the ingredients of cheating, as defined in Section 415 IPC, is existence of an intention to cheat at the time of making initial promise or existence thereof from the very beginning of formation of contract. The complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. (Paras 41 and 42)

The offence, if any, was committed under Section 409 IPC but the accused persons have not been charged under Section 409 IPC; even Accused 1 to 3 have not been charged for entering into a conspiracy with Accused 4, 5 and 6 in respect of commission of offences under the Prevention of Corruption Act. It is in the aforementioned situation, the judgment of conviction and sentence cannot be upheld. (Para 51)

The conclusions can be summarised as follows:

(*a*) The prosecution did not lay down any foundational facts to arrive at a finding of dishonest intention on the part of the appellants, nor has any such finding has been arrived at by the trial court or the High Court.

(*b*) The circumstances which were considered sufficient to bring home the charges against the appellants were: the cheques of Accused 1, 2 and 3 were discounted after purchasing cheques; cheques were deposited after a gap of one to four days; only later were the amounts deposited in the account, which circumstances are not sufficient to hold the appellants guilty for commission of offence under Section 420 IPC as all the actions on the part of the bank officers were in consonance with the long-standing banking practice.

(*c*) Accused 4 had taken care of having adequate security to ensure that the bank does not suffer any loss, the gain if any was caused to the bank.

(*d*) The appellants acted on instructions by the higher authority.

(*e*) The prosecution evidence does not establish any conspiracy on their part vis-à-vis Accused 1, 2 and 3. (Para 55). *S.V.L. Murthy* v. *State*, (2009) 6 SCC 77.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370; All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776: (2009) 1 SCC (Cri) 947; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Sharon Michael v. State of T.N., (2009) 3 SCC 375: (2009) 2 SCC (Cri) 103, relied on

[2660] — Ss. 215, 216, 218, 221 and 464 — Framing of charge — Failure to frame proper charge — Interference, if warranted — Need to show real prejudice — *Held, unless accused is able to establish that defect(s) in framing charge(s) has caused real prejudice to him; that he was not informed as to what was the real case against him; or that he could not defend himself properly, no interference is required on mere technicalities* (Paras 42 to 44 and 46). *Abdul Sayeed* v. *State of M.P.*, (2010) 10 SCC 259.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 14-9-2010]

State of A.P. v. Thakkidiram Reddy, (1998) 6 SCC 554: 1998 SCC (Cri) 1488; Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: 1956 Cri LJ 291; Gurpreet Singh v. State of Punjab, (2005) 12 SCC 615: (2006) 1 SCC (Cri) 191; Ramji Singh v. State of Bihar, (2001) 9 SCC 528: 2002 SCC (Cri) 760; Sanichar Sahni v. State of Bihar, (2009) 7 SCC 198: (2009) 3 SCC (Cri) 347, relied on

[2661] — Ss. 215, 222, 464 and 173 — In police report as well as in charge-sheet while co-accused assigned the substantive role and charged under Ss. 302 and 326, appellant charged with the aid of S. 34 for both the offences — But at the trial, contrary to the charge-sheet appellant confronted with evidence accusing him of the substantive charge under Ss. 302 and 326 whereas the co-accused assigned liability under S. 34 — *Co-accused later acquitted by High Court — Several infirmities found in trial of appellant — Held, prejudice cannot be ruled out and trial not fair. Pratap Singh* v. *State of Haryana*, 1991 Supp (1) SCC 409: 1991 SCC (Cri) 699.

Bench Strength 2. Coram: **Kuldip Singh** and *K. Ramaswamy*, JJ. [Date of decision: 7-12-1990]

[2662] — S. 215 — Applicability to domestic enquiries in labour matters — Omission to frame charge — Enquiry if vitiated — Analogy of S. 215 CrPC, 1973 employed — *Even though the charge of extortion was not included in the charge-memo, this act was specifically alleged by the management before the Labour Court and was specifically denied by the workmen, and the parties had led evidence in regard thereto, therefore, held, it could not be said that the workmen were misled or prejudiced by the omission — However, in light of* Laxmi Devi case, *AIR 1957 SC 7, no conclusive view expressed — Industrial Disputes Act, 1947, S. 11*

In the statements filed by the management before the Labour Court, this act of extortion is specifically alleged and in the reply-statement of the workmen, the same is specifically denied and parties have led evidence in regard to their respective cases on the question of extortion, therefore, it cannot be said that the workmen were misled or prejudiced by the omission to mention the charge of extortion nor can they contend that the said omission has occasioned a failure of justice. However, in light of *Laxmi Devi case*, AIR 1957 SC 7, the matter is left at that. (Paras 21, 16 and 17). *Krishnakali Tea Estate* v. *Akhil Bharatiya Chah Mazdoor Sangh*, (2004) 8 SCC 200: 2004 SCC (L&S) 1067: (2004) 103 FLR 273.

Bench Strength 3. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 10-9-2004]

Laxmi Devi Sugar Mills Ltd. v. Nand Kishore Singh, (1956) 2 LLJ 439: AIR 1957 SC 7: 1956 SCR 746, considered

[2663] — Ss. 215 and 228 — Framing of charge-sheet with respect to offences under various clauses of S. 13(1), Prevention of Corruption Act, 1988 — Necessity to mention each clause — Sanction order — Detail necessary with respect to the offences alleged — *Held, sanctioning authority is not required to separately specify each of the offences against the accused public servant — This is required to be done at the stage of framing of charge — In present case, most of the offences under various clauses of S. 13(1) alleged to have been committed, it was sufficient for sanction order to mention only S. 13(1) — It was not necessary to have mentioned each separate clause thereof which was attracted — Prevention of Corruption Act, 1988, Ss. 19 and 13*

The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. The law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply its mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised guidelines in that regard. (Para 47). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193: AIR 2007 SC 1274: (2007) 51 AIC 623 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

— S. 216 *See also* Ss. 227 to 232, Criminal Procedure Code, 1898, pp. 1102 et seq. in Vol. 2

— S. 216 *See* Ss. 190(1), 209, 216 and 223
See also Ss. 211 to 224
See also Ss. 211, 213, 214, 216 and 223
See also Ss. 211 and 216
See also Ss. 222 and 216
See also Ss. 227, 228, 216 and 221
See also Ss. 228 and 216
See also Ss. 464, 211 and 216
See also Ss. 464, 211, 216 and 228
See also Ss. 464, 216, 221 and 215
See also Ss. 464, 222, 215 and 216
See also Ss. 482, 211, 215 and 216
See also Ss. 482, 311, 391, 173(8), 216 and 24

[2664] — S. 216 — Addition of charge relating to dowry death [S. 304-B, IPC] during trial — *Death certificate already filed indicating probable cause of death to be cardio-respiratory failure due to acute respiratory failure — Production of another death certificate by prosecution which was issued by same doctor indicating a different cause of death — Objection raised against, by accused — Matter relating to production of subsequent certifi-*

cate kept in abeyance to be decided after examination of doctor — However, on the same date, trial court allowing application filed for addition of charge under S. 304-B — Presence of certain chemicals in viscera was noted by trial court — Effect of, was to be considered in the background of both the certificates, in case the latter certificate was taken on record — Hence held, it would be proper for trial court to defer the question of framing charge under S. 304-B after examination of the doctor and relevance of the subsequent certificate and its acceptability — Penal Code, 1860, S. 304-B

There is no quarrel with the proposition that the charge can be altered at any stage. But the question is whether in view of the order passed on the same date the order relating to alteration of charge has been passed by the trial court. The trial court itself noted that as per the first certificate the cause of death was cardio-respiratory failure due to acute respiratory failure. It, however, noted that some chemicals were noted in the viscera. The effect of the presence of those chemicals has necessarily to be considered in the background of both the certificates, in case the latter certificate is taken on record. That being so, it would be proper for the trial court to defer the question of framing charge under Section 304-B after examination of the doctor and relevance of the subsequent certificate and its acceptability. (Para 7). *Ishwarchand Amichand Govadia* v. *State of Maharashtra*, (2006) 10 SCC 322: (2006) 3 SCC (Cri) 554.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 13-10-2006]

[2665] — **S. 216 — Addition or alteration of charge during trial** — *Held, permissible if the court is satisfied that it is necessary to do so*

If during trial the trial court on a consideration of broad probabilities of the case based upon total effect of the evidence and documents produced is satisfied that any addition or alteration of the charge is necessary, it is free to do so, and there can be no legal bar to appropriately act as the exigencies of the case warrant or necessitate. (Para 10). *Hasanbhai Valibhai Qureshi* v. *State of Gujarat*, (2004) 5 SCC 347: 2004 SCC (Cri) 1603: AIR 2004 SC 2078: 2004 Cri LJ 2018: (2004) 3 Mah LJ 1074: (2004) 3 MPLJ 593.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-4-2004]

Kantilal Chandulal Mehta v. State of Maharashtra, (1969) 3 SCC 166: 1970 SCC (Cri) 19: AIR 1970 SC 359, relied on

[2666] — S. 216 — Application under for alteration of or addition to charge — *Held, not maintainable against persons who have already been discharged of all the charges — 'Alter or add to'*

'Add to any charge' means the addition of a new charge. An alteration of a charge means changing or variation of an existing charge or making of a different charge. Under S. 216 CrPC addition to and alteration of a charge or charges implies one or more existing charge or charges. When the appellants 4 and 5 were discharged of all the charges and no charge existed against them, an application under S. 216 was not maintainable in their case. The Magistrate in his order did not say that he was proceeding suo motu against them. However, in cases of appellants 1 to 3 against whom the charge under S. 427 IPC was already in existence there could arise the question of addition to or alteration of the charge. The Magistrate therefore while disposing of the application under S. 216 CrPC had no jurisdiction to frame charges against appellants 4 and 5.

Thus the APP's application under S. 216, insofar as the appellants 1 to 3 were concerned, could be dealt with under S. 216. *Sohan Lal* v. *State of Rajasthan*, (1990) 4 SCC 580: 1990 SCC (Cri) 650: AIR 1990 SC 2158: (1990) 3 Crimes 120.

Bench Strength **2**. Coram: **K.N. Saikia** and *K. Ramaswamy*, JJ. [Date of decision: 21-8-1990]

[2667] — S. 216 — Charges can be altered at any stage subsequent to the framing of charges (Para 16). *Naresh Giri* v. *State of M.P.*, (2008) 1 SCC 791: (2008) 1 SCC (Cri) 324: (2007) 4 KLT 1115.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 12-11-2007]

[2668] — S. 216 — Covers cases instituted on a private complaint. *Sohan Lal* v. *State of Rajasthan*, (1990) 4 SCC 580: 1990 SCC (Cri) 650: AIR 1990 SC 2158: (1990) 3 Crimes 120.

Bench Strength **2**. Coram: **K.N. Saikia** and *K. Ramaswamy*, JJ. [Date of decision: 21-8-1990]

[2669] — Ss. 216, 217 and 465 — Alteration or addition to a charge — Effect — *Court has discretion to direct a new trial — But unless there is a specific order to that effect it cannot be presumed that a new trial has commenced after addition or alteration of charges — No direction for new trial can be given unless proceeding with the trial is likely to prejudice the accused or the prosecution — Even if there was any irregularity in continuation of the trial after framing of the additional charges, judgment not open to be set aside in the absence of failure of justice*

On a combined reading of Sections 216 and 217 it is evident that after an alteration or addition of the charge the interest of the prosecution and the accused has to be safeguarded by permitting them to further examine or cross-examine the witness already examined, as the case may be, and by affording them an opportunity to call other witnesses. It is undoubtedly true that discretion has been given to the court to direct a new trial after addition or alteration of any charge, but it does not mean that every such addition or alteration in the charge which has been read over and explained to the accused would lead to inevitable inference that the court has directed a new trial for them. It, therefore, follows that unless the court passes a specific order and directs a new trial it cannot be presumed that a new trial has commenced only because an alteration or addition to a charge which has been read over and explained to the accused has been made. Any such direction given by the court has to be judged on the touchstone of prejudice to the accused or the prosecution. (Para 23)

In the instant case after the addition of charges the prosecution expressly stated that they did not want to further examine the four witnesses already examined but they were willing to produce them if the accused so wanted. The accused, however, did not avail of this opportunity in accordance with Section 217 of the Code and, therefore, it is too late in the day for them to raise a grievance on that score. Even if there was any irregularity in the continuation of the trial against the appellants after the additional charges were framed the court would not be justified in setting aside the impugned judgment on that ground alone for there is not an iota of material on record wherefrom it can be said that a failure of justice has occasioned thereby. To put it differently in such a case Section 465 of the Code would have squarely applied. (Para 23). *Ranbir Yadav* v. *State of Bihar*, (1995) 4 SCC 392: 1995 SCC (Cri) 728: AIR 1995 SC 1219: 1995 Cri LJ 2665.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 21-3-1995]

[2670] — Ss. 216 and 211 — Charge framed under S. 149, but not under S. 34 — *Conviction applying S. 34 in such a case, held, valid — Penal Code, 1860, Ss. 34 and 149* (Paras 17 and 18). *Dani Singh* v. *State of Bihar*, (2004) 13 SCC 203: 2005 SCC (Cri) 127: AIR 2004 SC 4570: 2004 Cri LJ 3328.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-3-2004]

Masalti v. State of U.P., AIR 1965 SC 202: (1965) 1 Cri LJ 226; Lalji v. State of U.P., (1989) 1 SCC 437: 1989 SCC (Cri) 211; State of U.P. v. Dan Singh, (1997) 3 SCC 747: 1997 SCC (Cri) 469, relied on

[2671] — S. 216 — *Supreme Court under Art. 136 finding that the charge under Ss. 147 and 149 IPC, was not proper — If at all S. 34 IPC could be invoked — Matter remanded to Magistrate for framing a proper charge — Penal Code, 1860, Ss. 149 and 34. Prabhu Dayal Agarwal* v. *Murari Lal Agarwal*, (1982) 3 SCC 367(1): 1983 SCC (Cri) 48(1).

Bench Strength 2. Coram: **V.D. Tulzapurkar** and *O. Chinnappa Reddy*, JJ. [Date of decision: 27-1-1981]

[2672] — S. 216 — Non-framing of charge under S. 34 IPC — Maintainability of conviction under the said section — Inference regarding common intention if could be drawn in absence of evidence of pre-concert of minds — *Appellants charged and convicted by trial court under S. 302 IPC — High Court in appeal convicting appellants under S. 302 r/w S. 34 — Held, common intention could be gathered from the facts and circumstances of the case — Despite there being no evidence of pre-concert of minds, where it is evident from the sequence of events that the intention of the appellants was not to cause injury alone but to kill the deceased, their conviction under S. 34 could not be interfered with merely on the ground of non-framing of charge under S. 34 — Penal Code, 1860 — Ss. 34 and 302*

It is true that the two injuries, which proved to be fatal, were not specifically attributed to either of the accused. The common intention can be formed at the spot. At times, it is difficult to get direct evidence of preconcert of minds. The common intention can be gathered from the circumstances and the manner in which assault is carried out. The manner in which assault was carried out leaves no doubt that the appellants had come with the intention to kill the deceased. Their intention was not to cause injuries alone. The continuance of causing of injuries in spite of the intervention of PW 4 and refusal to give water, when the deceased asked for it, shows the predetermined mind of the accused that they had come with the intention to kill the deceased. Although there is no evidence of prior meeting of minds, the sequence of events which unfolded during the course of occurrence clearly indicates the predetermined minds of the accused persons to kill the deceased. (Para 16). *Ramji Singh* v. *State of Bihar*, (2001) 9 SCC 528: AIR 2001 SC 3853.

Bench Strength 2. Coram: *R.C. Lahoti* and **Ashok Bhan**, JJ. [Date of decision: 12-10-2001]

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: 1956 Cri LJ 291; Dhanna v. State of M.P., (1996) 10 SCC 79: 1996 SCC (Cri) 1192: AIR 1996 SC 2478, followed

[**Ed.**: *See also* (1969) 3 SCC 717; AIR 1958 SC 672; AIR 1956 SC 400]

[2673] — Ss. 216, 211 and 215 — Addition of charge by appellate court — When permissible — Conviction under S. 123 IPC on failure to frame charge under, though charges framed under Ss. 121 and 121-A IPC — Propriety of — *Held, proper — Fact that there was no charge against accused Shaukat under S. 123 does not in any way result in prejudice to him because charge of waging war and other allied offences were subject-matter of the charges — Penal Code, 1860, Ss. 123, 121 and 121-A*

Having known about the plans of Afzal in collaborating with the terrorists, he refrained from informing the police or Magistrate intending thereby or knowing it to be likely that such concealment on his part will facilitate the waging of war. By his illegal omission to apprise the police or Magistrate of the design of Afzal and other conspirators to attack Parliament, which is an act of waging war, the appellant Shaukat has made himself liable for punishment for the lesser offence under Section 123 IPC. If he had given timely information, the entire conspiracy would have been nipped in the bud. The fact that there was no charge against him under this particular section, does not, in any way, result in prejudice to him because the charge of waging war and other allied offences are the subject-matter of charges. The accused Shaukat is not in any way handicapped by the absence of charge under Section 123 IPC. The case which he had to meet under Section 123 is no different from the case relating to the major charges which he was confronted with. In the face of the stand he had taken and his conduct even after the attack, he could not have pleaded reasonable excuse for not passing on the information. Viewed from any angle, the evidence on record justifies his conviction under Section 123 IPC. (Paras 321 and 320). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

[2674] — Ss. 216 and 401 — Altering charge under PFA — Prejudice to accused — *Appellants convicted by trial court and first appellate court under S. 16(1)(a)(i) — Alteration of charge from S. 16(1)(a)(i) to S. 16(1)(a)(ii) and conviction thereof by High Court in revision — Propriety of — Applying* Ram Sarup case, *(1980) 1 SCC 580, held, in decision of High Court changing the nature of offence prejudice is writ large as the two provisions are substantially different and evidence of one cannot lead to finding of guilt for the other — Prevention of Food Adulteration Act, 1954, Ss. 2(i-a)(m), 16(1)(a)(i) and 16(1)(a)(ii)*

The two accused persons found selling an adulterated food article. The Public Analyst in his report found that the abovementioned food article was adulterated with starch. This opinion was only partially maintained by the Central Food Laboratory as it opined that the foodstuff was adulterated, but there was no reference whatsoever to the adulteration by starch. The trial court and the first appellate court tried and convicted the appellants, who are father and son, for an offence punishable under Section 16(1)(*a*)(*i*) of the Prevention of Food Adulteration Act, 1954 and sentenced them to various terms of imprisonment. The matter was taken in revision before the High Court and the High Court held that a case under Section 16(1)(*a*)(*i*) of the Act could not be made out against the appellants, but as the trial court and the first appellate court had misapplied the penal provision, it was the obligation of the High Court to see that the accused did not escape from criminal liability and accordingly convicted them for an offence punishable under Section 16(1)(*a*)(*ii*) of the Act.

Allowing the appeal,

Held :

A bare reading of these two provisions and the findings of the first two courts reveal that the evidence required for recording a conviction under the two clauses would be distinct and different as the ingredients thereof are entirely different. In this view of the matter, it appears that the appellants were seriously prejudiced in the fact that the High Court had thought it fit to change the nature of the offence for which they had been brought to trial. The matter is settled in favour of the appellants by the cited judgment. In the light of what has been observed by Supreme Court the prejudice is writ large, more particularly as the ingredients of the two provisions are substantially different and evidence of one cannot lead to a finding of guilt for the other. (Paras 6, 8 and 9). *Ramjee Prasad* v. *State of Bihar*, (2009) 14 SCC 197.

Bench Strength 2. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 22-4-2009]

MCD v. Ram Sarup, (1980) 1 SCC 580: 1980 SCC (Cri) 137, applied

[2675] — S. 216(2) — Alteration of charge — *Held, though the power of the court to alter charges is undisputed, but it is obligatory on the court to bring the same to the notice of the accused and explain it to him — In the instant case alteration of charge not read and explained to accused — Held, requirements of S. 216(2) not complied with* (Paras 18 and 19). *Sabbi Mallesu* v. *State of A.P.*, (2006) 10 SCC 543: (2007) 1 SCC (Cri) 142: AIR 2006 SC 2747: 2006 Cri LJ 4038.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 12-7-2006]

[2676] — S. 216(5) — Applicability — Prosecution in respect of food adulteration instituted on the basis of report of Public Analyst after obtaining consent of authorities concerned — Subsequently certificate issued by Director, Central Food Laboratory showing that though both the authorities held that the sample of the food article (toor dal) was adulterated but there was difference in the reasons or data by which they reached the conclusion inasmuch as while Public Analyst opined that it contained kesari dal, the Director, CFL opined that it contained synthetic coal tar dye (tartrazine) — Held, fresh consent to institute prosecution and recommence the proceedings on the basis of the new facts revealed in the certificate of the Director, CFL not required — *Sanction is required only at the stage of institution of prosecution on the basis of report of Public Analyst and not at post-institutional stage when the certificate of Director, CFL can be brought in evidence — Once prosecution is instituted validly, matter is controlled by judicial functionary and switching back to the pre-institutional stage for fresh consent of the authorities concerned is unnecessary — In the circumstances, obtaining of fresh consent cannot also be insisted upon in view of the second limb of S. 216(5) CrPC — Prevention of Food Adulteration Act, 1954, Ss. 13 and 20(1)*

The appellant Food Inspector purchased toor dal from the grocery of the respondent for the purpose of taking sample. One of the three parts of the sample was sent to the Public Analyst who, after analysis, sent a report stating that the sample contained kesari dal and hence it was adulterated. Thereupon the complaint was filed on the premise that the respondent committed the offence under Section 16(1-A) of the Act read with Section 2(i-a)(*h*) and Section 7(*i*) of the Act. The Additional Chief Judicial Magistrate before whom the complaint was filed issued process to the respondent as accused. After entering appearance in the case the respondent moved an application for sending a second part of the sample to the Director of Central Food Laboratory. It was sent accordingly and upon the same being analysed at the Central Food Laboratory, the Director thereof sent a certificate to the trial court stating that the sample was adulterated as it contained synthetic coal tar dye (tartrazine). On receipt of the said certificate the trial Magistrate converted the case from summary trial to a warrant case trial. After examining three witnesses for the prosecution the trial Magistrate framed a charge against the accused under Sections 2(i-a)(*h*) and 7(*i*) read with Section 16(1-A)(*i*) of the Prevention of Food Adulteration Act. The respondent filed a revision before the High Court in challenge of the order framing charge. A Single Judge of the High Court accepted the respondent's contention that the complainant had not obtained sanction under Section 20 of the Act on the strength of the new facts revealed in the certificate issued by the Director of Central Food Laboratory and hence a fresh sanction is necessary for proceeding with the case. It was, therefore, directed that the Magistrate, before proceeding further, should give the prosecution an opportunity to place the certificate of the Director of Central Food Laboratory before the appropriate authority for consideration and consent for continuance of the prosecution and in the event of no such consent of the appropriate authority being obtained and produced, the Magistrate should discharge the accused and drop the proceedings. The Food Inspector who instituted the prosecution as well as the State have filed this appeal by special leave against the said order of the High Court. Allowing the appeal,

Held :

It is not necessary to deal with the question whether the prosecution was instituted with the written consent envisaged in Section 20 of the Act or whether it was instituted under a general authorisation made by the State Government. It is proposed to proceed on the assumption, without prejudice to the contention that the appellant instituted the prosecution proceedings on the strength of the written consent of one of the authorities concerned. (Para 11)

When the certificate of the Director, Central Food Laboratory superseded the report of the Public Analyst the latter stands sunk to the bottom and in that place the certificate alone would remain on the surface of evidence and hence that certificate alone can be considered as for the facts stated therein regarding the sample concerned. Thus the real contention posed is whether a fresh consent of the authority concerned is required when the said certificate has taken the place of the report of the Public Analyst. (Para 12)

The certificate of the Director of the Central Food Laboratory can be brought in evidence only in the post-institutional stage of a case, whereas the report of the Public Analyst can be obtained during pre-institution stage of the prosecution. There is no scope for countenancing a situation when prosecution proceedings can be instituted with the certificate of the Director of the Central Food Laboratory. What was in evidence in the form of report of the Public Analyst stands substituted, during the evidence stage, by the certificate of the Director of Central Food Laboratory. In other words, after evidence stage commences a new document would take the place of an existing material already admitted in evidence. Thereafter no legal provision requires the case to be switched back to the pre-institution stage. (Para 19)

It is the court's function to dispatch the other part of the sample to the Director of the Central Food Laboratory. What is the need for obtaining a fresh consent when the certificate of the Director of the Central Food Laboratory has reached the court? (Paras 17 and 20)

There is no good reason for making two different categories of cases with the help of certificates issued by the Central Food Laboratory. Report of the Public Analyst alone is contemplated for instituting the prosecution and consent or sanction is necessary only for such institution, and that a post-institutional development while exercising a statutory right conferred on the accused for challenging the report of the Public Analyst during trial is not a premise for turning the key backwards for a fresh institution of the prosecution, whatever be the result of the analysis made by the Central Food Laboratory. (Para 24)

It is also not possible to countenance the contention based on Section 216(5) CrPC. What is intended by that provision is that a prosecution, which requires previous sanction, cannot be started without such sanction even by way of amending the charge midway the trial. If the amended charge includes a new offence for which previous sanction is necessary then prosecution for such new offence cannot be started without such sanction. However, the second limb of the sub-section makes it clear that if sanction was already obtained for prosecution on the same facts as those on which the new or altered charge is founded then no fresh sanction is necessary. (Para 26)

The facts on which prosecution is founded under the Act were broadly that the accused had sold adulterated toor dal to the Food Inspector. Variation regarding the reasons or the data by which two different analysts had reached the conclusion that the sample is adulterated is not sufficient to hold that the basic facts on which the prosecution is founded, have been altered. Hence Section 216(5) of the Code would not improve the position of the accused for the purpose of obtaining fresh consent on the facts of this case. (Para 27)

It must, therefore, be held that if the prosecution has been validly instituted, neither any new data nor any added reasons contained in the certificate issued by the Director of the Central Food Laboratory would be sufficient to annul the sanction already obtained with which the prosecution was already instituted. The trial has to proceed with the certificate on record which superseded the report of the Public Analyst. (Para 28). *Food Inspector, Ernakulam* v. *P.S. Sreenivasa Shenoy*, (2000) 6 SCC 348: 2000 SCC (Cri) 1116: AIR 2000 SC 2577: 2000 Cri LJ 3498.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 19-7-2000]

State of Bombay v. Parshottam Kanaiyalal, AIR 1961 SC 1: (1961) 1 Cri LJ 170; A.K. Roy v. State of Punjab, (1986) 4 SCC 326: 1986 SCC (Cri) 443, relied on

State of Gujarat v. Ambalal Maganlal, (1978) 2 FAC 53 (Guj) (DB); Prahladbhai Ambalal Patel v. State of Gujarat, (1984) 2 FAC 27: 1984 Cri LJ 1642 (Guj) (FB), approved

Rattan Lal v. State of H.P., (1989) 2 FAC 190 (HP) (FB); S.M. Anwar & Co. v. State of W.B., 1994 FAJ 592 (Cal), overruled

Sreenivasa Shenoy v. Food Inspector, (1999) 1 KLT 17, reversed

— S. 217 *See* Ss. 211 to 224
See also Ss. 216, 217 and 465

— S. 218 *See also* S. 233, Criminal Procedure Code, 1898, pp. 1104 et seq. in Vol. 2

— S. 218 *See* Ss. 211 to 224
See also Ss. 221, 215 and 218
See also Ss. 221, 218 and 215
See also Ss. 221 & 218 and 215 & 464
See also Ss. 386(b), 374(2) and 218
See also Ss. 464, 218 and 211(4)
See also Ss. 464, 218 and 223
See also Ss. 464, 218 and 228

[2677] **— S. 218 — Omission to frame an independent charge** — *Appellant and two others charged under Ss. 302 and 201 r/w S. 34 IPC but the two accused acquitted of the charge under Ss. 302/34 IPC — Held, accused could be convicted under S. 302 IPC simpliciter even in absence of an independent charge*

If, from the evidence, it is established that any one of the accused charged under Ss. 302/34 have committed the crime individually, though the other accused were acquitted, even without any independent charge under S. 302, the individual accused would be convicted under S. 302, IPC simpliciter. The omission to frame an independent charge under S. 302, IPC does not vitiate the conviction and sentence under it. (Para 10). *Kishore Chand* v. *State of H.P.*, (1991) 1 SCC 286: 1991 SCC (Cri) 172: AIR 1990 SC 2140: 1990 Cri LJ 2289.

Bench Strength 2. Coram: *P.B. Sawant* and **K. Ramaswamy**, JJ. [Date of decision: 29-8-1990]

[2678] — Ss. 218, 464 and 465 — Misjoinder of charges — Separate charge and trial for each distinct offence not done — *It is an irregularity, not an illegality and is curable under Ss. 464 and 465, provided no failure of justice is occasioned thereby — Relevant factors of ascertaining whether any failure of justice had occasioned, stated*

It is true that Section 218 CrPC prescribes that for every distinct offence there shall be a separate charge and every charge shall be tried separately. Chapter XVII of the Code deals with the charge. Section 218 is under the heading — "Joinder of charges". Therefore, if joinder of charges is in contravention of procedure prescribed under Section 218, it would be misjoinder of charges which is not an illegality but an irregularity curable under Section 464 or Section 465 CrPC provided no failure of justice had occasioned thereby. To ascertain that it is the duty of the court to see whether an accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. (Paras 44 and 50)

In the present case the accused was represented by a very senior and able criminal lawyer. All the prosecution witnesses were subjected to incisive cross-examination. The accused put up 49 defence witnesses. In his cross-examination under Section 313 altogether 445 questions were put to him, affording an opportunity to explain all the circumstances appearing against him. Having regard to these facts, no failure of justice had occasioned. (Para 51). *Kamalanantha* v. *State of T.N.*, (2005) 5 SCC 194: 2005 SCC (Cri) 1121: AIR 2005 SC 2132.

Bench Strength **2**. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 5-4-2005]

Willie (William) Slaney v. State of M.P., (1955) 2 SCR 1140: AIR 1956 SC 116: 1956 Cri LJ 291, distinguished

Birichh Bhuian v. State of Bihar, 1963 Supp (2) SCR 328: (1963) 2 Cri LJ 190: AIR 1963 SC 1120; State of A.P. v. Cheemalapati Ganeswara Rao, (1964) 3 SCR 297: AIR 1963 SC 1850: (1963) 2 Cri LJ 671; R. v. Dawson, (1960) 1 All ER 558: (1960) 1 WLR 163 (CCA); State of W.B. v. Laisal Haque, (1989) 3 SCC 166: 1989 SCC (Cri) 513, relied on

[2679] — S. 218 — Charge of conspiracy to commit an offence — Followed by a substantive charge in respect of said offence — Conspiracy not established — Effect of — *Held, accused can be convicted in respect of substantive offence even if he is acquitted of the charge of conspiracy — Prevention of Corruption Act, 1988, S. 7 and S. 13(1)(d) r/w S. 13(2) — Penal Code, 1860, S. 120-B* (Para 5). *T. Shankar Prasad* v. *State of A.P.*, (2004) 3 SCC 753: 2004 SCC (Cri) 870: AIR 2004 SC 1242: (2004) 164 ELT 143: 2004 Cri LJ 884.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-1-2004]

Madan Lal v. State of Punjab, AIR 1967 SC 1590: 1967 Cri LJ 1401, followed

[2680] — S. 218 — Conviction under S. 306 IPC on the basis of presumption under S. 113-A of Evidence Act, 1872, while charge was framed under S. 302 IPC — Legality — *Held valid In absence of prejudice to the accused. Lakhjit Singh* v. *State of Punjab*, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 31-3-1993]

See also Dalbir Singh v. State of U.P., (2004) 5 SCC 334

[2681] — S. 218 — Joinder of charges — *Joint trial for offences of kidnapping and murder under the Penal Code along with offence under S. 25 of Arms Act read with S. 5 of TADA for illegal possession of country-made pistol and a cartridge — No charge that the accused used the pistol for committing the offence of kidnapping or murder — Held, joint trial was illegal and caused prejudice to the accused — Hence conviction for offence under S. 25 of Arms Act read with S. 5, TADA, set aside — Further, conviction under S. 25 of Arms Act must also fail for want of sanction under S. 39 of the Arms Act — Arms Act, 1959, Ss. 25, 27 and 39 — TADA, 1987, S. 5. Vijender* v. *State of Delhi*, (1997) 6 SCC 171: 1997 SCC (Cri) 857.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *B.N. Kirpal*, JJ. [Date of decision: 12-2-1997]

[2682] — Ss. 218 and 220 — Circumstantial evidence — Commission of rape and murder in a single incident — Whether charge of murder automatically falls if rape not proved — *Held, there was ample evidence of murder irrespective of charge of rape — Penal Code, 1860, Ss. 302 and 376*

It is a rather broad argument that the primary allegations were of rape whereas murder was a secondary issue in the facts of the case and that the proof of murder would depend on proof of rape. The records show that there is very substantial evidence with regard to the allegations of murder simpliciter. (Paras 49 to 51). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

[2683] — S. 218 proviso — Applicability — Held, applies only in such a case where the distinct offences for which the accused is charged are being tried before the same Magistrate — *In the instant case, offences were being tried before different Magistrates — Thus, proviso to S. 218, held, cannot give any single Magistrate the power to order transfer of cases to him from different Magistrates or courts* (Para 6). *State of Punjab* v. *Rajesh Syal*, (2002) 8 SCC 158: 2002 SCC (Cri) 1867: AIR 2002 SC 3687.

Bench Strength 3. Coram: *B.N. Kirpal, K.G. Balakrishnan* and *Arijit Pasayat*, JJ. [Date of decision: 4-10-2002]

— **S. 219** *See also* S. 234, Criminal Procedure Code, 1898, pp. 1107 et seq. in Vol. 2

— **S. 219** *See* Ss. 211 to 224
See also Ss. 227, 228 and 219

[2684] — S. 219(2) — Offence under CRPF Act committed by member of Force while not on active duty — *Accused charged with, and tried at one trial — Same quantum of punishment provided for all the charges — Held, there was no mistrial — Central Reserve Police Force Act, 1949, S. 9(e) to (l) read with S. 10(p). Union of India* v. *G. Soman Pillai*, 1998 SCC (Cri) 249.

Bench Strength 2. Coram: *G.N. Ray* and *B.L. Hansaria*, JJ. [Date of decision: 3-12-1996]

— **S. 220** *See also* S. 235, Criminal Procedure Code, 1898, pp. 1109 et seq. in Vol. 2

— **S. 220** *See* Ss. 197, 220, 221, 227, 239 and 245
See also Ss. 211 to 224
See also Ss. 215, 173, 220 and 228
See also Ss. 223 and 220
See also Ss. 482, 407 and 220

[2685] — S. 220 — Applicability — Where, in one series of acts so connected together as to form the same transaction, more than one offence is committed, held, there could be a joint trial (Para 6). *State of Punjab* v. *Rajesh Syal*, (2002) 8 SCC 158: 2002 SCC (Cri) 1867: AIR 2002 SC 3687.

Bench Strength 3. Coram: *B.N. Kirpal, K.G. Balakrishnan* and *Arijit Pasayat*, JJ. [Date of decision: 4-10-2002]

[2686] — S. 220 — "Same transaction" — Whether series of acts are so connected together as to form the same transaction — *Held, is a question of fact to be determined in the circumstances of the case having regard to the factors such as proximity of time and place and continuity of action and purpose or design — Where complaint filed before Magistrate at Bhagalpur, Bihar alleging commission of offence under Ss. 304-B/34 IPC by accused at Azamgarh, U.P. by narrating the chain of events starting from the date of marriage of the deceased with the accused, date on which complainant received telephonic message that deceased received burn injuries and ultimately the date of her death at Azamgarh, held, Magistrate at Bhagalpur cannot be said to have lacked jurisdiction to try the case as the chain of events constituted the same transaction*

The father of the deceased filed an FIR at police station in Bhagalpur, Bihar pursuant to which police registered a case under Sections 304-B/34/406 IPC. He also filed a complaint at police station in Bhagalpur against deceased's husband *B* and four others alleging commission of offence under Sections 304-B, 498-A, 120-B and 406 IPC. In the complaint petition he narrated the chain of events starting from 9-6-1994, the date on which his daughter was married to *B* till 12-6-1997, the date on which he received the message that his daughter had received burn injuries, and who ultimately died on 20-6-1997. The police on completion of investigation filed the charge-sheet on 3-4-1999. Immediately after filing of the charge-sheet and before the Magistrate took up the matter and passed any order in the criminal proceeding, the accused persons approached the High Court, assailing the territorial jurisdiction of the Magistrate at Bhagalpur to try the offence under Section 304-B IPC. It was contended that under Section 177 of the Code of Criminal Procedure, an offence could be enquired into and tried by the Court in whose local jurisdiction it was committed and consequently on the basis of allegations made in the FIR as well as the complaint filed, the incident constituting the alleged offence under Section 304-B being at Jahanaganj (Azamgarh) in the State of Uttar Pradesh, the Magistrate at Bhagalpur in the State of Bihar will have no territorial jurisdiction to try the offence. The Single Judge of the High Court, while rejecting the contention based on Section 177, relied on Section 220 CrPC and considering narration of events culminating in death of the deceased which constituted offence under Section 304-B IPC, came to the conclusion that there was a continuity of action to attract Section 220(1), and therefore, it cannot be said that the jurisdiction of the Magistrate at Bhagalpur was ousted to try the offence under Section 304-B. The High Court also casually observed that the assertions made prima facie constituted an offence under Section 498-A and since the accused had approached the Court even before the Magistrate had applied his mind to the result of the investigation on the basis of the allegations made by the informant/complainant, it would not be appropriate to express any definite opinion on the same. On behalf of the accused it was argued that from the tenor of the impugned judgment, it could well be imagined that the judgment was rather a strained one and had been passed in view of the earlier directions and the incident constituting the offence under Section 304-B could not be held to be one falling under Section 220 of the Code of Criminal Procedure, so as to be tried along with the offence under Section 406 at Bhagalpur. Rejecting the contentions of the appellant and dismissing the appeal,

Held :

The expression "same transaction" from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria. (Para 4)

Bearing in mind the aforesaid principles and on scrutiny of the narration of events in the FIR as well as the complaint, it must be held that there is no infirmity in the conclusion of the High Court in applying Section 220 of the Criminal Procedure Code to the case in hand and in coming to the conclusion that the jurisdiction of the Magistrate at Bhagalpur cannot be held to have been ousted for the offence under Section 304-B IPC. (Para 4). *Mohan Baitha* v. *State of Bihar*, (2001) 4 SCC 350: 2001 SCC (Cri) 710: AIR 2001 SC 1490.

Bench Strength 2. Coram: **G.B. Pattanaik** and *B.N. Agrawal*, JJ. [Date of decision: 21-3-2001]

[2687] — S. 220 — Single offence or separate offences — *Finance companies accepting deposits from a large number of persons but not repaying the same — Criminal cases filed by depositors at different places in different States — In such cases, since parties were different, amount of deposit and the period for which the deposit was accepted, were also different, held, each individual deposit agreement constituted an independent transaction*

As regards the issue of a single offence, the writ petitioners' contention cannot be accepted. Each individual deposit agreement shall have to be treated as a separate and individual transaction brought about by the allurement of the financial companies, since the parties are different, the amount of deposit is different as also the period for which the deposit was effected. It has all the characteristics of independent transactions. (Para 60). *Narinderjit Singh Sahni* v. *Union of India*, (2002) 2 SCC 210: AIR 2001 SC 3810.

Bench Strength 3. Coram: *G.B. Pattanaik*, **U.C. Banerjee** and *S.N. Variava*, JJ. [Date of decision: 12-10-2001]

[2688] — S. 220 — Trial for more than one offence — Different offences committed in a series of acts constituting one transaction — *Held, S. 220 is an enabling provision and no illegality is committed where court chooses to try the offences separately — Arms Act, 1959, S. 25 — Penal Code, 1860, Ss. 399 and 402 — Terrorist and Disruptive Activities (Prevention) Act, 1987 — Ss. 5 and 3. Mohinder Singh* v. *State of Punjab*, (1998) 7 SCC 390: 1998 SCC (Cri) 1638: AIR 1999 SC 211.

Bench Strength 2. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 24-9-1998]

[2689] — S. 220 — Applicability — Simultaneous conviction under Ss. 7 and 13(1)(d), Prevention of Corruption Act, 1988, held, is permissible — Principles under S. 71 IPC and S. 220 CrPC, applied — *Penal Code, 1860, S. 71 — Prevention of Corruption Act, 1988, Ss. 7 and 13(1)(d)*

The sentences of imprisonment in the present case shall be six months under Section 7 and one year under Section 13(2) of the Act, both the sentences to run concurrently. So far as the levy of fine in addition made by the learned trial Judge with a default clause on two separate counts are concerned, they shall remain unaffected and are hereby confirmed. (Para 14). *State* v. *A. Parthiban*, (2006) 11 SCC 473: 2006 Cri LJ 4772.

Bench Strength 2. Coram: **Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 9-10-2006]

[2690] — S. 220(3) — Simultaneous prosecution for two offences — *Act of accused in the same transaction constituting more than one offence — Accused-appellant firing at deceased and PW, causing death of the former and injuries to the latter — Act of firing at PW constituting offence under S. 307 IPC while act of firing at the deceased constituting offence under S. 302 IPC as well as under S. 27(3) of Arms Act — Held, in view of specific provi-*

sions of S. 220(3), the accused can be tried simultaneously for offences under S. 302 IPC as well as S. 27(3) of Arms Act (Para 11). *Surendra Singh Rautela* v. *State of Bihar,* (2002) 1 SCC 266: 2002 SCC (Cri) 165: AIR 2002 SC 260: 2002 Cri LJ 555.

Bench Strength 2. Coram: *M.B. Shah* and **B.N. Agrawal**, JJ. [Date of decision: 27-11-2001]

— S. 221 *See also* Ss. 236 and 237, Criminal Procedure Code, 1898, pp. 1110 et seq. in Vol. 2

— S. 221 *See* Ss. 197, 220, 221, 227, 239 and 245

See also Ss. 211 to 224
See also Ss. 211, 215 and 221
See also Ss. 215, 221 and 464
See also Ss. 227, 228, 216 and 221
See also Ss. 464, 216, 221 and 215
See also Ss. 464(1) and 222, 221

[2691] — S. 221 — Applicability — Condition for

The primary condition for application of Section 221 of the Code is that the court should have felt doubt, at the time of framing the charge, as to which of the several acts (which may be proved) will constitute the offence on account of the nature of the acts or series of acts alleged against the accused. In such a case the section permits to convict the accused of the offence which he is shown to have committed though he was not charged with it. But in the nature of the acts alleged by the prosecution in this case there was absolutely no scope for any doubt regarding the offence under Section 302 IPC, at least at the time of framing the charge. (Para 14). *Shamnsaheb M. Multtani* v. *State of Karnataka*, (2001) 2 SCC 577: 2001 SCC (Cri) 358: AIR 2001 SC 921.

Bench Strength 3. Coram: **K.T. Thomas**, *R.P. Sethi* and *B.N. Agrawal*, JJ. [Date of decision: 24-1-2001]

[2692] **— Ss. 221, 215 and 218 — Omission or defect in framing of charge** — *Held, accused may still be convicted for offence actually committed and proved on basis of evidence on record, so long as accused has not been misled by any error or omission in framing the charge and no failure of justice has been occasioned — Accused Respondent 1 being charged under S. 304-B IPC (dowry death) and alternatively under S. 498-A IPC — Statement of charges unambiguously stating that deceased had been subjected to such cruelty and harassment "as did drive her to commit suicide" — Trial court convicting Respondent 1 under S. 498-A IPC only — Held on facts, presumption under S. 113-A, Evidence Act could be raised and Respondent 1 could be convicted under S. 306 IPC as the case had all ingredients necessary for framing charge under that section — No need to remit the matter for retrial — Accused had had enough opportunity for defence — High Court ought to have allowed appeal of appellant parents of deceased — Respondent 1 sentenced to 5 years' RI and Rs 20,000 fine under S. 306 — Penal Code, 1860, Ss. 306, 304-B and 498-A — Evidence Act, 1872, S. 113-A*

The deceased, *K*, was married on 26-6-1988, to respondent-Accused 1, *S*, who worked as a Branch Postmaster in the village where the two lived. Dowry given at the marriage consisted of Rs 15,000 cash and jewellery worth Rs 15,000. Five acres of land and a house site were also given as a customary gift in the nature of stridhana, known as "*pasupukumkuma*", to the bride by her father for her maintenance. After *K* and Accused 1, *S*, had been married for about three or four months, *S* began demanding that *K* transfer the ownership of the land and house site to him. *K* refused and trouble between the two then began. *S* subjected *K* to harassment, including preventing delivery of letters from her father and sister to her, by taking advantage of his position in the village post office. At one point *K* got hold of the letters and gave them to her father. After this incident *K* was thrown out of the matrimonial home with a warning that she must return the letters. *K*, unable to bear her situation, consumed poison (an insecticide called *endosulphan*) on 22-10-1989, the day after she had been forced out of the house. PW 4 witnessed the scene when *K* was thrown out; *S* took her back when prevailed upon by PWs 3 and 4. PW 4 saw *S* taking *K* to hospital the next day. PW 4 informed the father of *K*, PW 1, who came immediately to the house and found that *K* was dead. PW 1 lodged an FIR within eight hours on the same day.

Accused 1 and his parents, Accused 2 and 3, were charged under Section 304-B IPC for causing the *dowry death* of *K* and in the alternative under Section 498-A IPC for cruelty and such harassment as to drive *K* to commit suicide.

The trial court convicted all the accused under Section 498-A IPC, acquitted them of the offence under Section 304-B, and sentenced them to 2 years' RI and fine of Rs 500 each.

A criminal revision petition was filed on behalf of the parents of the deceased against the acquittal of the accused under Section 304-B. The accused filed an appeal challenging their conviction. The revision petition was dismissed by the High Court and the judgment and order of the trial court confirmed in respect of Accused 1. The appeal of his parents was allowed and they were acquitted.

Before the Supreme Court, the State of A.P. filed a criminal appeal against the acquittal of the parents and the parents of the deceased filed criminal appeal praying for conviction of all three accused of the offence under Section 304-B.

Dismissing the State's appeal and allowing that of the parents of the deceased,

Held :

Mere omission or defect in framing the charge does not disable the criminal court from convicting the accused for the offence which is found to have been proved on the evidence on record. The Code of Criminal Procedure has ample provisions to meet a situation like the present one. From the statement of charge framed under Section 304-B and *in the alternative* Section 498-A IPC it is clear that all facts and ingredients for framing charge for offence under Section 306 IPC existed in the case. The mere omission on the part of the trial Judge to mention Section 306 IPC with Section 498-A IPC does not preclude the court from convicting the accused for the said offence when found proved. In the alternate charge framed under Section 498-A IPC, it has been clearly mentioned that the accused subjected the deceased to such cruelty and harassment as to drive her to commit suicide. The provisions of Section 221 CrPC take care of such a situation and safeguard the powers of the criminal court to convict an accused for an offence with which he is not charged although on facts found in evidence, he could have been charged for such an offence. (Para 22)

The provision of sub-section (2) of Section 221 read with sub-section (1) of the said section can be taken aid of in convicting and sentencing Accused 1 of offence of abetment of suicide under Section 306 IPC *along with or instead of Section 498-A IPC*. (Para 23)

Section 215 CrPc allows the criminal court to ignore any error in stating either the offence or the particulars required to be stated in the charge, if the accused was not, in fact, misled by such error or omission in framing the charge and it has not occasioned a failure of justice. As provided in Section 215 CrPC omission to frame charge under Section 306 IPC has not resulted in any failure of justice. There is no necessity to remit the matter to the trial court for framing charge under Section 306 IPC and direct a retrial for that charge. The accused cannot legitimately complain of any want of opportunity to defend the charge under Section 306 IPC and a consequent failure of justice. The same facts found in evidence, which justify conviction of the appellant under Section 498-A for cruel treatment of his wife, make out a case against him under Section 306 IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" under Section 304-B which is punishable with minimum sentence of seven years' rigorous imprisonment and maximum for life. Presumption under Section 113-A of the Evidence Act could also be raised against him on the same facts constituting the offence of cruelty under Section 498-A IPC. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet the charge under Section 498-A IPC. (Paras 24 and 25)

It is significant that against confirmation of his conviction by the High Court under Section 498-A IPC, Accused 1 has not preferred any special leave to appeal to this Court. The facts found proved for his conviction and sentence under Section 498-A IPC, cannot now be questioned by him. It is therefore concluded that the same facts and evidence on which Accused 1 was charged under Section 498-A and Section 304-B, the accused can be convicted and sentenced under Section 306 IPC. There is no legal or procedural impediment in doing so. (Para 26)

The legislature has by amending the Penal Code and the Evidence Act made penal law more strident for dealing with and punishing offences against married women. Such strident laws would have a deterrent effect on the offenders only if they are so stringently implemented by the law courts to achieve the legislative intent. On the facts found and the offence proved to have been committed leading to suicidal death of the wife, imprisonment of two years with fine of Rs 500 is too light a sentence. For offence under Section 306 IPC the sentence may extend to ten years. In this case the husband is found to have harassed his wife to such an extent as to drive her to commit suicide. Sentence of five years would in our opinion, be a proper sentence for the crime with the amount of fine increased to Rs 20,000 to be paid as compensation to the parents of the deceased. On non-payment of fine Accused 1 shall suffer further sentence of one year. (Para 27)

Thus Criminal Appeal No. 1457 of 1995 preferred by the parents of the deceased is allowed and the conviction and sentence of Accused 1 under Section 498-A IPC is maintained. Respondent-Accused 1 is also convicted under Section 306 IPC and sentenced to five years' rigorous imprisonment with a fine of Rs 20,000 to be paid as compensation to the parents of the deceased. In the event of non-payment of fine, Accused 1 shall suffer imprisonment for a further period of one year. The sentences imposed under Section 498-A IPC and under Section 306 IPC shall run concurrently. (Para 28). *K. Prema S. Rao* v. *Yadla Srinivasa Rao*, (2003) 1 SCC 217: 2003 SCC (Cri) 271: AIR 2003 SC 11: 2003 Cri LJ 69.

Bench Strength 3. Coram: *M.B. Shah, K.G. Balakrishnan* and **D.M. Dharmadhikari**, JJ. [Date of decision: 25-10-2002]

[2693] — Ss. 221, 222 and 462 — Absence of specific charge — Conviction — Sustainability — *Held, in certain situations an accused can be convicted for an offence with which he may not have been specifically charged and that an error, omission or irregularity in the framing of charge is, by itself not sufficient for upsetting the conviction — Further held, appellate, confirming or revisional court can interfere in such matters only if it is shown that error, omission or irregularity in the framing of charge has caused prejudice to the accused and failure of justice has been occasioned* (Para 21). *Dinesh Seth* v. *State (NCT of Delhi)*, (2008) 14 SCC 94.

Bench Strength 2. Coram: *Altamas Kabir* and **G.S. Singhvi**, JJ. [Date of decision: 18-8-2008]

State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73: 1994 SCC (Cri) 107; Satpal v. State of Haryana, (1998) 5 SCC 687: 1998 SCC (Cri) 1372; Pyare Lal v. State of Haryana, (1997) 11 SCC 552: 1998 SCC (Cri) 197, relied on

Dinesh Seth v. State, 2003 Cri LJ 4532 (Del), affirmed

[2694] — Ss. 221, 222 and 464 — Absence of specific charge of the provision on which conviction based — Accused however charged with substance of the offence and trial proceeding on that basis — *Appellant charged under S. 304-B r/w S. 34, but convicted under S. 498-A — Submission by appellant that omission of the trial court to frame specific charge under S. 498-A IPC had prejudiced him or that failure of justice had been occasioned on that count — Specific charge levelled against the accused was that they had subjected the deceased to cruelty for or in connection with demand for dowry and she had died unnatural death within seven years of her marriage — Cross-examination of PWs also unmistakably showing that the defence had made concerted effort to discredit the testimony of mother, sisters and brother of the deceased in the context of allegation of cruelty — Besides, in his statement under S. 313 of the Code, the appellant denied the allegation that he had subjected his wife to cruelty — Held, it is thus evident that the appellant was not only aware of the charge of cruelty but he got and availed the opportunity to defend himself with reference to that charge — Hence, submission of prejudice rejected — Penal Code, 1860, Ss. 304-B/34 and S. 498-A* (Paras 6 and 10 to 22). *Dinesh Seth* v. *State (NCT of Delhi)*, (2008) 14 SCC 94.

Bench Strength 2. Coram: *Altamas Kabir* and **G.S. Singhvi**, JJ. [Date of decision: 18-8-2008]

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116; Gurbachan Singh v. State of Punjab, AIR 1957 SC 623; Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235; Dalbir Singh v. State of U.P., (2004) 5 SCC 334: 2004 SCC (Cri) 1592, relied on

Sangaraboina Sreenu v. State of A.P., (1997) 5 SCC 348: 1997 SCC (Cri) 690, held, overruled

[2695] — Ss. 221 & 218 and 215 & 464 — Misjoinder of charges — Not made out when on the inference to be deduced from facts if proved it is not clear what offences they will constitute — *Ss. 215 and 464, held, also applicable on facts — Penal Code, 1860, Ss. 302/149 and 302 simpliciter*

The accused 16 persons including one *LH* along with 26 other persons (later acquitted) were charged for rioting, causing death and hurt under Ss. 147, 302 and 324 both read with S. 149. *LH* was separately charged under S. 302 simpliciter for having caused the death of the sole deceased *G*. The Sessions Court convicted the various accused under Ss. 143, 324/249 and 147 and *LH* under S. 148 as well as S. 302 and acquitted the remaining 26 accused.

On appeal the High Court ordered a retrial on the ground that material defect in the framing of the charges had occasioned failure of justice. Mistrial was founded on the grounds that: (1) While all the rioters including *LH* had been charged under Ss. 149/302, *LH* alone had also been separately charged under S. 302 simpliciter 'without making that charge as an alternative charge' (2) the charge was a 'rolled up charge' in that the common object was to murder *G* and 'injure others'. The use of 'injure others' without specifically mentioning the injured persons made the charge vague and indefinite, and (3) the evidence had not been discussed separately under different heads of the charges framed against each of the accused persons. Hence the order for retrial. Allowing the appeal by the State and the complainant

Held :

There was no fundamental defect in the framing of the charges. It is covered by S. 221, CrPC which is an exception to S. 218. The situation is also covered by S. 215 and S. 464.

Section 221 is an exception to S. 218 of the Code viz. that for every distinct offence there should be a separate charge and every charge should be tried separately. Section 221 applies to a case only when from the evidence led by the prosecution it is doubtful which of several offences has been committed by the accused person. There must not be any doubt as to 'a single act or series of acts' which constitutes the transaction, that is to say, there must not be any doubt as to the facts. The doubt must be as to the inference to be deduced from these facts, thus making it 'doubtful' which of several offences the facts which can be proved will constitute.

In the present case the facts are uncontroverted and there is no doubt regarding them. On a careful consideration of the evidence adduced and the circumstances the Sessions Court came to definitive findings regarding 16 of the 42 put on trial and in particular the role of *LH* and convicted them accordingly.

On these facts there was complete non-application of mind on the part of the High Court and instead of considering the appeals preferred by the respondents, it has passed an order for retrial which is totally unwarranted. It was nobody's case that the accused were, in fact, misled by any error or defect in the charges framed nor has the High Court explained as to how there has been a failure of justice. The High Court was clearly in error in directing a remand for retrial of the respondents. There is no material on record on which the High Court could have reached the conclusion that the accused had been misled by any error or omission in the charge or there was failure of justice. The present case meets the test of prejudice laid down in *Slaney's case*.

Nor has the High Court examined the merits of the case at all. If it had done so, it could not have come to the conclusion that there was any material defect or omission in the framing of the charges or giving the particulars thereof or any failure of justice was occasioned thereby. *State of W.B.* v. *Laisal Haque*, (1989) 3 SCC 166: 1989 SCC (Cri) 513: AIR 1989 SC 129: 1989 Cri LJ 865.

Bench Strength 2. Coram: **A.P. Sen** and *L.M. Sharma*, JJ. [Date of decision: 12-9-1988]

[2696] — Ss. 221, 218 and 215 — Absence of charge under S. 306 — Conviction thereunder — *Held, permissible where sufficient material available on record to convict the accused — Penal Code, 1860, Ss. 306, 498-A and 304-B — Evidence Act, 1872, S. 113-A*

Though no charge was framed under Section 306 IPC, that is inconsequential. On the facts of the case, even though it is difficult to sustain the conviction under Section 304-B IPC, there is sufficient material to convict the accused-appellants in terms of Section 306 IPC along with Section 498-A IPC. (Paras 15, 16 and 17). *Hira Lal* v. *State (Govt. of NCT of Delhi)*, (2003) 8 SCC 80: 2003 SCC (Cri) 2016: AIR 2003 SC 2865: (2003) 105 DLT 705: 2003 Cri LJ 3711.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 25-7-2003]

K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217: 2003 SCC (Cri) 271, followed

[2697] — Ss. 221, 218 and 215 — Suicide — Dowry death — Charges framed under Ss. 304-B and 498-A — Absence of charge under S. 306 — Effect — *Held, inconsequential — On facts, father-in-law convicted under Ss. 498-A and 304-B, whereas mother-in-law convicted under S. 498-A but acquitted under S. 304-B — Penal Code, 1860, Ss. 306, 304-B and 498-A* (Paras 11, 9, 10 and 12). *Kaliyaperumal* v. *State of T.N.*, (2004) 9 SCC 157: 2004 SCC (Cri) 1417: AIR 2003 SC 3828: 2003 Cri LJ 4321.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-8-2003]

K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217: 2003 SCC (Cri) 271, followed

[2698] — Ss. 221 and 222— Conviction under S. 201 IPC despite acquittal under S. 302 IPC — Held, is permissible — *But, in the present matter where the conviction of the appellant under S. 302 IPC was set aside, no case under S. 201 IPC was made out against him — Penal Code, 1860, Ss. 201 and 302* (Paras 16, 22 and 23). *Sukhram* v. *State of Maharashtra*, (2007) 7 SCC 502: (2007) 3 SCC (Cri) 426: AIR 2007 SC 3050: (2007) 57 AIC 90 (SC).

Bench Strength 2. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 17-8-2007]

Kalawati v. State of H.P., AIR 1953 SC 131: 1953 Cri LJ 668, relied on

[2699] — Ss. 221 and 374(1) — Conviction under S. 109 IPC when no charge framed — Abetment — Held, is a distinct offence for which a charge must be framed — *Where appellant was charged and convicted along with others for offences under Ss. 302/49 IPC, held, High Court in appeal erred in convicting appellant for the offence under S. 302 IPC read with S. 109 — Such an error committed by High Court necessitates appellant's acquittal — Penal Code, 1860, S. 109*

Allowing the appeal,

Held :

The appellant having faced trial for being a member of an unlawful assembly which achieved the common object of killing the deceased, could in no event be substitutedly convicted for offence under Section 302 IPC with the aid of Section 109 IPC. There was obviously thus not only a legal flaw but also a great prejudice to the appellant in projecting his defence. He, on such error committed by the High Court, has rightly earned his acquittal. (Para 2). *Wakil Yadav* v. *State of Bihar*, (2000) 10 SCC 500: 2001 SCC (Cri) 1499: 1999 Cri LJ 5000.

Bench Strength **2**. Coram: *M.M. Punchhi* and *S.P. Kurdukar*, JJ. [Date of decision: 31-7-1997]

Joseph Kurian v. State of Kerala, (1994) 6 SCC 535: 1995 SCC (Cri) 20, followed

[2700] — Ss. 221 and 464(1) — Framing of charge — Omission/defect in — When material — *Held, mere omission or defect in framing charge would not disable court from convicting accused for offence which has been found to be proved on basis of evidence on record — In such circumstances, matter would fall within purview of S. 221 CrPC — In instant case of bride committing suicide, there was no failure of justice, when High Court, on close scrutiny of evidence, converted conviction of appellant-accused (husband of deceased) under S. 304-B IPC to one under S. 306 IPC, even though specific charge had not been framed under S. 306 IPC — Penal Code, 1860, Ss. 304-B and 306* (Paras 22 and 23). *Narwinder Singh* v. *State of Punjab*, (2011) 2 SCC 47.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 5-1-2011]

Sangaraboina Sreenu v. State of A.P., (1997) 5 SCC 348: 1997 SCC (Cri) 690; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, distinguished

Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235; Town Investments Ltd. v. Deptt. of the Environment, 1978 AC 359: (1977) 2 WLR 450: (1977) 1 All ER 813 (HL), cited

[2701] — S. 221(1) — Attracted only where offence would fall under either of the alternative charges and not where offence would fall under both the charges — *CrPC, 1898, Ss. 236 and 237(1). V.K. Agarwal, Asstt. Collector of Customs* v. *Vasantraj Bhagwanji Bhatia*, (1988) 3 SCC 467: 1988 SCC (Cri) 679: AIR 1988 SC 1106: (1988) 16 ECC 164: (1988) 64 Comp Cas 664.

Bench Strength **2**. Coram: **M.P. Thakkar** and *K.N. Singh*, JJ. [Date of decision: 7-4-1988]

[2702] — S. 221(2) — Absence of charge under S. 34 IPC — Conviction with the aid of S. 34 IPC — Legality — *Accused persons charged only in respect of offences under S. 302 and S. 302 r/w S. 120-B IPC — Common intention established on facts — Held, accused could be convicted under S. 302 by applying S. 34 — Penal Code, 1860, S. 34* (Paras 10 and 11). *State of A.P.* v. *K. Srinivasulu Reddy*, (2003) 12 SCC 660: AIR 2004 SC 3305.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-12-2003]

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: 1956 Cri LJ 291; Dhanna v. State of M.P., (1996) 10 SCC 79: 1996 SCC (Cri) 1192, followed

— S. 222 *See also* S. 238, Criminal Procedure Code, 1898, p. 1113 in Vol. 2

— S. 222 *See* Ss. 211 to 224
See also Ss. 221 and 222
See also Ss. 221, 222 and 462
See also Ss. 221, 222 and 464
See also Ss. 464, 222, 215 and 216
See also Ss. 464(1) and 222, 221

[2703] — S. 222 — Conviction for lesser offence without being charged for the latter — Permissibility — *If court is satisfied that accused had not committed the offence with which he was charged but committed a less serious offence, then even though accused was not charged with that offence, he can be convicted therefor*

If the accused is charged for a higher offence and on the evidence led by the prosecution, the court finds that the accused has not committed that offence but is equally satisfied that he has committed a lesser offence, then he can be convicted for such lesser offence. Thus, if *A* is charged with an offence of committing murder of *B*, and the court finds that *A* has not committed murder as defined in Section 300 IPC but is convinced that *A* has committed an offence of culpable homicide not amounting to murder (as defined in Section 299 IPC), there is no bar on the court in convicting *A* for the said offence and no grievance can be made by *B* against such conviction. (Para 29). *Suman Sood* v. *State of Rajasthan*, (2007) 5 SCC 634: (2007) 2 SCC (Cri) 637: AIR 2007 SC 2774: 2007 Cri LJ 4080.

Bench Strength **2**. Coram: **C.K. Thakker** and *P.K. Balasubramanyan*, JJ. [Date of decision: 14-5-2007]

[2704] — S. 222 — When offence proved included in offence charged — Charge under latter set of sections but conviction under the former set — Permissibility — *A-3 charged of murder by resorting to extortion by engaging A-4 to put the property owner in fear of injury unless the property owner delivered his valuable property to a third party by executing a release deed in favour of A-3 — Prosecution failing to prove the commission of major offence of murder but succeeding in proving the commission of minor offence under Ss. 384* *and 34 IPC — In such circumstances, A-3, held, guilty under Ss. 384 and 34 — Sentenced to two years' rigorous imprisonment with a fine of Rs 5000 — Penal Code, 1860, Ss. 384 & 34 and Ss. 302, 307, 120-B, 23 & 114*

In the present case, the prosecution has alleged that for completing the transaction of selling the property to *L*, A-3 procured the services of A-4 who is shown to have put *P* and his brothers in fear of injury with the object of dishonestly inducing them to deliver their valuable property to *L* by execution of releases deeds, which were for the immediate benefit of A-3. In other words A-3 was charged for the offence of murder by resorting to extortion. The offence of extortion is a lesser offence which, under the circumstances of the case, was so connected with the main transaction that no failure of justice can be caused if A-3 is convicted and sentenced for the said offence. The offence with which A-3 was charged consisted of several particulars, the combination of some of those particulars constitute a complete minor offence of extortion. The offence of extortion in the context of the facts of the case has all the ingredients connected with the major offence. Respondent 3 was charged for an offence consisting of several particulars which the prosecution failed to prove so far as the major offence is concerned but succeeded in showing the commission of the minor offence punishable under Section 384 read with Section 34 IPC as it is proved that A-3 intentionally put *P* and his brothers in fear of injury and availing the services of A-4 dishonestly induced in them fear to deliver their valuable property. A-3 though not as a conspirator but sharing common intention with A-4 committed the offence of extortion. He is therefore, guilty of the offence of extortion, punishable under Section 384 read with Section 34 IPC. He is sentenced to rigorous imprisonment for two years with fine of Rs 5000. (Paras 57 and 64). *State of Maharashtra* v. *Bharat Chaganlal Raghani*, (2001) 9 SCC 1: AIR 2002 SC 409.

Bench Strength 2. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 11-7-2001]

Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235, followed

See also Dalbir Singh v. State of U.P., (2004) 5 SCC 334

[2705] — S. 222 — Where accused acquitted of offence of higher degree, held, he may still be convicted for lesser offence depending on actual evidence on record (Para 25). *K. Prema S. Rao* v. *Yadla Srinivasa Rao*, (2003) 1 SCC 217: 2003 SCC (Cri) 271: AIR 2003 SC 11: 2003 Cri LJ 69.

Bench Strength 3. Coram: *M.B. Shah, K.G. Balakrishnan* and **D.M. Dharmadhikari**, JJ. [Date of decision: 25-10-2002]

[2706] — S. 222 — Sharp-edged weapon used — Death caused by stab injuries inflicted by knife while the co-accused had caught hold of the victim — *On facts, though common intention to cause death doubtful an intention to cause grievous hurt, held, clear — Conviction altered to that under Ss. 326/34, IPC though originally charged under Ss. 302/149 and Ss. 307/149, IPC — No prejudice caused by such alteration — CrPC, 1898, S. 238. State of U.P.* v. *Ram Kishun*, (1976) 3 SCC 449: 1976 SCC (Cri) 443: AIR 1976 SC 2016: (1976) 3 SCR 379: 1976 Cri LJ 1559.

Bench Strength 2. Coram: *P.N. Bhagwati* and **P.K. Goswami**, JJ. [Date of decision: 13-2-1976]

[2707] — S. 222 — Appellant acquitted of the offence under Ss. 302/120-B — Whether her conviction under Ss. 302/34 proper — *In view of specific finding that circumstantial evidence was not sufficient for her conviction under Ss. 302/34 question not decided — Penal Code, 1860, Ss. 302/120-B and 302/34. Tanviben Pankajkumar Divetia* v. *State of Gujarat*, (1997) 7 SCC 156: 1997 SCC (Cri) 1004: AIR 1997 SC 2193: 1997 Cri LJ 2535: (1997) 1 Guj LH 851: (1997) 2 Guj LR 1346.

Bench Strength 2. Coram: **G.N. Ray** and *G.T. Nanavati*, JJ. [Date of decision: 6-5-1997]

[2708] — S. 222 — Applicability of — Conviction where major offence not proved, but minor offence in respect of which no charge was framed is established — *Accused charged only under Ss. 376/511 IPC — Said offence not made out — However, ingredients of minor offences under Ss. 366 and 354 IPC present — Held, accused could be convicted under Ss. 366 and 354 IPC by invoking S. 222 CrPC — Penal Code, 1860 — Ss. 376/511, 366 and 354 — Charge framed under Ss. 376/511, but convicted under Ss. 366 and 354*

In the instant case, the accused has been charged with Sections 376/511 IPC only. But, the offence committed does not come within the purview of offence punishable under Sections 376/511 IPC. In the absence of charge under any other section, the question now arises — whether the accused should be acquitted; or whether he should be convicted for committing any other offence pertaining to forcibly outraging the modesty of a girl. In a situation like this, Section 222 CrPC would be invoked which provides that in a case where the accused is charged with a major offence and the said charge is not proved, the accused may be convicted of the minor offence, though he was not charged with it. (Paras 23 and 36)

In the present case, the offence committed squarely covers the ingredients of Sections 366 and 354 IPC. The appellant is clearly guilty of the offences under Sections 366 and 354 IPC. (Paras 36 and 59). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength 2. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, relied on

[2709] — Ss. 222 and 216 — Absence of charge under S. 325 IPC in murder trial — Effect — Conviction under S. 325, if sustainable — *High Court finding that appellant may or may not have given the fatal blow on head of deceased and that his conviction under S. 302 IPC recorded by trial court was incorrect — Having found so, held, High Court erred in taking the view that appellant could be convicted under S. 325 and sentenced to four years' RI when there was no charge thereunder — Introduction of S. 325 IPC by High Court cannot be justified merely on ground that there was a scuffle and deceased sustained head injury — Penal Code, 1860, S. 325* (Paras 5 to 7). *Ravinder Kumar* v. *State of H.P.*, (2009) 16 SCC 354.

Bench Strength 2. Coram: *U.C. Banerjee* and *B.N. Agrawal*, JJ. [Date of decision: 10-10-2002]

[2710] — Ss. 222 and 216 — Conviction for offence which necessarily forms a part of offence for which acquittal is recorded — Impermissibility — *Acquittal under S. 148, but conviction under S. 302 r/w S. 149, in absence of charge S. 302 r/w S. 149 — Sustainability — Held, where appellants had been expressly charged under S. 148 but acquitted thereunder, they cannot legally be convicted under S. 302 r/w S. 149 because offence of rioting must occur where members are charged with murder as common object of unlawful assembly — S. 148 creates liability on persons armed with deadly weapons and is a distinct offence and it is not required that members of unlawful assembly should also be charged under S. 148 for convicting them under S. 302 r/w S. 149 — However, when accused is charged under S. 148 and acquitted, his conviction under S. 302 r/w S. 149 cannot be recorded — Penal Code, 1860, S. 148 and S. 302 r/w S. 149* (Paras 33 to 36). *Mohd. Ankoos* v. *High Court of A.P.*, (2010) 1 SCC 94.

Bench Strength 2. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 6-11-2009]

Mahadev Sharma v. State of Bihar, AIR 1966 SC 302: 1966 Cri LJ 197: (1966) 1 SCR 18, followed

[2711] — Ss. 222 and 216 — When offence proved included in offence charged — Conviction for — *Held, a court can convert a case from major offence to minor offence, if a case for conviction under such minor offence is made out and even though he was not charged therewith — In the instant case, though charge-sheet was submitted against Appellants 1, 2 (parents of Appellant 3) and also 3 under S. 363 IPC by the police but trial court framed charges only under S. 366-A and S. 372 r/w S. 511 IPC — In appeal filed against acquittal of appellants, High Court convicting them under S. 366-A and S. 372 r/w S. 511 IPC — Ingredients of S. 363 IPC involve an act of kidnapping of any person from the lawful guardianship — S. 366-A IPC also envisages similar act of kidnapping but with the intention of committing sexual intercourse — S. 366-A IPC is a major offence whereas S. 363 IPC is a minor offence — So far as Appellants 1 and 2 are concerned no evidence was led to prove that they had any role in the kidnapping — On the other hand, testimony of prosecutrix showed that it was Appellant 3 who kept the prosecutrix confined at a place away from home for 39 long days knowing that she was a minor — But no reliable or cogent evidence led to prove that prosecutrix was kidnapped by accused persons with the intention of making her have sexual intercourse with them or with any other person, or with the intention of selling her for prostitution — No reason for prosecutrix to falsely implicate Appellant 3 — Held, in such circumstances, Appellant 3 liable to be convicted under S. 363 IPC, while Appellants 1 and 2 acquitted of all charges — Since appellants were charged under S. 366-A they knew they had to defend themselves against allegations of taking away a minor out of lawful guardianship — Appellant 3 could be convicted under S. 363, in absence of any specific charge framed thereunder — Considering the fact that incident had occurred 15 years ago, Appellant 3 sentenced to 3 years' RI — Penal Code, 1860, Ss. 363, 366-A and 372 r/w S. 511* (Paras 46 to 60). *Sannaia Subba Rao* v. *State of A.P.*, (2008) 17 SCC 225.

Bench Strength 2. Coram: *R.V. Raveendran* and **Dr. M.K. Sharma**, JJ. [Date of decision: 24-7-2008]

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: (1955) 2 SCR 1140; Tarkeshwar Sahu v. State of Bihar, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556; Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358; State of W.B. v. Laisal Haque, (1989) 3 SCC 166: 1989 SCC (Cri) 513; Kammari Brahmaiah v. Public Prosecutor, (1999) 2 SCC 522: 1999 SCC (Cri) 281; Dalbir Singh v. State of U.P., (2004) 5 SCC 334: 2004 SCC (Cri) 1592, relied on

[2712] — S. 222 — Applicable provision — After finding the accused guilty under Ss. 376/511, even in absence of a charge under S. 376 read with S. 511, held, High Court should have convicted him under Ss. 376/511 by invoking S. 222, CrPC and not under S. 354 — *Quantum of punishment — Determination of — Keeping in view the objects of 1983 amendment to S. 376, held, no person committing or attempting to commit rape should be allowed to escape punishment — Having found the accused guilty, the quantum of punishment must be decided in accordance with law without being influenced by the press, electronic media or public agitation, as a trial by such agencies is the very antithesis of rule of law — While imposing fine and apportioning the whole or part thereof to the victim, the damage caused to her and even to her family should be taken into consideration — Father of eight-year-old daughter found guilty of attempting rape on a girl aged below twelve years and also found guilty under S. 57 of Bombay Children Act — High Court, however, setting aside the conviction under Ss. 376/511 and instead convicting him under S. 354 IPC and sentencing him to rigorous imprisonment for the period already undergone (only 33 days) and to a fine of Rs 40,000 of which Rs 25,000 was to be apportioned to the complainant (father of the prosecutrix in this case) — High Court upholding the respondent's conviction under S. 57 of the Bombay Act but restricting the sentence thereunder to the period of imprisonment already undergone — Matter coming up before the Supreme Court 11 long years after the incident and by then the fine imposed by the High Court having already been paid by the accused and the complainant having withdrawn his share of the fine — In such circumstances while converting the conviction of the accused from one under S. 354 IPC to that under Ss. 376/511 IPC, held, a sentence of five years' RI and a fine of Rs 40,000 would meet the ends of justice — Conviction and sentence under S. 57 of Bombay Children Act, however, affirmed — Penal Code, 1860, Ss. 376 (as amended in 1983)/511 or 354 — Bombay Children Act, 1948 (71 of 1948), S. 57 — Law Commission Reports 42nd, 69th and 84th — Criminal Law (Amendment) Act, 1983*

The accused-respondent was convicted by the trial court for offences under Section 376 of IPC and Section 57 of the Bombay Children Act, 1948 for having committed rape on a girl of eight years of age on 24-9-1986 and sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs 5000 and for offence under Section 57 of the Bombay Children Act he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs 500. The substantive sentences were ordered to run concurrently. The Bombay High Court upset the conviction under Section 376 IPC and instead convicted him for an offence under Section 354 IPC and sentenced him to suffer rigorous imprisonment which he had already undergone (which was 33 days in all) and to pay fine of Rs 40,000 out of which Rs 25,000 was directed to be paid to the complainant who was the father of the girl. The conviction for the offence under Section 57 of the Bombay Children Act was upheld but the sentence was reduced to the imprisonment already undergone. Cross appeals were filed against the High Court's decision. While the State of Maharashtra filed appeal against the conviction and sentence of the accused by the High Court praying for his conviction under Section 376 IPC and for enhancement of his sentence to a minimum of 10 years, the accused filed appeal against his very conviction and sentence under Section 354 IPC and Section 57 of the Bombay Children Act. On the question of sentence under Sections 376/511, IPC, the accused-respondent contended that when the offence was committed the accused had also a daughter of 8 years of age and that a long time had elapsed since the offence was committed and that in terms of the judgment of the High Court the accused had already deposited Rs 40,000 out of which Rs 25,000 had already been withdrawn by the father of the prosecutrix. It was submitted that if the Court came to the conclusion that the sentence had to be enhanced then only the amount of fine could be raised. Dismissing the respondent's appeal and partly allowing the State's appeal

Held :

The circumstances of the case show that the accused intended to commit rape on the girl. In the commission of that crime, he laid the girl on the seat in the Maruti car and then laid himself over her. He pulled down her knickers and also opened the zip of his pants and took out his male organ. He pressed his male organ on the private parts of the girl. But since he discharged, he could not penetrate and was unable to complete the offence of rape. However, it is clear that he did attempt to commit rape.

The High Court after having come to the conclusion that the accused was guilty of an offence under Sections 376/511 of the IPC could not have convicted the accused for an offence under Section 354 IPC. Section 511 IPC provides punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. In the instant case since the girl was under 12 years of age and the Sessions Judge having found that offence of rape had been committed could not have awarded sentence of 7 years when the law prescribes minimum sentence of rigorous imprisonment for a term not less than 10 years, unless exceptional circumstances existed. However, the State of the complainant did not come up in appeal in the High Court for enhancement of the sentence. Though there was no charge under Section 376 read with Section 511 IPC, under Section 222 CrPC when a person is charged for an offence he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

The respondent's plea that in case the court took a decision to enhance the sentence the amount of fine could be raised, cannot be accepted. A heinous crime has been committed and the accused must suffer for the consequences. A rapist not only violates the victim's personal integrity but leaves indelible marks on the very soul of the helpless female. The girl of 8 years must have undergone a traumatic experience. Despite the 11 year long lapse of time after the offence, keeping the objects of the 1983 amendment to Section 376 of IPC in view, the law as it exists now and the decisions of the Supreme Court on the question of sentence, the message is loud and clear that no person who commits or attempts to commit rape shall escape punishment.

Considering the whole aspect of the matter, it has to be held that a sentence of five years' rigorous imprisonment and fine of Rs 40,000 will meet the ends of justice. The fine has already been paid, out of that Rs 25,000 has been withdrawn by the father of the girl as per direction of the High Court which is upheld. The conviction of the accused-respondent is converted from one under Section 354 IPC to that under Sections 376/511 IPC and he is sentenced as aforesaid. The conviction and sentence of the accused under Section 57 of the Bombay Children Act as ordered by the High Court shall, however, stand. The sentences shall run concurrently. *State of Maharashtra* v. *Rajendra Jawanmal Gandhi*, (1997) 8 SCC 386: AIR 1997 SC 3986.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 11-9-1997]

[2713] — S. 222 — Applicability — Conviction for attempt to commit offence although attempt not separately charged — Maintainability — *Held, settled legal position is that if accused is charged of a major offence, but is not found guilty thereunder, he can be convicted of minor offence, if facts established indicate that such minor offence was committed — When a person is charged for an offence, he may be convicted of an attempt to commit such offence, although attempt is not separately charged — In the instant case, if it appeared to Court that S. 376 IPC was not applicable but a lesser offence under S. 376 r/w S. 511 IPC was made out, the Court was not prevented from taking recourse to and punishing accused for commission of such lesser offence — Penal Code, 1860, S. 511* (Paras 17, 18 and 20). *Pandharinath* v. *State of Maharashtra*, (2009) 14 SCC 537: (2009) 80 AIC 240 (SC).

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 6-7-2009]

State of Maharashtra v. Rajendra Jawanmal Gandhi, (1997) 8 SCC 386: 1998 SCC (Cri)) 76; Tarkeshwar Sahu v. State of Bihar, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, relied on

[2714] — S. 222 — Appellant charged under S. 302 IPC and an alternative charge under S. 306 IPC also framed against him — *Trial judge convicting him under S. 302 but no finding in respect of charge under S. 306 recorded resulting in his acquittal under S. 306 — No appeal filed by the State against acquittal under S. 306 — High Court acquitting the appellant of charge under S. 302 but convicting him under S. 306 — Held, offence under S. 306 being not a minor offence in relation to S. 302 within the meaning of S. 222 CrPC, High Court not justified in convicting the appellant under S. 306 after having acquitted him of the charge under S. 302 — However, finding of the High Court that the deceased committed suicide found to be proper and, therefore, the appellant cannot be convicted under S. 302 — S. 304-B squarely applies to the facts of the case but since the incident took place prior to introduction of that section accused could not be convicted under S. 304-B also — Penal Code, 1860, Ss. 302, 306 and 304-B. Lokendra Singh* v. *State of M.P.*, 1999 SCC (Cri) 371.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *D.P. Wadhwa*, JJ. [Date of decision: 19-8-1998]

Sangaraboina Sreenu v. State of A.P., (1997) 5 SCC 348: 1997 SCC (Cri) 690: 1997 Cri LJ 3955, followed

***Impliedly overruled** by Dalbir Singh v. State of U.P., (2004) 5 SCC 334*

[2715] — S. 222 — Accused charged for substantive offences under IPC and Abkari Act — *He cannot be convicted for abetment of those offences by employing S. 109 IPC — Penal Code, 1860, S. 109*

Section 109 IPC is by itself an offence though punishable in the context of other offences. The accused suffered a trial for substantive offences under the Penal Code and Abkari Act. When his direct involvement in these crimes could not be established, it is difficult to uphold the view of the High Court that he could lopsidedly be taken to have answered the charge of abetment and convicted on that basis. There would, as is plain, be serious miscarriage of justice to the accused in causing great prejudice to his defence. The roles of the perpetrator and abettor of the crime are distinct, standing apart from each other. The High Court was thus in error in employing S. 109 IPC to hold the accused guilty. *Joseph Kurian* v. *State of Kerala*, (1994) 6 SCC 535: 1995 SCC (Cri) 20: AIR 1995 SC 4.

Bench Strength 2. Coram: **M.M. Punchhi** and *K. Jayachandra Reddy*, JJ. [Date of decision: 4-10-1994]

[2716] — S. 222 — Accused persons charged with an offence under S. 4 of Explosive Substances Act, 1908 — *They can be convicted and punished for a lesser offence under S. 5 of that Act if the ingredients constituting that offence are established — Explosive Substances Act, 1908, Ss. 4 and 5. State of T.N.* v. *Sivarasan*, (1997) 1 SCC 682: 1997 SCC (Cri) 362.

Bench Strength 2. Coram: *G.N. Ray* and **G.T. Nanavati**, JJ. [Date of decision: 31-10-1996]

[2717] — S. 222 — Appellant charged and tried under S. 302 IPC — Conviction under S. 306 since it was the minor offence in relation to offence under S. 302 IPC — *Held, is illegal — Basic constituents of the two offences are of distinct and different categories — Penal Code, 1860, S. 302*

Section 306 IPC cannot be said to be a minor offence in relation to an offence under Section 302 IPC within the meaning of Section 222 CrPC for the two offences are of distinct and different categories. While the basic constituent of an offence under Section 302 IPC is homicidal death, those of Section 306 IPC are suicidal death and abetment thereof. *Sangaraboina Sreenu* v. *State of A.P.*, (1997) 5 SCC 348: 1997 SCC (Cri) 690: AIR 1997 SC 3233.

Bench Strength 2. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 23-4-1997]

Overruled in Dalbir Singh v. State of U.P., (2004) 5 SCC 334

[2718] — S. 222 — Applicability of — Conviction of accused under Ss. 304-B and 498-A r/w S. 34 IPC though he was charged only under S. 201 r/w S. 34 IPC — Permissibility of — *Held, since the offences under Ss. 304-B and 498-A IPC were not minor offences in relation to that under S. 201 IPC and all the said three offences were distinct and belonged to different categories, S. 222 CrPC had no application in present case — Hence, the said conviction was not permissible — Penal Code, 1860, Ss. 304-B, 498-A and 201 r/w S. 34 — Conviction of accused under Ss. 304-B and 498-A r/w S. 34 IPC though he was charged only under S. 201 r/w S. 34 IPC — Permissibility of*

The only charge framed against A-2 was for an offence punishable under Section 201 read with Section 34 IPC. True that Section 222 CrPC clothes the court with the power to convict a person of an offence which is minor in comparison to the one for which he is charged and tried, but by no stretch of imagination, offences under Sections 304-B and 498-A IPC, under which appellant A-2 was convicted by the trial court, could be said to be minor offences in relation to that under Section 201 IPC, for which he was charged. In fact, the three offences are distinct and belong to different categories. The ingredients of the offences under the said sections are vastly different. Therefore, Section 222 CrPC had no application to the facts in hand. (Para 14). *Sukhram* v. *State of Maharashtra*, (2007) 7 SCC 502: (2007) 3 SCC (Cri) 426: AIR 2007 SC 3050: (2007) 57 AIC 90 (SC).

Bench Strength 2. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 17-8-2007]

[2719] — Ss. 222 and 216 — Power of Supreme Court to itself frame charge instead of remanding the case for retrial — *Accused charge-sheeted under Ss. 498-A, 302 and 120-B IPC — But the trial court framing charge only under S. 302 IPC — Accused acquitted — Evidence on record clearly attracting charge under S. 498-A IPC — Held, in the circumstances of the case, the Supreme Court can itself examine the question of culpability of the accused for offence under the said section so as to obviate protraction of trial and multiplicity of proceedings against the accused — Constitution of India, Art. 142. Balram Prasad Agrawal* v. *State of Bihar*, (1997) 9 SCC 338: 1997 SCC (Cri) 612: AIR 1997 SC 1830: 1997 Cri LJ 1640.

Bench Strength 2. Coram: *G.N. Ray* and **S.B. Majmudar**, JJ. [Date of decision: 10-12-1996]

[2720] — Ss. 222 and 39 — Conviction without charge for minor offence — Habeas corpus — Maintainability — Petition for habeas corpus filed after dismissal of criminal appeal, review petition and curative petition — *Petitioner's plea that the Supreme Court allowed his appeal to the extent that his conviction under S. 121 IPC was set aside, but he was convicted under S. 123 IPC read with S. 39 CrPC, though this was not the charge against him, and therefore he was deprived of opportunity to defend himself — Held, this aspect had been considered while dismissing review and curative petitions — Entertaining a fresh petition under Art. 32 on the same ground would require setting aside the orders passed in review and curative* *petitions — This was not permissible — Supreme Court Rules, 1966, Or. 40 R. 1 — CPC, 1908, Or. 47 R. 1 — Penal Code, 1860, Ss. 121 and 123*

The contention raised by the petitioner that his conviction under Section 123 IPC without there being any charge framed tantamounts to grave miscarriage of justice and is contrary to the principles of natural justice, has already been rejected in the review petition. Thereafter, a curative petition which was placed in chambers by circulation before three seniormost Judges and one Judge who was a member of the Bench which initially delivered judgment (the other Judge of the Bench) and after due consideration, the curative petition was also rejected. In the curative petition also, a specific ground was raised by the petitioner that there was violation of principles of natural justice and manifest injustice was caused to him because he had not been given opportunity to defend himself for an offence under Section 123 IPC for which the charge had not been framed. By rejection of his curative petition, the contention so raised by the petitioner has also been rejected. (Para 24)

In the facts and circumstances of the case, there is no ground to entertain petition under Article 32 of the Constitution. Moreover, for granting relief prayed for by the petitioner for entertaining the present writ petition it is necessary to set aside judgment delivered by a Division Bench of the Supreme Court confirmed by dismissal of the review petition as also of the curative petition, which cannot be granted as not being permissible in exercise of the powers under Article 32 of the Constitution. (Para 25). *Shaukat Hussain Guru* v. *State*, (2008) 6 SCC 776: (2008) 3 SCC (Cri) 137: AIR 2008 SC 2419: 2008 Cri LJ 3016.

Bench Strength 2. Coram: **P.P. Naolekar** and *V.S. Sirpurkar*, JJ. [Date of decision: 14-5-2008]

[2721] — S. 222(2) — "Minor offence" — Meaning — *Where main ingredients of two cognate offences are common, one punishable with lesser sentence can be said to be minor offence — Ingredients of S. 304-B IPC being different from those of S. 302 IPC, the former cannot be regarded as minor offence*

Although the expression "a minor offence" under Section 222 CrPC is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-à-vis the other offence. The composition of the offence under Section 304-B IPC is vastly different from the formation of the offence of murder under Section 302 IPC and hence the former cannot be regarded as minor offence vis-à-vis the latter. However, the position would be different when the charge also contains the offence under Section 498-A IPC. (Paras 16 and 17). *Shamnsaheb M. Multtani* v. *State of Karnataka*, (2001) 2 SCC 577: 2001 SCC (Cri) 358: AIR 2001 SC 921.

Bench Strength 3. Coram: **K.T. Thomas**, *R.P. Sethi* and *B.N. Agrawal*, JJ. [Date of decision: 24-1-2001]

See now (2004) 5 SCC 334

[2722] — Ss. 222(2) & 464 and 313 — S. 113-A, Evidence Act, 1872 — Appellant-accused charged only under S. 302, but convicted by the High Court in terms of S. 306 — Sustainability — *Further submission that the offence was committed on 7-10-1982 when the provision i.e. S. 113-A was not in the statute-book — In view of conflicting two-Judge Bench decisions given in* Sangaraboina Sreenu case, *(1997) 5 SCC 348 and* Lakhjit Singh case, *1994 Supp (1) SCC 173 matter was referred to a three-Judge Bench decision in* Dalbir Singh case, *(2004) 5 SCC 334, which held that in view of S. 464 CrPC, it was possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed, unless the court was of the opinion that a failure of justice would occasion because the accused was not aware of the basic ingredients of offence for which he was convicted, or the main facts sought to be established against him were not explained to him clearly and he had no fair chance to defend himself — In the instant case, circumstances relatable to S. 306 IPC were clearly put to the appellant during his examination under S. 313 CrPC — Incriminating materials relating to torture, harassment and demand of dowry were specifically brought to the notice of the appellant during such examination — Only one witness was examined by the appellant to prove that the deceased had committed suicide who specifically stated that the appellant's father had asked him to inform PW 2 that the deceased had committed suicide and accordingly he had informed PW 2 — Even in absence of presumption under S. 113-A Evidence Act, prosecution version was specific to the extent that the deceased was being taunted by the appellant for not bringing adequate dowry and/or being of dark complexion — Humiliation and harassment meted out was described by the deceased when she had gone to her maternal uncle's house — Evidence of PW 1, who was a neighbour of the accused-appellant clearly showed* *that the appellant used to beat his wife i.e. the deceased and on the night of occurrence, when he was sitting on his rooftop he had heard cries of the deceased being beaten, went to the house of the appellant but was turned away by the appellant who said that it was their internal affair and he should mind his own business — To similar effect was the evidence of PW 4, another neighbour — Many major injuries on different parts of body including one mark on the neck were found by the doctor who conducted autopsy — Therefore, as rightly contended by the respondent State, even without reference to S. 113-A of the Evidence Act the prosecution version has been established — Penal Code, 1860, S. 302 or S. 306* (Paras 10 to 16). *Virendra Kumar* v. *State of U.P.*, (2007) 9 SCC 211: (2007) 3 SCC (Cri) 120: (2007) 51 AIC 81 (SC): 2007 Cri LJ 1435: (2007) 2 All LJ 687.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 16-1-2007]

Dalbir Singh v. State of U.P., (2004) 5 SCC 334: 2004 SCC (Cri) 1592, relied on

— S. 223 *See also* S. 239, Criminal Procedure Code, 1898, pp. 1114 et seq. in Vol. 2

— S. 223 *See* Ss. 190(1), 209, 216 and 223
See also Ss. 210 and 223
See also Ss. 211, 213, 214, 216 and 223
See also Ss. 211 and 223
See also Ss. 211 and 224
See also Ss. 229, 241 and 223
See also Ss. 464, 218 and 223

[2723] — S. 223 — Amalgamation of cases — Denial of — Large number of common witnesses and documents in all cases — Relief — *Liberty granted to accused-appellants to apply to the trial court to read the evidence of one case in other cases also*

In support of the plea of amalgamation of cases, the accused-appellants submitted that (*i*) in all the six cases against them there would be same witnesses (58 in number) and same documents (approximately 100 documents), and (*ii*) if these witnesses were to depose separately in all the six cases, there was a strong possibility of their evidence being different and of there being a conflict of decisions. It was also submitted that the appellants would have to hear the evidence of the same witnesses in six trials.

Rejecting the prayer for amalgamation of cases, *Held* :

It had been complained that the appellants would be forced to hear the same evidence 5 or 6 times. If the appellants or any of them feel aggrieved by this and if they so desire, they may apply to the Special Judges that evidence recorded in one case and documents marked as an exhibit in one case be used as evidence in other cases also. This would obviate their having to hear the same evidence in 5 or 6 different cases. (Para 14). *Lalu Prasad* v. *State*, (2003) 11 SCC 786: 2004 SCC (Cri) 1244: AIR 2003 SC 3838.

Bench Strength 3. Coram: **S.N. Variava**, *P. Venkatarama Reddi* and *Ashok Bhan*, JJ. [Date of decision: 26-8-2003]

[2724] — S. 223 — Amalgamation of cases — Power of Magistrate in respect of — Held, is discretionary — *He has to be satisfied that persons would not be prejudicially affected and that it is expedient to amalgamate cases* (Para 10). *Lalu Prasad* v. *State*, (2003) 11 SCC 786: 2004 SCC (Cri) 1244: AIR 2003 SC 3838.

Bench Strength 3. Coram: **S.N. Variava**, *P. Venkatarama Reddi* and *Ashok Bhan*, JJ. [Date of decision: 26-8-2003]

[2725] — S. 223 — Amalgamation of cases — Prayer in respect of, not made by all accused — Affidavit of consent, for joint trial, by all accused in all cases — Filing of, before the Supreme Court — *Held, could not be allowed — Such consent had to be obtained before the application for amalgamation was made — Then it was for the trial court to consider the question regarding the joint trial of all the accused persons*

The Supreme Court in the instant appeals was concerned with amalgamation of six cases (relating to famous Animal Husbandry Scam) pending before the Special Courts in the State of Jharkhand. Earlier these cases were before the Special Judge at Patna. An application for joint trial of two of these cases was moved when these two cases were pending before the Special Judge, Patna. The said application was rejected by the Special Judge, Patna. The Patna High Court, vide its judgment in *Lalu Prasad* v. *State of Bihar*, (2000) 3 Pat LJR 357, rejected the criminal petitions filed under Section 482 CrPC against the said order. The present appeals were filed against the order of the Jharkhand High Court dismissing the writ petitions (criminal) and a criminal miscellaneous petition filed before it for amalgamation of the cases. The appellants submitted that even though the petitions were dismissed by the Patna High Court, it had been held that there was a single conspiracy. It was submitted that the application for amalgamation was filed pursuant to the liberty granted by the Patna High Court while dismissing the petitions.

Held :

The High Court has also correctly held that it is the trial court which would have to consider the stand of other accused persons who have not prayed for joint trial. It is to be seen that apart from the appellants there are a large number of other accused persons. Most of the other accused persons have not applied for joint trial. The Supreme Court does not know what their stand is. When this was pointed out to the counsel for the appellants, it was stated that affidavit of consent, for joint trial, by all the accused in all the cases would be filed before the Supreme Court. But this is not the stage when such affidavits could be filed. The consent had to be obtained before the application for amalgamation was made. It was for the Special Judge to consider whether it was expedient and in the interest of justice that all accused persons, in all the cases, be tried jointly. It is neither expedient nor proper that the appellants be permitted to bypass the trial court in this manner. (Para 10)

That apart, the charge of conspiracy is only an allied charge and the main charges (under the Prevention of Corruption Act) are in respect of separate and distinct acts i.e. monies siphoned out of different treasuries at different times. Hence, these cases could not be amalgamated. (Para 11). *Lalu Prasad* v. *State*, (2003) 11 SCC 786: 2004 SCC (Cri) 1244: AIR 2003 SC 3838.

Bench Strength 3. Coram: **S.N. Variava**, *P. Venkatarama Reddi* and *Ashok Bhan*, JJ. [Date of decision: 26-8-2003]

Lalu Prasad v. State of Bihar, (2000) 3 Pat LJR 357, considered and explained

CBI v. Braj Bhushan Prasad, (2001) 9 SCC 432: 2002 SCC (Cri) 576, followed

Lalu Prasad v. State of Bihar, (2000) 3 Pat LJR 357; Lalu Prasad @ Lalu Prasad Yadav v. State through CBI, 2003 Cri LJ 610, approved

Kadiri Kunhahammad v. State of Madras, AIR 1960 SC 661: 1960 Cri LJ 1011; Babulal Chaukhani v. King Emperor, AIR 1938 PC 130: 39 Cri LJ 452; S. Swamirathnam v. State of Madras, AIR 1957 SC 340: 1957 Cri LJ 422; Mohan Baitha v. State of Bihar, (2001) 4 SCC 350: 2001 SCC (Cri) 710; Balbir v. State of Haryana, (2001) 1 SCC 285: 2000 SCC (Cri) 160; State of Bihar v. Ranchi Zila Samta Party, (1996) 3 SCC 682, distinguished

[2726] — S. 223 — **Animal Husbandry Scam — Amalgamation of six cases sought by accused-appellants on the plea that there was one conspiracy** — *Charges under the Prevention of Corruption Act and of the offence of conspiracy to defraud the Government exchequer of large sums of money — No finding by High Court that there was a single conspiracy — High Court rightly held that the said question could not be decided unless all the cases reach the stage of framing of charges — Three cases were still at the appearance stage — Further, all the accused in all the said cases did not apply for joint trial — That apart, charge of conspiracy was only an allied charge — The main charges (under the Prevention of Corruption Act) were in respect of separate and distinct acts i.e. monies siphoned out of different treasuries at different times — In view of the above reasons, held, the said cases could not be amalgamated. Lalu Prasad* v. *State*, (2003) 11 SCC 786: 2004 SCC (Cri) 1244: AIR 2003 SC 3838.

Bench Strength 3. Coram: **S.N. Variava**, *P. Venkatarama Reddi* and *Ashok Bhan*, JJ. [Date of decision: 26-8-2003]

[2727] — S. 223 — An accused cannot demand as a right his trial with co-accused. *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531.

Bench Strength 7. Coram: **Sabyasachi Mukharji**[1], **Ranganath Misra**[2], **G.L. Oza**[1&3], **B.C. Ray**[4], *S. Natarajan*[1], **M.N. Venkatachaliah**[5] and **S. Ranganathan**[6], JJ. [Date of decision: 29-4-1988]

[2728] — S. 223 — Clubbing and consolidating two cases, one on a police challan and the other on a complaint, not permissible under, if the prosecution versions in the two cases are materially different, contradictory and mutually exclusive — *Such cases ordered to be tried together but not consolidated i.e., evidence be recorded separately in both the cases and they be disposed of simultaneously — Art. 20(2) of the Constitution or S. 300, Criminal Procedure Code would not be infringed thereby. Harjinder Singh* v. *State of Punjab*, (1985) 1 SCC 422: 1985 SCC (Cri) 93: AIR 1985 SC 404.

Bench Strength 2. Coram: **A.P. Sen** and *V. Balakrishna Eradi*, JJ. [Date of decision: 21-12-1984]

[2729] — S. 223 — Persons who may be charged jointly — Prosecution of State officials in pick-and-choose manner — *A few who held office only for short periods or who had retired before process of impugned decision-making began, proceeded against — A few others connected with impugned decision of the Department, left out — Discrimination so made, deprecated — Prevention of Corruption Act, 1988, Ss. 13(1)(d)(ii)-(iii) — Constitution of India, Arts. 14 and 21* (Para 49). *State of M.P.* v. *Sheetla Sahai*, (2009) 8 SCC 617: (2009) 3 SCC (Cri) 901.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 4-8-2009]

[2730] — Ss. 223 and 220 — Applicability of, to trial under the Prevention of Corruption Act, 1988 — Jurisdiction of Special Judge — *Appellant not charged under PC Act, but under Ss. 420* *and 120-B/420 IPC — Whether Special Judge had jurisdiction to try appellant along with the two co-accused who, in addition to the said sections, were also charged under PC Act — Applying the provisions of Ss. 3 and 4 of the Act and Ss. 220 and 223 CrPC, held, in the facts and circumstances of the case, appellant and his co-accused could be tried by the Special Judge in the same trial — Prevention of Corruption Act, 1988, Ss. 4 and 3(1)*

The provisions of the Code of Criminal Procedure apply to trials under the Prevention of Corruption Act, 1988 subject to certain modifications as contained in Section 22 of the Act and their exclusion either express or by necessary implication. Section 223 CrPC has not been excluded either expressly or by necessary implication nor has the same been modified in their application to trials under the Act. The said provision therefore is applicable to the trial of an offence punishable under the Act. (Paras 12 and 13)

A Special Judge is not precluded altogether from trying any other offence, other than offences specified in Section 3 thereof. A person charged of an offence under the Act may in view of sub-section (3) of Section 4 be charged at the same trial of any offence under any other law with which he may, under the Code of Criminal Procedure, be charged at the same trial. Thus a public servant who is charged of an offence under the provisions of the Act may be charged by the Special Judge at the same trial of any offence under IPC if the same is committed in a manner contemplated by Section 220 of the Code. (Para 13)

Since sub-section (3) of Section 4 of the Act authorizes a Special Judge to try any offence other than an offence specified in Section 3 of the Act to which the provisions of Section 220 CrPC apply, there is no reason why the provisions of Section 223 of the Code should not apply to such a case. Section 223 in clear terms provides that persons accused of the same offence committed in the course of the same transaction, or persons accused of different offences committed in the course of the same transaction may be charged and tried together. (Para 14)

All the three accused, including the appellant, have been charged of the offence under Section 120-B read with Section 420 IPC. If the Special Judge has jurisdiction to try the co-accused for the offence under Section 120-B read with Section 420 IPC, the provisions of Section 223 are attracted. Therefore, it follows that the appellant who is also charged of having committed the same offence in the course of the same transaction may also be tried with them. Otherwise it appears rather incongruous that some of the conspirators charged of having committed the same offence may be tried by the Special Judge while the remaining conspirators who are also charged of the same offence will be tried by another court, because they are not charged of any offence specified in Section 3 of the Act. (Para 15)

Thus, in the facts and circumstances of this case, the Special Judge while trying the co-accused of an offence punishable under the provisions of the Act as also an offence punishable under Section 120-B read with Section 420 IPC has the jurisdiction to try the appellant also for the offence punishable under Section 120-B read with Section 420 IPC applying the principles incorporated in Section 223 of the Code. (Para 17). *Vivek Gupta* v. *CBI*, (2003) 8 SCC 628.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 25-9-2003]

Kadiri Kunhahammad v. State of Madras, AIR 1960 SC 661: 1960 Cri LJ 1013, relied on

[2731] — Ss. 223 and 220 — Misjoinder of accused — *Appellants 1 and 2 charged of conspiracy by retracting their earlier statements before officers of Enforcement Department regarding receipt of money and by giving false statements before ITO retracting their statements made before the Enforcement Officers but appellant 3 who claimed ownership of the money charged of conspiracy with appellants 1 and 2 to cause false entries in account books of a company and to wilfully make false statement before ITO — Courts below clubbing all the allegations against all the appellants together and considering the same as if all offences committed in the course of the same transaction of conspiracy — Putting appellant 3 in a joint trial with appellants 1 and 2 for conspiracy without any specific allegation or acceptable evidence to connect appellant 3 with the activities of appellants 1 and 2, held, amounted to misjoinder of charges which includes misjoinder of parties — This was not a mere irregularity but resulted in failure of justice in the facts and circumstances of the case. K.T.M.S. Mohd.* v. *Union of India*, (1992) 3 SCC 178: 1992 SCC (Cri) 572: AIR 1992 SC 1831: 1992 Cri LJ 2781: (1992) 197 ITR 196: (1992) 75 Comp Cas 321.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 28-4-1992]

[2732] — **Ss. 223 and 228(1) — Direction made by Sessions Court for separate trial of three of the accused by the Chief Judicial Magistrate — Propriety** — *Some evidence in trial against the said three accused was likely to be common in the trial of the other accused, who were charged before the Sessions Court — Likelihood of prejudice to the* *prosecution's case, if the trials were held separately — On facts, no prejudice was likely to be caused to the above three accused if they were tried by the Sessions Court — Further, S. 228(1) not applicable to the present case — Held, the aforesaid direction was not proper — The said three accused be tried by the Sessions Court* (Paras 3 and 4). *State of Kerala* v. *Ayyappan*, (2006) 13 SCC 320: (2007) 3 SCC (Cri) 672.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *B.N. Srikrishna*, JJ. [Date of decision: 9-8-2005]

[2733] — Ss. 223(a) and (d) — Joint trial — Offence committed "in the course of same transaction" — Test to determine — There must be commonality of purpose or design and continuity of action — *Where in connection with murder of one person, two different cases were put before Sessions Court, one pursuant to police investigation and the other pursuant to a private complaint accusing two different persons as perpetrators of the crime, held, the offence alleged in the two cases cannot be said to have been committed "in the course of the same transaction" and hence the same Sessions Judge should try the two cases separately one after the other and judgments should be pronounced separately — If more than one Public Prosecutor available, the two cases should be prosecuted by two different Public Prosecutors*

The deceased was shot at near a bus-stand. He was removed in an injured condition by his nephew (PW 4) and his uncle (PW 5) to hospital where he was pronounced dead. PW 4 then proceeded to the police station and launched the complaint accusing the present appellant and his brother as the persons who shot the deceased. The police registered an FIR on the strength of that complaint against the above two persons as accused. PW 7 Assistant Sub-Inspector of Police held the inquest on the dead body of the deceased on the same day. During the investigation, however, the appellant was found to be not the culprit and instead one 19-year-old youngster *G* was found to have shot at the deceased. *G* was arrested and on the strength of a statement elicited from him a country-made pistol, a used cartridge and a live cartridge were recovered from beneath the heap of fodder grain stocked in his house. *G* was finally charge-sheeted by the police and eventually that case was committed to the Court of Session. PW 4 filed a complaint before the Magistrate on the allegation that the real culprits of the deceased's murder were the appellant and his brother and that the police investigation was totally misdirected due to the influence of the real culprits. The Magistrate, on receipt of the complaint, proceeded therewith and eventually committed that case also to the Court of Session. Two separate trials, one against *G* and another against the appellant and his brother were conducted before the same Court of Additional Sessions Judge. The said Sessions Judge pronounced separate judgments acquitting *G* and convicting the appellant under Section 302 IPC (the appellant's brother was, however, acquitted). No appeal was filed against the acquittal of *G* and hence the Division Bench of the High Court heard the appeal filed by the appellant alone. The Bench confirmed the conviction and sentence passed on him and dismissed his appeal. Hence, the present appeal by special leave. The first point sought to be considered was whether the two sessions cases should have been tried separately (as is done in the present case) or whether they should have been jointly tried. Second point was whether on the facts of the case the trial court and the High Court were justified in convicting the appellant. Allowing the appeal and acquitting the appellant

Held :

In both clauses (*a*) and (*d*) of Section 223 CrPC the primary condition is that persons should have been accused either of the same offence or of different offences "committed in the course of the same transaction". The expression advisedly used is "in the course of the same transaction". That expression is not akin to saying "in respect of the same subject-matter". For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction". But if in one case the accused is alleged to have killed a person without any junction with the accused in the other case, then it cannot be treated as the same offence or even different offences "committed in the course of the same transaction". If such two diametrically opposite versions are put to joint trial the confusion which it can cause in the trial would be incalculable. It would then be a mess and then there would be no scope for a fair trial. Hence the attempt to bring the two cases under the umbrella of Section 233 of the Code has only to be foiled as untenable. (Paras 11 to 13)

In the present case the police version and the private complainant's version are diametrically divergent without anything in common except that the murdered person was the same. In such cases the most appropriate procedure to be followed by a

Sessions Judge should be the same as followed in the present case i.e. the two trials were separately conducted one after the other by the same court before the same Judge and judgments in both cases were separately pronounced on the same day. No doubt the Sessions Judge should take care that he would confine his judgment in one case only to the evidence adduced in that particular case. If more than one Public Prosecutor are available at the same station it is advisable that the Public Prosecutor who prosecuted one case should avoid prosecuting the other case. (Para 16). *Balbir* v. *State of Haryana*, (2000) 1 SCC 285: 2000 SCC (Cri) 160: AIR 2000 SC 11: 2000 Cri LJ 169.

Bench Strength **3**. Coram: **K.T. Thomas**, *A.P. Misra* and *S.S.M. Quadri*, JJ. [Date of decision: 26-10-1999]

State of A.P. v. Cheemalapati Ganeswara Rao, AIR 1963 SC 1850: (1964) 3 SCR 297; Harjinder Singh v. State of Punjab, (1985) 1 SCC 422: 1985 SCC (Cri) 93, relied on

See also 1994 Supp (1) SCC 183

— S. 223(d) *See* S. 223(a) and (d)

— **S. 224** *See also* S. 240, Criminal Procedure Code, 1898, p. 1116 in Vol. 2

— S. 224 *See* Ss. 211 to 224

[2734] — Ch. XVIII (Ss. 225 to 237) and S. 465 — Sessions Court, even after being specified as Special Court under the SC and ST Act, 1989, would continue to be a Sessions Court and trial before that Court can be held only in accordance with the provisions of Ch. XVIII CrPC — *Where respondent was charge-sheeted for offences under S. 376 IPC and S.3 of the Act and Magistrate committed the case to Sessions Court which was specified as a Special Court under the Act but that Court framed a charge only for offence under S. 376 IPC and after trial convicted the respondent under S. 376 IPC and sentenced him to 10 years' imprisonment, held, High Court erred in setting aside the conviction and sentence only on the technical ground that the trial court had no jurisdiction as he was only a Special Court specified under the Act, more so when no objection in that regard had been raised at any earlier stage of the proceedings — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ss. 14, 2(1)(d) & 3*

Even after specification of a Sessions Court as a Special Court under the Act the Sessions Court would continue to be the Sessions Court and a trial before that Court can be held only in accordance with the provisions contained in Chapter XVIII of the Code of Criminal Procedure. The Sessions Court which tried the case for the offence under Section 376 IPC continued to have jurisdiction to try the same, and the order of committal was legally valid. The appeal filed before the High Court could only be disposed of on merits. The High Court has not considered the appeal on merits. The fallout of the view taken by the High Court in this case would be that all the witnesses once examined in full should be called back again, and the whole chief-examination, cross-examination, re-examination and questioning of the accused under Section 313 of the Code, hearing arguments, then examination of defence witnesses further, again final arguments to be heard and preparation of judgment be done once again. The very object underlined in Section 465 of the Code is that if on any technical ground any party to the criminal proceedings is aggrieved he must raise the objection thereof at the earliest stage. If he did not raise it at the earliest stage he cannot be heard on that aspect after the whole trial is over. Therefore, the impugned judgment of the High Court is set aside and the case is remitted back to the High Court for disposal of the appeal afresh on merits. (Paras 5, 7 and 6). *State of H.P.* v. *Gita Ram*, (2000) 7 SCC 452: 2000 SCC (Cri) 1390: AIR 2000 SC 2940.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 8-9-2000]

Gangula Ashok v. State of A.P., (2000) 2 SCC 504: 2000 SCC (Cri) 488, followed

— S. 225 *See* Ss. 24 and 225

See also Ss. 24, 225 and 321

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 226, 231 and 225

See also Ss. 301, 302 and 225 & 24

See also Ss. 311 and 225

See also Ss. 406 and 386(1), 24 and 225

See also Ss. 406, 432(7), 385(1), 225, 2(u), 24 and 378

See also Ss. 482, 190, 301, 302 & 225

See also Ss. 482, 225 to 247

[2735] — **S. 225 — Informant if can assist Public Prosecutor — Public Prosecutor — Assistance to — An informant may assist the Public Prosecutor but he cannot, as of right, claim to pursue the trial in case of murder** — *If in the present case certain materials are brought to the notice of the Public Prosecutor which will unravel the truth, Public Prosecutor will take the same into consideration and act according to law. Abhilasha* v. *State of Rajasthan*, (2000) 10 SCC 237.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 8-10-1999]

— S. 226 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 202(2) proviso, 200, 203, 204, 208, 209, 313, 208, 226 to 228, 460, 461 and 465

See also Ss. 227, 228, 239, 240 & 226 and 482

See also Ss. 313, 229, 228 and 226

See also Ss. 482, 225 to 247

[2736] — **S. 226 — Opening of case by Public Prosecutor (PP)** — *PP can either state before the court that certain witnesses were not likely to support prosecution case or he may obtain direct information about what they might speak in court and if their version is not in favour of the prosecution, PP cannot be compelled to examine them for the prosecution*

In trials before a Court of Session, the prosecution "shall be conducted by a Public Prosecutor". Section 226 CrPC enjoins on him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused. If he knew at that stage itself that certain persons cited by the investigating agency as witnesses might not support the prosecution case he is at liberty to state before the court that fact. Alternatively, he can wait further and obtain direct information about the version which any particular witness might speak in court. If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution. (Para 12). *Banti* v. *State of M.P.*, (2004) 1 SCC 414: 2004 SCC (Cri) 294: AIR 2004 SC 261: 2004 Cri LJ 372.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 4-11-2003]

[2737] — **Ss. 226, 231 and 225 — Public Prosecutor is not bound to examine all the witnesses including even those who, according to his information, would not support the prosecution case** — *Although Public Prosecutor should prefer to examine those witnesses who are not related to the victim instead of those who are related to the victim but if he comes to know that any of the non-related victims would not support the prosecution version, he may drop such witness from being examined — Public Prosecutor has to take decision in that regard in a fair manner — He can interview the witnesses beforehand to know in advance the stand to be taken by the witnesses*

In the first information statement PW 4 mentioned that two persons had also seen the incident. The investigating officer included those two persons as witnesses to the occurrence when the final report was laid. But in the Sessions Court they were not examined by the Public Prosecutor. The Sessions Judge frowned at the prosecution for not examining those witnesses. The High Court noted that non-examination of those witnesses was due to an application submitted by the Public Prosecutor that those two witnesses did not support the prosecution version.

Held :

In trials before a Court of Session the prosecution "shall be conducted by a Public Prosecutor". Section 226 of the Code enjoins on him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused. If he knows at that stage itself that certain persons cited by the investigating agency as witnesses might not support the prosecution case he is at liberty to state before the Court that fact. Alternatively, he can wait further and obtain direct information about the version which any particular witness might speak in court. If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution. (Para 12)

When the case reaches the stage envisaged in Section 231 of the Code the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone. That principle also applies when there are too many witnesses cited, if they all had sustained injuries at the occurrence. It is open to the Public Prosecutor to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. (Para 13)

The situation in a case where the prosecution cited two categories of witnesses to the occurrence, one consisting of persons closely related to the victim and the other consisting of witnesses who have no such relation, the Public Prosecutor's duty to the Court may require him to produce witnesses from the latter category, also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that any one among that category would not support the prosecution version he is free to state in court about that fact and skip that witness from being examined as a prosecution witness. It is open to the defence to cite him and examine him as a defence witness. The decision in this regard has to be taken by the Public Prosecutor in a fair manner. He can interview the witness beforehand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in court. (Para 14). *Hukam Singh* v. *State of Rajasthan*, (2000) 7 SCC 490: 2000 SCC (Cri) 1416.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 14-9-2000]

Dalbir Kaur v. State of Punjab, (1976) 4 SCC 158: 1976 SCC (Cri) 527; Masalti v. State of U.P., AIR 1965 SC 202: (1965) 1 Cri LJ 226; Bava Hajee Hamsa v. State of Kerala, (1974) 4 SCC 479: 1974 SCC (Cri) 515; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033, relied on

[2738] — Ss. 226 and 231 — Evidence for prosecution — Public Prosecutor (PP) is to produce evidence which is in support of the prosecution, not against it — *If there are many witnesses on the same point or many witnesses who had suffered injuries in the same occurrence, PP may choose only some of them and inform the court that he would not examine the remaining persons — Where prosecution cited several witnesses, some related and some not related to the victim, PP should produce witnesses of the latter category, subject to his discretion to limit only one or two of them — But PP may not produce a witness, who according to his information, would not support the prosecution case — Defence can cite him and examine him as defence witness — PP has to take decision in the matter in a fair manner*

When the case reaches the stage as envisaged in Section 231 of the Code the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited, if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the court considerably in lessening the workload. Time has come to make every possible effort to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice. (Para 13)

The situation in a case where the prosecution cited two categories of witnesses to the occurrence, one consisting of persons closely related to the victim and the other, consisting of witnesses who have no such relation, the Public Prosecutor's duty to the court may require him to produce witnesses from the latter category, also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that any one among that category would not support the prosecution version he is free to state in court about that fact and skip the witness from being examined as a prosecution witness. It is open to the defence to cite him and examine him as a defence witness. The decision in this regard has to be taken by the Public Prosecutor in a fair manner. He can interview the witness beforehand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in court. (Para 14). *Banti* v. *State of M.P.*, (2004) 1 SCC 414: 2004 SCC (Cri) 294: AIR 2004 SC 261: 2004 Cri LJ 372.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 4-11-2003]

Masalti v. State of U.P., AIR 1965 SC 202: (1965) 1 Cri LJ 226; Bava Hajee Hamsa v. State of Kerala, (1974) 4 SCC 479: 1974 SCC (Cri) 515; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Dalbir Kaur v. State of Punjab, (1976) 4 SCC 158: 1976 SCC (Cri) 527; Hukam Singh v. State of Rajasthan, (2000) 7 SCC 490: 2000 SCC (Cri) 1416, relied on

[2739] — Ss. 226 and 231 — Failure of prosecution to produce all material witnesses — Adverse effect of — Highly unsatisfactory investigation — Multiple murder case — Occurrence taking place inside a bus — Bus not seized — *Absence of proper scene "mahazar" — Many relevant facts not noted by IO — Delay of six days in sending FIR to Magistrate — No reasonable explanation by IO for delay in questioning the material witnesses (fifteen days after the incident) — Failure to produce all material witnesses — Held, a case of this serious nature which resulted in the death of eight persons should have been conducted with more circumspection and seriousness — Failure of police to produce the best evidence before the court casts serious* *reflection on the system that is followed in investigation of criminal cases — CrPC, 1973, S. 157* (Para 6). *Sahdeo* v. *State of U.P.*, (2004) 10 SCC 682: 2004 SCC (Cri) 1873: AIR 2004 SC 3508: 2004 Cri LJ 2876.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 30-4-2004]

[2740] — Ss. 226 and 231 — Non-examination of an eyewitness mentioned in the FIR, held, on facts not fatal

It would be unsound to lay down a general rule that every witness mentioned in the first information report must be examined by the prosecution in all circumstances and that the failure to do so would lead to the rejection of the evidence of all others. *Bhagwati* v. *State of U.P.*, (1976) 3 SCC 235: 1976 SCC (Cri) 388: AIR 1976 SC 1449: 1976 Cri LJ 1171.

Bench Strength 2. Coram: *R.S. Sarkaria* and **P.N. Shinghal**, JJ. [Date of decision: 8-4-1976]

[2741] — Ss. 226, 242 and 311 — Prosecution witness — Non-examination of — *The defence having failed to call such witnesses as court witnesses, held, cannot later plead that those witnesses were withheld by the prosecution for any ulterior motive. Shanker* v. *State of U.P.*, (1975) 3 SCC 851: 1975 SCC (Cri) 270: AIR 1975 SC 757: 1975 Cri LJ 634.

Bench Strength 2. Coram: *V.R. Krishna Iyer* and **R.S. Sarkaria**, JJ. [Date of decision: 29-1-1975]

[2742] — Ss. 226 and 242 — Prosecution witness *— Non-examination by public prosecutor on ground of having been "won over" — Held, expression "won over" will include case of refusal by witness to give testimony by reason of fear of his life. Shanker* v. *State of U.P.*, (1975) 3 SCC 851: 1975 SCC (Cri) 270: AIR 1975 SC 757: 1975 Cri LJ 634.

Bench Strength 2. Coram: *V.R. Krishna Iyer* and **R.S. Sarkaria**, JJ. [Date of decision: 29-1-1975]

— S. 227 *See* Ss. 91, 227, 228, 239 and 240

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 197, 220, 221, 227, 239 and 245

See also Ss. 197, 227 and 228

See also Ss. 202(2) proviso, 200, 203, 204, 208, 209, 313, 208, 226 to 228, 460, 461 and 465

See also Ss. 203, 204, 209 and 227

See also Ss. 204, 203, 227, 228 and 190

See also Ss. 207, 238, 228 & 240 and S. 227

See also Ss. 209, 319, 2(g), 227 and 228

See also Ss. 228 and 227

See also Ss. 228, 227 and 26

See also Ss. 228 & 227 and 239 & 240 and 245(1) & (2)

See also Ss. 228, 227 and 240

See also Ss. 228 & 227 and 240 & 239

See also Ss. 228, 227 and 401

See also Ss. 228, 240 and 227

See also Ss. 239, 227, 245 and 482

See also Ss. 239, 240, 227, 190(1), 156(3) and 468

See also Ss. 239 & 240 and 227 & 228

See also Ss. 239, 240, 227 and 245

See also Ss. 240, 228, 238, 227 and 482

See also Ss. 245, 227 and 239

See also Ss. 245, 227, 397 and 482

See also Ss. 245, 239 and 227

See also Ss. 245(1), 227, 239 and 246

See also Ss. 300, 482, 465 and 227

See also S. 319 r/w Ss. 209 and 193, 227, 228, 229, 230, 231 and 482

See also Ss. 321, 227 and 239

See also Ss. 321, 227, 239 and 397

See also Ss. 340, 192 to 196, 227 and 482

See also Ss. 386 and 227, 228

See also Ss. 401 & 397 and 227 & 228

See also Ss. 408(1), 406, 407, 228(1), 227 and 26(a)(ii)

See also Ss. 482, 148(3), 342, 359, 357, 358 and 227

See also Ss. 482, 190, 203, 211, 227, 239 and 245

See also Ss. 482, 203 and 227

See also Ss. 482, 203, 227 and 245

See also Ss. 482, 225 to 247

See also Ss. 482 and 227

See also Ss. 482, 227 and 190

See also Ss. 482 and 227, 239 & 245

See also Ss. 482, 397, 227 & 228

[2743] — S. 227 — Discharge — Nature of inquiry to be made by court in deciding whether to discharge or to frame charges against the accused

Section 227 itself contains enough guidelines as to the scope of inquiry for the purpose of discharging an accused. It provides that "the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate inquiry in sifting and weighing the materials. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime. *Stree Atyachar Virodhi Parishad* v. *Dilip Nathumal Chordia*, (1989) 1 SCC 715: 1989 SCC (Cri) 285: 1989 Mah LJ 462.

Bench Strength **2**. Coram: *B.C. Ray* and **K. Jagannatha Shetty**, JJ. [Date of decision: 8-2-1989]

[2744] — S. 227 — Discharge — Summary dismissal of application for — Sustainability — Necessity of considering submission of accused *— FIR lodged alleging that accused had physical relationship with the informant on the promise that he would marry the informant and that they were married in a temple but accused denied all this and was marrying another girl — After investigation commenced, statement of the informant recorded under S. 164 and police report filed stating that offence under Ss. 376 and 406 IPC made out, application under S. 227 filed by accused for his discharge — Application rejected by trial court observing that there were sufficient grounds for framing charge against accused — Application filed before High Court challenging trial court's order rejected summarily — State submitting that though prima facie Ss. 376 and 406 IPC were not applicable but other provisions like Ss. 415 and 493 IPC were applicable — Held, it was rightly submitted that Ss. 376 and 406 IPC had no application but High Court should have dealt with the various submissions made before it — That having not been done, this was not a case where application under S. 227 should have been dismissed in a summary manner — Though stage of analysing the factual materials was yet to be undertaken but when on a bare reading of the FIR it shows that no offence had been made out for proceeding, the situation becomes different — Hence, without expressing any opinion on merits, order of High Court set aside and matter remitted to it for fresh consideration* (Paras 8 and 11). *Pradeep Kumar* v. *State of Bihar*, (2007) 7 SCC 413: (2007) 3 SCC (Cri) 407: AIR 2007 SC 3059: (2007) 4 KLT 41: (2007) 57 AIC 1 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 17-8-2007]

Deelip Singh v. State of Bihar, (2005) 1 SCC 88: 2005 SCC (Cri) 253, relied on

[2745] — S. 227 — Function of the Judge under, explained *— Held, he cannot act merely as a post office or mouthpiece of the prosecution — He has to sift and weigh the evidence for the limited purpose of finding out whether a prima facie case has been made out — Where two views are equally possible and evidence gives rise to some suspicion but not grave suspicion, he can discharge the accused — On facts held, prosecution failed to throw any suspicion, much less a grave suspicion, against the accused — Hence, there was no prima facie case — Therefore, criminal proceedings against him under Ss. 161/477-A IPC and Ss. 5(2) & (1)(d) of Prevention of Corruption Act, 1947, set aside — Prevention of Corruption Act, 1988, S. 7*

In exercising powers under Section 227 CrPC, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him gave rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 CrPC, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. (Para 12)

In the present case, in the alleged trap no police agency was involved; the FIR was lodged after seven days; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by the police after ten months of the occurrence. Therefore, not to speak of grave suspicion against the accused, in fact the prosecution has not been able to throw any suspicion. Therefore, it has to be held that no prima facie case was made against the appellant and consequently the criminal proceedings against the appellant are quashed. (Paras 14 and 15). *Dilawar Balu Kurane* v. *State of Maharashtra*, (2002) 2 SCC 135: 2002 SCC (Cri) 310: AIR 2002 SC 564: 2002 Cri LJ 980: (2002) 1 LLN 671.

Bench Strength **2**. Coram: *S.S.M. Quadri* and **S.N. Phukan**, JJ. [Date of decision: 8-1-2002]

Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 5: 1979 SCC (Cri) 609, relied on

[2746] — S. 227 — Special Judge's power to pass order of discharge under — Ambit and scope — *When discharge order should be passed — Principles stated — Special Judge should not act as a trial Judge but should weigh evidence and form opinion only on the limited question of whether a prima facie case made out — Excepting the cases of grave suspicion which the accused is unable to explain, he is empowered to discharge the accused — On facts, Special Judge justified in passing the discharge order*

In exercising the jurisdiction under S. 227, the Special Judge, which under the present Code is a senior and experienced court, cannot act merely as a post office or mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. While considering the question of framing charges under this section, he has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. *Union of India* v. *Prafulla Kumar Samal*, (1979) 3 SCC 4: 1979 SCC (Cri) 609: AIR 1979 SC 366: 1979 Cri LJ 154: 1979 MLJ (Cri) 361.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *D.A. Desai*, JJ. [Date of decision: 6-11-1978]

[2747] — S. 227 — Discharge of accused — When warranted — Scope and object of S. 227, stated

If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion as to the guilt of the accused, the trial Judge will be empowered to discharge the accused and at this stage the trial Judge is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" in Section 227 CrPC clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or enter into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts. (Para 10)

At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 CrPC, if not, he will discharge the accused. This provision was introduced in CrPC to avoid wastage of public time when a prima facie case was not disclosed and to save the accused from avoidable harassment and expenditure. (Paras 11 and 25). *P. Vijayan* v. *State of Kerala*, (2010) 2 SCC 398.

Bench Strength 2. Coram: **P. Sathasivam** and *H.L. Dattu*, JJ. [Date of decision: 27-1-2010]

State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533; Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4: 1979 SCC (Cri) 609; Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47; Soma Chakravarty v. State, (2007) 5 SCC 403: (2007) 2 SCC (Cri) 514, relied on

[2748] — Ss. 227, 193, 204 and 211 — After committal of a case to a Sessions Court, it is for that court to decide what action is to be taken and High Court cannot direct it to frame charges — *Constitution of India, Article 226 — Quashing of criminal charge/complaint/proceedings*

Pursuant to a complaint lodged against the appellants the police filed charge-sheet directly before the Sessions Court which was designated as Special Court for trial of offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. A charge was framed by the Special Judge against both the appellants for the alleged offences under the Act. At that stage the appellants moved the High Court for quashing the charge as well as the charge-sheet on various reasons. A Single Judge of the High Court of Andhra Pradesh found that the procedure adopted by the investigating officer in filing the charge-sheet straight away to the Special Court was not in accordance with law, and the Special Judge had no jurisdiction to take cognizance of any offence under the Act without the case having been committed to that Court. Accordingly the Single Judge set aside the proceedings of the Special Court and directed the charge-sheet and the connected papers to be returned to the police officer concerned who, in turn, was directed to present the same before a Judicial Magistrate of Ist Class "for the purpose of committal to the Special Court". The Single Judge further directed that "on such committal the Special Court shall frame appropriate charges in the light of the observations in the order". Disposing of the appeal,

Held :

The High Court of Andhra Pradesh has rightly set aside, as per the impugned order, the proceedings initiated by the Special Court specified under the Act. But it is not possible to support the directions given by the Single Judge in his order that after committal of the case the Special Court shall frame charge against the appellants. It is for the Special Court to decide regarding the action to be taken next, after hearing both sides as provided in Section 227 of the Code. No direction can be given to the Special Court at this premature stage as to what course the court should adopt then. It is open to the appellants to raise all their contentions at that stage if they wish to make a plea for discharge. If any such plea is made, the Judge of the Special Court shall pass appropriate orders untrammelled by the observations made in the impugned order. (Para 26). *Gangula Ashok* v. *State of A.P.*, (2000) 2 SCC 504: 2000 SCC (Cri) 488: AIR 2000 SC 740: 2000 Cri LJ 819: (2000) 1 KLT 609.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 28-1-2000]

[2749] — Ss. 227, 228, 67 and 407 — Compelling appearance for trial — *One of the several accused persons facing trial in another case in another State and, therefore, lodged in a jail in that other State — Trial court in that other State refusing to make the accused available for trial in the present case and, therefore, the trial court in the present case finding it not possible to frame charges against him — In such circumstances, Supreme Court directing the State Govts. to ensure the presence of all the accused persons at one place for trial and also directing both the High Courts concerned to examine on the administrative side the details to be worked out for this purpose and give appropriate directions for expeditious disposal of the case — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 20(b), 21 and 29*

Attempts should be made by the State Governments of Orissa and West Bengal to see that the trial in the pending cases are facilitated by making appropriate arrangements to have all the accused persons in one place for purposes of trial and details should be worked out and shall be examined by the High Court of Orissa and the High Court of Calcutta on the administrative side and appropriate directions be given in that regard to enable expeditious disposal of the case. (Para 4). *Babua* v. *State of Orissa*, (2001) 2 SCC 566: 2001 SCC (Cri) 351: AIR 2001 SC 1052.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *K. G. Balakrishnan*, JJ. [Date of decision: 30-1-2001]

[2750] — Ss. 227, 228, 239, 240 and 245 — Framing of charge — Proper basis — Nature of evaluation to be made at the stage of — *Held, at that stage the court is not expected to go deep into the probative value of the material on record — The court has to form a presumptive opinion as to existence of factual ingredients constituting the offence alleged*

Partly allowing the appeal,

Held :

At the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, the court is not expected to go deep into the probative value of the material on record. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. The materials brought on record by the prosecution has to be accepted as true at that stage. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence. (Paras 11, 14 and 13). *Onkar Nath Mishra* v. *State (NCT of Delhi)*, (2008) 2 SCC 561: (2008) 1 SCC (Cri) 507: 2008 Cri LJ 1391.

Bench Strength **2**. Coram: *Ashok Bhan* and **D.K. Jain**, JJ. [Date of decision: 14-12-2007]

State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659: 1996 SCC (Cri) 820; State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338: 2000 SCC Cri 1110, relied on

[2751] — Ss. 227 and 228 — Discharge — Scope of inquiry contemplated at — Appreciation of evidence, at stage of discharge — Impermissibility — *Held, at stage of framing charge, what is required to be seen is whether there are sufficient grounds to proceed against accused — Special Court erred in virtually passing order of acquittal in garb of order of discharge. CBI* v. *Mukesh Pravinchandra Shroff*, (2009) 16 SCC 429.

Bench Strength 2. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 29-11-2005]

[2752] — Ss. 227 and 228 — Framing of charge/Discharge of accused — Exercise of jurisdiction — Scope — Explained — Appreciation of evidence — Impermissibility — *Held, at the stage of framing of charge under S. 228 or while considering discharge petition filed under S. 227, it is not for Magistrate or Judge concerned to analyse all the materials including pros and cons, reliability or acceptability thereof, etc. — It is at the trial, that Judge concerned has to appreciate evidentiary value, credibility or otherwise of the material, veracity of various documents and is free to take a decision one way or the other — On facts held, though PWs 1, 2, 8 and 10 did not whisper a word about involvement of appellant in anti-Sikh riots of 1984 at the earliest point of time yet it cannot be presumed that there is no case to proceed against appellant — Hence, it could not be concluded that framing of charges against appellant by trial Judge (23 yrs later) was either bad in law or abuse of process of law or without any material basis — Inasmuch as trial related to incident of 1984, trial Judge directed to make sincere efforts for expeditious disposal of case — Penal Code, 1860, S. 120-B r/w Ss. 153-A, 295, 302, 395, 427, 436, 339 & 505 and S. 109 r/w Ss. 147, 148, 149, 153-A, 295, 302, 395, 427, 435, 339 & 505*

The present case arose out of the 1984 anti-Sikh riot cases in which thousands of Sikhs were killed. The investigation pertaining to the death of family members of Smt *J*, PW 1 was reopened by the Anti-Riot Cell of Delhi Police in the year 2002 and after investigation, a closure report was filed on 15-12-2005/22-12-2005. Thereafter, on 31-7-2008, a status report was filed by Delhi Police before the Metropolitan Magistrate. Pursuant to the recommendation of Justice Nanavati Commission, the Government of India entrusted the investigation to CBI on 24-10-2005. CBI registered a formal FIR on 22-11-2005. The closure report was filed by Delhi Police on 15-12-2005/22-12-2005, when a case had already been registered by CBI on 22-11-2005 and the documents had already been transferred to CBI.

After fresh investigation, CBI filed a charge-sheet on 13-1-2010. After committal, charges were framed on 15-5-2010. The appellant filed a petition for discharge raising various grounds in support of his claim. Since he was not successful before the Special Court, he filed a revision before the High Court and by the impugned order High Court dismissed his criminal revision and directed the trial court for early completion of the trial since the same was pending from 1984.

Directing as above, the Supreme Court dismissed the appeal.. *Sajjan Kumar* v. *CBI*, (2010) 9 SCC 368.

Bench Strength 2. Coram: **P. Sathasivam** and *Anil R. Dave*, JJ. [Date of decision: 20-9-2010]

Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4: 1979 SCC (Cri) 609; Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135: 2002 SCC (Cri) 310, relied on

[2753] — Ss. 227, 228 and 209 — Discharge — Scope and ambit of powers of trial court under S. 227 — *Held, if two views are equally possible and the Judge is satisfied that evidence produced gives rise to suspicion only, as distinguished from grave suspicion, he would be fully within his right to discharge the accused — At this stage he is not to see whether the trial will end in conviction or not — Words and Phrases — Expression "not sufficient ground for proceeding against the accused" appearing in S. 227, explained*

Chapter XVIII CrPC lays down the procedure for trial before the Court of Session, pursuant to an order of commitment under Section 209 CrPC. Section 227 CrPC contemplates the circumstances whereunder there could be a discharge of an accused at a stage anterior in point of time to framing of charge under Section 228 CrPC. It provides that upon consideration of the record of the case, the documents submitted with the police report and after hearing the accused and the prosecution, the court is expected, nay bound to decide whether there is "sufficient ground" to proceed against the accused and as a consequence thereof either discharge the accused or proceed to frame charge against him. (Para 15)

It is trite that the words "not sufficient ground for proceeding against the accused" appearing in Section 227 CrPC postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible. (Para 16). *Yogesh* v. *State of Maharashtra*, (2008) 10 SCC 394: AIR 2008 SC 2991: 2008 Cri LJ 3872.

Bench Strength **2**. Coram: *S.B. Sinha* and **D.K. Jain**, JJ. [Date of decision: 28-4-2008]

Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4: 1979 SCC (Cri) 609; State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533, relied on

[2754] — Ss. 227 and 482 — Discharge — Grounds for — Delay in proceedings — Continuation of prosecution and framing of charges on basis of statements made by PWs after a gap of about 23 years — Propriety — *Held, though delay may be a relevant ground, however, in light of materials available before court through CBI, without testing the same at trial, proceedings cannot be quashed merely on ground of delay — Those materials have to be tested in context of prejudice to accused only at trial — Constitution of India, Art. 21. Sajjan Kumar* v. *CBI*, (2010) 9 SCC 368.

Bench Strength **2**. Coram: **P. Sathasivam** and *Anil R. Dave*, JJ. [Date of decision: 20-9-2010]

P. Vijayan v. State of Kerala, (2010) 2 SCC 398: (2010) 1 SCC (Cri) 1488, relied on

Vakil Prasad Singh v. State of Bihar, (2009) 3 SCC 355: (2009) 2 SCC (Cri) 95; Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93; Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394: (2007) 3 SCC (Cri) 388, considered

[2755] — Ss. 227, 228 and 219 — Order to discharge or frame charges against the accused — Tests and nature of enquiry to be made by the court — *Court has to sift evidence on record only for limited purpose of ascertaining whether a prima facie case is made out against the accused — At that stage court is not required to undertake an elaborate enquiry in sifting and weighing the material to arrive at the conclusion that it will not lead to conviction — In the circumstances of the case the High Court erred in seeking independent corroboration to the version put up by the complainants and in discharging the accused — Case remitted to the trial court to proceed further in accordance with law — Trial court further directed to consider whether the charge was required to be altered or amended so as to make it consistent with S. 219*

At the stage of Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

What the Court has to consider at the stage of framing of the charge is whether the version of the person complaining together with his/her explanation is prima facie believable or not. It was, therefore, not proper for the High Court to seek independent corroboration at that stage and to quash the charge and discharge the accused in absence thereof. The High Court was wholly wrong in discarding the material placed before the Court as false and discharging the accused on that ground. *State of Maharashtra* v. *Priya Sharan Maharaj*, (1997) 4 SCC 393: 1997 SCC (Cri) 584: AIR 1997 SC 2041: 1997 Cri LJ 2248.

Bench Strength **2**. Coram: *G.N. Ray* and **G.T. Nanavati**, JJ. [Date of decision: 11-3-1997]

Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47, followed

State of Punjab v. Jagir Singh, (1974) 3 SCC 277: 1973 SCC (Cri) 886, distinguished

Priya Sharan Maharaj v. State of Maharashtra, 1995 Cri LJ 3683 (Bom), reversed

[2756] — Ss. 227, 228 and 401 — High Court should not ordinarily interfere with trial court's order for framing of charge unless there is glaring injustice — *High Court's interference at that stage may encourage unscrupulous persons to protract trial and prevent culmination of criminal case which would amount to abuse of process of the court — Where trial court by a well-reasoned order directed framing of charges for murder, held, High Court in revision was not justified in quashing that order by a cryptic non-speaking order*

It is the statutory obligation of the High Court not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused persons. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the court in the face. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled-for and unjustified litigation under the cloak of technicalities of law. (Paras 12 and 8). *Om Wati* v. *State*, (2001) 4 SCC 333: 2001 SCC (Cri) 685: AIR 2001 SC 1507.

Bench Strength 2. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 19-3-2001]

Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722: 2000 SCC (Cri) 303; Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715: 1989 SCC (Cri) 285; State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533: AIR 1977 SC 2018; Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja, (1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52; Satish Mehra v. Delhi Admn., (1996) 9 SCC 766: 1996 SCC (Cri) 1104, relied on

See also State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568 where Satish Mehra case, overruled

[2757] — Ss. 227, 228 and 401 — Revision against dismissal of discharge petition and framing of charges — Observations by High Court while dismissing revision — Effect on trial court — Need for independent application of mind by trial court — *Apprehension expressed that if observations concerned of High Court were allowed to stand, trial Judge would have no other option but to convict appellant which would be against all canons of justice — Held, it is for trial Judge to evaluate all materials including evidentiary value of testimonies of PWs, alleged contradictory statements, delay and the conduct of Delhi Police in filing status report and further investigation by CBI — Clarified that all observations concerned of High Court would not affect ultimate analysis and final verdict of trial Judge* (Paras 40 to 43). *Sajjan Kumar* v. *CBI*, (2010) 9 SCC 368.

Bench Strength 2. Coram: **P. Sathasivam** and *Anil R. Dave*, JJ. [Date of decision: 20-9-2010]

Common Cause v. Union of India, (1999) 6 SCC 667: 1999 SCC (Cri) 1196, considered

[2758] — Ss. 227, 245 and 362 — Review of order of discharge — Permissibility — *Held, the said order is a final order and the same cannot be reviewed or corrected by subsequent order — Sessions Judge, without considering the supplementary charge-sheet, discharging the accused taking into account only preliminary charge-sheet — But, he recalling the discharge order when application moved therefor by prosecution bringing the said error to his notice — Held, the said discharge order could not have been recalled or modified — Hence, High Court's order confirming the order of Sessions Judge, not sustainable — However, State could take such steps as permissible in law to question the order of discharge — Penal Code, 1860, Ss. 302, 394, 360 and 397 — Arms Act, 1959, S. 27* (Para 5). *Deepu* v. *State of M.P.*, (2007) 15 SCC 543.

Bench Strength 2. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 1-8-2003]

[2759] — Ss. 227, 228(1)(b) and 397/401 — Discharge of accused — When not justified — Test — *Whether there was sufficient ground for proceeding against the accused or presuming that accused had committed an offence — FIR showing that three accused came at the spot armed with firearms and after giving exhortation to kill **H** and others resorted to firing as a result of which **H** and a girl belonging to Scheduled Caste who had come there to purchase some articles died — During course of investigation name of Respondent 2 also appeared and some witnesses stated under S. 161 CrPC that one of the accused handed over his rifle to Respondent 2 who ran away from the spot — Trial court framed charges against Respondent 2 under S. 302 read with S. 34 IPC and S. 3(2)(v) of the SC and ST (Prevention of Atrocities) Act — Respondent 2 filed revision under Ss. 397/401 before High Court challenging the order framing the charges — High Court set aside the order for the reason that the firing was not aimed at the deceased girl but she received the fatal injuries accidentally — Held, reason for setting aside the order wholly erroneous and unsustainable — High Court failed to apply the relevant test for judging validity of trial court's order directing framing of charges — High Court ignored provisions of S. 301 IPC — Prosecution case that Respondent 2 ran away from the scene after an accused handed over his rifle to him also shows commission of offence under S. 201 IPC — Since two persons had been killed, there should be separate and distinct charge for each murder besides charge under S. 3(2)(v) of the SC/ST Act — In the circumstances, order of discharge not sustainable and Respondent 2 must face the trial.* *Rajbir Singh* v. *State of U.P.*, (2006) 4 SCC 51: (2006) 2 SCC (Cri) 209: AIR 2006 SC 1963: (2006) 3 All LJ 754: 2006 Cri LJ 2458.

Bench Strength 2. Coram: *Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 8-3-2006]

State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533; Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715: 1989 SCC (Cri) 285, relied on

[2760] — Ss. 227, 239, 245 and 482 — Framing of charge — High Court's interference at that stage — Proposition of law laid down in A.R. Antulay, (1986) 2 SCC 716, reiterated that the test to be applied at the stage of framing of charge is of prima facie case — *On facts held,* *strong suspicion about commission of offence and accused's involvement was sufficient for framing of charges — At that stage, there was no necessity of formulating opinion about prospects of conviction — Charges framed under Ss. 420 and 406 IPC, on account of breach of agreements relating to lease of commercial vehicles — High Court's interference on the ground that the charges were not sustainable, held, was not warranted* (Paras 13 and 14). *Sanghi Bros. (Indore) (P) Ltd.* v. *Sanjay Choudhary*, (2008) 10 SCC 681.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 3-10-2008]

State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659: 1996 SCC (Cri) 820; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715: 1989 SCC (Cri) 285; State of W.B. v. Mohd. Khalid, (1995) 1 SCC 684: 1995 SCC (Cri) 266; R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716: 1986 SCC (Cri) 256, relied on

Black's Law Dictionary; Shorter Oxford English Dictionary; Stroud's Legal Dictionary; P. Ramanatha Aiyar: Law Lexicon, referred to

[2761] — Ss. 227, 239 & 245 and 228 & 240 — Discharge of accused — Requirement of recording of reasons in respect of — *Framing of charge, forming of opinion in case of — Difference in the requirements, explained — Reason therefor, explained — Held, the moment discharge order is passed, it is imperative to record reasons — However, charge(s) may be framed without recording reasons for showing why the charge(s) were framed*

The question relating to forming of an opinion at the time of framing of charge is different from a case of recording of reasons on the basis of which an order of discharge of the accused may be passed. The moment the order of discharge is passed it is imperative to record the reasons. But for framing of charge the court is required to form an opinion that there is ground for presuming that the accused has committed the offence. In case of discharge of the accused the use of the expression "reasons" has been inserted in Sections 227, 239 and 245 CrPC. At the stage of framing of a charge the expression used is "opinion". The reason is obvious. If the reasons are recorded in case of framing of charge, there is likelihood of prejudicing the case of the accused put on trial. The Judge is required to record reasons only if he decides to discharge the accused. But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge. But where the question of jurisdiction is raised and the trial court is required to adjudicate that issue, it cannot be said that reasons are not to be recorded. In such a case reasons relate to question of jurisdiction and not necessarily to the issue relating to framing of charge. In such a case reasons dealing with a plea relating to jurisdiction have to be recorded. (Paras 13, 15 and 16). *Lalu Prasad* v. *State of Bihar*, (2007) 1 SCC 49: (2007) 1 SCC (Cri) 241: (2007) 1 KLT 47: (2007) 50 AIC 107 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533; Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722: 2000 SCC (Cri) 303, followed

[2762] — Ss. 227 and 209 — Expression "the record of the case" as used in S. 227 — Meaning of — *Held, the record of the case and documents submitted therewith as postulated in S. 227 relate to the case and the documents referred to in S. 209* (Para 8). *State of Orissa* v. *Debendra Nath Padhi*, (2005) 1 SCC 568: 2005 SCC (Cri) 415: AIR 2005 SC 359: (2005) 1 KLT 80: (2005) 99 Cut LT 348.

Bench Strength 3. Coram: **Y.K. Sabharwal**, *D.M. Dharmadhikari* and *Tarun Chatterjee*, JJ. [Date of decision: 29-11-2004]

Satish Mehra v. Delhi Admn., (1996) 9 SCC 766: 1996 SCC (Cri) 1104, overruled

Supdt. and Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja, (1979) 4 SCC 274: 1979 SCC (Cri) 1038; State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533; State of Delhi v. Gyan Devi, (2000) 8 SCC 239: 2000 SCC (Cri) 1486; State of M.P. v. S.B. Johari, (2000) 2 SCC 57: 2000 SCC (Cri) 311; State of Maharashtra v. Priya Sharan Maharaj, (1997) 4 SCC 393: 1997 SCC (Cri) 584; State Anti-Corruption Bureau v. P. Suryaprakasam, 1999 SCC (Cri) 373; Om Parkash Sharma v. CBI, (2000) 5 SCC 679: 2000 SCC (Cri) 1014, relied on

Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142: 1994 SCC (Cri) 1181; P.S. Rajya v. State of Bihar, (1996) 9 SCC 1: 1996 SCC (Cri) 897; State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338: 2000 SCC (Cri) 1110, explained and distinguished on facts

Om Parkash Sharma v. CBI, (2000) 5 SCC 679: 2000 SCC (Cri) 1014, distinguished and held obiter dicta

[2763] — Ss. 227 and 228 — Court is required to record its reasons only if it decides to discharge the accused but it is not required to do so if it is to frame charge against the accused. *Om Wati* v. *State*, (2001) 4 SCC 333: 2001 SCC (Cri) 685: AIR 2001 SC 1507.

Bench Strength 2. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 19-3-2001]

[2764] — Ss. 227 and 228 — Court on perusal of evidence has only to find out whether there exists sufficient ground so that a prima facie case is made out to proceed against the accused — *It is only when even accepting as it is the evidence, which prosecution proposes to adduce, no case is made out against the accused, court can discharge him*

In an occurrence which took place in July 1991, the appellant's son was subjected to beating by the accused-respondents by weapons like hockey sticks, lathis and iron chain. A report was lodged with the police regarding the incident. Statement of a person who claimed to be an eyewitness was recorded by police under Section 161 CrPC wherein he supported the above incident. The accused persons and the deceased were arrested by the police under Sections 107/151 CrPC. Due to beating the deceased complained of pain in all parts of his body which necessitated his admission in hospital where he died at about 5 a.m. on 7-9-1991. The post-mortem report stated that "the death in this case is possibly by hepatic failure following viral hepatitis". After investigation, the final report was submitted against the accused persons who were charged by the trial court by passing a detailed order on 23-12-1991. A revision petition was filed against that order before the High Court. Meanwhile the accused were released on bail by the High Court. The revision petition was disposed of by the High Court after four years by quashing the charges framed with direction to the trial court to pass "an order delineating reasons in sufficient detail to lend assurance to the accused, the public and the court that sufficient judicial thought is at its back". Again on 4-2-1998 the trial court dealt with all the arguments addressed before it and held that prima facie there was sufficient evidence to frame charges against the accused persons under Sections 302, 147 r/w Section 149 IPC. The accused respondents who were on bail again filed revision petition which the High Court disposed of by a non-speaking order as follows: "Heard learned counsel for the petitioners as also learned counsel for the State and perused the documents on record, in particular, the post-mortem report, I am of the view that the charge under Section 302 IPC cannot be made out. In this view of the matter, I quash the charge framed under Section 302 IPC and direct the trial court to reframe the charge in accordance with law based upon material on record. The revision petition is allowed." Allowing the appeal of the deceased's mother, the Supreme Court

Held :

The trial court, in the instant case, rightly held that merely on account of the observations and the opinion incorporated in the post-mortem report, the prosecution could not be deprived of its right to prove that the accused were guilty of the offence for which the final report had been filed against them. There was no ground for the High Court to interfere with the well-reasoned order of the trial court by passing a cryptic and telegraphic order which is impugned in this appeal. It is not safe, at this stage, to deprive the prosecution in proving its case on the basis of the direct evidence, the statement of the deceased claimed to be admissible under Section 32 of the Evidence Act and the other documents including the inquest report allegedly disclosing the infliction of injuries on the person of the deceased which resulted in his death. The acceptance of the opinion of the doctors, as incorporated in the post-mortem report for the cause of death of the deceased being "hepatic failure following viral hepatitis" cannot be accepted on its face value at this initial stage. (Para 11)

The present case reflects and demonstrates the abuse of the process of the court by the accused persons who have succeeded in protracting the commencement of trial against them for about a decade. The accused have left no stone unturned to exploit the procedural wrangles to defeat the ends of justice. The impugned order of the High Court not only reflects the non- application of mind by the Single Judge of the High Court while discharging the respondents for the offence punishable under Section 302 of the Indian Penal Code but also demonstrates the ignoring of the correct position of law applicable on the point and catena of judgments pronounced by the Supreme Court on the subject. (Para 2)

Now no reasons are required to be recorded when the charges are framed against the accused persons. At the stage of passing the order in terms of Section 227 of the Code, the court has merely to peruse the evidence in order to find out whether or not there is a sufficient ground for proceeding against the accused. If upon consideration, the court is satisfied that a prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of Section 228 of the Code. Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the court can discharge the accused. The court is not required to enter into meticulous consideration of evidence and material placed before it at this stage. (Paras 7 and 8). *Om Wati* v. *State*, (2001) 4 SCC 333: 2001 SCC (Cri) 685: AIR 2001 SC 1507.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 19-3-2001]

Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722: 2000 SCC (Cri) 303; Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715: 1989 SCC (Cri) 285; State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533: AIR 1977 SC 2018; Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja, (1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52; Satish Mehra v. Delhi Admn., (1996) 9 SCC 766: 1996 SCC (Cri) 1104, relied on

But see (2003) 2 SCC 711, 715 where Satish Mehra case, doubted, and See State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568 where Satish Mehra case, overruled

[2765] — Ss. 227 and 228 — Framing of charge — At this stage court has to be only prima facie satisfied about existence of sufficient ground for proceeding against the accused — For this limited purpose, court can evaluate material and documents on record — But it cannot appreciate the evidence — *In the circumstances held, accused-respondent's application for production of documents relating to income tax returns or income tax assessment orders which were collected during course of investigation conducted pursuant to complaint under S. 13(1)(e) r/w S. 13(2) of Prevention of Corruption Act were wrongly rejected by trial court in view of relevance of those documents in reaching court's prima facie satisfaction — Prevention of Corruption Act, 1988, S. 13(1)(e) r/w S. 13(2)*

A complaint under Section 13(1)(*e*) read with Section 13(2) of the Prevention of Corruption Act, 1988 for the check period 25-9-1982 to 27-3-1993 was filed against the respondent public servant stating that he had acquired the property in excess of the known sources of his income. While submitting the charge-sheet several important documents, which were collected during the course of investigation, were withheld. Most of the documents related to the income tax returns or income tax assessment orders. All these documents pertained to the period prior to 26-3-1993. Some of them even related to the year 1988. At the time of framing charges the respondent made an application seeking production of these documents in court. According to the respondent the said documents supported him. If those documents were considered even prima facie there was no scope to frame charges against him. But the said application was rejected stating that for the purpose of framing charges only the documents forwarded to the court under Section 173(5) CrPC were required to be considered. Hence the respondent filed criminal revision which was allowed by the High Court directing that the documents collected during investigation be produced and may be taken into consideration by the court below while framing the charge. Thereafter the trial court framed charges under Section 13(1)(*e*) read with Section 13(2) of the Act. Aggrieved by the order framing charges, the respondent filed a criminal revision. The High Court accepted the case of the respondent, set aside the order of the trial court framing charges and discharged the respondent. Dismissing the SLP by the State,

Held :

At the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to produce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence, then the charge can be quashed. (Paras 7 and 11)

In the normal course the documents in question in the present case could not have been prepared in anticipation that the respondent would have to face such charges on a future date. The documents being the orders of assessment or returns filed with the Income Tax Authorities on their face value supported the case of the respondent. There was no bar to consider the material on record in the case on hand, which was collected during the course of investigation and produced before the Court. (Paras 6 and 12)

Besides, in the order passed by the High Court in the earlier revision petition the trial court was directed that the documents made available by the accused during investigation be produced and they be taken into consideration by the court while framing charges. The said order became final, it having not been challenged further. In this situation the parties and the trial court were bound and governed by the said direction. The trial court's failure to follow the directions resulted in framing charges against the respondent ignoring the documents, which on their face value supported the respondent. (Para 6)

In this view the High Court, looking to the material and documents that were made available at the stage of framing charges on their face value in the light of the directions given earlier in criminal revision and bearing in mind the position in law, concluded that charges could not be framed against the respondent and, consequently, set aside the order of the trial court and discharged the respondent. On the facts and in the circumstances of the case and having regard to the legal position stated above, there is no good reason or valid ground to upset the impugned order. (Paras 13 and 14). *State of M.P.* v. *Mohanlal Soni*, (2000) 6 SCC 338: 2000 SCC (Cri) 1110: AIR 2000 SC 2583: 2000 Cri LJ 3504.

Bench Strength 2. Coram: *S. Rajendra Babu* and **Shivaraj V. Patil**, JJ. [Date of decision: 19-7-2000]

Ananda Bezbaruah v. Union of India, 1994 Cri LJ 12 (Gau), approved

Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47, relied on

State of M.P. v. S.B. Johari, (2000) 2 SCC 57: 2000 SCC (Cri) 311, distinguished

Followed in Hem Chand v. State of Jharkhand, (2008) 5 SCC 113

[2766] — Ss. 227 and 228 — Order to discharge accused or to proceed with trial — Tests and considerations to be applied by Court

Reading Ss. 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S. 227 or S. 228 of the Code. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. If the scales as to the guilt or innocence of the accused are even at the conclusion of the trial, then on the theory of benefit of doubt the case must end in the acquittal of the accused; but if, on the other hand, the scales are even at the initial stage of making an order under S. 227 or S. 228, then in such a situation, ordinarily and generally the order will have to be made under S. 228 and not under S. 227. The test is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Where there is a prima facie evidence even though the person charged of an offence in the complaint might have a defence, the matter has to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused. Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case.

In the present case, the fact that the deceased died an unnatural death and there were injuries of burning on her person was not in doubt or dispute. The question to be decided at the trial would be whether the respondent had murdered her and set fire to the body or whether she committed suicide by setting fire to herself. This undoubtedly is a serious matter for decision at the trial and the discharge of the accused under S. 227 is not justified. *State of Bihar* v. *Ramesh Singh*, (1977) 4 SCC 39: 1977 SCC (Cri) 533: AIR 1977 SC 2018: 1977 Cri LJ 1606.

Bench Strength **2**. Coram: **N.L. Untwalia** and *P.N. Shinghal*, JJ. [Date of decision: 2-8-1977]

[2767] — S. 227 — Expression "hearing the submissions of the accused" as used therein — Meaning of — *Held, means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith — It cannot mean opportunity to file material to be granted to the accused*

Can the trial court at the time of framing of charge consider material filed by the accused, was the point for determination in these matters.

Answering the said question in the negative,

Held :

The record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209 CrPC. That is the plain meaning of Section 227 read with Section 209 CrPC. The provision about hearing the submissions of the accused as postulated by Section 227 only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police. (Paras 8 and 18). *State of Orissa* v. *Debendra Nath Padhi*, (2005) 1 SCC 568: 2005 SCC (Cri) 415: AIR 2005 SC 359: (2005) 1 KLT 80: (2005) 99 Cut LT 348.

Bench Strength **3**. Coram: **Y.K. Sabharwal**, *D.M. Dharmadhikari* and *Tarun Chatterjee*, JJ. [Date of decision: 29-11-2004]

Satish Mehra v. Delhi Admn., (1996) 9 SCC 766: 1996 SCC (Cri) 1104, overruled

Supdt. and Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja, (1979) 4 SCC 274: 1979 SCC (Cri) 1038; State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533; State of Delhi v. Gyan Devi, (2000) 8 SCC 239: 2000 SCC (Cri) 1486; State of M.P. v. S.B. Johari, (2000) 2 SCC 57: 2000 SCC (Cri) 311; State of Maharashtra v. Priya Sharan Maharaj, (1997) 4 SCC 393: 1997 SCC (Cri) 584; State Anti-Corruption Bureau v. P. Suryaprakasam, 1999 SCC (Cri) 373; Om Parkash Sharma v. CBI, (2000) 5 SCC 679: 2000 SCC (Cri) 1014, relied on

Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142: 1994 SCC (Cri) 1181; P.S. Rajya v. State of Bihar, (1996) 9 SCC 1: 1996 SCC (Cri) 897; State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338: 2000 SCC (Cri) 1110, explained and distinguished on facts

Om Parkash Sharma v. CBI, (2000) 5 SCC 679: 2000 SCC (Cri) 1014, distinguished and held obiter dicta

[2768] — Ss. 227 & 228, 239 & 240, 91 and 482 — Framing of charge — Trial court whether can consider any material filed by the accused — *Held, at the said stage it can consider only the material produced by the prosecution — No provision in CrPC grants to the accused any right to file any material or document at the said stage — That right is granted only at the stage of trial —* Satish Mehra case, *(1996) 9 SCC 766 taking a contrary view, held, not correctly decided — Contention made about production of documents relying upon S. 91 CrPC, rejected — Scheme and object of new CrPC of 1973 which incorporated Ss. 227 and 209 and omitted Ss. 207 and 207-A existing in old CrPC of 1898, taken note of — Submission that the above interpretation of Ss. 227 and 239 would run the risk of those provisions being declared ultra vires Arts. 14 and 21 of the Constitution as it would compel the accused to face trial despite being in a position to produce unimpeachable and unassailable material to show his innocence at the stage of framing of charge, held, not acceptable — Constitution of India, Arts. 21, 14 and 226*

Can the trial court at the time of framing of charge consider material filed by the accused, was the point for determination in these matters.

Answering the said question in the negative, *Held* :

The law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. No provision in the Code of Criminal Procedure, 1973 (for short the "Code") grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial. *Satish Mehra case*, (1996) 9 SCC 766 holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. (Paras 23, 8, 27 and 18)

In the old Code of 1898 there was no provision similar to Section 227 of the new Code of 1973. Section 227 was incorporated in the 1973 Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. If the evidence even if fully accepted cannot show that the accused committed the offence, the accused deserves to be discharged. In the old Code, the procedure as contained in Sections 207 and 207-A was fairly lengthy. The aforesaid Sections 207 and 207-A have been omitted from the 1973 Code and a new Section 209 enacted on the recommendation of the Law Commission contained in its 41st Report. It was realised that the commitment inquiry under the old Code was resulting in inordinate delay and served no useful purpose. That inquiry has, therefore, been dispensed with in the 1973 Code with the object of expeditious disposal of cases. Instead of the committal Magistrate framing the charge, it is now to be framed by the Court of Session under Section 228 in case the accused is not discharged under Section 227. This change brought out in the 1973 Code is also required to be kept in view while determining the question. Under the 1973 Code, the evidence can be taken only after framing of charge. At the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code of Criminal Procedure. (Paras 9 and 18)

The reliance placed by the accused on Articles 14 and 21 is misplaced. Regarding the argument of the accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 CrPC and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice within the parameters laid down in *Bhajan Lal case*, 1992 Supp (1) SCC 335. (Paras 18 and 29). *State of Orissa* v. *Debendra Nath Padhi*, (2005) 1 SCC 568: 2005 SCC (Cri) 415: AIR 2005 SC 359: (2005) 1 KLT 80: (2005) 99 Cut LT 348.

Bench Strength **3**. Coram: **Y.K. Sabharwal**, *D.M. Dharmadhikari* and *Tarun Chatterjee*, JJ. [Date of decision: 29-11-2004]

Satish Mehra v. Delhi Admn., (1996) 9 SCC 766: 1996 SCC (Cri) 1104, overruled

Supdt. and Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja, (1979) 4 SCC 274: 1979 SCC (Cri) 1038; State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533; State of Delhi v. Gyan Devi, (2000) 8 SCC 239: 2000 SCC (Cri) 1486; State of M.P. v. S.B. Johari, (2000) 2 SCC 57: 2000 SCC (Cri) 311; State of Maharashtra v. Priya Sharan Maharaj, (1997) 4 SCC 393: 1997 SCC (Cri) 584; State Anti-Corruption Bureau v. P. Suryaprakasam, 1999 SCC (Cri) 373; Om Parkash Sharma v. CBI, (2000) 5 SCC 679: 2000 SCC (Cri) 1014, relied on

Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142: 1994 SCC (Cri) 1181; P.S. Rajya v. State of Bihar, (1996) 9 SCC 1: 1996 SCC (Cri) 897; State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338: 2000 SCC (Cri) 1110, explained and distinguished on facts

Om Parkash Sharma v. CBI, (2000) 5 SCC 679: 2000 SCC (Cri) 1014, distinguished and held obiter dicta

Followed in Bharat Parikh v. CBI, (2008) 10 SCC 109: (2008) 3 SCC (Cri) 609

[2769] — **Ss. 227, 228, 239, 240 and 482 — Consideration of material produced by the defence at the stage of taking cognizance or framing of charges — Power of trial court** — *Referring to relevant provisions contained in CrPC as well as various decisions of the Supreme Court including the one made by the three-Judge Bench in* Anil Kumar Bhunja case, *(1979) 4 SCC 274 Supreme Court taking the view that there is no requirement in law that the court at the time of framing charge should either give an opportunity to the accused to produce evidence in defence or consider such evidence the defence may produce at that stage — But in view of the fact that the Supreme Court in* Satish Mehra case, *(1996) 9 SCC 766 despite taking notice of the said three-Judge Bench judgment, had taken somewhat different view, held, it would be appropriate that the matter should be referred to a larger Bench* (Paras 7, 11 and 12). *State of Orissa* v. *Debendra Nath Padhi*, (2003) 2 SCC 711: 2003 SCC (Cri) 688: AIR 2003 SC 1512: 2003 Cri LJ 1517.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 6-2-2003]

Supdt. and Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja, (1979) 4 SCC 274: 1979 SCC (Cri) 1038; Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715: 1989 SCC (Cri) 285; Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47; Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521; State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533; G.L. Didwania v. ITO, 1995 Supp (2) SCC 724; Secy., Hailakandi Bar Assn. v. State of Assam, (1996) 9 SCC 74: 1996 SCC (Cri) 921; Uttam Chand v. ITO, (1982) 2 SCC 543: 1982 SCC (Tax) 150, considered

Satish Mehra v. Delhi Admn., (1996) 9 SCC 766: 1996 SCC (Cri) 1104, doubted

***Matter finally decided in** State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568*

[2770] — Ss. 227, 228, 239, 240 & 226 and 482 — Framing of charge — Whether there was sufficient ground for proceeding against the accused — Test to be applied — Court not debarred from looking into any material produced by the accused at that stage — *Hearing of accused not confined to oral arguments — Accusation by wife against her husband that he molested their infant child — Wife's attitude towards her husband found to be vengeful — In the circumstances of the case, possibility of the wife manipulating child's genitals in order to concoct medical evidence against the accused cannot be ruled out — Proceedings and charge framed by the Sessions Judge quashed and accused discharged — Penal Code, 1860, Ss. 354 and 376/511*

The appellant and his wife Anita were living in New York ever since their marriage. Before and after the birth of the children relationship between husband and wife was far from cordial. Husband alleged that his wife, in conspiracy with her father, had siphoned off a whopping sum from his bank deposits in India by forging his signature. He also alleged that his wife is suffering from some peculiar psychiatric condition. He approached a court at New York for securing custody of his children. On 31-10-1992 his wife left his house with the children and then filed a complaint with Saffolk Country Police Station (United States) alleging that her husband had sexually abused Nikita who was then aged four. United States police at the local level moved into action, but after conducting detailed investigation concluded that the allegations of incestuous abuse were untrue. The appellant's wife returned to India with her children. In the meanwhile Family

Court at New York has ordered that custody of the children be given to the husband and a warrant of arrest was issued against Anita for implementation of the said order. The appellant's wife came back to India and lodged an FIR on 14-8-1993 against her husband who had returned to India on 12-7-1993 and had filed a petition for a writ of habeas corpus for securing the custody of the children. On the basis of the FIR filed by the wife a case was charge-sheeted by the police. The Sessions Judge framed charges on two counts. First count in the charge was that appellant had outraged the modesty of his minor daughter aged about 3 years sometime during March and July 1991 at New Delhi by fondling with her vagina and also by inserting a bottle into it and thereby committed the offence under Section 354 of the IPC. Second count in the charge was that he made an attempt to commit rape on the said infant child (time and place being the same) and thereby committed the offence under Section 376 read with Section 511 of the IPC.

Allowing the appeal by the special leave,

Held :

Consideration which should weigh with the Sessions Court at the stage of framing of charge have been well designed by Parliament through Section 227 CrPC. Section 228 contemplates the stage after the case survives the stage envisaged in the former section. When the court is of opinion that there is ground to presume that the accused has committed an offence the procedure laid down therein has to be adopted. When those two sections are put in juxtaposition with each other the test to be adopted becomes discernible: Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is "sufficient ground for proceeding".

An incidental question which emerges in this context is whether the Sessions Judge can look into any material other than those produced by the prosecution. Section 226 of the Code obliges the prosecution to describe the charge brought against the accused and to state by what evidence the guilt of the accused would be proved. The next provision enjoins on the Sessions Judge to decide whether there is sufficient ground to proceed against the accused. In so deciding the Judge has to consider (1) the record of the case, and (2) the documents produced therewith. He has then to hear the submissions of the accused as well as the prosecution on the limited question whether there is sufficient ground to proceed. What is the scope of hearing the submissions? Should it be confined to hearing oral arguments alone?

Similar situation arises under Section 239 of the Code (which deals with trial of warrant cases on police report). In that situation the Magistrate has to afford the prosecution and the accused an opportunity of being heard besides considering the police report and the documents sent therewith. At these two stages the Code enjoins on the court to give audience to the accused for deciding whether it is necessary to proceed to the next stage. It is a matter of exercise of judicial mind. There is nothing in the Code which shrinks the scope of such audience to oral arguments. If the accused succeeds in producing any reliable material at that stage which might fatally affect even the very sustainability of the case, it is unjust to suggest that no such material shall be looked into by the court at that stage. Here the 'ground' may be any valid ground including insufficiency of evidence to prove the charge.

The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, the Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code.

But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. Most of the Sessions Courts in India are under heavy pressure of workload. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself.

In the instant case the complaint made by the wife with the New York police that her husband committed sexual offences against her 18 months' old female child was investigated by the New York police who found the complaint bereft of truth hook, line and sinker. The present charge is that the appellant committed such offences against the same child at New Delhi sometime during March to July 1991. There is now no case of what happened in United States. The Sessions Judge should have noted that appellant's wife has not even remotely alleged in the complaint filed by her on 19-3-1993 before CAW Cell, New Delhi that the appellant has done anything like that while he was in India. Even the other complaint petition (on which basis the FIR was prepared) is totally silent about a case that the appellant did anything against his daughter anywhere in India.

Her attitude to the appellant, even dehors the allegation involving the child, was vengeful. The Court can take into account the assertion of the petitioner that the present story involving the child was concocted by his wife to wreak her vengeance by embroiling him in serious criminal cases in India so that he could be nailed down here and prevent him from going back to USA.

Even overlooking all the inherent infirmities shrouding the testimony of a tiny tot speaking about what her father did when she was aged 3 and even ignoring the appellant's persistent submission that the little child was briskly tutored by her mother to speak to the present version, there is no reasonable prospect of the Sessions Court relying on such a testimony to reach the conclusion that the prosecution succeeded in proving the offence charged beyond all reasonable doubt.

Therefore, the proceedings and the charge framed by the Sessions Judge are quashed and the appellant is discharged. *Satish Mehra* v. *Delhi Admn.*, (1996) 9 SCC 766.

Bench Strength **2**. Coram: *M.M. Punchhi* and **K.T. Thomas**, JJ. [Date of decision: 31-7-1996]

***Doubted** in State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711, 715*

***Finally overruled** in State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568*

***Held, overruled** in Bharat Parikh v. CBI, (2008) 10 SCC 109: (2008) 3 SCC (Cri) 609*

[2771] — S. 227 — Material produced by the defence at stage of cognizance or framing of charges — Power of trial court to consider — *Held*, per Katju, J. (Kabir, J. concurring), *it cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted* — Per Kabir, J., *there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in S. 227 CrPC can be taken into consideration by the Magistrate at that stage — In a proceeding taken therefrom under S. 482 CrPC the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained — This appears to be the intention of the legislature in wording Ss. 227 and 228 the way in which they have been worded and as explained in* Debendra Nath Padhi case, *(2005) 1 SCC 568 by the larger Bench therein to which the very same question had been referred*

Disposing of the appeal in terms below,

Held :

Per Katju, J.

Judgment of the High Court cannot be sustained so far as it has quashed the complaint and proceedings against accused husband *R*, but it has to be sustained so far as it relates to his wife *V.* (Para 10)

While there were certain rulings of two-Judge Benches of this Court, which had held that the findings in a civil suit are binding in a criminal case on the same facts but not vice versa, this view appears to have been somewhat watered down in the subsequent decisions of the larger Benches of this Court. The law as to when criminal proceedings can be quashed by the High Court in exercise of powers under Section 482 CrPC or Article 226 of the Constitution has been laid down by the Supreme Court. (Paras 12 and 13)

The allegations in the FIR if treated to be correct prima facie make out an offence against the respondent's husband *R*. (Para 14)

An appeal is pending against the judgment in the civil suit. The evidence of *D* is a very detailed one and some contradictory statements appear to have been given by him e.g. that the amount was paid by *R* as a loan, and this contradicts the version that the money was paid as a sale consideration. In the judgment of the civil court it has been held that undue influence cannot be ruled out. In these circumstances it cannot be said that at this stage the proceedings in the criminal case were totally mala fide and with ulterior motive. (Para 17)

The pleas which the respondent *R* took before the High Court could be taken by him at the time of the trial, and it would not be proper to pre-empt the criminal proceeding at this stage. Serious allegations have been made against him in the FIR. The relation of a lawyer and his client is like a fiduciary relationship, and the lawyer has to act in the interest of his client. However, it is alleged in the FIR that *R* deceived the complainant and her husband. These are matters which the trial court in the criminal case should look into, and no opinion is being expressed either way on this question. However, this was not a fit case for quashing of the criminal proceedings against *R* in exercise of the powers under Section 482 CrPC or Article 226 of the Constitution. (Para 18)

In *Debendra Nath Padhi case*, (2005) 1 SCC 568 it has been observed that the width of the powers of the High Court under Section 482 CrPC and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of the Court or otherwise to secure the ends of justice within the parameters laid down in *Bhajan Lal case*, 1992 Supp (1) SCC 335. (Para 20)

It is well settled that a judgment of the Court has not to be treated as Euclid's formula. While it is true that ordinarily defence material cannot be looked into by the court while framing of the charge in view of *Debendra Nath Padhi case*, (2005) 1 SCC 568 there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing of the charges or taking cognizance. It cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. (Paras 21 and 22)

In this case it cannot be said that the evidence in the civil suit which was produced by the defence before the trial court established convincingly that the prosecution case is totally absurd or preposterous. This is a matter which has to be looked into by the trial court. However, the trial court will not be influenced by any observations made in this judgment. (Paras 23 and 25)

As regards the other criminal appeal in which *V*, wife of *R*, is the respondent, there is no material whatsoever either mentioned in the FIR or produced by the prosecution to show that *V* was in any way involved in the alleged criminal offence committed by her husband *R*. The only allegation against her is that the sale deed was in her favour. This does not prima facie make out any offence. Criminal proceeding against *V* was rightly quashed by the High Court. (Para 26)

Per Kabir, J. (concurring)

Section 227 CrPC, which is in Chapter XVIII of the Code of Criminal Procedure, which deals with trials before a Court of Session, relates to the opening stages of a trial at the time of framing of charge against the accused which is done under Section 228. The aforesaid provision has fallen for consideration of this Court in several cases on the question as to whether at the stage of framing of charge, the court in seisin of the matter is required to consider any material, other than that indicated in the section. (Paras 29 and 30)

Till 1996, the consistent view which had been taken by the Supreme Court was that at the time of framing of charge the trial court can consider only such materials as are placed by the investigating agency having regard to the very language of Section 227. At that stage, the defence could only be heard but could not be given an opportunity to produce evidence for the consideration of the court. However, a different view was expressed by a two-Judge Bench of this Court in *Satish Mehra case*, (1996) 9 SCC 766. It was because of this discordant note that in *Debendra Nath Padhi case*, (2005) 1 SCC 568 an order was passed referring the said question to a larger Bench and the same was taken up for consideration in the said case itself by a three-Judge Bench. (Para 31)

It may be noted that no provision in the Code gives the accused the right to file any material or document at the stage of framing of charge. The right is only granted at the stage of the trial. (Para 33)

The larger Bench (in *Debendra Nath Padhi case*) made a conscious distinction between a proceeding under Section 227 CrPC before the trial court and a proceeding under Section 482 CrPC and made a reference to the Court's power to consider material other than those produced by the prosecution in a proceeding under Section 482 CrPC. While holding that the decision rendered in *Satish Mehra case*, (1996) 9 SCC 766 was erroneous, the larger Bench held that if the submission that the accused would be entitled to produce materials and documents in proof of his innocence at the stage of framing of charge, was to be accepted, it would be unsettling a law well settled over a hundred years. Section 227 only means hearing the submissions of the accused on the records of the case filed by the prosecution and documents submitted therewith and nothing more. The larger Bench arrived at a definite conclusion that the expression "hearing the submissions of the accused" cannot mean an opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police. (Para 36)

The larger Bench (in *Debendra Nath Padhi case*) did not leave any scope for a different interpretation of the provisions of Section 227 as is now being made. However, the larger Bench did indicate that the width of the powers of the High Court under Section 482 CrPC and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court. (Para 37)

There is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 CrPC can be taken into consideration by the Magistrate at that stage. However, in a proceeding taken therefrom under Section 482 CrPC the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in *Debendra Nath Padhi case* by the larger Bench therein to which the very same question had been referred. (Para 38)

The complaint made in this case does make out a prima facie case against the accused *R* and the cognizance taken by the Magistrate cannot be faulted and the appeal as far as he is concerned, must be allowed. However, even prima facie, none of the offences referred to in the charge-sheet can be made out against the accused *V* and she has been roped in only with the aid of Section 120-B which is also not substantiated. The appeal as far as she is concerned, must be dismissed. (Para 39). *Rukmini Narvekar* v. *Vijaya Satardekar*, (2008) 14 SCC 1. Bench Strength 2. Coram: **Altamas Kabir**[2] and **Markandey Katju**[1], JJ. [Date of decision: 3-10-2008]

State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568: 2005 SCC (Cri) 415, followed

Satish Mehra v. Delhi Admn., (1996) 9 SCC 766: 1996 SCC (Cri) 1104, held, overruled

[2772] — **Ss. 227 & 228, 401 & 397 and 482 — Discharge — Court has only to see whether prima facie there was sufficient ground for proceeding against the accused — It cannot appreciate the evidence to arrive at a conclusion in the matter** — *On facts, held, High Court in revision erred in quashing the charge framed against the accused by trial court by appreciating the material produced by the prosecution and on that basis deciding that accused was not guilty — Constitution of India, Article 226 — Prevention of Corruption Act, 1947, Ss. 5(1)(d) and 5(2)*

An FIR was lodged alleging that the accused respondents, viz. the Dean, the Superintendent, the Medical-Officer-in-Charge of Stores, and the Accountant of S.G. Cancer Hospital, Indore entered into criminal conspiracy with some local businessmen in purchase of medicines for the said Hospital by misusing their posts and also by using some forged documents that caused wrongful loss to the Government. It was alleged that though many of the items had not been purchased, amount was paid on bogus vouchers. On the basis of the material on record, it was pointed out that some medicines were purchased at Jabalpur at lesser price, roughly at half the rate. After considering the material on record, the Sessions Judge framed the charge. That charge was quashed by the High Court against the respondents by accepting the contention raised and considering the details of the material produced on record. The High Court observed that the role of the Medical-Officer-in-Charge in purchase of the medicines was limited to the extent that he prepared only a comparative statement of tenders and that the other two persons were members of the Purchase Committee. The Court arrived at the conclusion that comparison of different prices at different places at different periods on the basis of different transactions between different persons cannot straight away be made the basis for alleging corruption or corrupt practice on the part of the accused. The Court further observed that the trial court had not properly appreciated that there was a difference of about 550 miles between Jabalpur and Indore and therefore price difference in purchase of medicines would be there. The Court also held that the medicines were purchased at two places during different periods and therefore also, there would be a price difference. With regard to the Dean and the Superintendent, the Court observed that they were not shown to have any control over the purchase of the goods and, therefore, they cannot be saddled with the criminal prosecution. The Court further considered that as per the statement of the manufacturing company the quotations given by M/s Allied Medicine Agency, Indore were genuine and, therefore, held that charges levelled against the respondents cannot stand for a minute. Similarly, dealing with the contention of the respondent Accountant, the High Court observed that it cannot be disputed that the respondent had prepared the bills on account of instructions given to him by his superiors, and that on his own account he could not have prepared the said bills for making payment to the Company. The Court also observed that he was neither empowered to place orders nor competent to make payment thereof unless the same was approved by the doctors who were actually in charge of the Hospital. The Court, therefore, held that there was no sufficient material available for framing the charge against him.

Allowing the appeals,

Held :

The aforesaid exercise of appreciating the materials produced by the prosecution at the stage of framing of the charge is wholly unjustified. The entire approach of the High Court appears to be as if the Court was deciding the case as to whether the accused are guilty or not. It was done without considering the allegations of conspiracy relating to the charge under Section 120-B. In most of the cases, it is only from the available circumstantial evidence an inference of conspiracy is to be drawn. Further, the High Court failed to consider that medicines are normally sold at a fixed price and in any set of circumstances, it was for the prosecution to lead necessary evidence at the time of trial to establish its case that purchase of medicines for the Cancer Hospital at Indore was at a much higher price than the prevailing market rate. Further again non-joining of the two remaining members to the Purchase Committee cannot be a ground for quashing the charge. After framing the charge and recording the evidence, if the Court finds that other members of the Purchase Committee were also involved, it is open to the Court to exercise its power under Section 319 of the Criminal Procedure Code. Not only that, the Court erroneously considered the alleged statement of the manufacturing company that quotations given by M/s Allied Medicine Agency, Indore were genuine without there being any cross-examination. The High Court ignored the allegation that many of the items have not been purchased and the amount was paid on bogus vouchers. Hence, there was no justifiable reason for the High Court to quash the charge framed by the trial court. (Para 6)

The entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. (Para 4). *State of M.P.* v. *S.B. Johari*, (2000) 2 SCC 57: 2000 SCC (Cri) 311: AIR 2000 SC 665: 2000 Cri LJ 944.

Bench Strength 2. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 17-1-2000]

Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjayya, (1990) 4 SCC 76: 1991 SCC (Cri) 47, relied on

[2773] — Ss. 227 & 228(1) and 239 & 240(1) — Scope of inquiry by court at the stage of framing of charges against accused restated

At the stage of framing of the charge the court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. The court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. Each case depends upon its particular facts and circumstances and sometimes even a remote link between the activities of an accused and the facts of the case may justify a reasonable inference warranting a judicial finding that there is ground for presuming that an accused has committed the offence or at least to presume that the question of his being directly or indirectly involved in the commission of such offence is not to be ruled out. (Paras 9 to 11). *Suresh* v. *State of Maharashtra*, (2001) 3 SCC 703: 2001 SCC (Cri) 621: AIR 2001 SC 1375: 2001 Cri LJ 1697.

Bench Strength 2. Coram: *K.T. Thomas* and **D.P. Mohapatra**, JJ. [Date of decision: 2-3-2001]

State of Maharashtra v. Priya Sharan Maharaj, (1997) 4 SCC 393: 1997 SCC (Cri) 584; Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47; State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338: 2000 SCC (Cri) 1110, relied on

Rudolf Fernandes v. State of Goa, 1993 Mah LJ 1664, approved

[2774] — S. 227 — Discharge — Supreme Court interfering on facts and setting aside the proceedings before the Court of Session — *Plea of accused that continuance of the proceedings before the appropriate court in the manner prescribed in law would serve no useful purpose in view of the long passage of time, held, had no substance — It was for the competent court to decide the action to be taken next — Accused directed to raise all their contentions at that stage if they wanted to make a plea for discharge* (Para 18). *Moly* v. *State of Kerala*, (2004) 4 SCC 584: 2004 SCC (Cri) 1348: AIR 2004 SC 1890: 2004 Cri LJ 1812.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 23-3-2004]

[2775] — Ss. 227, 239, 399 and 401 — Corruption — Need for expedition in disposal of proceedings relating to — *Discharge for alleged offences committed in relation to — Revision application filed by accused for non-allowance of discharge — Need for expedition in disposal of such proceedings*

The challenge in the writ petition was essentially to the appointment of Respondent 3 Ms Neera Yadav as Chief Secretary of the State of Uttar Pradesh. It was contended by the petitioner that it was a prestigious appointment and looking to the tainted reputation and doubtful integrity of Respondent 3, she should not have been appointed as a Chief Secretary, particularly when criminal cases were pending and a Commission had been appointed by the Supreme Court to look into the various aspects, including the correctness of the decision to drop disciplinary proceedings against Respondent 3.

Held :

CBI obtained sanction to prosecute Respondent 3 Neera Yadav, from the Central Government and filed charge-sheets before the Special Judge, CBI. After the charge-sheets were filed Respondent 3 made an application for discharge under the provisions of CrPC, which was rejected. While rejecting the prayer for discharge, the Special Judge directed framing of charges. The order rejecting the prayer for discharge is currently under challenge before the High Court in Criminal Revision No. 2284 of 2004. It appears from the order passed by the High Court directing stay of further proceedings, that the primary question before it related to absence of sanction in terms of Section 197 CrPC. Considering the passage of time, the matters should be decided as early as practicable. The High Court is requested to ensure that Criminal Revision No. 2284 of 2004 is disposed of within a period of 3 months from the date of receipt of this order. (Paras 3 and 13). *Centre for Public Interest Litigation* v. *Union of India*, (2005) 8 SCC 202: AIR 2005 SC 4413: (2005) 128 Comp Cas 387.

Bench Strength **3**. Coram: *Ruma Pal*, **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 6-10-2005]

[2776] — Ss. 227, 228 and 482 — Quashing of charge — Propriety — Two dying declarations, one recorded by SDM and other by Executive Magistrate — *High Court set aside the order of framing charge by preferring one dying declaration to that of other — Appreciation or marshalling of evidence, held, not permissible at the time of framing of charge — Even strong suspicion is enough to frame charge, restated*

The deceased *DK* was a dumb lady. When she went to the land of the respondents, she was caught and set on fire after pouring kerosene on her. The appellant husband was attracted by the fire and brought her to the hospital. On the same day itself, her dying declaration based on signs was recorded by the Executive Magistrate. *DK* identified the respondents herein. In a subsequent dying declaration recorded by SDM, *DK* named some other persons and also identified them. The trial court's order of framing charges against the respondents was set aside by the High Court in a criminal revision filed by the respondents wherein *DK* is said to be deaf and paralytic. The husband of the deceased *DK* challenged the order of discharge passed by the High Court.

Allowing the appeal,

Held :

The jurisdiction of the learned Sessions Judge while exercising power under Section 227 CrPC is limited. Charges can also be framed on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. (Para 13)

The observation of the High Court that the deceased was both deaf and dumb is not based on any material. Apart from the other materials on record, even the respondents in their memo of revision had described the deceased merely as a dumb and paralytic person and not a deaf person. Furthermore, it was not the stage where the High Court should prefer one dying declaration to that of the other. (Para 15). *Palwinder Singh* v. *Balwinder Singh*, (2008) 14 SCC 504.

Bench Strength **2**. Coram: *S.B. Sinha* and *Cyriac Joseph*, JJ. [Date of decision: 20-10-008]

State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568: 2005 SCC (Cri) 415, relied on

[2777] — S. 227 — Highly incriminating circumstances — Discharge if justified — If established by the prosecution it will, in the light of the supporting circumstances, make out a prima facie case against the accused — *Onus thereupon will shift on the accused — Order of discharge under S. 227, CrPC ignoring such and other incriminating circumstances not justified — Penal Code, 1860 — S. 302 — Evidence Act, 1872, S. 106*

The accused and his deceased wife was last seen together going to a hut. Later the accused was seen leaving the hut with blood-stained clothes on his person and going to the police station for confession. The deceased was found dead inside the hut. The Sessions Court passed a discharge order under S. 227, CrPC and the High Court confirmed the same.

Held :

The circumstances proved by the prosecution (1) of being last seen together, and (2) accused emerging with blood-stained clothes were highly incriminating in nature and make out a prima facie case against the accused for the charge of murder. It would be for the accused then to explain how death ensued inside the hut as also the incriminating circumstances. The mere fact that previously the deceased was seen in the company of another person did not cast any doubt on the evidence of her being last seen together with the accused. There was thus sufficient ground for proceeding against the accused. Therefore, the Sessions Court was not justified in passing the discharge order under S. 227, CrPC and the High Court erred in confirming that order. *State of Karnataka* v. *Khaja Hussain*, (1982) 3 SCC 456: 1983 SCC (Cri) 82.

Bench Strength **2**. Coram: *V.D. Tulzapurkar* and *A. Varadarajan*, JJ. [Date of decision: 9-11-1982]

[2778] — Ss. 227, 397, 401 and 482 — Discharge petition of appellant-accused, A-3 (retired IPS officer) under S. 227, dismissed by courts below — Propriety — Case of alleged fake encounter of a Naxalite with police — *After about 28 years, on newspapers reporting aforesaid encounter to be fake, several writ petitions filed before High Court, praying for transfer of investigation to CBI — In said proceedings, extra-judicial confession in the form of counter-affidavit filed by Constable R (A-1, since deceased), was made, confessing that he shot aforesaid Naxalite on instruction of the then DSP (A-2) and that appellant-accused (A-3) was present when incident occurred — On basis of aforesaid counter-affidavit, High Court directed CBI to register FIR, which ultimately led to trial court framing charge regarding appellant under Ss. 302/34 IPC and dismissing his discharge petition under S. 227 CrPC, which order was affirmed by High Court in revision — Sustainability — Held, admissibility, probative value, reliability, etc. of extra-judicial confession in the form of counter-affidavit made by A-1 before High Court, are all matters to be considered at time of trial — After evaluating materials produced by prosecution and after considering probability of case, trial court being satisfied by existence of sufficient grounds against appellant, framed charge under Ss. 302/34 IPC and because of same, it dismissed discharge petition — Whether materials at hands of prosecution were sufficient or not are matters for trial — At this stage, it cannot be claimed by appellant that there is no sufficient ground for proceeding against him and discharge is the only course open — Further, whether trial will end in conviction or acquittal is also immaterial — All these relevant aspects were carefully considered by High Court and it rightly affirmed order passed by trial court dismissing discharge petition filed by appellant — Penal Code, 1860 — Ss. 302/34 — Evidence Act, 1872, S. 30* (Paras 24 and 26). *P. Vijayan* v. *State of Kerala*, (2010) 2 SCC 398.

Bench Strength **2**. Coram: **P. Sathasivam** and *H.L. Dattu*, JJ. [Date of decision: 27-1-2010]

Hardeep Singh Sohal v. State of Punjab, (2004) 11 SCC 612: 2004 SCC (Cri) Supp 137, considered

[2779] — S. 227 — Discharge against changes under TADA — *Allegation of propagating pro-Khalistan cult among Sikh community and organising force threatening the Govt. with dire consequences under pretext of championing cause of Sikh community — Held, prima facie provisions of the Act attracted on the basis of such allegation — Hence Designated Court erred in discharging the accused of the charges under the Act — TADA, 1987, Ss. 3(3) and 4(3), 5, 6. State of A.P. v. S. Eshar Singh,* (1993) 1 SCC 440: 1993 SCC (Cri) 338: AIR 1993 SC 1374: 1993 Cri LJ 1028.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 11-11-1992]

[2780] — Ss. 227 and 245 — Discharge justified where dispute of a civil nature — Withholding property of company wrongfully — Criminal complaint, on facts, not maintainable — Dispute really of a civil nature — *Accused granted rent-free accommodation as part of conditions of employment contained in an agreement which containing clauses stipulating employee's right to retain flat in certain circumstances such as termination within a particular period — Upon termination employee refusing to hand over possession — Employer company though not itself the lessee of the property filing complaint under S. 630,* *Companies Act, 1956 and Penal Code, 1860, Ss. 406, 408, 409 — Magistrate discharging accused on the ground that the complaint and the material on record disclosed that the dispute was really of a civil nature — Held, on facts, High Court in revision erred in quashing Magistrate's order of discharge and remanding case — Companies Act, 1956, S. 630. Jagdish Chandra Nijhawan* v. *S.K. Saraf*, (1999) 1 SCC 119: 1999 SCC (Cri) 20: AIR 1999 SC 217: (1999) 95 Comp Cas 48: (1999) 1 LLJ 295.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 27-11-1998]

[2781] — Ss. 227 and 482 — Consort in live-in relationship with husband of complainant — Liability under S. 498-A, if any — *Appellant was living with accused husband of complainant, allegedly as his wife — Appellant prayed for discharge, as she could not be made an accused under S. 498-A since she was not a relative of M (husband of complainant) — Held, S. 498-A being a penal provision, deserves strict construction — Neither a girlfriend nor concubine is a relative of husband within meaning of S. 498-A IPC — Appellant discharged — Penal Code, 1860, S. 498-A* (Paras 15 and 16). *Sunita Jha* v. *State of Jharkhand*, (2010) 10 SCC 190.

Bench Strength **2**. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 13-9-2010]

U. Suvetha v. State, (2009) 6 SCC 757: (2009) 3 SCC (Cri) 36, applied

[2782] — S. 227 — Applicability — Conspiracy — *Existence of reasonable ground to believe that two or more persons have conspired together to commit an offence, held, is a condition precedent to the applicability of S. 10, Evidence Act, 1892 — However, even at the stage covered by S. 227 CrPC the court can consider the materials relating to what an accused would have said, done or written with reference to the common intention between the accused for deciding whether there is a reasonable ground to believe that the accused in question could be one of the conspirators — Evidence Act, 1872, S. 10* (Para 16). *State of T.N.* v. *J. Jayalalitha*, (2000) 5 SCC 440: 2000 SCC (Cri) 981: AIR 2000 SC 1589.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.C. Lahoti*, JJ. [Date of decision: 9-5-2000]

[2783] — Ss. 227, 228, 216 and 221 — Prima facie case of cheating and money circulation against the appellant-accused — Courts not interfering at the stage of framing of charge, held, justified

On the facts and in the circumstances of the case, the courts below were right in not interfering with the prosecution at the stage of framing of charge. It is no doubt, true, that the above orders do not mean that the accused have committed such offences. It only means that a prima facie case has been made out to frame charge and at that stage, no interference is called for. (Paras 44 and 49). *Kuriachan Chacko* v. *State of Kerala*, (2008) 8 SCC 708: (2008) 3 SCC (Cri) 631.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 10-7-2008]

— S. 228 *See also* S. 271, Criminal Procedure Code, 1898, p. 1124 in Vol. 2

— S. 228 *See* Ss. 91, 227, 228, 239 and 240
See also Ss. 190 to 210, 225 to 235 and 238 to 250
See also Ss. 190, 211 and 228
See also Ss. 197, 227 and 228
See also Ss. 202(2) proviso, 200, 203, 204, 208, 209, 313, 208, 226 to 228, 460, 461 and 465
See also Ss. 204, 203, 227, 228 and 190
See also Ss. 204, 228 and 240
See also Ss. 207, 238, 228 & 240 and S. 227
See also Ss. 209, 319, 2(g), 227 and 228
See also Ss. 215, 173, 220 and 228
See also Ss. 215 and 228
See also Ss. 227 and 228
See also Ss. 227, 228, 67 and 407
See also Ss. 227, 228 and 209
See also Ss. 227, 228, 216 and 221
See also Ss. 227, 228 and 219
See also Ss. 227 & 228, 239 & 240, 91 and 482
See also Ss. 227, 228, 239, 240 & 226 and 482
See also Ss. 227, 228, 239, 240 and 245
See also Ss. 227, 228, 239, 240 and 482
See also Ss. 227, 228 and 401
See also Ss. 227 & 228, 401 & 397 and 482
See also Ss. 227, 228 and 482
See also Ss. 227, 239 & 245 and 228 & 240
See also Ss. 239 & 240 and 227 & 228
See also Ss. 239 & 240 and 228
See also Ss. 240 and 228
See also Ss. 240, 228, 238, 227 and 482
See also Ss. 313, 228, 374 and 386
See also Ss. 313, 229, 228 and 226
See also S. 319 r/w Ss. 209 and 193, 227, 228, 229, 230, 231 and 482
See also Ss. 321, 228, 240 & 173

See also Ss. 386 and 227, 228
See also Ss. 401 & 397 and 227 & 228
See also Ss. 401, 397 and 228
See also Ss. 439 and 228
See also Ss. 464, 211, 216 and 228
See also Ss. 464, 218 and 228
See also Ss. 464 and 228
See also Ss. 482, 173(8) and 228
See also Ss. 482, 190, 228, 240 & 246
See also Ss. 482, 225 to 247
See also Ss. 482 and 228
See also Ss. 482, 228 and 240
See also Ss. 482, 309, 228 and 240
See also Ss. 482, 397, 227 & 228

[2784] — S. 228 — Framing of charge — Findings regarding sufficiency or otherwise of the material to frame charge — Proper stage — *Sessions Court framing a charge under S. 304 Pt. II IPC indicating conclusive opinion as to the sufficiency of material to establish charge punishable under that section — High Court in the criminal application filed thereagainst giving a finding as to non-existence of sufficient material to frame such a charge and proceeding to frame charge under S. 304-A — Held, arguments regarding framing of proper charge can only be decided by the trial court at an appropriate stage of the trial — More so, when neither of the sides were prejudiced by framing of charge under either section — Further held, by virtue of such premature finding of the High Court, the prosecution case gets pre-empted to that extent since during the course of trial even if the Magistrate comes to a different conclusion it may not be possible to pass appropriate orders — Constitution of India, Arts. 226 and 227*

The respondent-accused was charged with rash and negligent driving under the influence of alcohol without holding a motor driving licence and in spite of being cautioned by the complainant failing to control the speed of vehicle, thus resulting in death of one person and causing grievous injuries to four others who happened to be sleeping on the footpath. The respondent accordingly was charged with offences under Sections 304-A, 279, 337, 338, 427 IPC and Sections 134(*a*) and (*b*) read with Sections 181 and 185 of the Motor Vehicles Act, 1988 as also under Section 66(1)(*b*) of the Bombay Prohibition Act triable by a court of Magistrate of competent jurisdiction. A few days later the charge-sheet came to be modified based on the additional statement of the complainant and instead of Section 304-A IPC, Section 304 Part II IPC was substituted which is an offence exclusively triable by the Court of Session and hence the learned Magistrate who took cognizance of the offence committed the case to the Court of Session for trial. The respondent thereafter filed criminal application in the Sessions Court alleging that the facts as narrated in the complaint did not constitute an offence punishable under Section 304 Part II IPC and if at all, only a charge under Section 304-A could be framed against him apart from other offences triable by the Court of Magistrate. The said application was rejected and charges were framed one of which was for an offence punishable under Section 304 Part II IPC. Being aggrieved thereby, the respondent preferred criminal application under Section 482 CrPC before the High Court which by the impugned order allowed the same and directed the appropriate Magistrate's Court to frame de novo charges under various sections mentioned in the impugned order including the one under Section 304-A IPC. Hence the present appeal by the State.

Disposing of the appeal,

Held :

In the present case, the Sessions Court had come to the conclusion that evidence adduced is sufficient to frame a charge under Section 304 Part II IPC, along with the other charges while the High Court seem to have expressed a conclusive opinion that offence under Section 304-A IPC alone could be framed, along with the other charges. Neither of the sides would have been in any manner prejudiced in the trial by framing of a charge either under Section 304-A or Section 304 Part II IPC except for the fact that the forum trying the charge might have been different, which by itself, would not have caused prejudice to any party. This is because at any stage of the trial it would have been open to the court concerned to have altered the charge appropriately depending on the material that is brought before it in the form of evidence. But now by virtue of the impugned judgment of the High Court, even if in the course of the trial the Magistrate were to come to the conclusion that there is sufficient material to charge the respondent for a more serious offence than the one punishable under Section 304-A, it will not be possible for it to pass appropriate order. To that extent the prosecution case gets pre-empted. (Paras 7, 8 and 11). *State of Maharashtra* v. *Salman Salim Khan*, (2004) 1 SCC 525: 2004 SCC (Cri) 337: AIR 2004 SC 1189: 2004 Cri LJ 920.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 18-12-2003]

[2785] — S. 228 — Framing of charge — "Ground for presuming" — Scope — *Held, at stage of framing of charge, court is required to evaluate material and documents on record to find out if facts emerging therefrom, taken at their face value, disclose existence of all ingredients constituting the alleged offence — For this limited purpose, the court may sift the evidence — Court has to consider material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at definite conclusion — Presume means if on the basis of materials on record, court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists* (Paras 25 and 26). *Chitresh Kumar Chopra* v. *State (NCT of Delhi)*, (2009) 16 SCC 605.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 10-8-2009]

State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659: 1996 SCC (Cri) 820; Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47, followed

[2786] — S. 228 — Framing of charge — Technical defect — No grievance made by accused about prejudice caused on account of non-framing of proper charge — Effect — *But in appeal filed by complainant, High Court setting aside the order of acquittal and directing retrial on ground of technical defect in framing of charges such as one set of charges not containing signature of accused and that in one of the charges, section had not been mentioned — Held, High Court erred in setting aside the judgment of acquittal on ground of improper framing of charges when no such grievance was made by accused — There was no ground to direct retrial of the case* (Para 3). *K. Sainarayana Babu* v. *M. Sivaram Murthy*, (2005) 10 SCC 457: 2005 SCC (Cri) 1583.

Bench Strength **3**. Coram: *Y.K. Sabharwal, D.M. Dharmadhikari* and *Tarun Chatterjee*, JJ. [Date of decision: 8-12-2004]

[2787] — S. 228 — Framing of charge in cases triable by the Sessions Court — *Comparison with procedure under the old Code — Criminal Procedure Code, 1898, Ss. 207-A and 271*

The charge against the accused under the procedure prescribed in the new Code is to be framed for the first time by the Court of Session while according to the procedure prescribed under the old Code, the charge is framed by the committing Magistrate and the Court of Session is merely given the power to alter or amend the charge, if it thinks necessary to do so. *State of Karnataka* v. *K.H. Annegowda*, (1977) 1 SCC 417: 1977 SCC (Cri) 106: AIR 1977 SC 357: 1977 Cri LJ 220: (1977) 2 SCR 350.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *A.C. Gupta*, JJ. [Date of decision: 8-12-1976]

[2788] — Ss. 228 and 227 — Discharge and dilution of a charge — Duty of court to safeguard rights of victim who does not participate in discharge proceedings, pointed out

The reason given for dropping the charge under Section 302 was totally inadequate and untenable, and showed non-application of mind by the appellant to the statements in the charge-sheet and the medical record. The order does not explain as to why a charge under Section 304 was being preferred to one under Section 302 IPC. (Para 26)

All that the appellant stated in his order dated 21-3-1996 was, that on consideration of the material available in the case diary, he had found that there was no sufficient material to frame the charge under Section 302 IPC. This is nothing but a bald statement and was clearly against the statement of the injured eyewitness, and supporting medical papers on record. The appellant has not even referred to the same. He has also not stated in his order as to why he was of the opinion that the material available in the case diary was insufficient. Such a bald order raises a serious doubt about the bona fides of the decision rendered by the Judge concerned. (Para 25)

Although it is not so specifically stated in Section 228, it can certainly be said that when the charge under a particular section is dropped or diluted (although the accused is not discharged), some minimum reasons in a nutshell are expected to be recorded disclosing the consideration of the material on record. This is because the charge is to be framed "after such consideration" and therefore, that consideration must be reflected in the order. (Paras 21 and 24)

Section 228 which deals with framing of the charge, begins with the words "If, after such consideration". Section 228 refers to the "consideration" under Section 227 which has to be after taking into account the record of the case and the documents submitted therewith. These words provide an interconnection between Sections 227 and 228. Section 227 provides for recording the reasons for discharging an accused. As per Section 227 while discharging an accused, the Judge concerned has to consider the record of the case and the documents placed therewith, and if he is so convinced after hearing both the parties that there is no sufficient ground to proceed against the accused, he shall discharge the accused, but he has to record his reasons for doing the same. (Para 21)

A discharge order is passed on an application by the accused on which the accused and the prosecution are heard. At the stage of discharging an accused or framing of the charge, the victim does not participate in the proceeding. While framing the charge, the rights of the victim are also to be taken care of as also that of the accused. That responsibility lies on the shoulders of the Judge. (Para 22)

The Judge must give his reasons at least in a nutshell, if he is dropping or diluting any charge, particularly a serious one as in the present case. It is also necessary for the reason that the order should inform the prosecution as to what went wrong with the investigation. Besides, if the matter is carried to the higher court, it will be able to know as to why a charge was dropped or diluted. (Para 22). *R.S. Mishra* v. *State of Orissa*, (2011) 2 SCC 689.

Bench Strength **2**. Coram: *J.M. Panchal* and **H.L. Gokhale**, JJ. [Date of decision: 1-2-2011]

Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47, relied on

[2789] — Ss. 228 and 227 — Discharge and dilution of a charge — When unwarranted — *As per PW 3 injured witness, accused hitting head and chest of her husband with lathi and causing his death — Post-mortem report confirming this — As there was prima facie case under S. 302 IPC, that charge, held, should not have been diluted to S. 304 IPC — If there is strong suspicion of commission of certain offence, discharge and dilution of charge is unwarranted — Penal Code, 1860, S. 302 or S. 304 [S. 300 Exception 1]*

At the initial stage of the framing of a charge, if there is a strong suspicion/evidence which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. (Para 23)

In fact, since the material on record revealed a higher offence, it was expected of the appellant Additional Sessions Judge to frame the charge for more grievous offence and not to dilute the same. There was a prima facie case to proceed to frame the charge under Section 302 IPC. A young person was killed. It was not a case of grave and sudden provocation. (Paras 26, 6 and 8)

The material on record cannot be said to be self-contradictory or intrinsically unreliable. The material on record showed that there was an injured eyewitness and there was the supporting medical report. PW 3 (injured wife of deceased) stated that the accused had given a lathi-blow on the head of the deceased and then on his chest, in her presence. PW 3 also stated about the lathi-blow given to her. The post-mortem examination revealed that amongst other injuries, the left side mandible of the deceased was fractured and there was subdural haematoma over the left parietal region of the scalp. The other vital organs like lungs, liver, kidney were all congested. Due to these injuries, the deceased went into coma and then died. (Paras 26, 6 and 8). *R.S. Mishra* v. *State of Orissa*, (2011) 2 SCC 689.

Bench Strength **2**. Coram: *J.M. Panchal* and **H.L. Gokhale**, JJ. [Date of decision: 1-2-2011]

State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533; Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521; Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430: (1963) 2 Cri LJ 397, relied on

[2790] — Ss. 228 and 227 — Discharge under S. 227 or dilution of a charge under S. 228 — Need for giving reasons — Manner, mandatoriness of and rationale, stated — *Giving a bald order of dilution without any reasons as in present case, held, raises a serious doubt about bona fides of decision rendered by Sessions Judge — In case of dilution of charge some minimum reasons in nutshell are expected and more so in case of serious offences as in present case of alleged murder — Giving reasons would help prosecution know its defects and higher courts may then adjudicate properly in case of dispute — Penal Code, 1860, S. 302 or S. 304. R.S. Mishra* v. *State of Orissa*, (2011) 2 SCC 689.

Bench Strength **2**. Coram: *J.M. Panchal* and **H.L. Gokhale**, JJ. [Date of decision: 1-2-2011]

Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47, relied on

[2791] — Ss. 228 and 227 — Sufficiency of experience to pass order under — What is

It cannot be said that the appellant did not have requisite experience to pass a correct legal order under Section 228 CrPC. The impugned order of the Single Judge deciding revision notes that the appellant had been functioning in the rank of the District Judge from August 1991 onwards i.e. for nearly 5 years prior to his order dated 21-3-1996. The impugned order further states in para 5 that a judicial officer, before being posted as an Additional Sessions Judge, gets an experience of taking the sessions cases as Assistant Sessions Judge. (Para 27). *R.S. Mishra* v. *State of Orissa*, (2011) 2 SCC 689.

Bench Strength **2**. Coram: *J.M. Panchal* and **H.L. Gokhale**, JJ. [Date of decision: 1-2-2011]

[2792] — Ss. 228 and 227 — "If after such consideration" in S. 228 — Interpretation and implication

The reason given for dropping the charge under Section 302 was totally inadequate and untenable, and showed non-application of mind by the appellant to the statements in the charge-sheet and the medical record. The order does not explain as to why a charge under Section 304 was being preferred to one under Section 302 IPC. (Para 26)

All that the appellant stated in his order dated 21-3-1996 was, that on consideration of the material available in the case diary, he had found that there was no sufficient material to frame the charge under Section 302 IPC. This is nothing but a bald statement and was clearly against the statement of the injured eyewitness, and supporting medical papers on record. The appellant has not even referred to the same. He has also not stated in his order as to why he was of the opinion that the material available in the case diary was insufficient. Such a bald order raises a serious doubt about the bona fides of the decision rendered by the Judge concerned. (Para 25)

Although it is not so specifically stated in Section 228, it can certainly be said that when the charge under a particular section is dropped or diluted (although the accused is not discharged), some minimum reasons in a nutshell are expected to be recorded disclosing the consideration of the material on record. This is because the charge is to be framed "after such consideration" and therefore, that consideration must be reflected in the order. (Paras 21 and 24)

Section 228 which deals with framing of the charge, begins with the words "If, after such consideration". Section 228 refers to the "consideration" under Section 227 which has to be after taking into account the record of the case and the documents submitted therewith. These words provide an interconnection between Sections 227 and 228. Section 227 provides for recording the reasons for discharging an accused. As per Section 227 while discharging an accused, the Judge concerned has to consider the record of the case and the documents placed therewith, and if he is so convinced after hearing both the parties that there is no sufficient ground to proceed against the accused, he shall discharge the accused, but he has to record his reasons for doing the same. (Para 21)

A discharge order is passed on an application by the accused on which the accused and the prosecution are heard. At the stage of discharging an accused or framing of the charge, the victim does not participate in the proceeding. While framing the charge, the rights of the victim are also to be taken care of as also that of the accused. That responsibility lies on the shoulders of the Judge. (Para 22)

The Judge must give his reasons at least in a nutshell, if he is dropping or diluting any charge, particularly a serious one as in the present case. It is also necessary for the reason that the order should inform the prosecution as to what went wrong with the investigation. Besides, if the matter is carried to the higher court, it will be able to know as to why a charge was dropped or diluted. (Para 22). *R.S. Mishra* v. *State of Orissa*, (2011) 2 SCC 689.

Bench Strength 2. Coram: *J.M. Panchal* and **H.L. Gokhale**, JJ. [Date of decision: 1-2-2011]

Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47, relied on

[2793] — Ss. 228 and 227 — Framing of charge — Court has to sift evidence on record and other documents only for the limited purpose of ascertaining whether prima facie case is made out against the accused — *If so it should frame charges under S. 228, and if not, discharge the accused under S. 227*

Under S. 227 CrPC, a duty is cast on the judge to apply his mind to the material on record and if on examination of the record he does not find sufficient ground for proceeding against the accused, he must discharge him. On the other hand if after such consideration and hearing he is satisfied that a prima facie case is made out against the accused, he must proceed to frame a charge as required by S. 228 of the Code. At the Ss. 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence. *Niranjan Singh Karam Singh Punjabi* v. *Jitendra Bhimraj Bijjaya*, (1990) 4 SCC 76: 1991 SCC (Cri) 47: AIR 1990 SC 1962: 1990 Cri LJ 1869.

Bench Strength 2. Coram: **A.M. Ahmadi** and *N.M. Kasliwal*, JJ. [Date of decision: 7-8-1990]

[2794] — Ss. 228 and 227 — Magistrate has only to consider generally the materials placed before him by investigating officer in considering the sufficiency of ground for proceeding against the accused

Where a case is at the stage of framing charges and the prosecution evidence has not yet commenced, the Magistrate has to consider the question of sufficiency of ground for proceeding against the accused on a general consideration of materials placed before him by the investigating police officer. The truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Ss. 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence. *Supdt. and Remembrancer of Legal Affairs* v. *Anil Kumar Bhunja*, (1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52: 1979 Cri LJ 1390.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *O. Chinnappa Reddy*, JJ. [Date of decision: 23-8-1979]

[2795] — Ss. 228 & 227 and 239 & 240 and 245(1) & (2) — Framing of charge — Court must apply its judicial mind to the material placed on record — *The materials on record must satisfy the mind of the court framing the charge that the commission of offence by the accused in question was probable — Instead of examining the merits of the prosecution case qua the charged accused, the court giving reasons for discharge of certain accused — Held, approach of the court was not proper — In the circumstances, the Supreme Court itself examined, whether on the basis of material placed before the trial court, charges should be framed against the accused persons. State of Maharashtra* v. *Som Nath Thapa*, (1996) 4 SCC 659: 1996 SCC (Cri) 820: AIR 1996 SC 1744.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and **B.L. Hansaria** and *S.C. Sen*, JJ. [Date of decision: 12-4-1996]

[2796] — Ss. 228 & 227 and 239 & 240 and 245(1) & (2) — Whether charges should be framed or not — Test of existence of prima facie case — *If there is ground for presuming that the accused has committed the offence it can be said that a prima facie case has been made out against the accused — Even if the court thinks that the accused might have committed the offence it can frame the charges — At the stage of framing of charge probative value of the materials on record cannot be gone into*

If there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.

Regarding the meaning of the word presume, in *Black's Law Dictionary* it has been defined to mean "to believe or accept upon *probable* evidence". In *Shorter Oxford English Dictionary* it has been mentioned that in law 'presume' means "to take as proved until evidence to the contrary is forthcoming", *Stroud's Legal Dictionary* has quoted in this context a certain judgment according to which "A presumption is a *probable* consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged."

So if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused *might have* committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused *has* committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage. *State of Maharashtra* v. *Som Nath Thapa*, (1996) 4 SCC 659: 1996 SCC (Cri) 820: AIR 1996 SC 1744.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and **B.L. Hansaria** and *S.C. Sen*, JJ. [Date of decision: 12-4-1996]

[2797] — Ss. 228 & 227 and 240 & 239 — Scope — Jurisdiction of court at the stage of framing of charge — Whether any documents, whereupon accused may rely in support of his defence, can be looked into at the stage of framing of charge — *On facts, appellant-accused facing trial for alleged commission of offence under Ss. 13(1)(e)/13(2), PC Act, 1988 — He filed an application for his discharge, inter alia, on the premise that no case for framing of charge was made out, along with some documents in his own defence — Said application was rejected by trial court opining that documents relied on by appellant cannot be looked into for the purpose of passing an order on his application for discharge — Revision filed thereagainst dismissed by High Court — Sustainability — Held, court at the stage of framing of charge exercises a limited jurisdiction — At that stage it would not weigh the evidence — It would only see whether a prima facie case is made out — Whether a case of probable conviction for commission of offence is made out on the basis of the materials found during investigation should be its concern — It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence — It would ordinarily not consider whether the accused would be able to establish his defence, if any — Prevention of Corruption Act, 1988, Ss. 13(1)(e)/13(2)*

The question that arose before the Supreme Court was whether any documents, whereupon the appellant may rely in support of his defence can be looked into at the stage of framing of the charge.

Dismissing the appeal,

Held :

At the stage of framing of charge, the court will not weigh the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidence is brought on record at the trial. (Para 9)

The court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any. (Para 13)

It is one thing to say that on the basis of the admitted documents, the appellant was in a position to show that the charges could not have been framed against him, but it is another thing to say that for the said purpose he could rely upon some documents whereupon the prosecution would not rely. (Para 10)

Hence the trial court rightly refused to look into any of the documents filed by the appellant along with his application for discharge. (Para 13). *Hem Chand* v. *State of Jharkhand*, (2008) 5 SCC 113: (2008) 2 SCC (Cri) 537: AIR 2008 SC 1903.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 13-3-2008]

State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338: 2000 SCC (Cri) 1110, followed

State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568: 2005 SCC (Cri) 415, relied on

[2798] — Ss. 228 and 240 — Framing of charge — Necessary considerations — *Held, charge can be framed if there are materials showing possibility about the commission of the crime as against certainty — At that stage, evidence cannot be gone into meticulously — It is immaterial whether the case is based on direct or circumstantial evidence* (Para 10). *State of A.P.* v. *Golconda Linga Swamy*, (2004) 6 SCC 522: 2004 SCC (Cri) 1805: AIR 2004 SC 3967.

Bench Strength **2**. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 27-7-2004]

Followed *in Bharat Parikh v. CBI, (2008) 10 SCC 109: (2008) 3 SCC (Cri) 609*

[2799] — Ss. 228 and 240 — Framing of charge — Considerations of trial court during — Limitations — *Reiterated, at the stage of framing of charge, the court is not required to go into details of the investigation but to only arrive at a prima facie finding on the materials made available as to whether a charge could be sustained as recommended in the charge-sheet — Holding of a mini trial at the time of framing of charge deprecated — Also, held, various circumstances can only be considered during a proper trial and not on the basis of surmises at the time of framing charge, where on the strength of the charge-sheet, only a prima facie satisfaction about the commission of an offence has to be arrived at by the trial court*

In the instant case, on 14-7-2004, Officers of the Special Police Establishment (Lokayukta), appellant-accused in two of the appeals herein, set a trap for one *R*, Deputy Commissioner, Commercial Tax, and arrested him for taking a bribe of Rs 2000 from one *C*, Tax Consultant.

On 15-7-2004, prior to 9 a.m., *R* was found unconscious in the bathroom of the Office of the Lokayukta. He was taken to a hospital for treatment. The records of the hospital showed that when *R* was brought to the hospital at 9 a.m. on 15-7-2004, his body had neither any pulse nor respiration and recordable blood pressure and even heart sounds were absent. Though resuscitation measures were undertaken, including cardiopulmonary resuscitation (CPR), there was little response and *R* was declared dead at 1.30 p.m. on the same day.

The post-mortem examination of the deceased, which was conducted on 15-7-2004 itself, at about 4 p.m., revealed certain injuries on the body, which included broken ribs, but the cause of death was shown to be on account of asphyxia within six hours of the post-mortem examination.

On completion of investigation, the investigating agency filed a charge-sheet before the trial court on 12-5-2005, and on 15-7-2005, the trial court framed charges against the five accused persons under Section 304 Part II IPC, but dropped the charge under Section 330 IPC.

Aggrieved by the framing of charge under Section 304 Part II IPC, accused persons filed criminal revisions before the High Court. On the other hand, on account of the dropping of charges under Section 330 IPC, the widow of the deceased also filed criminal revision before the High Court. All the revisional applications were heard together by the High Court which by its order dated 11-9-2006, set aside the charge framed by the trial court and directed that charge could only be framed under

Sections 323/34 IPC. Hence, these five appeals were filed by the widow of the deceased, the State and the accused persons, against the said judgment and order of the High Court.

Partly allowing the three appeals filed by the widow of the deceased and the State and dismissing the two appeals filed by the accused persons,

Held :

At the stage of framing of charge, the court is not required to go into the details of the investigation but to only arrive at a prima facie finding on the materials made available as to whether a charge could be sustained as recommended in the charge-sheet. The holding of a mini trial at the time of framing of charge is deprecated. (Para 39)

It has been sufficiently established that the deceased was a patient of asthma which could cause asphyxia which was ultimately said to be the cause of death of *R*. It is also clear that notwithstanding his serious respiratory problem, the deceased was kept in a windowless room which was full of dust and cobwebs which are known allergens for triggering an asthma attack, which can be fatal, as in this case. The injuries found on the body of the deceased may have been caused during attempts at resuscitation, but all the said circumstances can only be considered during a proper trial and not on the basis of surmises at the time of framing charge where on the strength of the charge-sheet, only a prima facie satisfaction about the commission of an offence has to be arrived at by the trial court. Therefore, while rejecting the submissions that there were no materials on record to frame charge against the accused persons even under Sections 323/34 IPC, on a prima facie view of the matter, there is ground to proceed against the accused persons even under Section 304 Part II IPC. On that score, the High Court had erred in quashing the charge framed against the accused persons under Section 304 Part II and observing that in view of the materials on record only a charge under Section 323 could be brought against the accused persons. (Para 37). *Indu Jain* v. *State of M.P.*, (2008) 15 SCC 341: (2009) 3 SCC (Cri) 996: AIR 2009 SC 976: 2009 Cri LJ 951.

Bench Strength 2. Coram: **Altamas Kabir** and *Markandey Katju*, JJ. [Date of decision: 23-10-2008]

Kewal Krishan v. Suraj Bhan, 1980 Supp SCC 499: 1981 SCC (Cri) 438; Bharat Parikh v. CBI, (2008) 10 SCC 109: (2008) 3 SCC (Cri) 609; State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568: 2005 SCC (Cri) 415, relied on

[2800] — Ss. 228 and 240 — Framing of charge — Prerequisites for — Relevant considerations at the stage of framing of charge — *Held (Per Katju, J.), the court can frame the charge if on the basis of material on record it can form an opinion that the commission of offence by the accused was possible — Whether, in fact, the accused committed the offence, can only be decided at trial — At the time of framing of charge, the probative value of the material on record cannot be gone into — The said material has to be accepted as true at that stage — Further held [per Sinha, J. (concurring)], suspicion alone cannot be the basis for framing charge — There must exist some materials therefor*

Per Katju, J.

The settled legal position is that if on the basis of material on record the court could form an opinion that the accused *might* have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused *has* committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial. (Para 10)

Per Sinha, J. (concurring)

Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the court must come to a prima facie finding that there exist some materials therefor. Suspicion alone, without anything more, cannot form the basis therefor or held to be sufficient for framing charge. (Para 19). *Soma Chakravarty* v. *State*, (2007) 5 SCC 403: (2007) 2 SCC (Cri) 514: AIR 2007 SC 2149.

Bench Strength 2. Coram: **S.B. Sinha**[2] and **Markandey Katju**[1], JJ. [Date of decision: 10-5-2007]

Union of India v. Major J.S. Khanna, (1972) 3 SCC 873: 1973 SCC (Cri) 94; State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659: 1996 SCC (Cri) 820, relied on

[2801] — Ss. 228, 240, 231, 242, 235 and 248 — Appreciation of evidence at stage of framing of charges and at stage of conclusion of trial — Distinguished — *Held, while framing charges court may consider whether or not accused committed offence — But for recording conviction commission of offence has to be proved by prosecution beyond reasonable doubt* (Para 51). *State of M.P.* v. *Sheetla Sahai*, (2009) 8 SCC 617: (2009) 3 SCC (Cri) 901.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 4-8-2009]

[2802] — Ss. 228 & 240 and Ch. III (Ss. 26 to 35) — Framing of charge and determination of jurisdiction of court — Recording of reasons — Difference in the requirement, explained — *Held, though charge(s) can be framed without recording reasons, where a question of jurisdiction is raised, and court is required to adjudicate the same, the court must record reasons relating to the question of jurisdiction*

The question relating to forming of an opinion at the time of framing of charge is different from a case of recording of reasons on the basis of which an order of discharge of the accused may be passed. The moment the order of discharge is passed it is imperative to record the reasons. But for framing of charge the court is required to form an opinion that there is ground for presuming that the accused has committed the offence. In case of discharge of the accused the use of the expression "reasons" has been inserted in Sections 227, 239 and 245 CrPC. At the stage of framing of a charge the expression used is "opinion". The reason is obvious. If the reasons are recorded in case of framing of charge, there is likelihood of prejudicing the case of the accused put on trial. The Judge is required to record reasons only if he decides to discharge the accused. But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge. But where the question of jurisdiction is raised and the trial court is required to adjudicate that issue, it cannot be said that reasons are not to be recorded. In such a case reasons relate to question of jurisdiction and not necessarily to the issue relating to framing of charge. In such a case reasons dealing with a plea relating to jurisdiction have to be recorded. (Paras 13, 15 and 16). *Lalu Prasad* v. *State of Bihar*, (2007) 1 SCC 49: (2007) 1 SCC (Cri) 241: (2007) 1 KLT 47: (2007) 50 AIC 107 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533; Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722: 2000 SCC (Cri) 303, followed

[2803] — Ss. 228 and 211 — Framing of charges — Questions to be considered at stage of — *Questions as to applicability of legal provisions, held, are not matters on which a definite conclusion should be reached ahead of trial*

The question whether Section 120-B applies to the POTA offences or Section 3(3) alone applies is not a matter on which a definite conclusion should be reached ahead of the trial. (Para 25). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Willie (William) Slaney v. State of M.P., (1955) 2 SCR 1140: AIR 1956 SC 116: 1956 Cri LJ 291; State of A.P. v. Cheemalapati Ganeswara Rao, (1964) 3 SCR 297: (1963) 2 Cri LJ 671, relied on

[2804] — Ss. 228 and 216 — Alteration of charge — *Held, charges can be altered at any stage of the proceedings by the court trying the offence depending on the evidence adduced — Further held, the trial court can always commit the case to the superior court in case the evidence on record establishes a more serious offence during the trial — Similarly, the superior court can always convict the accused of the lesser offence than he is charged with*

The law governing the trial of criminal offences provides for alteration of charges at any stage of the proceedings depending upon the evidence adduced in the case. If the Court of Magistrate at any stage of trial comes to the conclusion that the material on record indicates the commission of an offence which requires to be tried by a superior court, it can always do so by committing such case for further trial to a superior court as contemplated in the CrPC. On the contrary, if the trial is being conducted in a superior court like the Sessions Court and if that court comes to the conclusion that the evidence produced in the said trial makes out a lesser offence than the one with which the accused is charged, it is always open to that court based on evidence to convict such accused for a lesser offence. Thus, arguments regarding the framing of a proper charge are best left to be decided by the trial court at an appropriate stage of the trial. (Para 4). *State of Maharashtra* v. *Salman Salim Khan*, (2004) 1 SCC 525: 2004 SCC (Cri) 337: AIR 2004 SC 1189: 2004 Cri LJ 920.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 18-12-2003]

[2805] — S. 228 — Framing of charge — *No specific charge under S. 302 r/w S. 149 IPC framed but charges under S. 148, S. 302 simpliciter and S. 324 IPC framed and accused persons convicted thereunder by trial court — High Court setting aside conviction under S. 302 and instead convicting one of the accused under S. 304 Pt. I and the remaining accused under S. 326 — Plea to convict the accused under S. 302 r/w S. 149 IPC — Held, non-mentioning of S. 149 in form though an irregularity, but* *failure to mention to the accused the nature of the offence committed in substance not a mere irregularity and therefore, accused cannot be convicted thereunder — Penal Code, 1860, Ss. 302/149*

The Sessions Judge did not frame a charge against the accused persons for the offence punishable under Section 302 IPC read with Section 149 IPC. The relevant prosecution allegations so as to bring in the ingredients of the offence punishable under Section 302 IPC read with Section 149 IPC also were not incorporated in the charge framed by the Sessions Judge. The accused were not told that they had to face charges of being members of an unlawful assembly and the common object of such assembly was to commit murder of the deceased and in furtherance of that common object murder was committed and thereby they had a constructive liability and thus they committed the offence punishable under Section 302 IPC read with Section 149 IPC. Of course the mere omission to mention Section 149 may be considered as an irregularity, but failure to mention the nature of the offence committed by them cannot be said to be a mere irregularity. Had this mistake been noticed at the trial stage, the Sessions Judge could have corrected the charge at any time before the delivery of the judgment. In the instant case, the accused were told to face a charge punishable under Section 302 simpliciter and there was no charge under Section 302 IPC read with Section 149 IPC. Therefore, it is not possible to reverse the conviction of the accused under Section 326 IPC and substitute the conviction for the offence punishable under Sections 302/149 IPC as there was no charge framed against them for such offence. (Para 8). *Bala Seetharamaiah* v. *Perike S. Rao*, (2004) 4 SCC 557: 2004 SCC (Cri) 1332: AIR 2004 SC 2172: 2004 Cri LJ 2034: (2004) 17 AIC 126 (SC).

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *B.N. Srikrishna*, JJ. [Date of decision: 16-3-2004]

[2806] — S. 228 — Framing of charge — Doctrine of parity — Necessify of consideration of — *Many accused including government servants involved in offence of fraud and misappropriation of huge amount of Govt. money — An accused similarly situated not proceeded against only because departmental proceedings ended in his favour — Held (Per Sinha, J.), in a case of present nature the trial Judge should have considered the question having regard to the "doctrine of parity" — Relevant considerations which should have been taken into account in this regard, indicated — Penal Code, 1860, Ss. 420, 468 and 471 r/w S. 120-B — Constitution of India, Art. 14*

In a case of this nature the trial Judge should have considered the question having regard to the "doctrine of parity" in mind. An accused similarly situated has not been proceeded against only because the departmental proceedings ended in his favour. Whether an accused before him although stands on a similar footing despite he having not been departmentally proceeded against or had not been completely exonerated also required to be considered. If exoneration in a departmental proceeding is the basis for not framing a charge against an accused person who is said to be similarly situated, the question which requires a further consideration was as to whether the applicant before it was similarly situated or not and/or whether the exonerated officer in the departmental proceeding also faced same charges including the charge of being a party to the larger conspiracy. (Para 23). *Soma Chakravarty* v. *State*, (2007) 5 SCC 403: (2007) 2 SCC (Cri) 514: AIR 2007 SC 2149.

Bench Strength **2**. Coram: **S.B. Sinha**[2] and **Markandey Katju**[1], JJ. [Date of decision: 10-5-2007]

L. Chandraiah v. State of A.P., (2003) 12 SCC 670: 2005 SCC (Cri) 825, relied on

[2807] — S. 228 — Interference with order framing charges — Improper application of mind by trial court — Non-interference by Supreme Court — *Though there was improper application of mind by trial court while framing charges, considering that prosecution had already started examination of witnesses and it seemed that all endeavours would be made for early disposal of matter, held (Per Sinha, J.), the discretionary jurisdiction under Art. 136 may not be exercised at this point of time — Hence, matter not remitted to trial court for consideration afresh — Trial court directed to dispose of matter as expeditiously as possible. Soma Chakravarty* v. *State*, (2007) 5 SCC 403: (2007) 2 SCC (Cri) 514: AIR 2007 SC 2149.

Bench Strength **2**. Coram: **S.B. Sinha**[2] and **Markandey Katju**[1], JJ. [Date of decision: 10-5-2007]

[2808] — S. 228 — Commutation of sentence— Considerations for — Validity of Magistrate's action under S. 228 decided after eight years of protracted proceedings — Effect — *Even after such a long period the accused can be put on trial — However, this is a circumstance to be taken into consideration by the trial Court in fixing the nature and quantum of sentence, in the event of the accused being found guilty. Supdt. and Remembrancer of Legal Affairs* v. *Anil Kumar Bhunja*, (1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52: 1979 Cri LJ 1390.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *O. Chinnappa Reddy*, JJ. [Date of decision: 23-8-1979]

[2809] — S. 228 — Fraud and misappropriation of government money — Responsibility for signing a document — *Accused alleged to have dishonestly processed and verified fake bills — Plea of accused that she signed the said bills in normal course of her duty and it was account section which was negligent in not verifying those bills — Sustainability of — Held, the said plea was not tenable as when a person signs on a document he or she is expected to make some enquiry before signing it — Penal Code, 1860, Ss. 420, 468 and 471 r/w S. 120-B* (Para 14). *Soma Chakravarty* v. *State*, (2007) 5 SCC 403: (2007) 2 SCC (Cri) 514: AIR 2007 SC 2149.

Bench Strength **2**. Coram: **S.B. Sinha**[2] and **Markandey Katju**[1], JJ. [Date of decision: 10-5-2007]

[2810] — Ss. 228 and 220 — Kidnapping and rape forming part of same transaction — *Trial court continuing proceedings for kidnapping but dropping charge for rape, on ground of lack of territorial jurisdiction — Held, impermissible — Penal Code, 1860, Ss. 376 and 366* (Para 4). *Parshotam Lal* v. *State of Punjab*, (2010) 1 SCC 65.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 6-10-2009]

[2811] — S. 228 — Framing of charges — Propriety — Offence of fraud and misappropriation of huge amount of government money by accused persons — *Charges against appellant government employee that she dishonestly processed and verified fake bills to cause undue pecuniary advantage to herself — Though appellant was not assigned any duty to process or sign the bills in question, she did so — Said bills were not sanctioned/approved by competent authority — Also, those bills were not entered in bill register — No file had been opened in respect thereof — File numbers written on fictitious bills were fake — Held (Per Katju, J.), there was existence of material on record to show a prima facie case against appellant — Hence, framing of charges against her was proper — Plea that appellant signed the fake bills by negligence but without any mala fide intention, held, could be considered during trial — Per Sinha, J. (concurring) though there was improper application of mind by trial court while framing charges, considering that prosecution already started examination of witnesses and assured that all endeavours would be made for early disposal of matter, the discretionary jurisdiction under Art. 136 of the Constitution would not be exercised at this stage for remitting the matter to trial court for consideration afresh — Thus, the order framing charges against appellant is upheld — Trial court directed to complete trial as expeditiously as possible — Penal Code, 1860, Ss. 420, 468 and 471 r/w S. 120-B — Prevention of Corruption Act, 1988, S. 13(1)(d) r/w S. 13(2)*

Charges were framed against the appellant and the other accused for various offences under the Indian Penal Code and the Prevention of Corruption Act. Allegations were made that by misusing their official position, the accused public servants, employees of Indian Trade Promotion Organisation (ITPO), caused an undue pecuniary advantage to themselves to the tune of Rs 30,30,057 and led to a corresponding loss to ITPO.

The prosecution case was that the publicity department of ITPO was concerned with the release of advertisements in newspapers. There were two types of advertisements: (*1*) regular advertisements; and (*2*) ad hoc advertisements. Regular advertisements were given to the national dailies and other leading newspapers and magazines, whereas ad hoc advertisements were those which were issued on ad hoc basis from time to time with the specific approval of the Chief Managing Director or Executive Director only.

At the relevant time, Deputy Manager *B* was in charge of the work relating to ad hoc advertisements. He was the authorised officer to process the bills for such advertisements. One *U*, Proof Reader/Senior Assistant of ITPO, floated 6 bogus firms and submitted 76 bogus bills worth Rs 30,30,057 for payment by signing under fictitious names. With these bills he enclosed photocopies of fake advertisements. Out of 76 bogus bills, 14 were dishonestly processed and verified by the appellant and one *J*, in connivance with the other accused to cheat ITPO and give wrongful gain to themselves. All the bogus vouchers had been filled in by the co-accused *G* who was neither posted in the publicity division nor was authorised to do so. The appellant knew that the said bogus bills had not been entered in the bill register of the Publicity Division of ITPO and no file had been opened/created in respect thereof. The file numbers written on the fictitious bills were also fake. None of the above bills bore initials or signatures of *B*, who was in charge of the ad hoc advertisements.

After examining the allegations and evidence collected by investigation, the trial court framed the impugned charges against the appellant and *J*. Against the order framing charges, a criminal revision was filed before the High Court. The said revision was dismissed by the impugned judgment. Hence, the present appeal.

Dismissing the appeal,

Held :

Per Katju, J.

It cannot be accepted there was no material to show that the appellant was prima facie guilty or had any mens rea. There are serious allegations of misappropriation of a huge amount of money belonging to the Government, and it cannot be said at this stage that there is no material at all for framing the charge against the appellant. Hence, the view taken by the High Court in this connection is proper. (Paras 11, 9, 12 and 15)

The appellant was never assigned any duty in respect of processing or signing the bills for ad hoc advertisements, and she was assigned duty only of regular advertisements. Moreover, these bills were not sanctioned/approved by the competent authority i.e. the Chairman/Executive Director. No doubt the appellant contended that she signed the fake bills by negligence but without any mala fide intention, but this is a matter which is to be seen at the time of the trial. (Paras 14 and 15)

Per Sinha, J. (concurring)

The trial Judge, it appears, did not properly apply its mind in regard to the different categories of the accused while framing charges. It ought to have been done. (Para 19)

Ordinarily, the matter would have been remitted to the trial Judge for consideration afresh, but as the prosecution has already started examination of witnesses and it is assured that all endeavours would be made for early disposal of the matter, the discretionary jurisdiction under Article 136 of the Constitution may not be exercised at this point of time. However, keeping in view the fact that a large number of officers of the Union of India are involved in the present case and as it is stated at the Bar that they have not been promoted because of the pendency of this case, the trial Judge is requested to dispose of the matter as expeditiously as possible. (Para 25). *Soma Chakravarty* v. *State*, (2007) 5 SCC 403: (2007) 2 SCC (Cri) 514: AIR 2007 SC 2149.

Bench Strength 2. Coram: **S.B. Sinha**[2] and **Markandey Katju**[1], JJ. [Date of decision: 10-5-2007]

[2812] — S. 228 — Framing of charge — On facts, upheld — GPA-holder accepting factum of cancellation of GPA but thereafter executing the same — *High Court while dismissing revision petition observing that it was possible that the appellants were duped by the attorney who knew that his powers had been revoked but concealed the fact, but such arguments could be validly advanced by petitioners for establishing their bona fides during trial — Hence, held, no interference with impugned judgment called for — Penal Code, 1860, S. 409 & S. 420 r/w S. 120-B* (Paras 2, 17 and 18)

In February 1987 complainant and his five family members executed general power of attorney (GPA) at Canada in favour of one *M* which was subsequently registered at Ferozepur. The GPA-holder sold a plot of land belonging to complainant to appellants for Rs 5 lakhs, and the sale deed was duly registered. In December 1989 appellants suddenly came to know that complainant had filed a suit for declaration that said GPA-holder had no authority to sell the property and/or to permanently alienate and dispose of the said property. An ex parte injunction order/status quo was granted on 2-12-1989 though the appellants in absence of knowledge of the same had got the sale deeds registered on 5-12-1989.

On 14-6-1990 an order was passed in the suit restraining appellants from dispossessing the complainant from the said property and to maintain status quo, whereas in fact appellants were already in possession of that property since 7-11-1989. In appeal filed by the appellants the learned ADJ ordered status quo with regard to ownership and possession of property.

On 30-6-1995, complainant lodged a complaint with Deputy Commissioner, who was related to him. The Commissioner summoned the appellants at his residence and asked them to cancel the sale deeds and to concede the claim of complainant, threatening them with dire consequences.

On 31-8-1995 after about six years FIR was lodged against appellants. On 29-5-1996 a report was submitted to SSP stating that FIR was intended to pressurise the appellants and no offence appeared to have been committed by them. In spite of that charge-sheet was filed against appellants. Charges were framed against appellants under Section 120-B read with Section 409 IPC and Section 120-B read with Section 420 IPC against appellants. Criminal revision was filed challenging maintainability of charges framed against them which was dismissed by the High Court by impugned order holding that there was sufficient ground to presume that unrebutted evidence of complainant constitutes triable offences. It was also found that details of property in respect of which it was executed were missing and though the power of attorney prima facie appeared to be a valid document, nevertheless on a plain reading thereof left one with uncertain feeling as regard its impact. Hence, the present appeal.

Dismissing the appeal, the Supreme Court held as above. *Chaman Lal* v. *State of Punjab*, (2009) 11 SCC 721: (2009) 2 ECrN 1057 (SC).

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 31-3-2009]

Mohd. Khalid v. State of W.B., (2002) 7 SCC 334: 2002 SCC (Cri) 1734, relied on

American Jurisprudence, Vol. II, Section 23, p. 559; Halsbury's Laws of England, 4th Edn., Vol. 11, p. 44, para 58, cited

[2813] — S. 228 — Conspiracy and abetment of an offence — Involvement in — Drawing inference as to — Fraud alleged to have been committed by government servants by processing and verifying fake bills — *Officers who would be liable for conspiracy and abetment of — Held (Per Sinha, J.), all the officers who dealt with the relevant files at one point of time or the other could not be considered to have taken part in conspiracy or would be guilty of aiding and abetting the offence — In such a case it was necessary to deal with individual acts of criminal misconduct for finding out a case therefor — Penal Code, 1860, Ss. 120-B, 107, 109, 420, 468 and 471*

The courts although may take a strict view of an offence where fraud is alleged against a public servant, but only because it is found to have been committed, the same by itself may not be sufficient to arrive at a conclusion that all officers who have dealt with the files at one point of time or the other would be taking part in conspiracy thereof or would otherwise be guilty of aiding and abetting the offence. It is necessary to deal with the individual acts of criminal misconduct for finding out a case therefor. (Para 22). *Soma Chakravarty* v. *State*, (2007) 5 SCC 403: (2007) 2 SCC (Cri) 514: AIR 2007 SC 2149.

Bench Strength 2. Coram: **S.B. Sinha**[2] and **Markandey Katju**[1], JJ. [Date of decision: 10-5-2007]

[2814] — S. 228 — Objections raised to framing of charges for offences under Ss. 353, 506, 186 r/w 34, 504 and 173 IPC in a complaint case — *Objections accepted by Magistrate but rejected by Additional Sessions Judge in revision and writ petition against revisional order dismissed by High Court — Main dispute compromised and more than 15 years elapsed since the incident — Held, proceedings need not proceed any further in the interest of justice — Hence without going into the merits proceedings quashed. Prem Lata* v. *State of Punjab*, 1991 Supp (1) SCC 201: 1991 SCC (Cri) 547: AIR 1991 SC 69.

Bench Strength 2. Coram: *P.B. Sawant* and *K. Ramaswamy*, JJ. [Date of decision: 10-8-1990]

[2815] — Ss. 228, 197 and 177 — Power of High Court to pass directions relating to framing of charge, sanction and jurisdiction

It was not necessary to decide the question regarding the offences to be included in the charge which may be framed against the accused persons because that work has to be done by the Sessions Judges concerned after hearing both sides, as provided under Section 228 of the Code. The appellants can raise their arguments regarding what offences can be included in the charge at the appropriate stage. (Para 23)

The question of necessity of sanction need be considered by the Sessions Judge if and when raised by the accused. The High Court should not have embarked upon a discussion regarding sanction at such a premature stage, that too in the writ petition filed by the Samity. If the finding of the High Court is that no sanction is required such a finding has to be treated as bad mainly because that question has to be decided after taking into account various considerations including the fact situation in each case. (Para 24)

The jurisdiction of the Court can be decided on the factual foundation in each case. The High Court should not have pre-empted the Court before which each case would come up in the normal course, to determine the question of jurisdiction, if it is raised by any of the parties. It is difficult for the Supreme Court to comprehend what the learned Judges would have meant by "Special Court" to be established by the State Government. There is no suggestion in the impugned judgment as to what are the offences alleged to have been committed by the officials under any special enactment. The aforesaid direction (extracted above) if allowed to remain in force would create only confusion and provide room for procrastination of the trials. (Para 25). *A.K. Singh* v. *Uttarakhand Jan Morcha*, (1999) 4 SCC 476: 1999 SCC (Cri) 580: AIR 1999 SC 2193.

Bench Strength 3. Coram: **K.T. Thomas**, *D.P. Mohapatra* and *U.C. Banerjee*, JJ. [Date of decision: 13-5-1999]

[2816] — Ss. 228, 227 and 26 — Power of Sessions Court — Scope — Held, extends to try even cases which are not triable exclusively by it — Provision for in S. 228(1)(a) for transferring such a case to CJM, held, is not mandatory — On facts, transfer of only one of the counter-cases, held, improper — Transfer of one of the cross-cases, by Sessions Court to CJM — Legality — *Case and counter-case both committed to Sessions Court — Sessions Court finding that in* *one case no charge for an offence triable exclusively by Sessions Court could be framed while such a charge could be framed in the other case — In such circumstances, transfer of the former case by Sessions Court to CJM for trial under S. 228(1), held, improper — Sessions Court should have rather itself tried it in the manner indicated in* Naithani Lal case *1990 Supp SCC 145 — CrPC, 1973, Ss. 408(1), 228(1), 227 and 26(a)(ii) — Penal Code, 1860, Ss. 307, 149, 147, 427 and 324*

A Sessions Judge has the power to try any offence under IPC. It is not necessary for the Sessions Court that the offence should be one exclusively triable by a Court of Session. This power of the Sessions Court can be discerned from a reading of Section 26 CrPC. Therefore, when a case involving offence not exclusively triable by such court is committed to the Court of Session, the Sessions Judge has to exercise a discretion regarding the case which he has to continue for trial in his court and the case which he has to transfer to the CJM. In Section 228(1) CrPC, the employment of the word "may" at one place and the word "shall" at another place in the same sub-section unmistakably indicates that when the offence is not triable exclusively by the Sessions Court it is not mandatory that he should order transfer of the case to the CJM after framing a charge. In situations where it is advisable for him to try such offence in his court there is no legal obligation to transfer the case to the CJM. (Para 16)

In the present case, the Sessions Judge ought not to have transferred the second case to the CJM as he did, but he himself should have tried it in the manner indicated in *Nathi Lal*. (Para 17). *Sudhir* v. *State of M.P.*, (2001) 2 SCC 688: 2001 SCC (Cri) 387: AIR 2001 SC 826.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 2-2-2001]

Goriparthi Krishtamma, In re, 1929 MWN 881; Krishna Pannadi v. Emperor, AIR 1930 Mad 190: 31 Cri LJ 461, impliedly approved on this point

Nathi Lal v. State of U.P., 1990 Supp SCC 145: 1990 SCC (Cri) 638, followed

[2817] — **Ss. 228, 227 and 240 — Identification by photo, held, admissible in evidence for the purpose of framing charges** — *However, it would become substantive evidence only when the witness identifies the accused in the court*

There is no legal provision which inhibits the admissibility of identification by photo. In the present case prosecution does not say that they would rest with the identification made by the Inspector of Royal Swaziland Police Force when the photograph was shown to him. Prosecution has to examine him as a witness in the court and he has to identify the accused in the court. Then alone it would become substantive evidence. But that does not mean that at this stage the court is disabled from considering the prospect of such a witness correctly identifying the appellant during trial. (Para 12). *Umar Abdul Sakoor Sorathia* v. *Narcotic Control Bureau*, (2000) 1 SCC 138: 2000 SCC (Cri) 200: AIR 1999 SC 2562: 1999 Cri LJ 3972.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 6-8-1999]

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899, distinguished

[2818] — Ss. 228, 227 and 401 — Charges framed by trial court — High Court's interference in revision under S. 401 discharging the accused when uncalled for — *Bride-burning for dowry — When trial court, finding a prima facie case prefers to frame charges against the accused, High Court should not interfere by probing into sufficiency of grounds for conviction of the accused and ordering his discharge — In such case Supreme Court, if satisfied as to the prima facie case against the accused, would restore the order of the trial court — Constitution of India, Article 136 — Penal Code, 1860 — Ss. 302, 304-B, 498-A — Dowry Prohibition Act, 1961 — Evidence Act, 1872, S. 113-A*

The deceased was seen in flames and crying for help in the first floor of the house of her in-law within 5 days of her marriage with the younger brother of the appellant. While the neighbours extinguished the flame, the inmates of the house did not render any such help. The appellant who was on the first floor was seen coming down the stairs. The deceased succumbed to the burn injuries in hospital on the same day. Before the death, her dying declaration was said to have been recorded by the Executive Magistrate, wherein it was stated that when she was preparing tea in the kitchen, her saree caught fire accidentally and consequently she received the burn injuries. The Chemical Analyser found kerosene residue on each and every garment of the deceased. The post-mortem report also indicated, besides burn injuries, that the deceased had sustained contusions on the back of shoulders, which might have been caused with a blunt, rounded object. The appellant and his father were charge-sheeted under S. 306 read with S. 34, IPC. The trial court after considering all the facts and circumstances and hearing the parties came to a prima facie conclusion that it was not a suicidal but homicidal death. Accordingly a charge under S. 302, IPC was framed against the appellant. But the appellant's father was discharged holding that the allegations against him did not justify the framing of any charge. But on revision the High Court inter alia observed that the fact that accused-appellant was passive was of no consequence. "It all depends upon the mental response and reaction of an individual whether he faces the risk and attempts to extinguish the flames or quietly watches the incident". The High Court took the view that the charge against the appellant was misconceived as there was not even a case against him to frame charge under S. 306, IPC. Accordingly, it discharged the accused. A social welfare organisation viz. Stree Atyachar Virodhi Parishad preferred the present appeals. Appreciating the object of the organisation and the assistance rendered by it and allowing its appeal

Held :

Section 227 which confers power to discharge an accused was designed to prevent harassment to an innocent person by the arduous trial or the ordeal of prosecution. The power has been entrusted to the Sessions Judge who brings to bear his knowledge and experience in criminal trials. If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the court in the face.

In the present case the trial court had considered every material on record and given reasons why a charge under S. 302, IPC was warranted against the appellant even though police had charge-sheeted him under S. 306, IPC. But the High Court discharged the appellant mainly relying on the dying declaration as if it has been conclusively proved to be the true and faithful version of the deceased. Apart from that, the approach made and the opinion expressed by the High Court in respect of many of the matters cannot be countenanced.

The discretion exercised by the trial court in discharging the appellant's father was correct. Although it was his obligation as manager of the family to protect the deceased and safeguard her life, but that by itself without anything more is not sufficient to frame a charge against him. *Stree Atyachar Virodhi Parishad* v. *Dilip Nathumal Chordia*, (1989) 1 SCC 715: 1989 SCC (Cri) 285: 1989 Mah LJ 462.

Bench Strength **2**. Coram: *B.C. Ray* and **K. Jagannatha Shetty**, JJ. [Date of decision: 8-2-1989]

[2819] — Ss. 228 and 482 — Abetment of suicide — Quashment of charge — When warranted — Appellant not named in FIR — *Order of framing a charge under S. 306 IPC on basis of allegation of father of deceased — Allegations not substantiated — Held, suicide note does not even remotely connect appellant with offence of abetment — Order framing charge against appellant is unsustainable — Penal Code, 1860, Ss. 306 and 107* (Paras 14, 21 to 27)

An enquiry was conducted by the Security Officer of the University, the appellant herein, regarding the theft of a mobile phone. A dispute arose between deceased and *H*. Deceased committed suicide during enquiry, by jumping in front of a train, leaving a suicide note. In the suicide note it is stated that he did not commit the theft and he had committed suicide because he was falsely implicated in the theft case of a mobile phone. On the basis of the suicide note an FIR under Section 306 IPC was registered. In the said FIR, the appellant was not even named as an accused. A report under Section 173 CrPC was submitted only against *H*. Charges were framed against *H*. Complainant, being the father of the deceased filed a private complaint alleging that the appellant *S* and *M* were responsible for abetting the suicide of his son. The trial court, on the basis of the said complaint, summoned the appellant as well as *M* to face trial under Section 306 IPC. The appellant, aggrieved by the framing of the charge moved the High Court in the revision petition which was dismissed. The appellant submitted that whether it would be just and fair to compel the appellant to face the rigmarole of a criminal trial in the absence of any credible material against him? When the appellant was in no manner connected with this case and there was no credible material to connect the appellant with the crime, in this view of the matter, according to the appellant, it would be a futile exercise to compel him to undergo the rigmarole of a criminal trial.

Allowing the appeal,

Held :

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide. (Para 25)

In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation. (Para 26)

When the facts of this case are carefully scrutinised and critically examined in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under Section 306 IPC against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge under Section 306 IPC against the appellant is quashed and all proceedings pending against him are also set aside. (Para 27). *S.S. Chheena* v. *Vijay Kumar Mahajan*, (2010) 12 SCC 190: (2010) 3 UPLJ 223 (SC).

Bench Strength **2**. Coram: **Dalveer Bhandari** and *K.S. Radhakrishnan*, JJ. [Date of decision: 12-8-2010]

Gangula Mohan Reddy v. State of A.P., (2010) 1 SCC 750: (2010) 1 SCC (Cri) 917; Mahendra Singh v. State of M.P., 1995 Supp (3) SCC 731: 1995 SCC (Cri) 1157; Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73: 1994 SCC (Cri) 107; Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605: (2010) 3 SCC (Cri) 367, relied on

[2820] — S. 228 & S. 397 r/w Ss. 401 & 482 — Abetment of suicide — Framing of charge — Essentials — *Held, a person is said to have abetted in doing a thing, when he "instigates" others to do it — Further held, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred — Appellant charged that he along with other two accused "in furtherance of common intention", mentally tortured* ***JS*** *(the deceased) and thereby abetted him to commit suicide — Apart from the suicide note statements recorded by the police during investigation, showing that on account of business transactions with the accused, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do —* ***Prima facie****, the conduct of the appellant and his accomplices appeared such that the deceased was left with no other option except to end his life — Hence, impugned judgment upholding order of trial court framing charge for offence under S. 306 r/w S. 34 IPC, calls for no interference — Penal Code, 1860, S. 306 r/w S. 34 and S. 107* (Paras 15, 19 and 21 to 24). *Chitresh Kumar Chopra* v. *State (NCT of Delhi)*, (2009) 16 SCC 605.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 10-8-2009]

Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088, followed

[2821] — Ss. 228, 240 and 173 — Framing of charge — Case instituted upon a police report — *At the stage of framing of charges court must confine its attention to documents referred to under S. 173 only — Court not justified in referring to the letters purportedly written by the accused when their authenticity and veracity are yet to be gone into. State of J&K* v. *Sudershan Chakkar*, (1995) 4 SCC 181: 1995 SCC (Cri) 664: AIR 1995 SC 1954: 1995 Cri LJ 3606.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision: 10-5-1995]

[2822] — Ss. 228, 240 and 227 — Framing of charges under Ss. 23 and 29, NDPS Act — Nature of material on record on the basis of which the charges can be framed — *Held, at the stage of framing of charges, the court need not deeply examine the probative value of the materials on record — If on the basis of such material the court could come to the conclusion that the accused would have committed the offence, the court is obliged to frame the charge — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 23 and 29*

On 21-4-1994, the Royal Police of the Kingdom of Swaziland (situate adjacent to South Africa and Mozambique) intercepted a container truck carrying a huge quantity of tablets of "Mandrax" which were concealed in packets of electric globes. Messages were sent to various Narcotic Bureaus. It was eventually discovered that the said stock was despatched from the port of Chennai in India in the name of a Chennai-based firm and the destination was a company at Annfrere, South Africa. After investigation a complaint was filed against four persons and different provisions of NDPS Act. Subsequently the investigating agency received some more information about the aforesaid Mandrax and the connection therewith of the appellant who was an Indian citizen and had in the past held a post in the Consulate of Liberia at Mozambique. After obtaining permission from the Special Court under Section 173(8) CrPC, the investigating agency conducted further investigation which revealed that the appellant was one of the key persons who conspired with the other four accused already charge-sheeted. Subsequently the appellant was also arraigned with them for the offence under Section 29 of the NDPS Act. Both the consignor and consignee were found to be fictitious concerns and the appellant was allegedly the Chairman of the clearing agency which had presented the Bill of Entry on behalf of the non-existent consignee and had taken possession of the consignment. The prosecution further alleged that the Inspector of the Royal Swaziland Police had stated in an affidavit that he had seen a car making a U-turn before the police station and the driver of the car curiously watching the police personnel offloading the Mandrax consignment. That the driver of the car was an Indian male who, on being interrogated told that he was a diplomat from Liberia and was staying in Mozambique. That the said driver looked very nervous. The prosecution further alleged that the said Police Inspector of Swaziland on being shown a photo of the appellant had identified the figure therein as the person who had been driving the car at the time of interception of the Mandrax consignment. The appellant's application for a discharge under Section 227 CrPC was rejected by the Special Court. The appellant's petition for quashing the order of the Special Court was rejected by the High Court. Before the High Court the appellant had relied on one document each from the Mozambique Police and the South African Police, dated August 1996 and 3-4-1997 respectively, to the effect that no material had been till then collected to connect the appellant with the contraband consignment. The appellant contended that identification by photo was illegal and could not be used. Dismissing his appeal,

Held :

The two communications from the police of the foreign countries revealed only what the police then felt on the materials they could unearth till then. Such a view expressed by the police in those countries cannot foreclose the investigating force in India from arriving at the right conclusion, nor even the police authorities of those countries themselves from taking a different view subsequently. (Para 6)

If the allegations are correct, there is an undeniable position that a serious offence under Section 23 of the NDPS Act had been committed in respect of the aforesaid contraband articles. It is for the prosecution to establish the persons who have committed the offence. Four persons who were already charge-sheeted are said to be those engaged at the exporting end. There must have been human persons at the importing stage and it is for the prosecution to establish who they were. The investigation revealed that the appellant was the Chairman of the clearing agency. This is a very material and incriminating circumstance which, if established, would take the prosecution a long way off. (Paras 7 and 8)

At the stage of framing charge the court is not expected to go deep into the probative value of the materials on record. If on the basis of materials on record the court could come to the conclusion that the accused would have committed the offence the court is obliged to frame the charge and proceed to the trial. There is no scope for contending in the present case that the court cannot frame charge under Section 29 read with Section 23 of the NDPS Act. The trial court and the High Court rightly repelled the plea of the appellant in that regard. (Paras 15 and 18). *Umar Abdul Sakoor Sorathia* v. *Narcotic Control Bureau*, (2000) 1 SCC 138: 2000 SCC (Cri) 200: AIR 1999 SC 2562: 1999 Cri LJ 3972.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 6-8-1999]

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; Satish Mehra v. Delhi Admn., (1996) 9 SCC 766: 1996 SCC (Cri) 1104, distinguished

State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659: 1996 SCC (Cri) 820, followed

See also *State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568*

[2823] — Ss. 228 and 227 — Bombay Bomb Blast case — Framing of charge — *Appellant allegedly facilitating landing, transportation and distribution of arms, ammunition and RDX by sending his men and jeeps — Appellant also providing financial aid to the co-accused which was used for blast purpose — Appellant's scooter used as scooter bomb — Held, the alleged fact that the jeeps provided by the appellant had cavities to conceal arms, etc. and that the jeeps were recovered at the instance of the appellant in which were found traces of RDX would prima facie show that the appellant had abetted the terrorist act within the meaning of S. 109 IPC — Alleged financial assistance would attract the enlarged definition of abetment given in S. 2(1)(a)(iii), TADA Act — Charges maintained — Penal Code, 1860 — Ss. 109 and 120-B — TADA, 1987, Ss. 3(3) and 2(1)(a)(iii). State of Maharashtra* v. *Som Nath Thapa*, (1996) 4 SCC 659: 1996 SCC (Cri) 820: AIR 1996 SC 1744.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and **B.L. Hansaria** and *S.C. Sen*, JJ. [Date of decision: 12-4-1996]

[2824] — Ss. 228 and 227 — Bombay Bomb Blast case — Framing of charge against the accused — *Allegation that the appellant in question permitted the co-accused to park motor vehicles laden with arms, ammunition and explosives in his premises — Material on record showing that immediately after coming to know about parking of the vehicles the appellant asked the co-accused to remove the vehicles from his compound — Held, conduct of the appellant is indicative of the fact that he was neither in conscious possession of the arms, ammunition, etc. nor had he aided the co-accused* *in any way in the terrorist act — Appellant discharged — Penal Code, 1860, S. 120-B — TADA, 1987, Ss. 3(3) and 6. State of Maharashtra* v. *Som Nath Thapa*, (1996) 4 SCC 659: 1996 SCC (Cri) 820: AIR 1996 SC 1744.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and **B.L. Hansaria** and *S.C. Sen*, JJ. [Date of decision: 12-4-1996]

[2825] — Ss. 228, 167, 173, 2(g) & (h), 190 and 309 — Suspension of President or Vice-President of Municipality — Provision for suspension on detention in prison during "trial" — Scope — *(Per majority, S.B. Sinha, J., contra) Detention in judicial custody during investigation, held, covered — Purposive interpretation applied — Plea to give a restricted meaning to "trial" so as to include only the proceedings subsequent to framing of charges, rejected — Gujarat Municipalities Act, 1963 (34 of 1964), S. 40(1) — Penal Code, 1860, Ss. 307, 143, 147, 148 and 149 — Arms Act, 1959, S. 25(1)(c) — Bombay Police Act, 1951 (22 of 1951), S. 135*

The appellant herein was elected as President of a municipality in Gujarat. His term of office was to expire on 30-6-2002. Two FIRs were lodged against him for offences under Sections 307, 143, 147, 148 and 149 IPC read with Section 25(1)(*c*) of the Arms Act and under Section 135 of the Bombay Police Act. During investigation, the appellant was arrested and detained in judicial custody from 13-6-2001 to 6-7-2001. Exercising the power under Section 40 of the Gujarat Municipalities Act, 1963 (for short "the Act"), the authorised officer suspended the appellant from his office. The Appellate Authority dismissed his appeal. Then the appellant filed before the High Court a writ petition, which was later dismissed by a Single Judge. A Division Bench affirmed that decision. Then the appellant filed the instant SLP and a contempt petition. The appellant contended that as the offence alleged to have been committed by him was triable by a Court of Session, the trial thereof in contradistinction to the term "investigation" or "inquiry" would commence from the stage of Section 228 CrPC. That an investigation and/or an inquiry could not be said to be a "trial" within the meaning of Section 40 of the Act. The appellant strongly relied upon the distinction between two parts of Section 40(1) of the Act regarding offences under the Prevention of Corruption Act, Bombay Prohibition Act, Gujarat Municipalities Act on the one hand and other enactments on the other.

Dismissing the SLP by a majority, and dropping the contempt proceedings unanimously

Held :

Per Rajendra Babu, J.

Section 40(1) is disjunctive in nature. It consists of two parts. The second part deals with the suspension of a President or Vice-President who has been detained in a prison during trial under the provisions of any law. The present petition falls under the second part. (Para 46)

The manifest intention and obvious purpose of Section 40 is to ensure the proper functioning of the office of the President or Vice-President of the Municipalities by keeping the public confidence. The Act aims to keep those persons, against whom serious criminal proceedings are initiated or who are detained in prisons, away from the public office of the President or Vice-President of the Municipalities until they are cleared of the charge. Actual conviction for the alleged offence is not a necessary precondition for suspension under Section 40. The cardinal dictum that the legislature laid down vide Section 40 is to allow only those persons against whom there are no criminal proceedings to man the office of the Municipal President or Vice-President. (Paras 47 and 52)

The proper meaning of the words "detained in prison during trial" in Part II of Section 40(1) should be in perfect tune with the spirit of Section 40. Otherwise, the purpose of the section will be defeated. Therefore, the word "trial" used in the expression "detained in prison during trial" cannot be singled out and cannot be accorded a restricted meaning. (Paras 48 and 52)

The word "trial" in Section 40 of the Act cannot be supplanted with a straitjacket meaning so as to cover all situations. The purpose of Section 40 could only be promoted if the word "trial" is given a broad meaning. This intention is vividly displayed by choosing the expression "under the provisions of any law for the time being in force" in Part II of Section 40(1), which means the provision is designed to cover any "detention in prison" under provisions of any law. Only by this interpretation, the textual meaning of "during trial" matches the contextual spirit of Section 40 that aims to ensure the smooth functioning of the office and to keep the confidence of the people in the institution. (Paras 51, 52 and 47)

Therefore, the word "trial" should not be given a restricted meaning so as to include only proceedings after the accused is actually arraigned before the competent court for framing and facing of charges. Thus, detention in the present case took place during the process of trial. It served as a step in aid for trial. (Paras 53 and 55)

The appellant's reliance on the distinction between the two parts of Section 40(1), is not proper. Many offences arising under other laws adverted to in the latter part of Section 40(1) of the Act are no less serious than those adverted to in the former part thereof. For that matter they may be far more serious. Further, for practical reasons, if a person is kept in prison, whatever may be the nature of the offence whether falling under the first part or the second part of Section 40(1), the working of the Act will be put in jeopardy unless he is suspended. Treating one who has committed an offence under the Bombay Prohibition Act as liable to be suspended immediately on being accused of such an offence and arrested, while treating the other who has committed a murder as not so liable would lead to anomalous results as in the categorisation of offences no scientific basis is discernible. Thus two classes are created, one more onerous than the other and, therefore, may lead to being irrational and arbitrary so as to violate Article 14. (Para 54)

Per Dr. AR. Lakshmanan, J.

Section 40 of the Act requires purposive interpretation. The object of the provision is to keep criminal elements away from local bodies and to allow public offices to be held by persons with apparent integrity and moral conduct. The first and second parts of Section 40(1) are disjunctive as indicated by putting the word *or* between the first and second parts. The first part of the section is not attracted to the facts of the present case. Therefore, the petitioner's case is to be considered for applicability of the last part. As rightly pointed out by the High Court, the word "trial" cannot be given a fixed meaning as is to be understood from CrPC and it has to be given the meaning as is to be understood from the law applicable to the trial in question during which the holder of the elected office has been detained. (Para 58)

Moreover, the word "trial" has not been expressly defined in CrPC. It should not be given a restrictive meaning to include only proceedings after the accused is actually arraigned before the competent court for framing and facing the charge. (Para 59)

The High Court has rightly held that the "detention in jail during trial" as mentioned in the second part of Section 40(1) of the Act should be interpreted as "detention in jail during the process of trial" which period shall include the period from the trial" which period shall include the period from the date of filing of the FIR till the end of the trial and the detention of the President or Vice-President at any time during the period in jail shall attract the second part of Section 40(1) of the Act and the authority is competent to take a decision whether such President or Vice-President who has been detained in connection with the alleged criminal offence should be suspended or not. The word "trial" should be interpreted to achieve the object of the Act. (Para 60)

Considering the gravity of the situation that the person was in judicial custody his insistence on holding the office as an officer of the Municipality is impermissible. Likewise, the general principle for a public office is that by any act or omission if a person or officer is imprisoned or is in judicial custody, he should be suspended from the post. (Para 61)

Per S.B. Sinha, J. (minority view)

In Section 40(1), the legislature advisedly has used two different terms as regards different offences for achieving the same object. Whereas, the President or Vice-President of a Municipal Council may be placed under suspension upon institution of a case under the Prevention of Corruption Act, 1947 and the Bombay Prohibition Act, 1949, but in relation to other cases the order of suspension can be passed only when he has been detained in a prison during trial. (Para 12)

The expression "trial" although has not been defined in CrPC must be construed in the light of the expression "inquiry" or "investigation" as contained in Sections 2(*g*) and 2(*h*) thereof. The very fact that an inquiry or investigation will not be "trial" is a clear pointer to the fact that so long as an investigation or an inquiry does not come to an end a trial does not commence. Thus, whereas in an inquiry or investigation evidence is collected, the same is adduced during trial. Evidence may be collected behind the back of the accused, but the same has to be adduced only in his presence. (Paras 13 to 15)

Detention of an accused either in police custody or judicial custody is not a matter of much relevance for the purpose of interpretation of Section 40 of the Act. (Para 17)

A statute is to be construed according to the intention of the legislature. The golden rule of interpretation of a statute is that it has to be given its literal and natural meaning. The intention of the legislature must be found out from the language employed in the statute itself. (Paras 19 to 21)

It is also well settled that when two different expressions are used by the legislature, the same must be held to have intended to convey two different meanings. Section 40 uses the term "instituted" in relation to offences under the statutes specified therein; whereas in relation to the others, the term "during the trial" has been used. (Paras 22 and 23)

Detention of an accused when a case is instituted and during trial is provided in different chapters of CrPC. An accused may be detained in custody during investigation in terms of Section 167 CrPC whereas, he has to be detained after receipt of the charge-sheet and during inquiry or trial in terms of Section 309 thereof. (Para 24)

What is imperative for the purpose of commencement of trial is that cognizance of the offence has been taken which can be done under Section 190 CrPC only upon receiving the report of the investigating officer upon completion of investigation, under Section 173. So far as the sessions trial is concerned, the same begins upon framing of charge as provided for under Chapter XVIII CrPC. However, it is also a fact that the word trial, may in different situations be interpreted differently, having regard to the text and context thereof. (Paras 25, 26 and 29)

Moreover, Section 40 of the Act provides for a disqualification to hold an elected office. A strict construction of the second part of Section 40 is, therefore, called for, having regard to the fact that the act of suspension from holding an office would be quasi-criminal in nature. It is trite that a law leading to disqualification to hold an office should be clear and unambiguous like a penal law. In the event a statute is not clear, recourse to strict interpretation must be made for construction thereof. (Paras 30 and 31)

Moreover, in service rules it is ordinarily mentioned that a holder may be placed under suspension if he is detained in custody either during investigation or trial. Thus, whenever the legislature thinks fit to provide for suspension of a holder of a post when he is in custody, the stages of the case are specifically mentioned. (Para 40)

While providing for different standards in the matter of issuance of order of suspension, the legislature must have kept in mind the impact of institution of cases which, in its opinion, would amount to moral turpitude. So far as offences under the statutes other than specified in the first part of the statute are concerned, the legislature did not evidently intend that an order of suspension be issued automatically without making an investigation in relation thereto. (Para 41)

Therefore, in my opinion, the impugned judgment of the High Court cannot be sustained. (Para 42). *Bipinchandra Parshottamdas Patel* v. *State of Gujarat*, (2003) 4 SCC 642: 2003 SCC (Cri) 831: AIR 2003 SC 2256.

Bench Strength 3. Coram: **S. Rajendra Babu**[2], **S.B. Sinha**[1] and **Dr. Ar. Lakshmanan**[3], JJ. [Date of decision: 14-4-2003]

State of Bihar v. Ram Naresh Pandey, AIR 1957 SC 389: 1957 SCR 279: 1957 Cri LJ 567, relied on

Bipinchandra Parshottamdas Patel v. State of Gujarat, (2002) 1 Guj LR 319, affirmed

— **S. 228(1)** *See* Ss. 223 and 228(1)

See also Ss. 227 & 228(1) and 239 & 240(1)

See also Ss. 408(1), 406, 407, 228(1), 227 and 26(a)(ii)

— **S. 228(1)(b)** *See* Ss. 227, 228(1)(b) and 397/401

— **S. 229** *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 313, 229, 228 and 226

See also S. 319 r/w Ss. 209 and 193, 227, 228, 229, 230, 231 and 482

See also Ss. 482, 225 to 247

[2826] — Ss. 229, 233, 235, 241 and 248 — Admission of guilt before court by accused after close of prosecution evidence and his examination under S. 313, Criminal Procedure Code — *Conviction, held on facts, was affected by the admission and hence, cannot be sustained — Prevention of Food Adulteration Act, 1954, S. 16 — Evidence Act, 1872, S. 18*

When there is an admission of guilt made by the accused as a result of plea bargaining or otherwise, the evaluation of the evidence by the Court is likely to become a little superficial and perfunctory and the Court may be disposed to refer to the evidence not critically with a view to assessing its credibility but mechanically as a matter of formality in support of the admission of guilt. In the present case, the Magistrate was affected by the admission of guilt made by the appellant and in the circumstances, it would not be right to sustain the conviction of the appellant. *Ganeshmal Jashraj* v. *Govt. of Gujarat*, (1980) 1 SCC 363: 1980 SCC (Cri) 239: AIR 1980 SC 264: 1980 MLJ (Cri) 474: (1980) 21 GLR 429: (1980) 1 SCR 1114.

Bench Strength 2. Coram: **P.N. Bhagwati** and *V.D. Tulzapurkar*, JJ. [Date of decision: 30-10-1979]

[2827] — Ss. 229, 241 and 223 — Several accused facing trial jointly — Conviction of some of them at the stage of recording of their pleas — *Held, that would not amount to separating their trial from that of the other accused persons unless there is a separate order in that regard — TADA, 1987, S. 15(3) proviso*

There has been no order separating the trial of A-7 to A-9 from that of these appellants and it is evident that the same trial continued even after A-7 to A-9 were convicted based on their pleas. Therefore, the argument of the appellants that A-7 to A-9 were not tried in the same trial as the appellants, cannot be countenanced. (Para 52). *Jameel Ahmed* v. *State of Rajasthan*, (2003) 9 SCC 673.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 30-4-2003]

[2828] — Ss. 229, 241, Ch. XX-A (Ss. 265-A to 265-L) and 368, 399 and 401 — Plea bargaining — Neither the trial court nor the High Court has the jurisdiction to bypass on the basis of a plea-bargain the minimum sentence prescribed by law — *Contention rejected that it was not open to trial court to enhance the sentence for conviction under Ss. 392 r/w 397 Penal Cod e, 1860 to rigorous imprisonment for seven years because the practice of plea-bargaining had been adopted at the trial — High Court was within jurisdiction in confirming the minimum sentence of 7 years awarded by the trial court — Penal Code, 1860, Ss. 397 r/w 392* (Para 4). *Kirpal Singh* v. *State of Haryana*, (1999) 5 SCC 649: 1999 SCC (Cri) 1025.

Bench Strength 2. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 10-5-1999]

Thippaswamy v. State of Karnataka, (1983) 1 SCC 194: 1983 SCC (Cri) 160, distinguished

[2829] — Ss. 229, 241, Ch. XX-A (Ss. 265-A to 265-L) and 368, 399 & 401 — Plea bargaining — *Enhancement or imposition of sentence in revision or appeal after the accused had plea-bargained for a lighter sentence or mere fine in the trial court, held, would not be reasonable, just or fair and thereby offend Art. 21 — Proper course in such instances is to order retrial giving opportunity to the accused to defend himself — Penal Code, 1860, S. 304-A — Constitution of India — Article 21. Thippaswamy* v. *State of Karnataka*, (1983) 1 SCC 194: 1983 SCC (Cri) 160: AIR 1983 SC 747: 1983 Cri LJ 1271.

Bench Strength 3. Coram: *P.N. Bhagwati*, *R.S. Pathak* and *A.N. Sen*, JJ. [Date of decision: 25-11-1982]

— S. 230 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also S. 319 r/w Ss. 209 and 193, 227, 228, 229, 230, 231 and 482

See also Ss. 482, 225 to 247

—S. 231 *See* S. 286, Criminal Procedure Code, 1898, pp. 1124 et seq. in Vol. 2

— S. 231 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 213, 231 and 232

See also Ss. 226 and 231

See also Ss. 226, 231 and 225

See also Ss. 235, 231 & 233 and 248, 242 & 243

See also S. 319 r/w Ss. 209 and 193, 227, 228, 229, 230, 231 and 482

See also Ss. 327, 231, 233, 242 to 244, 247, 273 and 283

See also Ss. 391 and 231, 242, 244, 233, 243 & 247

See also Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247

See also Ss. 482, 225 to 247

See also CRIMINAL TRIAL — 'Appreciation of Evidence',

CRIMINAL TRIAL — 'Witnesses', and

CRIMINAL TRIAL — 'Prosecution' in Vol. 3

[2830] — S. 231 — Evidence for prosecution — *Once the prosecution case is believed the non-examination of some other witnesses, held, not to affect the testimony of those already believed. Nirpal Singh* v. *State of Haryana*, (1977) 2 SCC 131: 1977 SCC (Cri) 262: AIR 1977 SC 1066: (1977) 2 SCR 901: 1977 Cri LJ 642.

Bench Strength 2. Coram: *P.N. Bhagwati* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 1-2-1977]

[2831] — Ss. 231, 242 and 244 — Cross-examination of PW before Commissioner — When permissible — Applicability — Witness not able to make himself available for cross-examination due to old age and ill-health — Appointment of Commissioner for cross-examination — *Despite two opportunities being granted to defence for cross-examining the IO, defence failing to do so — However, said IO recalled for cross-examination by order dated 7-8-2003 — Between 2003 to 2006 said IO not making himself available for his cross-examination due to his old age and prolonged illness — Hence, held, S. 33 inapplicable — However, directed that if the said witness is not capable of giving evidence by appearing in court, the prosecution may file an application for his cross- examination through a Commissioner which may be allowed by the trial Judge — Thereafter it would be for the Commissioner to consider as to whether IO is capable of deposing before him or not — Further clarified that said order was passed in exercise of jurisdiction under Art. 142 and not be construed as a precedent — Constitution of India, Arts. 142 and 141 — Evidence Act, 1872, S. 33* (Paras 3 to 5 and 11 to 13). *State of Orissa* v. *Prasanna Kumar Mohanty*, (2009) 7 SCC 412: (2009) 3 SCC (Cri) 428: (2009) 78 AIC 269 (SC).

Bench Strength 2. Coram: *S.B. Sinha* and *Dr. M.K. Sharma*, JJ. [Date of decision: 9-4-2009]

Gopal Saran v. Satyanarayana, (1989) 3 SCC 56, considered

[2832] — S. 231 — Examination of defence witnesses as prosecution witnesses — *Not unfair when the witnesses examined only from the point of view of bringing the whole transaction before court martial. Major G.S. Sodhi* v. *Union of India*, (1991) 2 SCC 382: 1991 SCC (Cri) 357: AIR 1991 SC 1617: (1991) 1 LLN 365: 1991 Cri LJ 1947.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 30-11-1990]

[2833] — S. 231 — Eyewitness account of three witnesses found acceptable by the courts below — *Non-examination of other witness is inconsequential. Girish Yadav* v. *State of M.P.*, (1996) 8 SCC 186: 1996 SCC (Cri) 552: AIR 1996 SC 3098.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 29-3-1996]

[2834] — S. 231 — Failure of prosecution to examine persons mentioned in the FIR — *Held, detrimental — CrPC, 1898, S. 286. State of U.P.* v. *Hari Prasad*, (1974) 3 SCC 673: 1974 SCC (Cri) 203: AIR 1974 SC 1740: (1974) 2 SCR 588: 1974 Cri LJ 1274.

Bench Strength **2**. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 6-12-1973]

[2835] — S. 231 — Failure of prosecution to produce eyewitnesses — *Prosecution stating that two witnesses, whose evidence was necessary for unfolding the case have been won over by the defence — Held, such a bald assertion unsupported by any data is insufficient to absolve the prosecution from its duty to examine witnesses. Balak Ram* v. *State of U.P.*, (1975) 3 SCC 219: 1974 SCC (Cri) 837: AIR 1974 SC 2165: 1974 Cri LR (SC) 530: 1974 Cri LJ 1486.

Bench Strength **2**. Coram: *H.R. Khanna* and **Y.V. Chandrachud**, JJ. [Date of decision: 16-8-1974]

[2836] — S. 231 — Failure of prosecution to produce witnesses who were not eyewitnesses, held, not to be fatal on the facts. *Dalip Singh* v. *State of Punjab*, (1979) 4 SCC 332: 1979 SCC (Cri) 968: AIR 1979 SC 1173: 1979 Cri LJ 700.

Bench Strength **2**. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 12-1-1979]

[2837] — S. 231 — Choice of witness for prosecution — Power of prosecutor — Child produced as eyewitness instead of his mature elder brother and sister who had also seen the incident — *Held, it was for Public Prosecutor to decide whether mature witnesses should be examined or not and whether child witness had no role in the matter — Defence never requested trial court to call upon Public Prosecutor to examine the elder brother and sister — Defence also failed to examine them as defence witnesses or to make a prayer to examine them as court witnesses — Held, for non-examination of elder brother and sister, child witness could not be blamed, nor could his evidence be brushed aside in a casual manner* (Paras 38 to 40). *State of U.P.* v. *Krishna Master*, (2010) 12 SCC 324: AIR 2010 SC 3071: 2010 Cri LJ 3889: (2010) 94 AIC 257: (2010) 5 All LJ 423.

Bench Strength **2**. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 3-8-2010]

[2838] — S. 231 — Material witnesses — Non-examination of — *Explained on the basis of their being relatives of the accused or won over by them and therefore not likely to speak the truth — No adverse inference against the prosecution can therefore be drawn*

Per Fazal Ali, J.

There is no duty on the prosecution to examine witnesses who might have been gained over by the accused and even if those witnesses are not produced by the prosecution there is nothing to stop the accused from applying to the court for examining such witnesses under S. 540 of the Code of Criminal Procedure.

In the instant case it has been seen that the Public Prosecutor has given a statement that the witnesses concerned were either relatives of the accused or that they had been gained over by the accused and were therefore not likely to speak the truth. In view of this explanation it cannot be said that the witnesses were deliberately withheld or unfairly kept back and therefore no adverse inference could be drawn against the prosecution for non- examination of those witnesses. *Dalbir Kaur* v. *State of Punjab*, (1976) 4 SCC 158: 1976 SCC (Cri) 527: AIR 1977 SC 472: 1977 Cri LJ 273: (1977) 1 SCR 280.

Bench Strength **2**. Coram: **A.C. Gupta**[2] and **S. Murtaza Fazal Ali**[1], JJ. [Date of decision: 20-8-1976]

[2839] — S. 231 — Non-examination by prosecution of certain witnesses mentioned in the FIR, held, would cause no infirmity if the evidence actually led by the prosecution is reliable and trustworthy. *Pal Singh* v. *State of U.P.*, (1979) 4 SCC 345: 1979 SCC (Cri) 981: AIR 1979 SC 1116: 1979 Cri LJ 917.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 12-1-1979]

[2840] — S. 231 — Non-examination of independent witnesses of locality though statement of some of the witnesses recorded — *Held, that by itself would not detract from the veracity of the eyewitness account. Ram Sanjiwan Singh* v. *State of Bihar*, (1996) 8 SCC 552: 1996 SCC (Cri) 701: AIR 1996 SC 3265.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 26-4-1996]

[2841] — S. 231 — Non-examination of non-material witness by prosecution, held, inconsequential — *CrPC, 1898, S. 286(2). Boya Ganganna* v. *State of A.P.*, (1976) 1 SCC 584: 1976 SCC (Cri) 102: AIR 1976 SC 1541: 1976 Cri LJ 1158.

Bench Strength 2. Coram: **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 7-11-1975]

[2842] — S. 231 — Non-examination of residents of locality inconsequential if no evidence to show that they were present and witnessed the occurrence — *Adverse inference only justified only if shown that material witnesses had actually seen the occurrence but had been deliberately withheld — No presumption regarding their presence can be drawn merely because they own houses near scene of occurrence. Pattad Amarappa* v. *State of Karnataka*, 1989 Supp (2) SCC 389: 1990 SCC (Cri) 179: AIR 1989 SC 2004: 1989 Cri LJ 2167: (1989) 3 Crimes 39.

Bench Strength 2. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 25-7-1989]

[2843] — S. 231 — Non-examination of witnesses of locality though statements of some of the residents recorded — No explanation forthcoming — *Held, prosecution version doubtful — Genesis of the crime suppressed*

The locality where the incident occurred was a thickly populated one. There were several residential quarters as well as shops and dispensaries nearby. At the time of the occurrence, there were several persons who had come out to purchase vegetables from the nearby lane. The halwai shop as well as the dispensaries of two medical practitioners near the place of occurrence were open. On hearing the commotion several persons had come out of their houses. Even though statements of a few including one of the medical practitioners were recorded none was called to the witness box.

Held :

Non-examination of witnesses of locality whose presence would be natural creates doubt regarding the truth of the prosecution version. *State of U.P.* v. *Madan Mohan*, (1989) 3 SCC 390: 1989 SCC (Cri) 585: AIR 1989 SC 1519: 1989 Cri LJ 1485.

Bench Strength 2. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 20-4-1989]

[2844] — S. 231 — Non-production without cause of material prosecution witness already cited in the calendar of witnesses — *Held, prejudiced fair trial and amounted to an irregularity. S. Harnam Singh* v. *State (Delhi Admn.)*, (1976) 2 SCC 819: 1976 SCC (Cri) 324: AIR 1976 SC 2140: 1976 Cri LJ 913.

Bench Strength 2. Coram: **R.S. Sarkaria** and *P.N. Shinghal*, JJ. [Date of decision: 23-3-1976]

[2845] — S. 231 — Occurrence taking place in a barber shop — *Non-examination of barber not fatal to the prosecution case which stood well established on record by the eyewitness account of other witnesses — Evidence Act, 1872, S. 114 Ill. (g). Ram Sanjiwan Singh* v. *State of Bihar*, (1996) 8 SCC 552: 1996 SCC (Cri) 701: AIR 1996 SC 3265.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 26-4-1996]

[2846] — S. 231 — Dowry death — Evidence — Where sufficient, non-production of remaining evidence, if necessary — *Where there was sufficient evidence to prove the charges under Ss. 304-B and 498-A, mere non-production of certain letters allegedly written by the deceased to her parents, held, did not falsify the prosecution case — Penal Code, 1860, Ss. 304-B and 498-A — Evidence Act, 1872, S. 113-B. Ram Kumar* v. *State of Haryana*, (1998) 9 SCC 1: 1998 SCC (Cri) 833: AIR 1999 SC 1491.

Bench Strength 2. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 8-1-1998]

[2847] — S. 231 — Prosecution evidence — *No capital can be made out of failure to examine a witness of no use to the prosecution. State of Gujarat* v. *Bai Fatima*, (1975) 2 SCC 7: 1975 SCC (Cri) 384: AIR 1975 SC 1478: (1975) 12 ACC 243: 1975 Cri LJ 1079.

Bench Strength 2. Coram: *A. Alagiriswami* and **N.L. Untwalia**, JJ. [Date of decision: 19-3-1975]

[2848] — S. 231 — Prosecution not bound to produce each and every witness of the occurrence irrespective of the consideration whether such witness is essential to the unfolding of the narrative on which the prosecution case is based — *On facts held, non-examination of some of the witnesses not fatal. Rajbir* v. *State of Haryana*, (1996) 7 SCC 86: 1996 SCC (Cri) 178.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision: 29-9-1994]

[2849] — S. 231 — Prosecution not bound to produce every possible witness — *Adverse inference only justified if a material witness kept out — Evidence Act, 1872, S. 114, Ill. (g)*

The onus of providing the prosecution case rests entirely on the prosecution and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At the most, if a material witness is withheld, the court may draw an adverse inference against the prosecution. But it is not the law that the omission to examine any and every witness even on minor points would undoubtedly lead to rejection of the prosecution case or drawing of an adverse inference against the prosecution. The law is well settled that the prosecution is bound to produce only such witnesses as are essential for unfolding of the prosecution narrative. In other words, before an adverse inference against the prosecution can be drawn it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were therefore material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point: it is the quality rather than the quantity of the evidence that matters. *Sarwan Singh* v. *State of Punjab*, (1976) 4 SCC 369: 1976 SCC (Cri) 646: AIR 1976 SC 2304: 1976 Cri LJ 1787.

Bench Strength **3**. Coram: *P.N. Bhagwati*, *A.C. Gupta* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 11-8-1976]

[2850] — S. 231 — Persons who may be produced as witnesses — Persons not named in charge-sheet — *Held, prosecution is entitled to produce any person as witness even though such person is not named in the earlier charge-sheet* (Para 22). *Rama Chaudhary* v. *State of Bihar*, (2009) 6 SCC 346.

Bench Strength **2**. Coram: *S.B. Sinha* and **P. Sathasivam**, JJ. [Date of decision: 2-4-2009]

[2851] — Ss. 231, 234, 242, 244 and 293 — Expert opinion — Doubts — Duty/Obligation of prosecution — Helping expert with factual information to arrive at correct explanations regarding commission of offence — *Expert ruling out commission of unnatural offence under S. 377 IPC — Doubt regarding disappearance of lacerations due to delayed medical examination — Held, it is obligatory on the part of the prosecution to draw the attention of expert to such doubt so as to enable him to furnish an explanation — Evidence Act, 1872, S. 45 — Penal Code, 1860, S. 377*

When an expert categorically ruled out the commission of an unnatural offence having regard to his expertise, it was obligatory on the part of the prosecution to draw his attention so as to enable him to furnish an explanation. It was contended that lacerations are likely to disappear if the examination is made after two to three days and nature of injuries would also depend upon several factors. PW 3, doctor in his evidence stated that the tissues around the anus are hard and rough. At the time of answering the calls of nature, the extra skin will be expanded. Immediately after it will come to original status. By examination it was found that the boy was not habitually used for anal intercourse. If there is continuous act of intercourse for about a week or even 2, 3 days it can be found out as to whether he had had any intercourse or not. (Paras 30, 29 and 28)

It may be true that absence of medical evidence by itself may not be a crucial factor in all cases, but, the same has to be taken into consideration as a relevant factor when other evidence points towards the innocence of the appellant. It is not a case where only one view was possible. It is a well-settled principle of law that where two views are possible, the High Court would not ordinarily interfere with the judgment of acquittal. (Paras 30 and 38). *Gowrishankara Swamigalu* v. *State of Karnataka*, (2008) 14 SCC 411.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

Ejaj Ahmad: Sexual Offences; Modi: Medical Jurisprudence and Toxicology, referred to

[2852] — S. 231 — Prosecution not producing witnesses won over by opposite party — *It would be unreasonable to insist tendering such witnesses before Court — CrPC, 1898, S. 286(2)*

It is undoubtedly the duty of the prosecution to lay before the Court all material evidence available to it which is necessary for unfolding its case, but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorized. *Bava Haji Hamsa* v. *State of Kerala*, (1974) 4 SCC 479: 1974 SCC (Cri) 515: AIR 1974 SC 902: 1974 Cri LJ 755.

Bench Strength **3**. Coram: *M.H. Beg*, *Y.V. Chandrachud* and **R.S. Sarkaria**, JJ. [Date of decision: 21-2-1974]

[2853] — S. 231 — Prosecution producing all the necessary witnesses for unfolding the narrative — Held, all persons who saw the incident need not be produced — *Evidence Act, 1872, S. 114, Ill. (g)*. *Verghese Thomas* v. *State of Kerala*, (1976) 4 SCC 348: 1976 SCC (Cri) 643: AIR 1977 SC 701: 1977 Cri LJ 343: 1976 Cri LJ 643.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 26-9-1975]

[2854] — S. 231 — Prosecution though generally not bound to produce every witness must examine all the eyewitnesses when some of them are interested and require corroboration — *Adverse inference on non-examination of independent eyewitnesses mentioned in the FIR held, justified. Bir Singh* v. *State of U.P.*, (1977) 4 SCC 420: 1977 SCC (Cri) 640: AIR 1978 SC 59: 1978 Cri LJ 177: 1978 ALJ 365.

Bench Strength **2**. Coram: *A.C. Gupta* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 18-8-1977]

[2855] — S. 231 — Version of prosecution witnesses — *Alleged to be false — All necessary evidence brought on record, defence cross examined the prosecution witnesses effectively and evidence against the accused existing — In the circumstances it was for the court martial to arrive at a conclusion on the basis of the evidence — Supreme Court cannot reappreciate the evidence under Art. 32 to find the veracity of the version of the witnesses. Major G.S. Sodhi* v. *Union of India*, (1991) 2 SCC 382: 1991 SCC (Cri) 357: AIR 1991 SC 1617: (1991) 1 LLN 365: 1991 Cri LJ 1947.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 30-11-1990]

[2856] — S. 231 — Witnesses for the prosecution — Dacoity and murder — *Independent witnesses present at scene of occurrence — Duty of prosecution to examine — Failure to examine witnesses named in FIR held fatal. Ram Lakhan Singh* v. *State of U.P.*, (1977) 3 SCC 268: 1977 SCC (Cri) 474: AIR 1977 SC 1936: 1977 Cri LJ 1566.

Bench Strength **3**. Coram: **P.K. Goswami**, *A.C. Gupta* and *P.N. Shinghal*, JJ. [Date of decision: 6-5-1977]

[2857] — Ss. 231, 242, 243, 244 and 247 — Recording of evidence — Objection against — New practice directions — *Procedure to be followed by trial court at evidence-taking stage when any objection is raised regarding admissibility of any material or any item of oral evidence — Practice of passing detailed order allowing or rejecting the objection and then giving time by suspending trial to enable the parties concerned to move the higher court against such interlocutory order, held, not proper — Instead court should make a notice of such objection and decide it at the last stage of the final judgment — This procedure has to be followed except where the objection relates to deficiency in stamp duty of a document — Evidence Act, 1872, Ss. 5 and 3*

In this case on different occasions the trial Judge had chosen to decide questions of admissibility of documents or other items of evidence, as and when objections thereto were raised and then detailed orders were passed either upholding or overruling such objections. After passing the orders the trial court waited for days and weeks for the parties concerned to go before the higher courts for the purpose of challenging such interlocutory orders.

Held :

It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. Such practices when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings. (Para 13)

When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. There is no illegality in adopting such a course. (Para 14)

However, if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed. (Para 14)

The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. This measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses. (Para 15)

Therefore, the above is made as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence. (Para 16). *Bipin Shantilal Panchal* v. *State of Gujarat*, (2001) 3 SCC 1: 2001 SCC (Cri) 417: AIR 2001 SC 1158: 2001 Cri LJ 1254.

Bench Strength **3**. Coram: **K.T. Thomas**, *R.P. Sethi* and *B.N. Agrawal*, JJ. [Date of decision: 22-2-2001]

[2858] — Ss. 231, 242, 243, 246 and 326 — Cross-examination — Opportunity of — Stage at which to be availed — *Held, party which fails to avail of said opportunity at the appropriate stage is precluded from taking plea of non-observance of natural justice at a later stage — On facts, plea as to non-cross-examination raised only at stage of arguments before High Court — High Court rejecting plea at that stage — Held, proper — CPC, 1908, Or. 18 Rr. 4 and 5 — Contempt of Courts Act, 1971, S. 17*

A party which fails to avail of the opportunity to cross-examine at the appropriate stage is precluded from taking the plea of non-observance of principles of natural justice at a later stage. Such a plea would not be tenable. Therefore, having regard to the fact that contempt proceedings are to be decided expeditiously in a summary manner the convictions have been recorded without extending the opportunity to the contemners to cross-examine those who had deposed against them on affidavits. (Paras 30 and 31)

The High Court in its order has noted that the learned counsels appearing for both the parties have taken a stand that all possible fair and proper opportunities were extended to them. In view of the statements made by the counsel for the parties it will not be open to the counsel for the parties at this stage to take the stand that in the absence of cross-examination of the concerned persons, reliance could not be placed on the statements which were made on oath. Counsel who had appeared for the contemners before the High Court did not claim the right of cross-examination. Only at the stage of arguments was a submission made that opportunity to cross-examine the concerned persons was not given which vitiated the trial. High Court rejected this contention by holding that such a stand could not be taken at that stage of the proceedings. (Paras 30 and 13). *Daroga Singh* v. *B.K. Pandey*, (2004) 5 SCC 26: 2004 SCC (Cri) 1521: 2004 Cri LJ 2084.

Bench Strength **2**. Coram: *R.C. Lahoti* and **Ashok Bhan**, JJ. [Date of decision: 13-4-2004]

Vinay Chandra Mishra, In re, (1995) 2 SCC 584, followed
Arun Paswan, SI v. State of Bihar, (2004) 5 SCC 53, relied on

[2859] — Ss. 231, 242, 244, 309 and 437 & 439 — Delay in conduct of trial — Power of Magistrate to close the case of prosecution — Grant of bail — Other reliefs that can be granted in case of — Propositions laid down in *Abdul Rehman Antulay case*, (1992) 1 SCC 225: 1992 SCC (Cri) 93 supplemented by additional directions — *In the instant case FIR regarding offence under S. 5(2) & (1)(e) of Prevention of Corruption Act was lodged 16 long years ago and charge-sheet was submitted three years later but the prosecution had till 1-6-1995 examined only three out of forty witnesses — However, the accused was never incarcerated as his bail application was allowed on the day he had appeared before the court — In such, circumstances, the relief of quashment of the entire prosecution including FIR, not granted — Instead, the trial court directed to pass appropriate orders in pursuance of the present judgment — Constitution of India — Art. 21 — Prevention of Corruption Act, 1947, Ss. 5(2) and (1)(e)*

A case regarding an offence under Sections 5(2) & (1)(*e*) of the Prevention of Corruption Act, 1947 was registered against the petitioner on 2-11-1982. A charge-sheet was submitted on 30-8-1985 by the CBI. The Special Judge, CBI took cognizance of the offences on 14-11-1986 and issued summons. On 24-4-1987, the petitioner appeared before the Court, applied for, and obtained, bail. The charges were framed by the Special Judge on 4-3-1993. Three out of forty witnesses were examined by the prosecution till 1-6-1995. The petitioner, by a writ petition before the Patna High Court, sought the quashment of the entire prosecution including the FIR on the ground that the long delay since the institution of the FIR had violated his right to speedy trial. Allowing the appeal, without passing an order on merits of the case,

Held :

The legal position adumbrated by the Supreme Court in *Abdul Rehman Antulay case* that the right to speedy trial flows from Article 21 and encompasses the stages right from the date of registration of the FIR and onwards, remains unaltered. But it has become necessary to consider the matter at some length and lay down additional guidelines in view of the large pendency of the cases before the Special Court, Patna for more than two decades by now.

The Code of Criminal Procedure is comprehensive enough to enable the Magistrate to close the prosecution if the prosecution is unable to produce its witnesses in spite of repeated opportunities. Section 309(1) CrPC supports the above view as it enjoins expeditious holding of the proceedings and continuous examination of witnesses from day to day. The section also provides for recording reasons for adjourning the case beyond the following day.

(*i*) Where the offence is punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case.

(*ii*) In such cases, if the accused has been in jail for a period of not less than one-half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit.

(*iii*) If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the court considers it necessary to grant further time to the prosecution to adduce evidence beyond the said time-limit.

(*iv*) But if the inability for completing the prosecution within the said period is attributable to the conduct of the accused in protracting the trial, the time-limit for closing the prosecution evidence mentioned in the preceding clause would not apply.

Where the trial has been stayed by orders of the court or by operation of law, the period of such stay shall be excluded from the said period for closing the prosecution evidence. The above directions will be in addition, and without prejudice, to the directions issued by the Supreme Court in *"Common Cause" A Registered Society* v. *Union of India* [(1996) 4 SCC 33] as modified in *"Common Cause" A Registered Society* v. *Union of India* [(1996) 6 SCC 775].

[The Supreme Court set aside the impugned order of the High Court and directed the Special Judge, CBI, South Bihar, Patna to pass appropriate orders in the case of the petitioner in pursuance of the instant judgment.]. *Raj Deo Sharma* v. *State of Bihar*, (1998) 7 SCC 507: 1998 SCC (Cri) 1692: AIR 1998 SC 3281.

Bench Strength 3. Coram: *M.M. Punchhi*, *C.J.* and *K.T. Thomas* and *M. Srinivasan*, JJ. [Date of decision: 8-10-1998]

Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93, affirmed and supplemented

"Common Cause" A Registered Society v. Union of India, (1996) 4 SCC 33: 1996 SCC (Cri) 589; "Common Cause" A Registered Society v. Union of India, (1996) 6 SCC 775: 1997 SCC (Cri) 42, followed

Hussainara Khatoon (I) v. State of Bihar, (1980) 1 SCC 81: 1980 SCC (Cri) 23; Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Hussainara Khatoon (IV) v. State of Bihar, (1980) 1 SCC 98: 1980 SCC (Cri) 40; State of Maharashtra v. Champalal Punjaji Shah, (1981) 3 SCC 610: 1981 SCC (Cri) 762; Madhu Mehta v. Union of India, (1989) 4 SCC 62: 1989 SCC (Cri) 705, relied on

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899, explained

***Partly overruled** in P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578*

***See also** State v. Dr. Narayan Waman Nerukar, (2002) 7 SCC 6*

***Clarified in** Supdt. of Police, Karnataka Lokayukta v. B. Srinivas, (2008) 8 SCC 580*

[2860] — Ss. 231, 242 and 243 — Power of power-of-attorney holder to "act" on behalf of principal — Word "acts" in Or. 3 Rr. 1 and 2 CPC — Scope — *Power to depose on behalf of principal — Scope — Power to depose in place of principal, held, extends only to depositions in respect of "acts" done by power-of-attorney holder in exercise of power granted by the instrument — Term "acts" would not include deposing in place of and instead of the principal for acts done by principal and not by power-of-attorney holder — Similarly power-of-attorney holder cannot depose for principal in respect of matters of which only principal can have personal knowledge and in respect of which principal is liable to be cross-examined — If principal is unable to appear in court, a commission for recording his evidence may be issued — Auction of attached property and recovery of debt — Determination of share in attached property — Burden of proving co-ownership of property concerned, extent of their share therein, independent source of income if any and that their share was purchased from such independent income placed on appellants on remand by Supreme Court in* Janki Vashdeo Bhojwani (I), *(2004) 3 SCC 584 — Therefore, held, it was obligatory for them to have entered the witness box and discharged the burden by themselves — Questions on remand above could only have been answered by appellants themselves and not by a mere holder of power of attorney from them — Power of attorney does not have personal knowledge of these matters of the appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined on such facts — Hence appellants failed to establish that they had any independent* *source of income and contributed therefrom for the purchase of their share in the property — This being the core question, appeal liable to be dismissed — However, even on an appraisal of the documentary evidence on record by the Supreme Court, it is seen that there is no proof that the source of purchase of the purported share of the appellants in the property is from the independent income of the appellants — Further held, appellants have not approached the Court with clean hands — From the conduct of the parties it is apparent that the litigation has been a ploy to salvage the property from sale in execution of the decree — Hence appeals dismissed with costs — Supreme Court Rules, 1966, Or. 41 R. 1 — Evidence Act, 1872, Ss. 106, 137 and 138 — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, S. 25(a) — CPC, 1908, Or. 3 Rr. 1 and 2, Or. 18 Rr. 4 and 19, Or. 10 R. 4, Or. 11 R. 1 and Or. 26* (Paras 12 to 14, 16, 18, 10, 22, 23, 25, 27 and 30). *Janki Vashdeo Bhojwani* v. *Indusind Bank Ltd.*, (2005) 2 SCC 217: AIR 2005 SC 439: (2004) 123 Comp Cas 154: (2005) 2 KLT 265: (2005) 1 Mah LJ 1170.

Bench Strength 2. Coram: *D.M. Dharmadhikari* and **H.K. Sema**, JJ. [Date of decision: 6-12-2004]

Vidhyadhar v. Manikrao, (1999) 3 SCC 573, relied on

Shambhu Dutt Shastri v. State of Rajasthan, (1986) 2 WLN 713 (Raj); Ram Prasad v. Hari Narain, AIR 1998 Raj 185: (1998) 3 Cur CC 183; Pradeep Mohanbay (Dr.) v. Minguel Carlos Dias, (2000) 1 Bom LR 908, approved

Humberto Luis v. Floriano Armando Luis, (2002) 2 Bom CR 754, overruled

[2861] — Ss. 231, 242 and 244 — Non-examination of material witnesses, held, fatal to the prosecution case. *S.P. Bhatnagar* v. *State of Maharashtra*, (1979) 1 SCC 535: 1979 SCC (Cri) 323: AIR 1979 SC 826: 1979 Cri LJ 566.

Bench Strength 2. Coram: **Jaswant Singh** and *O. Chinnappa Reddy*, JJ. [Date of decision: 4-1-1979]

[2862] — Ss. 231, 242 and 244 — Prosecution evidence — *Material witness will be one whose evidence is necessary to the unfolding of the prosecution narrative — Omission to examine the person who merely informed the police of the going on of the fight not fatal. Sitaram* v. *State of M.P.*, 1980 Supp SCC 338: 1981 SCC (Cri) 276: AIR 1979 SC 1235: 1979 Cri LJ 1028.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 6-3-1979]

[2863] — Ss. 231, 311 and 313 — Re-examination of witness — Prosecution evidence closed and accused examined under S. 313 CrPC — *Prosecution not moving trial judge at any stage for recalling prosecution witness — Order of High Court in revision reserving liberty to prosecution to recall a witness for re-examination, held, uncalled for — Evidence Act, 1872, S. 138. Mir Mohd. Omar* v. *State of W.B.*, (1989) 4 SCC 436: 1989 SCC (Cri) 750: AIR 1989 SC 1785: 1989 Cri LJ 2070: (1989) 2 Crimes 698.

Bench Strength 2. Coram: **K. Jagannatha Shetty** and *A.M. Ahmadi*, JJ. [Date of decision: 8-8-1989]

[2864] — Ss. 231, 233, 242 and 243 — Conviction under S. 8 r/w S. 20(b)(ii), NDPS Act confirmed by High Court — Allegation of mala fides — Unsubstantiated pleas — *Allegation that accused was falsely implicated as the accused had met with an accident with a police jeep driven by the investigating officer (PW 6) — Allegation that panch witnesses were not locals and stock witnesses of the police — Held, in the absence of any suggestion or material in cross-examination such lame pleas cannot be accepted — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 8 and 20(b)(ii)* (Paras 4 and 5). *Ghasita Sahu* v. *State of M.P.*, (2008) 3 SCC 52: (2008) 1 SCC (Cri) 605: AIR 2008 SC 1425: 2008 Cri LJ 2060.

Bench Strength 2. Coram: *S.B. Sinha* and **V.S. Sirpurkar**, JJ. [Date of decision: 28-1-2008]

[2865] — Ss. 231 and 233 — Equal treatment, held on facts, given to evidence of prosecution and defence witnesses (Para 15). *Anil Sharma* v. *State of Jharkhand*, (2004) 5 SCC 679: 2004 SCC (Cri) 1706: AIR 2004 SC 2294: 2004 Cri LJ 2527.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 30-4-2004]

[2866] — Ss. 231 and 242 — Adverse inference — When may be drawn — Held on facts, the same could not be drawn against prosecution for not examining the three injured witnesses — *Those witnesses were not ready to depose on behalf of the prosecution out of fear of the accused persons — Evidence of other eyewitnesses could not be discarded merely because of the said non-examination — Evidence Act, 1872, Ss. 114 Ill. (g), 134 and 135* (Para 11). *Rajan Rai* v. *State of Bihar*, (2006) 1 SCC 191: (2006) 1 SCC (Cri) 209: AIR 2006 SC 433: 2006 Cri LJ 163: (2005) 36 AIC 10 (SC).

Bench Strength 2. Coram: **B.N. Agrawal** and *A.K. Mathur*, JJ. [Date of decision: 10-11-2005]

[2867] — Ss. 231 and 242 — Grounds for non-examination of witnesses — Witnesses not present during incident — *Non-examination of witnesses on ground that witnesses not present dur-*

ing incident — Conclusion based on the fact that statements of such witnesses purportedly recorded in language not known to them — Held, not a ground by itself sufficient to conclude that such witnesses were not present, for it was not a requirement of law that the language of statement recorded under S. 161 CrPC be known to the witness — Moreover, merely because witnesses could only speak the said language, and were not literate in it was not enough to conclude that they did not know the language

It is not a requirement in law that the statement under Section 161 CrPC has to be recorded in the language known to the person giving the statement. As a matter of fact, the person giving the statement is not required to sign the statement as is mandated in Section 162 CrPC. (Para 71)

The High Court noted that the statements of certain witnesses under Section 161 CrPC were recorded in Gujarati language though the witnesses did not know Gujarati, and therefore concluded that they were not present during the incident and, therefore, question of their statement being recorded by the police did not arise. There was no material before the High Court for coming to a finding that the persons did not know Gujarati since there may be a person who could converse fluently in a language though not literate to read and write. The reasoning is erroneous for more reasons than one and the conclusion of the High Court holding that the persons were not present during the incident is untenable. (Para 71). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

[2868] — Ss. 231 and 242 — Non-examination of witnesses — Permissible grounds for — Particular order of examination of witnesses set — Departure from — When permissible — *Evidence Act, 1872, Ss. 134 and 135*

It is true that the prosecution is not bound to examine each and every person who has been named as a witness. A person named as a witness may be given up when there is material to show that he has been gained over or that there is no likelihood of the witness speaking the truth in court. (Para 71)

The reasons indicated by the High Court to justify non-examination of the eyewitnesses are not sustainable. In respect of one it has been said that whereabouts of the witness may not be known. There is nothing on record to show that efforts were made by the prosecution with any meticulous care or seriousness to produce the witness for tendering evidence, and yet the net result was "untraceable". Another aspect which has been lightly brushed aside by the High Court is that one person who was to be examined on a particular date was examined earlier than the date fixed. This unusual conduct by the prosecutor should have been seriously taken note of by the trial court and also by the High Court. (Para 71)

So far as non-examination of some injured relatives is concerned, the High Court has held that in the absence of any medical report, it appears that they were not present during the incident and, therefore, held that the prosecutor might have decided not to examine them because there was no injury. This is nothing but a wishful conclusion based on presumption. (Para 73). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

[2869] — Ss. 231 and 242 — Prosecution evidence — Failure to examine material eyewitnesses — *Held, not fatal when he was related to the accused and won over — CrPC, 1898, Ss. 257-A (7), 286(2) and 244. Soma Bhai* v. *State of Gujarat*, (1975) 4 SCC 257: 1975 SCC (Cri) 515: AIR 1975 SC 1453: 1975 Cri LJ 1201.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 30-4-1975]

[2870] — Ss. 231 & 242 and 173 & 157 — Investigating officer — Presence of during trial

Time and again, the Supreme Court has stressed upon the need of the investigating officer being present during trial unless compelling reasons exist for a departure. In the instant case, this does not appear to have been done, and there is no explanation whatsoever why it was not done. Even the Public Prosecutor does not appear to have taken note of this desirability. (Para 71). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Shailendra Kumar v. State of Bihar, (2002) 1 SCC 655: 2002 SCC (Cri) 230: (2001) 8 Supreme 13, relied on

[2871] — Ss. 231 and 340 — Evidence for prosecution — *Once a witness is examined as a prosecution witness, he cannot be allowed to perjure himself by resiling from the testimony given in court on oath — Affidavit filed by a person stating* *that whatever he had deposed before court as PW was not true and was done so at the instance of the police, held, rightly rejected by Sessions Court and High Court* (Paras 38 and 39). *Yakub Ismailbhai Patel* v. *State of Gujarat*, (2004) 12 SCC 229: AIR 2004 SC 4209: 2004 Cri LJ 4205.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 31-8-2004]

[2872] — Ss. 231(2) and 246(5), 162(1) proviso, Expln. and Ss. 161 & 172 — Re-examination of witness — *Explanation to any contradiction in the evidence of a PW brought forth by the defence by using a part his statement recorded under S. 161 — Failure to give said explanation — Effect — When a part of the statement of a witness recorded under S. 161 is used by defence for contradicting the witness during cross-examination, prosecution is entitled to use any other part of the statement during re-examination for explaining it — If prosecution fails to do so, it is not open to the court to invoke S. 172 to trace out from the case diary any earlier statement of the witness recorded under S. 161 for explaining such contradiction — Evidence Act, 1872, Ss. 138, 145 and 157*

According to the prosecution while the deceased and PW 1 were on the evening stroll, A-1 stabbed the deceased with a knife in his abdomen and when the deceased tried to escape, he was intercepted by A-1 as well as by A-2 to A-4 and they all inflicted blows on him which resulted in his death. Thereafter A-1 went to a Judicial Magistrate, exhibited a knife and requested the Magistrate to record his confession. The Magistrate recorded his confession after administering oath to him and got it signed by the confessor. Soon after the incident PW 1 informed about it to his father (PW 10) who then lodged the FIR on that basis. However, PW 1, in his statement recorded two days after the incident (on 14-10-1991) under Section 161 CrPC, except for the knife-blow wielded by A-1, attributed no other role to the remaining accused. The prosecution examined PW 1 as the solitary eyewitness to the occurrence and PW 10 to speak about the version reported to him by PW 1. The Judicial Magistrate who recorded the confession of A-1 was examined as PW 2. The defence counsel used the statement of PW 1 recorded on 14-10-1991 under Section 161 CrPC for the purpose of contradicting the evidence of PW 1 that he had "also stated before the police that all the accused had further started beating" the deceased. The trial court, placing reliance on the testimony of PW 1 and also on the confession of A-1 besides the evidence of PW 10 as a piece of corroboration, came to the conclusion that the deceased was incessantly stabbed by A-1 alone. The trial court was not satisfied with the evidence against the remaining accused. Hence it convicted A-1 alone under Section 302 IPC and sentenced him to life imprisonment and acquitted A-2 to A-4.

The State filed appeal before the High Court against the acquittal of the three accused, while A-1 filed a separate appeal challenging the conviction and sentence passed on him. The High Court while confirming the conviction and sentence passed on A-1 made a scathing attack on the Sessions Judge for the reasoning advanced in support of the order of acquittal of the other three accused. One of the reasonings which the High Court pointed out was that PW 1 was confronted only with the statement recorded under Section 161 of the Code on 14-10-1991, whereas that witness was interrogated by the investigating officer on 12-10-1991; the earlier interrogation record should have been traced out by the trial Judge from the case diary of the police. The High Court expressed the view that the Sessions Judge had a duty to peruse the case diary prepared as per Section 172 of the Code for satisfying himself whether the witness had stated any particular fact during the interrogation. The High Court scrutinised the case diary and copiously used the entries therein for driving the point home. From the oral statement of PW 1 and that of the investigating officer, supported by the police case diaries, it found that the statement of PW 1 was actually recorded in the morning of 12-10-1991 and "the findings recorded by the learned trial Judge to the contrary are absolutely erroneous". It further observed that not only the police had let off the co-accused of A-1 but even the Magistracy "has failed in imparting justice and had fallen prey to the evil propensities of police indulged by the higher officers, as is well made out from the statement of the investigating officer", who had stated that the higher officers thought that the co-accused of A-1 were innocent. Thus the High Court reversed the acquittal of A-2 to A-4 and convicted them also under Section 302 read with Section 34 IPC and sentenced them to imprisonment for life. They filed appeal before the Supreme Court as of right under Section 379 CrPC and Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. A-1 filed appeal by special leave. Dismissing the appeal filed by A-1 but allowing the appeals filed by A-2 to A-4,

Held :

It would have been desirable that the High Court did not make such strong remarks castigating the police and the subordinate judiciary, when the situation did not warrant such castigation. Judicial restraint should have dissuaded the High Court from making such unnecessary castigation. (Para 10)

That apart, the legal proposition propounded by the High Court regarding the use of Section 172 of the Code is erroneous. The whole exercise made by the High Court on that aspect was in the wake of what PW 1 said, that he was questioned by the investigating officer on 12-10-1991. That might be so but the defence counsel used the statement as recorded on 14-10-1991 under Section 161 of the Code for the purpose of contradicting PW 1. The omission in the statement recorded under Section 161 CrPC by PW 1 dated 14-10-1991 regarding the role attributed to A-2 to A-4 relates to a very material aspect and hence it amounted to contradiction. When any part of such statement is used for contradicting the witness during cross-examination the Public Prosecutor has the right to use any other part of the statement, during re-examination, for the purpose of explaining it. The said right of the Public Prosecutor is explicitly delineated in the last part of the proviso to Section 162(1) CrPC. (Paras 10 and 11)

If a Public Prosecutor failed to get the contradiction explained as permitted by the last limb of the proviso to Section 162(1) of the Code, it is not permissible for the court to invoke the powers under Section 172 CrPC for explaining such contradiction which deals with the diary of proceedings in investigation. Sub-section (2) of Section 172 CrPC makes it clear that the discretion given to the court to use such diaries is only for aiding the court to decide on a point. The court is forbidden from using the entries of such diaries as evidence. What cannot be used as evidence against the accused cannot be used in any other manner against him. If the court uses the entries in a case diary for contradicting a police officer it should be done only in the manner provided in Section 145 of the Evidence Act i.e. by giving the author of the statement an opportunity to explain the contradiction, after his attention is called to that part of the statement which is intended to be so used for contradiction. In other words, the power conferred on the court for perusal of the diary under Section 172 is not intended for explaining a contradiction which the defence has winched to the fore through the channel permitted by law. The interdict contained in Section 162, debars the court from using the power under Section 172 for the purpose of explaining the contradiction. (Paras 13 and 14)

The assertion of PW 1 that A-2 to A-4 had given blows to the deceased thus stands contradicted by his own previous statement. Such a contradiction is on a crucial aspect pertaining to the complicity of A-2 to A-4. The trial court was well justified in holding that the evidence of PW 1 is not sufficient to convict those three accused for the offence under Section 302 with the aid of Section 34 IPC. (Para 15)

That apart, there should have been strong and good reasons for the High Court for converting an order of acquittal into one of conviction. The reasons set out by the High Court for disturbing the order of acquittal of A-2 to A-4 were not satisfactory. (Paras 16 and 17)

However, there is no reason to dissent from the finding regarding reliability of the testimony of PW 1 so far as A-1 is concerned. (Para 17)

Thus the conviction and sentence passed on A-1 are confirmed. But the conviction and sentence passed on A-2 to A-4 by the High Court are set aside and the order of acquittal passed in their favour by the trial court will stand restored. (Para 24). *Mahabir Singh* v. *State of Haryana*, (2001) 7 SCC 148: 2001 SCC (Cri) 1262: AIR 2001 SC 2503.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 26-7-2001]

Dhanna v. State of M.P., (1996) 10 SCC 79: 1996 SCC (Cri) 1192, relied on

— S. 232 *See also* S. 289, Criminal Procedure Code, 1898, p. 1131 in Vol. 2

— S. 232 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 213, 231 and 232

See also Ss. 482, 225 to 247

[2873] — Ss. 232, 235, 248 and 255 — Acquittal of co-accused — Effect — *Held, does not by itself entitle the other accused in the same case to acquittal as a single significant detail may alter the entire aspect — Criminal Trial — Acquittal of co-accused — Constitution of India — Art. 141*

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect. It is more pronounced in criminal cases where the backbone of adjudication is fact-based. (Para 18). *Megh Singh* v. *State of Punjab*, (2003) 8 SCC 666: AIR 2003 SC 3184.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 15-9-2003]

— **S. 233** *See also* S. 289, Criminal Procedure Code, 1898, p. 1131 in Vol. 2

— **S. 233** *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 229, 233, 235, 241 and 248

See also Ss. 231 and 233

See also Ss. 231, 233, 242 and 243

See also Ss. 235, 231 & 233 and 248, 242 & 243

See also Ss. 303, 304, 233 and 243

See also Ss. 311, 233, 243 and 315

See also Ss. 327, 231, 233, 242 to 244, 247, 273 and 283

See also Ss. 391 and 231, 242, 244, 233, 243 & 247

See also Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247

See also Ss. 482, 190(1), 204, 233 & 243

See also Ss. 482, 225 to 247

[2874] — S. 233 — "Every distinct offence"

The expression 'every distinct offence' must have a different content from the expressions 'every offence' or 'each offence'. A separate charge is required for every distinct offence and not necessarily for each separate offence. 'Distinct' means 'not identical'. It stresses characteristics that distinguish while the word 'separate' would stress the 'two things not being the same'. Two offences would be distinct if they be not in any way interrelated. If there be some interrelation, there would be no distinctness and it would depend on the circumstances of the case in which the offences were committed whether there be separate charges for those offences or not. *Banwarilal Jhunjhunwala* v. *Union of India*, AIR 1963 SC 1620: 1963 Supp (2) SCR 338: (1963) 2 Cri LJ 529.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 21-11-1962]

[2875] — Ss. 233 and 313 — Accused stating that the death of the victims occurred due to the shots fired by one S with the gun of P — *Where it was undisputed that the gun from which the shots had been fired at the two deceased did belong to the accused, held, the circumstances in which the gunshot injuries were sustained by the deceased ought to have been explained satisfactorily by the defence — Evidence Act, 1872, S. 106*

The fact that the gun from which shots had been fired at the deceased did belong to the accused was not adverted to by the High Court at all. A different theory which was sought to be set up by the defence, by stating that the death of the victims had occurred due to shots fired by *S* with the gun belonging to one *P*, was disbelieved by the Sessions Judge for good reasons. However, that aspect was totally ignored by the High Court. If the gunshot injuries had been sustained by the two deceased from the licensed gun belonging to the accused, the circumstances in which the injuries were sustained by them ought to have been explained satisfactorily by the defence. (Paras 12 and 10). *State of Haryana* v. *Ram Sarup*, (2002) 7 SCC 250: 2002 SCC (Cri) 1691: AIR 2002 SC 3114.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 4-9-2002]

[2876] — Ss. 233 and 313 — Prevention of Food Adulteration Act, 1954, Ss. 7 and 16, R. 61 proviso and Appendix B Item A.11.02.08 — Accused taking stand that he used vegetable ghee which is not brominated vegetable oil — *Prosecution to prove affirmatively that the sample was adulterated and any stand taken by accused cannot be used as evidence unless its veracity otherwise established. Kishan Chand* v. *Delhi Admn.*, (1979) 4 SCC 709: 1980 SCC (Cri) 165: AIR 1979 SC 1128: 1979 Cri LJ 921.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **A.D. Koshal**, JJ. [Date of decision: 20-2-1979]

[2877] — Ss. 233(3) and 311 — Defence witness — Prosecution witness when may be called as — *Accused's application for compelling attendance of any prosecution witness, who had been examined, cross-examined and discharged, to be juxtaposed as defence witness, held, not maintainable — Court has power to reject such application on ground that it is made for the purpose of vexation or delay or for defeating the ends of justice — Where two witnesses were examined as eyewitnesses and then cross-examined and discharged but about 5 years after recording of their statements as prosecution witnesses, they were allowed to be examined as defence witnesses when they resiled completely from their previous statements as prosecution witnesses, held, their subsequent statements cannot be acted upon — Such defence witnesses are liable to be charged under S. 193 IPC*

The respondents were charged under Sections 302/34 IPC for committing murder. Statements of PW 8, brother of the deceased and PW 9, a friend of the deceased, were recorded under Section 164 CrPC before the Magistrate on 21-9-1989. Thereafter they were examined by the prosecution as eyewitnesses and their statements were recorded before the Sessions Judge on 18-12-1990. They were then cross-examined and discharged. An application under Section 311 CrPC was filed for recalling and re-examining them but the same was rejected by the court on 2-9-1994. However, PW 8 and PW 9 filed an affidavit on 16-8-1994 that the statements made before the Magistrate by them were under pressure and tutored by the police. Thereupon they were recalled by the trial court purportedly in exercise of power under Section 233(3) CrPC and examined as DW 1 and DW 2 on behalf of the accused and their statements were recorded on 17-7-1995 when they completely resiled from their previous statements as PWs. In between 18-12-1990, the day on which their statements were recorded before the Sessions Judge as PWs, and their statements as defence witnesses which were recorded on 17-7-1995 as DWs, no complaint whatsoever was made by DW 1 and DW 2 to any court or to any authority that they gave statements on 18-12-1990 due to coercion, threat or being tutored by the police. The trial court after threadbare discussion of the evidence of the prosecution witnesses including the said two witnesses, convicted the accused under Sections 302/34 IPC. But the High Court relying upon the testimony of DW 1 and DW 2 reversed the judgment of the trial court and acquitted the accused.

Allowing the State's appeal,

Held :

The High Court reversed the order of conviction and recorded the order of acquittal, which is perverse. (Para 11)

Section 233 itself deals with entering upon defence by the accused. The application for recalling and re-examining persons already examined, as provided under Section 311 CrPC, was already rejected. The power to summon any person as a witness or recall and re-examine any person already examined is the discretionary power of the court in case such evidence appears to it to be essential for a just decision of the case. Under Section 233 CrPC the accused can enter upon defence and he can apply for the issue of any process for compelling the attendance of any witness in his defence. The provisions of sub-section (3) of Section 233 cannot be understood as compelling the attendance of any prosecution witness examined, cross-examined and discharged to be juxtaposed as DWs. In the present case PW 8 and PW 9 were juxtaposed as DW 1 and DW 2. This situation is not one what was contemplated by sub-section (3) of Section 233 CrPC. (Para 14)

When such frivolous and vexatious petitions are filed, a judge is not powerless. He should have used his discretionary power and should have refused relief on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. (Para 15)

The order of the High Court is accordingly set aside and the order of the trial court convicting the respondent under Sections 302/34 IPC is restored. (Para 8)

Prima facie, PW 8 and PW 9 in their subsequent affidavits made a false statement which they believed to be false or did not believe to be true. Hence, they are liable for perjury for giving false evidence punishable under Section 193 IPC. Therefore, the Additional Sessions Judge is directed to file a complaint under Section 193 of the Penal Code and initiate proceedings against them and pass necessary orders in accordance with law. (Para 19). *State of M.P.* v. *Badri Yadav*, (2006) 9 SCC 549: (2006) 3 SCC (Cri) 337: AIR 2006 SC 1769: 2006 Cri LJ 2128: (2006) 3 KLT 205.

Bench Strength 2. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 31-3-2006]

Yakub Ismailbhai Patel v. State of Gujarat, (2004) 12 SCC 229: 2004 SCC (Cri) Supp 196, relied on

— S. 234 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 231, 234, 242, 244 and 293

See also Ss. 482, 225 to 247

— S. 235 *See also* S. 309, Criminal Procedure Code, 1898, pp. 1138 et seq. in Vol. 2

— S. 235 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 229, 233, 235, 241 and 248

See also Ss. 232, 235, 248 and 255

See also Ss. 313 and 235

See also Ss. 401, 397, 235, 248 and 255

See also Ss. 401 & 399 and 354 & 235

See also Ss. 482, 225 to 247

See also CRIMINAL TRIAL — 'Sentence' in Vol. 3

[2878] — **Ss. 235 and 215 — Where charge was framed for offence under S. 302 IPC only, whether conviction can be awarded under S. 304-B IPC** — *In view of conflicting decisions rendered by two-Judge Benches of the Supreme Court in Lakhjit Singh and Sangaraboina Sreenu cases, question to be decided by a larger Bench of the Court — Penal Code, 1860 — Ss. 302 and 304-B. Shamnsaheb M. Multtani* v. *State of Karnataka*, (2000) 3 SCC 698: 2000 SCC (Cri) 738.

Bench Strength 2. Coram: *K.T. Thomas* and *A.P. Misra*, JJ. [Date of decision: 14-9-1999]

Matter now resolved in (2004) 5 SCC 334

[2879] — Ss. 235, 231 & 233 and 248, 242 & 243 — Appreciation of evidence — Stage for when arises at the trial — *Held, stage for appreciating the evidence for the purpose of arriving at conclusion whether prosecution was able to bring home the charge against the accused or not would arise only after all the evidence is brought on record at the trial* (Para 9). *Hem Chand* v. *State of Jharkhand*, (2008) 5 SCC 113: (2008) 2 SCC (Cri) 537: AIR 2008 SC 1903.

Bench Strength 2. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 13-3-2008]

[2880] — Ss. 235 and 286 — Reversal of acquittal by High Court — *Whether High Court justified in sentencing the accused persons to a term of imprisonment without affording them an opportunity of hearing on the question of sentence — Question not decided. Padmanabhan Vijaykumar* v. *State of Kerala*, 1994 Supp (2) SCC 156: 1994 SCC (Cri) 892: AIR 1993 SC 2641.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 24-2-1993]

[2881] — S. 235 — Sessions Court — Appreciation of evidence by — *Trial court though finding that prosecution established its case beyond doubt that appellant lit the matchstick when deceased herself poured kerosene on her body, concluding that appellant had no intention to kill his wife — It was further held that accused had no knowledge that the burn injuries were likely to cause death of deceased, but his act would certainly cause hurt to a person and accordingly found appellant guilty under S. 324 IPC — Anguish expressed over the manner in which trial court had dealt with the matter — Penal Code, 1860 — Ss. 302/304 Pt. I and S. 324* (Paras 9 and 10). *Ongole Ravikanth* v. *State of A.P.*, (2009) 13 SCC 647: AIR 2009 SC 2129: (2009) 79 AIC 1 (SC): (2009) 3 APLJ 1 (SC): 2009 Cri LJ 3944.

Bench Strength 2. Coram: **B. Sudershan Reddy** and *Aftab Alam*, JJ. [Date of decision: 17-6-2009]

[2882] — Ss. 235(1) and (2) — It is illegal to convict and impose sentence on the same day. *Burn Standard Co. Ltd.* v. *Union of India*, (1991) 3 SCC 467: AIR 1991 SC 1784.

Bench Strength 2. Coram: *K.N. Singh* and **Kuldip Singh**, JJ. [Date of decision: 16-7-1991]

— S. 235(2) *See* Ss. 28 & 29 and 235(2)
See also Ss. 235(1) and (2)
See also Ss. 248(2) and 235(2)
See also Ss. 309(2) third proviso and 235(2)
See also Ss. 354(3) and 235(2)
See also Ss. 354(3), 235(2) and 307
See also Ss. 354(3), 368 and 235(2)
See also Ss. 360 & 235(2)

[2883] — S. 235(2) — Nature and object of explained — *If grievance is made in the higher Court of the failure of trial Court to give such opportunity, held, a remand does not necessarily follow — The superior court can invite the submissions and dispose of the question of sentence accordingly*

The imperative language of sub-section (2) of S. 235 leaves no room for doubt that after recording the finding of guilt and the order of conviction, the Court is under an obligation to hear the accused on the question of sentence unless it released him on probation of good conduct or after admonition under S. 360. The right to be heard on the question of sentence has a beneficial purpose for a variety of facts and considerations bearing on the sentence can, in the exercise of that right, be placed before the Court which the accused, prior to the enactment of the Code of 1973, had no opportunity to do. The social compulsions, the pressure of poverty, the retributive instinct to seek an extra-legal remedy to a sense of being wronged, the lack of means to be educated in the difficult art of an honest living, the parentage, the heredity — all these and similar other considerations, can hopefully and legitimately, tilt the scales on the propriety of sentence. The mandate of S. 235(2) must, therefore, be obeyed in its letter and spirit.

However, it is not true that failure on the part of the Court, which convicts an accused, to hear him on the question of sentence must necessarily entail a remand to that Court in order to afford to the accused an opportunity to be heard on the question of sentence. The accused may exercise that right either by instructing his counsel to make oral submissions to the higher Court or he may, on affidavit or otherwise, place in writing before the higher Court whatever he desires to place before it on the question of sentence. The Court may in appropriate cases, have to adjourn the matter in order to give to the accused sufficient time to produce the necessary data and to make his contentions on the question of sentence. That, perhaps, must inevitably happen where the conviction is recorded for the first time by a higher Court.

Hence, for a proper and effective implementation of the provision contained in S. 235(2), it is not always necessary to remand the matter to the Court which has recorded the conviction. The fact that the Supreme Court in *Santa Singh case* [(1976) 4 SCC 190] remanded the matter to the Sessions Court does not spell out the ratio of the judgment to be that in every such case there has to be a remand. Remand is an exception, not the rule, and ought therefore to be avoided as far as possible in the interest of expeditious though fair, disposal of cases. (Para 78). *Dagdu* v. *State of Maharashtra*, (1977) 3 SCC 68: 1977 SCC (Cri) 421: AIR 1977 SC 1579: (1977) 3 SCR 636: 1977 Cri LJ 1206.

Bench Strength 3. Coram: **Y.V. Chandrachud**[1], **P.K. Goswami**[2] and *P.N. Shinghal*, JJ. [Date of decision: 19-4-1977]

Applied in Kamalakar Nandram Bhavsar v. State of Maharashtra, (2004) 10 SCC 192

[2884] — **Ss. 235(2) and 465 — Nature and scope of — Accused on conviction must be heard before award of sentence** — *Hearing implies opportunity to place full and adequate material before the court and if necessary to lead evidence — Provision mandatory and cannot be treated as a mere irregularity curable under S. 465, CrPC, 1973 — Failure to give opportunity therefore vitiates the award of sentence*

Per Bhagwati, J.

Section 235(2) is clear and explicit and does not admit of any doubt. The court must in the first instance, deliver a judgment convicting or acquitting the accused. If the accused is acquitted, no further question arises. But if he is convicted, then the court has to "hear the accused on the question of sentence, and then pass sentence on him according to law".

A proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances — extenuating or aggravating — of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These factors have to be taken into account by the court in deciding upon the appropriate sentence.

The hearing contemplated by S. 235(2) is not confined merely to hearing oral submissions, but it is also intended to give an opportunity to the prosecution and the accused to place before the court facts and material relating to various factors bearing on the question of sentence and if they are contested by either side, then to produce evidence for the purpose of establishing the same. Of course, care would have to be taken by the court to see that this hearing on the question of sentence is not abused and turned into an instrument for unduly protracting the proceedings. The claim of due and proper hearing would have to be harmonised with requirement of expeditious disposal of proceedings.

The non-compliance with the mandatory provisions of S. 235(2) cannot be treated as a mere irregularity curable under S. 465 of the Code of Criminal Procedure, 1973. It is much more serious. It amounts to bypassing an important stage of the trial and omitting it altogether so that the trial cannot be said to be that contemplated in the Code. This deviation constitutes disobedience to an express provision of the Code as to the mode of trial. It goes to the root of the matter and the resulting illegality is of such a character that it vitiates the sentence.

When no opportunity has been given to the appellant to produce material and make submissions in regard to the sentence to be imposed on him, failure of justice must be regarded as implicit. S. 465 cannot, in the circumstances, have any application.

Per Fazal Ali, J.

Under S. 235(2) the accused must be given an opportunity of making his representation only regarding the question of sentence and for this purpose he may be allowed to place such materials as he may think fit but which may have a bearing only on the question of sentence.

There may be a number of circumstances of which the court may not be aware and which may be taken into consideration by the court while awarding the sentence, particularly a sentence of death. He has to be heard on his personal, social and domestic circumstances before the sentence is given. *Santa Singh* v. *State of Punjab*, (1976) 4 SCC 190: 1976 SCC (Cri) 546: AIR 1976 SC 2386: 1976 Cri LJ 1875.

Bench Strength 2. Coram: **P.N. Bhagwati**[1] and **S. Murtaza Fazal Ali**[2], JJ. [Date of decision: 17-8-1976]

Explained in Dagdu v. State of Maharashtra, (1977) 3 SCC 69: 1977 SCC (Cri) 421

[2885] — **S. 235(2) — Affording opportunity of hearing before passing order of sentence mandatory** — *Time be given for reflection to elicit reply shedding light on motive — Hence trial courts, after recording conviction, should adjourn the matter to a future date and decide the question of sentence after affording opportunity of hearing to both the parties — Sentence imposed without substantial compliance with S. 235(2) liable to be replaced by an appropriate order of sentence*

The choice of sentence has to be made after following the procedure set out in sub-section (2) of S. 235, CrPC. That sub-section satisfies a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at the same time helps the court to choose the sentence to be awarded. The provision is mandatory and should not be treated as a mere formality. The choice has to be made after giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc. before the court, otherwise the court's decision would be vulnerable. In many cases a sentencing decision has far more serious consequences on the offender and his family members than in the case of a purely administrative decision a fortiori, therefore, the principle of fair play must apply with greater vigour in the case of the former than the latter. An administrative decision having civil consequences, if taken without giving a hearing is generally struck down as violative of the rule of natural justice. Likewise a sentencing decision taken without following the requirements of sub-section (2) of S. 235 of the Code in letter and spirit would also meet a similar fate and may have to be replaced by an appropriate order. As a general rule the trial courts should after recording the conviction adjourn the matter to a future date and call upon both the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it and thereafter pronounce the sentence to be imposed on the offender. In the present case the trial judge did not attach sufficient importance to the mandatory requirement of sub-section (2) of S. 235 of the Code. The High Court also had before it only the scanty material placed before the Sessions Judge when it confirmed the death penalty. *Allauddin Mian* v. *State of Bihar,* (1989) 3 SCC 5: 1989 SCC (Cri) 490: AIR 1989 SC 1456: 1989 Cri LJ 1466.

Bench Strength 2. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 13-4-1989]

[2886] — S. 235(2) — **Affording opportunity of hearing to accused before taking decision on sentence mandatory**

The requirement of sub-section (2) of S. 235 of the Code of Criminal Procedure is mandatory and confers a right on the offender to be heard on the question of sentence. However, the opportunity statutorily afforded to the offender does not absolve the court of its obligation to apply its judicial mind on the question of sentence but casts additional obligations (*i*) to give the offender an opportunity to make a representation on the question of sentence and (*ii*) to take into consideration such representation while determining the appropriate sentence to be awarded to the offender. *Anguswamy* v. *State of T.N.*, (1989) 3 SCC 33: 1989 SCC (Cri) 481.

Bench Strength 2. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 20-4-1989]

Allaudin Mian v. State of Bihar, (1989) 3 SCC 5, followed

[2887] — S. 235(2) — Failure to give opportunity on the question of sentence — *Remission of case to trial Court on this point, held, does imply de novo trial — Conviction will stand — Fact that another Judge hears the case on question of sentence, held, immaterial*

Once the Judge who hears the evidence delivers a judgment of conviction, one part of the trial comes to an end. The second part of the trial is restricted only to the question of sentence and so far as that is concerned, when a case is remitted by the Supreme Court to the Sessions Court for giving a hearing on the question of sentence under S. 235(2) there would be fresh evidence and the principle that the Sessions Judge may not act on evidence already recorded before his predecessor and must conduct a de novo trial would not be violated. *Nirpal Singh* v. *State of Haryana*, (1977) 2 SCC 131: 1977 SCC (Cri) 262: AIR 1977 SC 1066: (1977) 2 SCR 901: 1977 Cri LJ 642.

Bench Strength 2. Coram: *P.N. Bhagwati* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 1-2-1977]

[2888] — S. 235(2) — Hearing on question of sentence not given by trial Court — *Appellate Court, held, need not remand the case and should itself give such opportunity and dispose of the case on question of sentence. Tarlok Singh* v. *State of Punjab*, (1977) 3 SCC 218: 1977 SCC (Cri) 490: AIR 1977 SC 1747: 1977 Cri LJ 1139.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *P.S. Kailasam*, JJ. [Date of decision: 28-4-1977]

[2889] — S. 235(2) — Hearing on sentence — *Trial court dealing with question of sentence in a rather cryptic manner by a one paragraph order — Order of conviction and sentence pronounced on same day — Held, the manner in which the trial court decided the question of sentence cannot be approved. Anshad* v. *State of Karnataka*, (1994) 4 SCC 381: 1994 SCC (Cri) 1204.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 22-4-1994]

[2890] — S. 235(2) — Hearing to accused on question of sentence — Hearing given to counsel appointed by accused — *Held, is enough — Moreover, on facts, appellant-accused was present in* *court and he did not make any statement beyond that made by his counsel — He also had liberty to adduce evidence regarding the sentence but did not avail of the same*

The contention that the appellant should have been heard in person and not through the counsel appointed by him before imposition of the sentence (the death penalty) cannot be accepted. If the accused had engaged a counsel the court can ask the counsel as to whether he had anything to say about the sentence. The appellant was also present in the court and he did not make any further statement regarding the sentence to be imposed on him. He also had liberty to adduce evidence regarding the sentence but he did not avail that opportunity and the contention that the appellant was not questioned before the sentence was imposed is not correct. (Para 12). *Surendra Pal Shivbalakpal* v. *State of Gujarat*, (2005) 3 SCC 127: 2005 SCC (Cri) 653: AIR 2004 SC 4862: 2004 Cri LJ 4642.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 16-9-2004]

[2891] — **S. 235(2) — If minimum sentence provided under the statute is imposed no question of providing an opportunity under S. 235 would arise** — *Hence failure to give such opportunity immaterial. Tarlok Singh* v. *State of Punjab*, (1977) 3 SCC 218: 1977 SCC (Cri) 490: AIR 1977 SC 1747: 1977 Cri LJ 1139.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *P.S. Kailasam*, JJ. [Date of decision: 28-4-1977]

[2892] — **S. 235(2) — Mandatory requirement of providing pre-decisional opportunity of hearing to accused on question of sentence** — *Plea regarding failure to provide such opportunity raised for the first time before Supreme Court — Moreover, judgment of trial court showing that trial court in fact had heard the accused on the same day of passing the judgment — In the circumstances held, plea of non compliance with S. 235(2) does not merit consideration. Jumman Khan* v. *State of U.P.*, (1991) 1 SCC 752: 1991 SCC (Cri) 283: AIR 1991 SC 345: 1991 Cri LJ 439.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 30-11-1990]

[2893] — **S. 235(2) — Matters that may be considered under** — *Confession made by accused before High Court accepting a part of the offence at the stage of hearing under — High Court cannot take the same into consideration in its main judgment in the appeal against conviction but the same can be taken into consideration for the purpose of imposition of punishment*

Per Sinha, J.

The stage of hearing an accused under Section 235(2) CrPC is after the judgment of conviction is pronounced and not prior thereto. The appellant herein made a confession before the High Court. The High Court took the same into consideration in the main judgment which could not be done. He had been brought before the High Court only for purpose of fulfilling the requirement of Section 235(2). His statement was taken during midst of hearing. He knew the implications thereof. Despite the same, he made a categorical statement that he was responsible for burying the dead body. He gave an explanation, which might not have found favour with the High Court, but the fact that he had made a confession at least accepting a part of the offence could not have been ignored at least for the purpose of imposition of punishment. He is more than 64 years' old. He is in custody for a period of 16 years. The death sentence was awarded to him by the trial court in terms of its judgment dated 20-5-2005. In a situation of this nature, imposition of a life imprisonment for commission of the crime under Section 302 shall serve the ends of justice. (Para 97). *Swamy Shraddananda* v. *State of Karnataka*, (2007) 12 SCC 288: (2008) 2 SCC (Cri) 322: AIR 2007 SC 2531.

Bench Strength **2**. Coram: **S.B. Sinha**[1] and *Markandey Katju*[2], JJ. [Date of decision: 18-5-2007]

[2894] — **S. 235(2) — Non-compliance — Contention in respect of** — *Order of sentence passed after hearing the counsel for the accused-appellant on the same date on which the verdict of the guilt was pronounced — Not that the appellant sought for an adjournment or grant of further time for making submission on the sentence but the same was refused — Further, no grievance in that behalf made before the High Court — On facts, held, contention as to alleged non-compliance with S. 235(2) liable to be rejected — Penal Code, 1860, Ss. 498-A and 306* (Paras 5 and 6). *Moti Lal* v. *State of M.P.*, (2004) 2 SCC 469: 2004 SCC (Cri) 573: 2004 Cri LJ 907.

Bench Strength **2**. Coram: **Doraiswamy Raju** and *S.B. Sinha*, JJ. [Date of decision: 20-1-2004]

Santa Singh v. State of Punjab, (1976) 4 SCC 190: 1976 SCC (Cri) 546, explained and distinguished on facts

[2895] — **S. 235(2) — Non-compliance with — No opportunity for hearing on question of sentence given** — *Held, no grievance can be made where minimum sentence under the provision has been awarded. Santa Singh* v. *State of Punjab*, (1976) 4 SCC 190: 1976 SCC (Cri) 546: AIR 1976 SC 2386: 1976 Cri LJ 1875.

Bench Strength **2**. Coram: **P.N. Bhagwati**[1] and **S. Murtaza Fazal Ali**[2], JJ. [Date of decision: 17-8-1976]

[2896] — S. 235(2) — Procedure for awarding sentence in accordance with S. 235(2)

Where the accused is convicted for an offence under S. 302, Indian Penal Code, the Court should call upon the Public Prosecutor at the stage of S. 235(2) to state to the Court whether the case is one where the accused as a matter of justice should be awarded the extreme penalty of law or the lesser sentence of imprisonment for life. If the Public Prosecutor informs the Court that the State as prosecutor is of the opinion that the case is not one where extreme penalty is called for and if the Sessions Judge agrees with the submission, the matter should end there. *Rajendra Prasad* v. *State of U.P.*, (1979) 3 SCC 646: 1979 SCC (Cri) 749: AIR 1979 SC 916: 1979 Cri LJ 792.

Bench Strength 3. Coram: **V.R. Krishna Iyer**[1], *D.A. Desai*[1] and **A.P. Sen**[2], JJ. [Date of decision: 9-2-1979]

[2897] — S. 235(2) — Requirement of affording pre-sentence hearing — Parties heard but none of them giving any documentary or oral evidence with regard to sentence — Defence lawyer merely pleading young age and absence of past criminal record of the offender — *Held, in the circumstances of the case, requirement of S. 235(2) satisfied*

The statute has engrafted in the statute-book the provisions of Sections 235(2) so as to see that proper appreciation of the evidence takes place and proper opportunity of hearing as regards punishment be afforded, but if there is no taker of such an opportunity and in spite of there being lawyers appearing for the accused as well, the question of further adjournment of the matter would not arise. It is true that the obligation is not discharged by putting formal questions to the accused. The Judge is supposed to elicit materials from the accused which will have a bearing on the question of sentence and it is on this requirement of law, it has to be considered as to whether there was in fact such a genuine attempt to elicit materials but as the record depicts there was no taker of this opportunity and the defence lawyer pleaded two facts to be considered in the matter for award of punishment, viz., (*a*) the accused is aged 22 years, and (*b*) has no other past criminal record. In the instant case the trial Judge has shown utmost concern and after much deliberation came to the conclusion in the matter of grant of punishment. The judgment was adjourned and the lawyer was asked — and prompt came the reply that the sentence ought to be considered by reason of the age and no past record. Both these aspects have been duly considered by the Sessions Judge and there is no infirmity therein. On the contrary the aggravating situations are galore to support the finding of the Sessions Judge as confirmed by the High Court. (Paras 18 and 20). *Jai Kumar* v. *State of M.P.*, (1999) 5 SCC 1: 1999 SCC (Cri) 638: AIR 1999 SC 1860.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and *M. Srinivasan* and **U.C. Banerjee**, JJ. [Date of decision: 11-5-1999]

[2898] — S. 235(2) — Sentence — Opportunity to adduce relevant material and evidence on the question of sentence must be afforded to accused as well as prosecution before passing sentence — *Even if accused declined to adduce oral evidence he can show grounds for imposing lesser sentence — Though court should not pass the sentence on the same day of recording conviction, but where accused has already served long term of imprisonment, remanding the matter for reconsideration not considered proper — In the circumstances, sentence of death for committing murder of four persons and attempting to murder another person, converted into sentence of life imprisonment on par with the sentence awarded to the co-accused — Penal Code, 1860 — Ss. 302 r/w 34 and 307 r/w 34 — Terrorist Affected Areas (Special Courts) Act, 1984, S. 14(1)*

On finding that the accused committed the charged offences, S. 235(2) of the Code empowers the Judge that he shall pass sentence on him according to law on hearing him. Hearing contemplated is not confined merely to oral hearing but also intended to afford an opportunity to the prosecution as well as the accused to place before the court facts and material relating to various factors on the question of sentence and if desired by either side to have evidence adduced to show mitigating circumstances to impose a lesser sentence or aggravating grounds to impose death penalty. Therefore, sufficient time must be given to the accused or the prosecution on the question of sentence, to show the grounds on which the prosecution may plead or the accused may show that the maximum sentence of death may be the appropriate sentence or the minimum sentence of life imprisonment may be awarded, as the case may be. Even though the accused declined to adduce oral evidence, it does not prevent him to show grounds to impose lesser sentence. The sentence awarded on the same day of finding guilt is not in accordance with the law. That would normally have the effect of remanding the case to the Special Court for reconsideration. But in the view of the fact that A-1 was in incarceration for long term of six years from the date of conviction, it needs no remand for further evidence. It is sufficient that the sentence of death awarded to A-1 is converted into rigorous imprisonment for life for causing the deaths of all four deceased. The conviction of A-1 for attempt to murder PW 4 and sentence of five years' rigorous imprisonment is also upheld and all the sentences would run concurrently. A-2 is acquitted of all charges. (Para 18). *Malkiat Singh* v. *State of Punjab*, (1991) 4 SCC 341: 1991 SCC (Cri) 976.

Bench Strength **3**. Coram: *A.M. Ahmadi*, *V. Ramaswami* and **K. Ramaswamy**, JJ. [Date of decision: 10-4-1991]

Allauddin Mian v. State of Bihar, (1989) 3 SCC 5: 1989 SCC (Cri) 490; Anguswamy v. State of T.N., (1989) 3 SCC 33: 1989 SCC (Cri) 481, relied on

[2899] — S. 235(2) — Sessions Court should question the accused on the sentence whether S. 235(2) governs the matter or not — *That would furnish to the court useful data on the question of sentence which is proposed to pass. Suresh* v. *State of U.P.*, (1981) 2 SCC 569: 1981 SCC (Cri) 559: AIR 1981 SC 1122: (1981) 3 SCR 259: 1981 Cri LJ 746.

Bench Strength **2**. Coram: **Y.V. Chandrachud, C.J.** and *A.P. Sen*, J. [Date of decision: 17-3-1981]

[2900] — S. 235(2) — Trial court has mandatory duty under sub-section (2) to give the accused opportunity of being heard on the question of sentence — *After pronouncing the judgment on conviction on Feb. 16, trial court remanding the accused persons to judicial custody till Feb. 23 and giving them full opportunity of being heard and also fully hearing the advocate for the accused on the question of sentence — On facts, held, no prejudice was caused to the accused on ground of non-compliance of S. 235(2). Shobhit Chamar* v. *State of Bihar*, (1998) 3 SCC 455: 1998 SCC (Cri) 790: AIR 1998 SC 1693.

Bench Strength **2**. Coram: *G.T. Nanavati* and **S.P. Kurdukar**, JJ. [Date of decision: 4-3-1998]

Santa Singh v. State of Punjab, (1976) 4 SCC 190: 1976 SCC (Cri) 546; Allauddin Mian v. State of Bihar, (1989) 3 SCC 5: 1989 SCC (Cri) 490, relied on

[2901] — Ss. 235(2) and 309(2) — Sentence — Accused entitled to opportunity to adduce evidence and get the case adjourned if necessary — *But once court after affording the opportunity proposes to award sentence, no further adjournment need be granted*

Under S. 235(2), the accused is entitled to an opportunity to adduce evidence and if need be the case is to be adjourned to another date. There is illegality to convict and to impose sentence on the same day. Under S. 309(2) third proviso brought by Amendment Act, 1978 no adjournment should be granted for the purpose only of enabling the accused person to show cause against sentence to be imposed upon him. Under S. 235(2) when the accused has been given right to be heard on the question of sentence it is a valuable right. To make that right meaningful the procedure adopted should be suitably moulded and the accused given an opportunity to adduce evidence on the nature of the sentence. The hearing may be on the same day if the parties are ready or be adjourned to a next date but once the court after giving opportunity proposes to impose appropriate sentence there is no need to adjourn the case any further thereon. In the present case though the Sessions Judge needed to adjourn the case under S. 235(2) to next date but in the High Court the counsel was directed to show any additional grounds on the question of sentence. The High Court observed that the counsel was unable to give any additional ground. Therefore, there is no infirmity in imposition of the sentence. (Para 12). *Sevaka Perumal* v. *State of T.N.*, (1991) 3 SCC 471: 1991 SCC (Cri) 724: AIR 1991 SC 1463: 1991 Cri LJ 1845.

Bench Strength **2**. Coram: *B.C. Ray* and **K. Ramaswamy**, JJ. [Date of decision: 7-5-1991]

[2902] — S. 235(2) — Failure to give hearing on the question of sentence, held, will not in any way affect the conviction. *Tarlok Singh* v. *State of Punjab*, (1977) 3 SCC 218: 1977 SCC (Cri) 490: AIR 1977 SC 1747: 1977 Cri LJ 1139.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *P.S. Kailasam*, JJ. [Date of decision: 28-4-1977]

[2903] — Ss. 235(2) and 354(3) — Benefit of doubt — Not relevant when considering sentence — Hence benefit of doubt given to co-accused irrelevant

The doctrine of benefit of doubt only would operate in proof of the commission of the offence. If there is any reasonable doubt, not the doubt of vacillating mind of a judge, the accused is entitled to that benefit and be acquitted. The benefit of doubt again does not enter in the area of consideration of imposing sentence. (Para 8). *Sevaka Perumal* v. *State of T.N.*, (1991) 3 SCC 471: 1991 SCC (Cri) 724: AIR 1991 SC 1463: 1991 Cri LJ 1845.

Bench Strength **2**. Coram: *B.C. Ray* and **K. Ramaswamy**, JJ. [Date of decision: 7-5-1991]

[2904] — S. 235(2) — Non-hearing of accused on the question of sentence — Effect of

Contention is that the trial Judge has not heard the appellant on the question of sentence as is provided for under Section 235(2) CrPC. Although it is correct, but keeping in view the fact that the conviction of the appellant was under Section 304 Part I IPC even otherwise the sentence imposed on him is just and proper. Hence, the High Court was not correct in invoking the provisions of the Probation of Offenders Act, 1958. While setting aside that part of the judgment of the High Court, the judgment of conviction and sentence passed by the trial Judge is restored. (Paras 15 and 16). *Bala Baine Linga Raju* v. *State of A.P.*, (2009) 6 SCC 706.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

[2905] — S. 235(2) — Appellant sentenced to death not heard under S. 235(2) — *Supreme Court giving such opportunity and finding appellant not really destitute and in view of the brutal murder of two, death sentence not interfered with. Kuruvi* v. *State of T.N.*, (1979) 1 SCC 136: 1978 SCC (Cri) 578: AIR 1978 SC 1397: 1978 Cri LJ 1421.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 3-3-1978]

[2906] — S. 235(2) — Failure to give opportunity on the question of sentence — *But where the minimum sentence has been awarded held, the case need not be remitted to the trial Court for reconsideration on the question of sentence. Nirpal Singh* v. *State of Haryana*, (1977) 2 SCC 131: 1977 SCC (Cri) 262: AIR 1977 SC 1066: (1977) 2 SCR 901: 1977 Cri LJ 642.

Bench Strength 2. Coram: *P.N. Bhagwati* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 1-2-1977]

[2907] — S. 235(2) — Accused convicted under S. 392, IPC for the first time reversing the judgments of trial court and High Court — *Hence accused entitled to an opportunity of being heard on the question of sentence in compliance with S. 235(2) — Accordingly case directed to be put up after 10 days. Suryamoorthi* v. *Govindaswamy*, (1989) 3 SCC 24: 1989 SCC (Cri) 472: AIR 1989 SC 1410: 1989 Cri LJ 1451.

Bench Strength 2. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 13-4-1989]

[2908] — Ss. 235(2), 248(2), 255(2) and 360 — Sentencing — Mitigating circumstances — Factors bearing on the offence and the offender to be considered as a whole — *Long period of imprisonment not fruitful — Payment of fine instead more effective — A 19 years' old student belonging to a middle class family sentenced to 2 years' imprisonment and fine of Rs 2000 for scooter theft and 6 months' imprisonment and fine of Rs 500 for car lifting, both the sentences being concurrent — Case coming up before Supreme Court 9 years after — Accused already undergone 6 months' imprisonment and also getting married and having children — Uncle of the accused guaranteeing his good behaviour — On facts, sentences reduced to the extent already undergone but fine imposed not interfered with*

The court has to consider the totality of factors bearing on the offence and the offender and fix a punishment which will promote effectively the punitive objective of the law — deterrence and habilitation.

A long period of incarceration in the present condition of prisons may brutalise the boy and blunt his finer sensibilities so that the end-product may perhaps be more criminal than the one at the point of entry. Not that all prison terms are not deterrent but some cases prove to be counter-productive especially when the delinquent is young. The initial few months of jail life are the most painful and, therefore, the most deterrent.

A long protracted litigation is also some deterrent for a young man in his twenties. The youthful age of the accused is a factor which deserves consideration. The offender having served a term of nearly six months must well have realised that the game of crime does not pay. Moreover, the young man has married and has three children. This is a measure of assurance that he will not play recklessly with his freedom. Family life is ordinarily an insurance against a career of crime. Besides, the undertaking given by the uncle of the accused has considerable relevance. A breach of the conditions in the guarantee is to be made actionable on the motion of the State.

Payment of fine brings home the sense of responsibility in a surer fashion than even short terms of imprisonment in some cases. Therefore, the fines of Rs 2000 and Rs 500 imposed on the appellant should remain without interference. *Ashok Kumar* v. *State (Delhi Admn.)*, (1980) 2 SCC 282: 1980 SCC (Cri) 426: AIR 1980 SC 636: 1980 Cri LJ 444.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *R.S. Pathak*, JJ. [Date of decision: 29-1-1980]

[2909] — Ss. 235(2), 248(2), 325, 360 and 361 — Punishment/Sentencing — Principles for — Held, presently there are no set principles of sentencing in India and this has given rise to anomalies — There is need to develop principles — Some of the guiding factors stated — *Law and practice relating to sentencing in USA, UK and views of some scholars discussed, and stressed that courts while imposing sentence must apply mind to applicable principles — Whether the sentence should be deterrent, reformative or proportional,* *depends upon facts and circumstances of a case — There are certain offences which touch the social fabric or affect public health — They have to be dealt with sternly — Respondent who was convicted under the Punjab Excise Act, 1914 (1 of 1914), S. 61(1), for carrying 2000 litres of rectified spirit, released by High Court on probation, taking the view that offence was committed 19 years back and respondent had already suffered mental agony — Held, normally, the Supreme Court does not interfere under Art. 136 with the quantum of sentence, but the High Court in this case committed serious error — Six months' simple imprisonment and fine of Rs 5000 therefore imposed — Madhava Menon Committee Report — Malimath Committee Report — Committee on Reforms of the Criminal Justice System, 2003 — Crime and Disorder Act, 1998 (English) — Criminal Justice Act, 2003 (American) — Sentencing Reform Act, 1984 (American) — Probation of Offenders Act, 1958 — Constitution of India, Arts. 47 and 136 — Punjab Excise Act, 1914 (1 of 1914), S. 61(1) — Penal Code, 1860, S. 53*

The Indian judicial system has not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to purport and object for which punishment is imposed upon an offender, have not issued any guidelines. Other developed countries have done so. At some quarters, serious concerns have been expressed in this behalf. Some committees as for example Madhava Menon Committee and Malimath Committee have advocated introduction of sentencing guidelines. (Para 2)

Whether the Court while awarding a sentence would take recourse to principle of deterrence or reform or invoke doctrine of proportionality, would no doubt depend upon the facts and circumstances of each case. While doing so, however, nature of offence plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution. There are certain offences which touch social fabric. Even while introducing doctrine of plea bargaining in CrPC, certain types of offences have been kept out of its purview. While imposing sentences, the said principles should be borne in mind. (Paras 5 and 6)

Although a wide discretion has been conferred upon court, the same must be exercised judiciously. It would depend upon circumstances in which crime has been committed and criminal's mental state and age are relevant factors. (Paras 8 and 15)

What would be the effect of sentencing on the society is a question which has been left unanswered by the legislature. The superior courts have come across a large number of cases which go to show anomalies as regards the policy of sentencing. Whereas quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine. (Para 9)

To what extent should the Judges have discretion to reduce the sentence so prescribed under the statute has remained a vexed question. However, in India, the view always has been that the punishment must be proportionate to the crime. Applicability of the said principle in all situations, however, is open to question. Judicial discretion must be exercised objectively having regard to the facts and circumstances of each case. (Para 14)

The courts while imposing sentence must take into consideration principles applicable thereto. It requires application of mind. The purpose of imposition of sentence must also be kept in mind. (Para 31). *State of Punjab* v. *Prem Sagar*, (2008) 7 SCC 550: (2008) 3 SCC (Cri) 183: 2008 Cri LJ 3533.

Bench Strength 2. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 13-5-2008]

Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358; Gentela Vijayavardhan Rao v. State of A.P., (1996) 6 SCC 241: 1996 SCC (Cri) 1290; Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359: (2006) 1 SCC (Cri) 499; Sevaka Perumal v. State of T.N., (1991) 3 SCC 471: 1991 SCC (Cri) 724; State of M.P. v. Bala, (2005) 8 SCC 1: 2005 SCC (Cri) 1947; State of M.P. v. Govind, (2005) 8 SCC 12 (3): 2005 SCC (Cri) 1958 (2); State of Karnataka v. Raju, (2007) 11 SCC 490: (2008) 1 SCC (Cri) 787; Dalbir Singh v. State of Haryana, (2000) 5 SCC 82: 2004 SCC (Cri) 1208; Rattan Singh v. State of Punjab, (1979) 4 SCC 719: 1980 SCC (Cri) 17; United States v. Booker, 160 L Ed 2d 621: 543 US 220: 125 S Ct 738 (2005); Gall v. United States, 552 US 38 (10-12-2007), relied on

Don M. Gottfredson, "Sentencing Guidelines" in Sentencing by Hyman Gross and Andrew von Hirsch; Kevin R. Reitz: Encyclop'dia of Crime and Justice, 2nd Edn., "Sentencing Guidelines"; Andrew Ashworth: Sentencing and Criminal Justice, 2005, 4th Edn.; Marvin Frankel: Criminal Sentences: Law Without Order; Frank O. Bowman: Federal Sentencing Guidelines: A Structural Analysis, III 105 Colum. L. Rev. 1315, quoted

[2910] — Ss. 235(2), 248(2) and 255(2) — Sentencing — Nature of function of — Held, awarding of sentence subject to any mandatory minimum prescribed by law, and consideration of its adequacy and legality are essentially judicial functions, including in their ambit power to suspend the sentence, pending disposal of the appeal

Awarding sentence, upon conviction, is concededly a judicial function to be discharged by the courts of law established in the country. It is always a matter of judicial discretion, however, subject to any mandatory minimum sentence prescribed by the law. The award of sentence by a criminal court wherever made subject to the right of appeal cannot be interfered or intermeddled with in a way which amounts to not only interference but actually taking away the power of judicial review. Awarding the sentence and consideration of its legality or adequacy in appeal is essentially a judicial function embracing within its ambit the power to suspend the sentence under the peculiar circumstances of each case, pending the disposal of the appeal. (Para 16). *Dadu* v. *State of Maharashtra*, (2000) 8 SCC 437: 2000 SCC (Cri) 1528: AIR 2000 SC 3203.

Bench Strength 3. Coram: *K.T. Thomas*, **R.P. Sethi** and *S.N. Variava*, JJ. [Date of decision: 12-10-2000]

[2911] — Ss. 235(2), 248(2) and 357 — Therapeutic role of punishment stressed — *Basis and purpose of punishment discussed — Humanitarian tone in sentencing stressed — Courts should personalise the sentence proceedings under Ss. 235(2) and 248(2), Criminal Procedure Code, 1973 from a reformative angle — Appropriateness of fine under S. 357, CrPC, 1973 to reimburse the victims of white-collar crimes suggested. Mohd. Giasuddin* v. *State of A.P.*, (1977) 3 SCC 287: 1977 SCC (Cri) 496: AIR 1977 SC 1926: 1977 Cri LJ 1557.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision: 6-5-1977]

[2912] — S. 235(2) — Death sentence — Murder — Consideration before the Court. *Shiv Mohan Singh* v. *State (Delhi Admn.)*, (1977) 2 SCC 238: 1977 SCC (Cri) 324: AIR 1977 SC 949: 1977 Cri LJ 767.

Bench Strength 2. Coram: *Y.V. Chandrachud* and **V.R. Krishna Iyer**, JJ. [Date of decision: 10-3-1977]

— S. 235(2) — Death Sentence *See also* CRIMINAL LAW — 'Penal Code, 1860, S. 302'

See also CRIMINAL TRIAL — 'Sentence' in Vol. 3

[2913] — S. 235(2) — Reversal of acquittal by High Court — But while recording conviction High Court not giving opportunity to the accused persons to represent against the sentence — *Remand in such case by Supreme Court if called for — Held, not always mandatory — Remand can be avoided as far as possible in the interest of expeditious, though fair, disposal of cases — Thus on facts, confirming the conviction, Supreme Court awarding the sentence after giving an opportunity to the accused persons to represent against the quantum of sentence* (Paras 11 to 13). *Kamalakar Nandram Bhavsar* v. *State of Maharashtra*, (2004) 10 SCC 192: AIR 2004 SC 503: 2004 Cri LJ 615: (2004) 14 AIC 336 (SC).

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-11-2003]

Santa Singh v. State of Punjab, (1976) 4 SCC 190: 1976 SCC (Cri) 546: AIR 1976 SC 2386, distinguished

Dagdu v. State of Maharashtra, (1977) 3 SCC 68: 1977 SCC (Cri) 421, applied

[2914] — S. 235(2) — Death sentence awarded by Sessions Judge without recording accused's statement and providing him opportunity to produce evidence — *Accused sole earning member of a family consisting of five minors — In view of special circumstances and economic condition death sentence reduced to life imprisonment. Keram Ali* v. *State of U.P.*, (1977) 4 SCC 433: 1977 SCC (Cri) 637: AIR 1978 SC 35: 1978 Cri LJ 176: 1978 ALJ 364.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *Jaswant Singh*, JJ. [Date of decision: 24-10-1977]

[2915] — S. 235(2) — Requirement of affording pre-sentence hearing — Conviction and sentence of death pronounced on the same day — *Where accused persons had already resolved to kill the deceased (Gen. Vaidya who had conducted Operation Blue Star to clear the Golden Temple from terrorists) and were prepared to sacrifice their lives for the cause even before making their confessional statements in examination under S. 313 and executed their resolve in a planned manner without ever praying for lesser sentence despite being aware of the death sentence granted in Kehar Singh case, held, accused were mentally prepared for the extreme penalty and hence requirement of S. 235(2) satisfied in letter and spirit — Penal Code, 1860 — Ss. 302, 307 and 34*

Both the accused had mentally decided to own their involvement in the murder of Gen. Vaidya before their statements were recorded under S. 313 of the Code. Not only that, their attitude reveals that they had resolved to kill him as they considered him an enemy of the Sikh community since he was alleged to have desecrated the Akal Takht. They also told the trial court that they were proud of their act and were not afraid of death and were prepared to sacrifice their lives for the article of their faith, namely, the realisation of their dream of a separate State of Khalistan. It is thus apparent that before they made their statements admitting their involvement they had mentally prepared themselves for the extreme penalty and, therefore, if they desired to place any material for a lesser sentence they had ample opportunity to do so. But after the decision of the Supreme Court in *Kehar Singh case* and having regard to the well planned manner in which they executed their resolve to kill Gen. Vaidya, they were aware that there was every likelihood of the Court imposing the extreme penalty and they would have, if they so desired, placed material in their written statements or would have requested the Court for time when their statements under S. 313 of the Code were recorded, if they desired to pray for a lesser sentence. Their resolve not to do so is reflected in the fact that they have not chosen to file any appeal against their convictions by the Designated Court. Therefore, the requirements of S. 235(2) of the Code have been satisfied in letter and spirit and no prejudice is shown to have occurred to the accused. *State of Maharashtra* v. *Sukhdev Singh*, (1992) 3 SCC 700: 1992 SCC (Cri) 705: AIR 1992 SC 2100.

Bench Strength 2. Coram: **A.M. Ahmadi** and *K. Ramaswamy*, JJ. [Date of decision: 15-7-1992]

[2916] — Ss. 235(2) and 309(2) third proviso (as introduced by Act 45 of 1978) — Death sentence — Non-compliance with S. 235(2) — *Defence contention that trial court did not adjourn the hearing of the case for sentencing after the order of conviction was pronounced — No request made to the trial court for adjournment — Having regard to the law laid down in* Ramdeo Chauhan *v.* State of Assam, *(2001) 5 SCC 714, held on facts, there was no substance in the contention that the sentence imposed was vitiated for non-compliance with S. 235(2)*

In *Ramdeo Chauhan* v. *State of Assam*, (2001) 5 SCC 714, it was held that the mandate of the legislature is clear that no adjournment can be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed upon him. Nonetheless, the court can in appropriate cases grant adjournment for the aforesaid purpose, if the proposed sentence is a sentence of death. From the material on record, it does not appear that any request was made to the learned Sessions Judge for adjournment. In the circumstances, there is no substance in the contention that the sentence imposed was vitiated for non-compliance with Section 235(2). (Para 14). *Gurdev Singh* v. *State of Punjab*, (2003) 7 SCC 258: 2003 SCC (Cri) 1616: AIR 2003 SC 4187: 2003 Cri LJ 3764.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 1-8-2003]

Muniappan v. State of T.N., (1981) 3 SCC 11: 1981 SCC (Cri) 617; Allauddin Mian v. State of Bihar, (1989) 3 SCC 5: 1989 SCC (Cri) 490, distinguished on law

Ramdeo Chauhan v. State of Assam, (2001) 5 SCC 714: 2001 SCC (Cri) 915, followed

[2917] — Ss. 235(2) and 354(3) — Death sentence — When not justified — Murder of children — *Children victims of wrath of accused when their father, the real target, became inaccessible — Motive not clear — Material before court scanty — Death sentence imposed by trial court without affording proper opportunity of hearing to the accused as contemplated under S. 235(2), CrPC — Recording of reasons for award of death sentence mandatory — Failure to do so, effect of — Held on facts and in the circumstances, death sentence not warranted — Sentence of life imprisonment substituted — Penal Code, 1860 — S. 302*

According to the prosecution case when PW 6 was sitting at the entrance of his house, six accused persons came with deadly weapons. On seeing them PW 6 went to the 'osra' (verandah) of his house. When accused 3 started to untie the buffalo tethered in front of his house and the other accused were hurling abuses on PW 6; PW 6 objected. Thereupon, accused 4 and 6 shouted 'sale ko jan se mar do'. Immediately thereafter accused 1 and 2 moved menacingly towards PW 6. At that time two daughters of PW 6, one aged 7 years and the other aged 7 months were playing in the dalan outside the western room. On seeing the two armed accused PW 6 ran into the adjoining room to arm himself with a spear. But his wife who was in the room prevented him from going out. Having failed to get PW 6, accused 1 gave farsa blows on the head, abdomen and left thumb of the elder daughter and accused 2 gave a farsa blow on the head of the younger daughter of PW 6. The injured children were taken to the dispensary where they succumbed to their injuries. The prosecution case was that accused 1 and 2 along with accused 3 to 6 constituted an unlawful assembly with the common object of killing PW 6 and in pursuance of that object accused 1 and 2 caused death of the two minor girls. The trial court convicted accused 1 and 2 under Ss. 302, 452 and 148, IPC and awarded them sentence of death under S. 302 and RI for one year each under Ss. 452 and 148. Accused 3 and 4 were convicted under Ss. 302/149, 447 and 148, IPC and sentenced to life imprisonment under Ss. 302/149 and to RI for one year and 3 months respectively under Ss. 148 and 447. Accused 5 and 6 were convicted under Ss. 302/149, 447 and 147 IPC and sentenced to life imprisonment under S. 302/149 and to RI for 3 months and 6 months respectively under Ss. 447 and 147. The High Court confirmed the death sentence awarded to accused 1 and 2. The conviction of the remaining four accused under S. 302/149 was, however, altered to S. 326/149 and sentence of life imprisonment awarded to each of them was substituted by a sentence of RI for seven years. Their convictions and sentences on the other counts were, however, maintained.

Held :

Prosecution evidence was reliable and could be acted upon for confirming the conviction of the accused persons.

However, in the present case the material for choice of sentence for accused 1 and 2 is scanty. The motive for the crime is obscure, the one stated, namely, the quarrel between two infants of both sides, does not seem to be correct. The killings were not for gain. The charge shows that the target was PW 6, the father, and not the two infants. The killing of the two infants was not in the contemplation of any of the accused. Both the girls were the victims of the offenders' ire resulting from frustration at the escape of their target. The circumstances of this case show that the offenders had killed the two girls not because of any hatred for them or to accomplish their objective but out of frustration and anger at having lost their target. There is nothing so uncommon about the crime as to make the case an exceptional one. The mere fact that infants are killed, without more, is not sufficient to bring the case within the category of 'the rarest of rare' cases. As the trial Judge did not give time to the convicts to reflect on the question of sentence, the chance, however remote, of the true motive for the crime surfacing was lost. The antecedents of the accused, their socio-economic conditions, the impact of their crime on the community etc., have not come on record. The absence of these particulars makes the choice of punishment difficult. In view of these aspects and having regard to the circumstances in which the murders took place, the extreme penalty of death is not warranted. *Allauddin Mian* v. *State of Bihar*, (1989) 3 SCC 5: 1989 SCC (Cri) 490: AIR 1989 SC 1456: 1989 Cri LJ 1466.

Bench Strength 2. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 13-4-1989]

[2918] — Ss. 235(2) and 354(3) — Death sentence — Guilt proved by circumstantial evidence — Effect — Rape and murder of a girl aged 7-8 years — Conviction — Punishment — Conviction of appellants on basis of circumstantial evidence — Sustainability of death sentence *— Death sentence imposed by the Sessions Judge confirmed by the High Court — Held, if guilt is proved by circumstantial evidence, ordinarily, death penalty would not be awarded — Moreover, Appellant 1 showed his remorse and repentance and accepted his guilt even in his statement under S. 313 CrPC — Hence, instead of extreme death penalty, punishment of RI for life imposed — Penal Code, 1860 — Ss. 376 and 302* (Paras 57 to 65). *Bishnu Prasad Sinha* v. *State of Assam*, (2007) 11 SCC 467: AIR 2007 SC 848: (2007) 53 AIC 166 (SC): 2007 Cri LJ 1145.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 16-1-2007]

State of Rajasthan v. Kheraj Ram, (2003) 8 SCC 224: 2003 SCC (Cri) 1979; State of M.P. v. Munna Choubey, (2005) 2 SCC 710: 2005 SCC (Cri) 559; Sahdeo v. State of U.P., (2004) 10 SCC 682: 2004 SCC (Cri) 1873; Raju v. State of Haryana, (2001) 9 SCC 50: 2002 SCC (Cri) 408; Amrit Singh v. State of Punjab, (2006) 12 SCC 79: (2006) 2 SCC (Cri) 397; Sk. Ishaque v. State of Bihar, (1995) 3 SCC 392: 1995 SCC (Cri) 534; Ronny v. State of Maharashtra, (1998) 3 SCC 625: 1998 SCC (Cri) 859; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

[2919] — Ss. 235(2) and 354(3) — Pre-sentence hearing — Procedure — Natural justice, while recording of special reasons before imposition of death sentence — Rights of accused and duties of court, stated (per Ganguly, J.)

Per Ganguly, J.

In a criminal trial where the prosecution seeks to make out a case for imposition of death sentence, it has to discharge a very heavy and an onerous burden. In discharging such a burden the prosecution must not only prove beyond reasonable doubt that the accused has committed the crime but in order to make out a case for death sentence, it also has to prove beyond any reasonable doubt as to how the crime has been committed and specially the aggravating circumstances which warrant a death penalty and the consequential absence of mitigating circumstances. (Para 83)

The accused must be given a real and effective chance of rebuttal and to disprove the existence of aggravating circumstance. Therefore, apart from his examination under Section 313 CrPC, the accused must be separately heard on the sentence to be imposed on him where he can demonstrate all the mitigating circumstances. Those must be weighed in the balance and they must receive a liberal and expansive interpretation by court. From the records it does not appear that in the instant case adequate and effective hearing was given to the accused by the trial court on the aforesaid basis before imposing the death sentence on him. (Paras 83 and 85)

In a case where the court imposes the death sentence both the aforesaid provisions, namely, Sections 235(2) and 354(3) CrPC assume significance. It gives the accused (*i*) a right of pre-sentence hearing, on which he can (*ii*) bring on record material or evidence which may not be (*iii*) strictly relevant to or connected with the particular crime but (*iv*) may have a bearing on the choice of sentence. Therefore, it has to be a regular hearing like a trial and not a mere empty formality or an exercise in an idle ritual. Therefore, regardless of whether the accused asks for such a hearing, the same must be offered to the accused and an adequate opportunity for bringing materials on record must be given to him especially in case where Section 354(3) comes into play. It is only after undertaking that exercise that "special reasons" for imposing death penalty can be recorded by the court. (Paras 81, 86 and 89)

Here prosecution has not discharged any burden at all far less the burden referred to above. This is a statutory obligation which is cast on the court in a case where both Section 235(2) read with Section 354(3) apply in view of the law laid down in *Bachan Singh case*, (1980) 2 SCC 684. The constitutional validity of Section 354(3) was also upheld in this case. The mandate of Article 141 of the Constitution cannot be ignored either by the trial court or the High Court. In the order imposing death sentence, the trial Judge has not even once referred to Section 354(3). Therefore, the imposing of death sentence by the trial court is wholly illegal and contrary to the provisions of CrPC and contrary to the law laid down in Bachan Singh case. In the instant case the High Court, unfortunately as the first appellate court, both on facts and in law, has confirmed the death sentence without pointing out these glaring illegalities in sentencing procedure of the trial court and especially in a case where a death penalty has been imposed. Unfortunately in the present case the High Court failed to correct the flawed sentencing procedure followed by the trial court and erred in law by confirming the death sentence which led to an obvious miscarriage of justice. (Paras 88, 81, 90, 98 and 101). *Rameshbhai Chandubhai Rathod* v. *State of Gujarat*, (2009) 5 SCC 740.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat**[1] and **A.K. Ganguly**[2], JJ. [Date of decision: 27-4-2009]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Muniappan v. State of T.N., (1981) 3 SCC 11: 1981 SCC (Cri) 617; Allauddin Mian v. State of Bihar, (1989) 3 SCC 5: 1989 SCC (Cri) 490; Malkiat Singh v. State of Punjab, (1991) 4 SCC 341: 1991 SCC (Cri) 976; Anshad v. State of Karnataka, (1994) 4 SCC 381: 1994 SCC (Cri) 1204; Anguswamy v. State of T.N., (1989) 3 SCC 33: 1989 SCC (Cri) 481; State of Maharashtra v. Sindhi, (1975) 1 SCC 647: 1975 SCC (Cri) 283, referred to

[2920] — Ss. 235(2) and 354(3) — Sentencing policy — Principles/standards/considerations involved (per Ganguly, J.) — *Constitution of India, Arts. 14, 19 and 21 — Applicability to sentencing policy of Ss. 235(2) and 354(3) CrPC*

Per Ganguly, J.

Fairness, justice and reasonableness which constitute the essence of guarantee of life and liberty epitomised in Article 21 of the Constitution also pervades the sentencing policy in Sections 235(2) and 354(3). Those two provisions virtually assimilate the concept of "procedure established by law" within the meaning of Article 21 of the Constitution. Thus, a strict compliance with those provisions in the way it was interpreted in *Bachan Singh case*, (1980) 2 SCC 684 having regard to the development of constitutional law by the Supreme Court, is a must before death sentence can be imposed. (Para 106)

While the anxiety about the expectation of society to the adequacy of the sentence to the nature of the crime must be kept in mind, at the same time, the courts cannot be oblivious of the person who is alleged to have committed the crime and his rights under a fair and structured sentencing policy. Before imposing death sentence, an abiding concern for the dignity of human life must be shown by court. "Cry for justice" is not answered by frequent awarding of death sentence on a purported faith on "deterrence creed". Before choosing the option for death sentence, the court must consciously eschew its tendency of "retributive ruthlessness". The Court must consider whether there is a possibility of reform or rehabilitation of the man committing the crime and which must be at the heart of the sentencing proceSs. It is only this approach that can keep imposition of death sentence within the "rarest of rare cases". The expression "rarest of rare cases" is not to be read as a mere play on words or a tautologous expression. This is a very loaded expression and is not to be trifled with. It is pregnant with respect for the inviolability of human life. That is why the word "rare" has been used twice and once in a superlative sense. Therefore, the significance of this expression cannot be watered down on a perceived notion of a "cry for justice". This expression "rarest of rare cases" has been interpreted by the Supreme Court even where the accused was found guilty of both murder and rape and death sentence was awarded by the trial court and the High Court confirmed it. (Paras 107 to 111). *Rameshbhai Chandubhai Rathod* v. *State of Gujarat*, (2009) 5 SCC 740.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat**[1] and **A.K. Ganguly**[2], JJ. [Date of decision: 27-4-2009]

McGautha v. State of California, 28 L Ed 2d 711: 402 US 183 (1970); Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Furman v. Georgia, 33 L Ed 2d 346: 408 US 238 (1972), referred to

[2921] — S. 235(2) — Personal family circumstances of accused who did not intend to cause the fatal blow considered and sentence reduced. *Tulsi Ram* v. *State of U.P.*, (1982) 3 SCC 478: 1983 SCC (Cri) 104.

Bench Strength 2. Coram: **P.N. Bhagwati** and *A. Varadarajan*, JJ. [Date of decision: 27-4-1981]

[2922] — Ss. 235(2) and 354(3) — Deprivation of procedural safeguards under, to person committing murder while serving life imprisonment — *Held, unjust and arbitrary. Mithu* v. *State of Punjab*, (1983) 2 SCC 277: 1983 SCC (Cri) 405: AIR 1983 SC 473: 1983 Cri LJ 811: 1983 MLJ (Cri) 485.

Bench Strength 5. Coram: **Y.V. Chandrachud, C.J.**[1] and *S. Murtaza Fazal Ali*[1], *V.D. Tulzapurkar*[1], **O. Chinnappa Reddy**[2] and *A. Varadarajan*[1], JJ. [Date of decision: 7-4-1983]

[2923] — Ss. 235(2) and 360 — Prosecution of company under a provision imposing a minimum term of imprisonment, held, (per majority) not maintainable — *AY 1985-86 — Prosecution of companies under Ss. 276-C, 277 and 278 read with S. 278-B, IT Act, 1961 — Maintainability — (Per majority) In view of mandatory provision for imprisonment in Ss. 276-C, 277 and 278 and incapability of a company of being imprisoned, such prosecution, held, not maintainable — Court has no choice but to impose only a fine in such a case — Only Parliament can introduce a change — In the said sections the context does not permit application to the word "person" the definition contained in S. 2(31), IT Act, 1961 — Reports of Law Commission, Finance Minister's speech while introducing the Bill for Taxation Laws (Amendment) Act, 1975, and the text and lapsed IPC (Amendment) Bill, 1972, cl. 72(a) taken into consideration — Maxims "judicis est jus dicere, non dare", doctrine of causus omissus and strict construction applied — (Per Mathur, J., dissenting) In view of Ss. 235(2) & 360 CrPC and S. 326 IPC and incapability of its being imprisoned does not mean that a company should not be prosecuted at all — In case of conviction a fine can be imposed upon it — Taking of a different view would render S. 10-B Essential Commodities Act and S. 35 Drugs and Cosmetics Act otiose Income Tax Act, 1961, Ss. 276-C, 277, 278, 278-B and 2(31) — General Clauses Act, 1897, S. 3(42) — Law Commission's 41st Report para 24.7 and 47th Report para 8.3 taken into consideration — Taxation Laws (Amendment) Act, 1975 — Penal Code, 1860, S. 326 — Essential Commodities Act, 1955, S. 10-B — Drugs and Cosmetics Act, 1940, S. 35 — CPC, 1908, Or. 21 Rr. 32 and 33 — Penal Code (Amendment) Bill, 1972, Cl. 72(a)*

Respondent 1 herein was a registered company and Respondent 2 was its Managing Director. In its income tax return for AY 1985-86 the respondent Company showed a loss of Rs 43,940. It claimed deduction of Rs 9,16,442 on account of depreciation and investment allowance etc. on the ground that two new machines worth Rs 14,79,589 were purchased and installed during the relevant previous year. In the absence of any supporting documentary evidence, the assessing officer rejected that claim. However, after the remand of the matter by CIT (Appeals), the assessing officer found that although purchased during the relevant previous year, the machines were installed after the expiry thereof. In such circumstances, the respondent Company sought to abandon its claim to depreciation and other allowances. Subsequently, the CIT by his order dated 26-3-1992 accorded sanction for filing of a criminal complaint under Sections 276-C, 277 read with Section 278-B IT Act (for short "the Act") against the Company and its Managing Director (respondents herein). Allowing a petition filed under Section 482 CrPC, by the respondents, the Karnataka High Court held that as the Company was a juristic person, it could not be punished with imprisonment and therefore its prosecution was purposeless. The High Court further held that since the sanction to prosecute the respondents had been granted without affording them any opportunity of hearing, the principles of natural justice were violated and the order granting sanction was invalid. Therefore, it quashed the complaints but granted liberty to the appellants to accord fresh sanction for prosecution of the Managing Director after giving him an opportunity of hearing. The Revenue then filed the instant appeal by special leave. Three questions arose before the Supreme Court: (*i*) whether the sanction of the CIT granted under Section 279(1) of the Act without affording prior opportunity to the respondents, was vitiated by violation of principles of natural justice, (*ii*) whether the mens rea of the person in-charge could be attributed to the company, and (*iii*) whether a company was liable for punishment of fine alone if the law contemplated punishment by imprisonment only or by imprisonment plus fine.

Dismissing the appeal in respect of Respondent 1 (the Company) and allowing it in respect of Respondent 2 (the Company's Managing Director)

Held :

Per majority

Per Srikrishna, J.

A penal statute is to be construed strictly. If the act alleged against the accused does not fall within the parameters of the offence described in the statute, the accused cannot be held liable. There is no scope for intendment based on the general purpose or object of law. If the legislature has left a lacuna, it is not open to the court to paper it over on some presumed intention of the legislature. The maxim "*judicis est jus dicere, non dare*" pithily expounds the duty of the court. It is to decide what the law is and apply it; not to make it. (Paras 26 and 27)

The question whether a corporation can be prosecuted for an offence even when the punishment is a mandatory sentence of imprisonment has not been free from doubt is evident from para 24.7 of the 41st Report and para 8.3 of the 47th Report of the Law Commission of India which has recommended specific amendments in order to get over that difficulty. The recommendations show that the law as it exists renders it impossible for a court of law to convict a corporation where the statute mandates a minimum term of imprisonment plus fine. It would not be open to the court of law to hold that a corporation would be found guilty and sentenced only to a fine for that would be rewriting the statute and exercising a discretion not vested in the court by the statute. It is precisely for this reason that the Law Commission recommended that where the offence is punishable with imprisonment, or with imprisonment and fine, and the offender is a corporation, the court should be empowered to sentence such an offender to fine only. These recommendations have not been acted upon, though several other recommendations made by the 47th Report of the Law Commission have been accepted and implemented by Parliament vide the Taxation Laws (Amendment) Act, 1975. Hence, the state of law as noticed by the Law Commission continues. (Paras 28, 29 and 31)

In view of the Finance Minister's speech at the time of introduction of the Bill which culminated in enactment of the Taxation Laws (Amendment) Act, 1975. Hence, it is apparent that the legislative mandate is to prohibit the courts from deviating from the minimum mandatory punishment prescribed by the statute. The court should be slow in interpreting a penal statute in a manner which would amount to virtual rewriting of the statute to prejudice the accused. (Paras 38 and 39)

The view taken herein finds support from the Australian jurisdiction. Faced with the same situation, the legislature in Australia enacted Part 2.5 of the Commonwealth Criminal Code Act, 1995 to specifically provide: "a body corporate may be found guilty of any offence, including one punishable by imprisonment". This provision has to be read with Section 4-B(3) of the Crimes Act, 1914. That was a case of the legislature stepping in to supply the *casus omissus*. Therefore, the Supreme Court cannot, in the garb of construction of the penal provisions of Sections 276-C, 277 and 278, impose a punishment of fine in a situation which calls for no punishment by a virtual rewriting of the statute. (Paras 45 and 46)

As regards the definition of "person" in Section 2(31) of the Act, all definitions in the Act apply "unless the context otherwise requires". The context does indicate to the contrary, while reading of the word "person" in the sections concerned. (Para 47)

Therefore, it is held that the respondent Company herein cannot be prosecuted for offences under Sections 276-C and 277 read with Section 278 since each one of these sections requires the imposition of a mandatory term of imprisonment coupled with a fine and leaves no choice to the court to impose only a fine. Therefore, the High Court was justified in quashing the prosecution as far as the respondent Company is concerned. (Paras 49 and 51)

Per Rajendra Babu, J. (concurring)

Corporate criminal liability cannot be imposed without making corresponding legislative changes. For example, the imposition of fine in lieu of imprisonment. Such legislative changes took place in Australia, France, Belgium and Canada. (Para 57)

Under the present Indian law it is not possible to impose fine in lieu of imprisonment though the definition of "person" in the Penal Code includes "company". Parliament has also understood this problem. Besides the reports of the Law Commission of India, as is evident for clause 72(*a*) of the IPC (Amendment) Bill, 1972. To bring such a fundamental change in the criminal jurisprudence is a legislative function. Only Parliament can do it. That Bill was not passed and lapsed. (Paras 58 to 60)

Per Mathur, J. (dissenting)

Sections 276-C and 277 make the persons committing the offences mentioned therein, liable to punishment by imprisonment and fine. Section 2(31) of the Act defines a "person" and it includes a company and this provision is exactly similar to Section 3(42) of the General Clauses Act. Many other statutes which make a provision for offences by companies contain exactly similar provisions. Reference may be made to Section 35-H of the Wealth Tax Act, Section 14-A of the Employees' Provident Fund and Miscellaneous Provisions Act, Section 141 of the Negotiable Instruments Act, Section 34 of the Drugs and Cosmetics Act, Section 10 of the Essential Commodities Act, Section 6 of the Indian Merchandise Act, Section 38 of the

Narcotic Drugs and Psychotropic Substances Act and Section 17 of the Prevention of Food Adulteration Act. (Paras 9 and 9.1.0)

Sections 276-C and 277 of the Act provide both substantive sentence of imprisonment and fine. It is true that a company cannot be made to undergo a substantive sentence of imprisonment. However, there is no reason why it should not be awarded a sentence of fine only in the event it is found guilty of having committed the offence. Sections 235(2) and 360 CrPC and Section 326 IPC show that even after a person has been convicted and sentenced, it is not absolutely mandatory that he must undergo the whole sentence awarded to him by actually spending that period in jail. There is no way in which a court may compel the parties to actually comply with a decree of restitution of conjugal rights. The remedy provided viz. attachment and sale of the property of the judgment-debtor or payment of periodical sum provided in Order 21 Rules 32 and 33 CPC is hardly a substitute for husband and wife living together and performing their marital obligations. That does not mean that a decree for restitution of conjugal rights should not be passed. Therefore, the mere fact that a company cannot be sent to jail or made to undergo imprisonment cannot lead to an inference that it should not be prosecuted at all. In the event of its conviction, an appropriate fine can be imposed upon it which is also one of the punishments provided under Sections 276-C and 277 of the Act. (Para 14)

Moreover, if a company is not to be prosecuted only on the ground that substantive sentence cannot be awarded to it, the provisions of Section 10-B of the Essential Commodities Act and Section 35 of the Drugs and Cosmetics Act would never come into operation, clearly defeating the legislative intent and the purpose for which they have been enacted. The publication in newspapers about prosecution and conviction of a company is bound to bring bad name to the company and lower its image before the public at large. Section 278-A of the Act makes second conviction punishable with more severe punishment. A company may be blacklisted or may be denied licences with the result that its manufacturing activity may come to a standstill. (Paras 15 and 16)

Courts would be shirking their responsibility of imparting justice by holding that prosecution of a company is unsustainable merely on the ground that being a juristic person it cannot be sent to jail to undergo the sentence. (Para 21). *Asstt. Commr.* v. *Velliappa Textiles Ltd.*, (2003) 11 SCC 405: (2003) 263 ITR 550.

Bench Strength **3**. Coram: **S. Rajendra Babu**³, **B.N. Srikrishna**² and **G.P. Mathur**¹, JJ. [Date of decision: 16-9-2003]

M.V. Javali v. Mahajan Borewell & Co., (1997) 8 SCC 72: 1997 SCC (Cri) 1239; United States v. Union Supply Co., 54 L Ed 87: 215 US 50 (1909), dissented from

MCD v. J.B. Bottling Co. (P) Ltd., 1975 Cri LJ 1148 (Del) (FB); Oswal Vanaspati & Allied Industries v. State of U.P., (1993) 1 Comp LJ 172 (All), overruled

P.V. Pai v. R.L. Rinawma, ILR 1993 Kant 709; Kusum Products Ltd. v. S.K. Sinha, (1980) 126 ITR 804 (Cal); Modi Industries Ltd. v. B.C. Goel, (1983) 144 ITR 496 (All), impliedly approved on this point

Bristol Guardians v. Bristol Waterworks Co., 1914 AC 379: 83 LJCh 393: 110 LT 846 (HL); Tuck & Sons v. Priester, (1887) 19 QBD 629: 56 LJQB 553 (CA); London & North Eastern Rly. Co. v. Berriman, (1946) 1 All ER 255: 1946 AC 278 (HL); R. v. I.C.R. Haulage Ltd., (1944) 1 All ER 691: 1944 KB 551 (CCA), relied on

Tarak Chandra Mukherjee v. Ratan Lal Ghosal, AIR 1957 Cal 257: 61 CWN 263 (FB); State of Maharashtra v. Syndicate Transport Co. (P) Ltd., AIR 1964 Bom 195: (1964) 2 Cri LJ 276, impliedly approved

Tolaram Relumal v. State of Bombay, AIR 1954 SC 496: 1954 Cri LJ 1333; Bijaya Kumar Agarwala v. State of Orissa, (1996) 5 SCC 1: 1996 SCC (Cri) 864; Sanjay Dutt v. State (II), (1994) 5 SCC 410: 1994 SCC (Cri) 1433; Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47; State of Maharashtra v. Jugmander Lal, AIR 1966 SC 940: 1966 Cri LJ 707, followed

Doubted in *AnZ Grindlays Bank Ltd. v. Directorate of Enforcement, (2004) 6 SCC 531 by a three-Judge Bench and matter referred to a Constitution Bench which has overruled in Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530. See also held in Standard Chartered Bank v. Directorate of Enforcement, (2006) 4 SCC 278*

[2924] — Ss. 235(2) and 360 — If alcohol had played any role in the commission of the offence State must provide for anti-alcoholic therapy of the prisoner. *Dilbag Singh* v. *State of Punjab*, (1979) 2 SCC 103: 1979 SCC (Cri) 376: AIR 1979 SC 680: 1979 GLR (SC) 390: 1979 Cri LJ 636: 1979 MLJ (Cri) 534: 16 ACC 104 (II).

Bench Strength **3**. Coram: **V.R. Krishna Iyer**, *D.A. Desai* and *A.P. Sen*, JJ. [Date of decision: 25-1-1979]

— S. 236 *See* Ss. 482, 225 to 247

— S. 237 *See* Ss. 401 and 237

See also Ss. 482, 225 to 247

[2925] — S. 237 — Accused charged under Ss. 302/149, IPC convicted under Ss. 302/34, IPC — *One of the appellants charged with an offence under Ss. 302/149 — Therefore, courts below committed no illegality or impropriety in convicting him under Ss. 302/34 — Penal Code, 1860, Ss. 149 and 34 — Charged under Ss. 302/149 but convicted under Ss. 302/34. Gajjan Singh* v. *State of Punjab*, (1999) 1 SCC 233: 1998 SCC (Cri) 1603: AIR 1998 SC 2417.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 29-4-1998]

[2926] — Ss. 237(2) and 327(2) — Open or public trial — Right to, not absolute — In exceptional circumstances trial can be held in camera (Per curiam). *Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569: 1994 SCC (Cri) 899: 1994 Cri LJ 3139.

Bench Strength **5**. Coram: **S. Ratnavel Pandian**[1], *M.M. Punchhi*[1], **K. Ramaswamy**[2], *S.C. Agrawal*[1] and **R.M. Sahai**[3], JJ. [Date of decision: 11-3-1994]

[2927] — Ch. XII (Ss. 154 to 176) and S. 190 — Officers of Department of Revenue Intelligence (DRI) invested with powers of officer-in-charge of police station under S. 53, NDPS Act, 1985 — *Held, are not police officers within the meaning of S. 25, Evidence Act, 1872 — Consequently confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible as evidence — Officers appointed under S. 53, NDPS Act, 1985 not entitled to exercise all the powers under Chapter XII of CrPC, 1973 including power to submit report or charge-sheet under S. 173, CrPC — Evidence Act, 1872 — S. 25 — Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 53, 36-A, 52, 52-A, 41, 42, 43 and 44*

Officers of the Department of Revenue Intelligence who have been invested with the powers of an officer-in-charge of a police station under S. 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985, are not "police officers" within the meaning of S. 25 of the Evidence Act, 1872. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence as against him. Officer appointed under S. 53 other than a police officer is not entitled to exercise "all" the powers under Chapter XII of the Code including the power to submit a charge-sheet under S. 173, CrPC.

Even if an officer is invested under any special law with powers analogous to those exercised by a police officer-in-charge of a police station investigating a cognizable offence, he does not thereby become a police officer under S. 25, Evidence Act, unless he has the power to lodge a report under S. 173 of the Code. Any person on whom power to investigate under Chapter XII is conferred can be said to be a "police officer", no matter by what name he is called. The nomenclature is not important, the content of the power he exercises is the determinative factor. The important attribute of police power is not only the power to investigate into the commission of cognizable offence but also the power to prosecute the offender by filing a report or a charge-sheet under S. 173 of the Code. There is nothing in the provisions of the Act to show that the legislature desired to vest in the officers appointed under S. 53 of the Act, all the powers of Chapter XII, including the power to submit a report under S. 173 of the Code.

Clause (*d*) of S. 36-A of 1985 Act makes it clear that if the investigation is conducted by the police, it would conclude in a police report but if the investigation is made by an officer of any other department including the DRI, the Special Court would take cognizance of the offence upon formal complaint made by such authorised officer of the concerned government. Needless to say that such a complaint would have to be under S. 190 of the Code. *Raj Kumar Karwal* v. *Union of India*, (1990) 2 SCC 409: 1990 SCC (Cri) 330: AIR 1991 SC 45: (1990) 48 ELT 496.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 21-3-1990]

State of Punjab v. Barkat Ram, AIR 1962 SC 276: 1962 (1) Cri LJ 217; Raja Ram Jaiswal v. State of Bihar, AIR 1964 SC 828: (1964) 1 Cri LJ 705; Badku Joti Sawant v. State of Mysore, AIR 1966 SC 1746: 1966 Cri LJ 1353; Romesh Chandra Mehta v. State of W.B., AIR 1970 SC 940: 1970 Cri LJ 863; Illias v. Collector of Customs, Madras, AIR 1970 SC 1065: 1970 Cri LJ 998; State of U.P. v. Durga Prasad, (1975) 3 SCC 210: 1974 SCC (Cri) 828; Balkishan A. Devidayal v. State of Maharashtra, (1980) 4 SCC 600: 1981 SCC (Cri) 62, followed

Radha Kishun Marwari v. Emperor, AIR 1932 Pat 293 (SB): ILR (1933) 12 Pat 46; Mahesh v. Union of India, (1988) 1 FAC 339 (All); Mangal Singh Bhan Singh Rathod v. State of Gujarat, (1988) 2 FAC 173 (Guj), approved

Affirmed in Kanhaiyalal v. Union of India, (2008) 4 SCC 668

— S. 238 *See also* S. 251-A, Criminal Procedure Code, 1898, pp. 1118 et seq. in Vol. 2

— S. 238 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193, 238 to 250

See also Ss. 207, 238, 228 & 240 and S. 227

See also Ss. 240, 228, 238, 227 and 482

See also Ss. 340(1)(b) and 341 to 344 & 238 to 243

See also Ss. 482, 225 to 247

[2928] — Ss. 238 to 240 and 211 — Proceedings under Ss. 238 to 240 are in the nature of pre-trial or trial proceedings — *Framing of charge under S. 240 — Nature of function of the court — Order to frame charge against the accused if final or interlocutory. V.C. Shukla* v. *State through CBI*, 1980 Supp SCC 92: 1980 SCC (Cri) 695: AIR 1980 SC 962: 1980 Cri LJ 690: 1980 MLJ (Cri) 664.

Bench Strength **4**. Coram: **S. Murtaza Fazal Ali**[1], **P.N. Shinghal**[2], **D.A. Desai**[3] and *A.P. Sen*[1], JJ. [Date of decision: 7-12-1979]

[2929] — Ss. 238, 239, 244 and 245 — Trial of a warrant case — Difference between case instituted on basis of police report and case instituted otherwise than on police report — *Held, in first category, prosecution gets opportunity to lead evidence only after charge is framed whereas in second category complainant gets two opportunities to lead evidence, first before charge is framed and second after charge is framed*

The essential difference of procedure in the trial of warrant case on the basis of a police report and that instituted otherwise than on police report is particularly marked in Sections 238 and 239 CrPC on one side and Sections 244 and 245 CrPC on the other. Where a case is instituted on a police report, the prosecution has only one opportunity to lead evidence and that too comes only after the charge is framed. However, in the warrant trial instituted otherwise than the police report, the complainant gets two opportunities to lead evidence, firstly, before the charge is framed and secondly, after framing of the charge. (Paras 19, 20 and 22). *Ajoy Kumar Ghose* v. *State of Jharkhand*, (2009) 14 SCC 115: AIR 2009 SC 2282: 2009 Cri LJ 2824.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 18-3-2009]

— **S. 239** *See* S. 251-A, Criminal Procedure Code, 1898, pp. 1118 et seq. in Vol. 2

— **S. 239** *See* Ss. 91, 227, 228, 239 and 240
See also Ss. 190 to 210, 225 to 235 and 238 to 250
See also Ss. 190, 193, 238 to 250
See also Ss. 190, 198-A, 209, 239, 240, 242 and 323
See also Ss. 197, 220, 221, 227, 239 and 245
See also Ss. 204 & 203, 202, 200, 239 and 362 & 482
See also Ss. 227 & 228, 239 & 240, 91 and 482
See also Ss. 227, 228, 239, 240 & 226 and 482
See also Ss. 227, 228, 239, 240 and 245
See also Ss. 227, 228, 239, 240 and 482
See also Ss. 227 & 228(1) and 239 & 240(1)
See also Ss. 227, 239 & 245 and 228 & 240
See also Ss. 227, 239, 245 and 482
See also Ss. 227, 239, 399 and 401
See also Ss. 228 & 227 and 239 & 240 and 245(1) & (2)
See also Ss. 228 & 227 and 240 & 239
See also Ss. 238 to 240 and 211
See also Ss. 245, 227 and 239
See also Ss. 245, 239 and 227
See also Ss. 245(1), 227, 239 and 246
See also Ss. 302 and 239
See also Ss. 320, 239 and 482
See also Ss. 321, 227 and 239
See also Ss. 321, 227, 239 and 397
See also Ss. 321 & 239
See also Ss. 340(1)(b) and 341 to 344 & 238 to 243
See also Ss. 401, 397 and 239
See also Ss. 482, 190, 203, 211, 227, 239 and 245
See also Ss. 482, 225 to 247
See also Ss. 482 and 227, 239 & 245
See also Ss. 482 and 239, 240, 245
See also Ss. 482, 397, 401, 239, 240 and 173

[2930] — S. 239 — Discharge based on discussion of materials then on record improper — *On facts, the discharge was based on surmises and conjectures — State justified in having the order of discharge quashed*

All that is required at the stage of framing of charges is to see whether a prima facie case regarding the commission of certain offences is made out. the question whether the charges will eventually stand proved or not can be determined only after evidence is recorded in the case. What the Special Judge has done is to decide the case on merit without giving the prosecution an opportunity to adduce evidence against the accused. The order of the Special Judge is therefore not in accordance with law and is clearly unsustainable. *State of H.P.* v. *Krishan Lal Pardhan*, (1987) 2 SCC 17: 1987 SCC (Cri) 270: AIR 1987 SC 773: 1987 Cri LJ 709.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 5-2-1987]

[2931] — Ss. 239, 190 and 173 — Special Judge finding prima facie case against the accused but replaced by another judge before framing of charge — Second judge discharging the accused by a 16-page order — *Held, second judge could not, on the same material on record, come to a different conclusion — The review of the earlier order was illegal. State of H.P.* v. *Krishan Lal Pardhan*, (1987) 2 SCC 17: 1987 SCC (Cri) 270: AIR 1987 SC 773: 1987 Cri LJ 709.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 5-2-1987]

[2932] — Ss. 239, 240, 227, 190(1), 156(3) and 468 — Discharge after taking cognizance of offence — Permissibility — Complaint under S. 190(1), CrPC for offences under Ss. 498-A and 406 IPC — *Magistrate ordering investigation by police — Police, after investigation, submitting charge-sheet (final report) — Thereupon Magistrate taking cognizance of the offence and fixing a date for framing charges — Discharging of the accused on the date so fixed, on the ground that the complaint was barred by limitation, held, not impermissible. Arun Vyas* v. *Anita Vyas*, (1999) 4 SCC 690: 1999 SCC (Cri) 629: AIR 1999 SC 2071. Bench Strength 2. Coram: *K. Venkataswami* and **S.S.M. Quadri**, JJ. [Date of decision: 14-5-1999]

[**Ed.**: The Supreme Court directed the Magistrate to consider the question of limitation taking note of Section 473 CrPC in the light of the observations made herein. (Para 17).]

[2933] — Ss. 239, 240, 227 and 245 — No reasons are required to be recorded when charges are to be framed against an accused — Reasons are to be recorded only when accused is to be discharged

On the basis of a complaint lodged with the police an investigation was conducted and a charge-sheet was filed before the Metropolitan Magistrate against the appellants for offences under Sections 454, 380 and 120-B IPC. The Magistrate issued process to the accused and framed charge against the appellants. While framing the charge the Magistrate dismissed the petition filed by the accused for discharging them by a short order stating that prima facie the case was established against the accused persons under the said sections. The appellants then moved the High Court for quashing the charge. A Single Judge of the High Court who set aside the said order of the Magistrate remarked that it was not discernible from the order of the Magistrate that he had taken into consideration the charge-sheet and the other papers submitted therewith for satisfying himself as to whether there is a prima facie case against the accused persons for the aforesaid offences. The Single Judge expressed his helplessness in supporting the order framing charges against the appellants. The Metropolitan Magistrate was thereupon directed to peruse the charge-sheet along with other papers submitted to him and satisfy himself again as to the existence of a prima facie case against the accused.

Disapproving the order of the High Court and yet not setting it aside in the absence of appeal by the State,

Held :

Section 239 shows that the Magistrate is obliged to record his reasons if he decides to discharge the accused. But in view of Section 240 there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation, he is only required to frame a charge in writing against the accused. If the trial court decides to frame a charge there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is prima facie order that the trial Judge has formed the opinion, upon considering the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned. Even in cases instituted otherwise than on a police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. Even in a trial before a Court of Session, the Judge is required to record reasons only if he decides to discharge the accused (vide Section 227 of the Code). But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge. (Paras 10 and 8)

In the present case as the Metropolitan Magistrate has chosen to frame the charge, the High Court, when moved by the accused for quashment of the charge, could have re-examined the records to consider whether the charge framed was sustainable or not. If the High Court decides to quash the charge it is open to the High Court to record the reasons thereof. The present order of the High Court is one of setting aside the charge without stating any reason. But the direction to the Magistrate to consider the materials once again and then to frame a charge for the same offence (if the Magistrate reaches the opinion that there is ground for presuming the commission of offence) is simply to repeat what the Metropolitan Magistrate had done once at the first instance. To ask him to do the same thing over again is adding an unnecessary extra work on the trial court. Be that as it may, the State has not challenged the order of the High Court. Hence the impugned order of the High Court need not be set aside. It is for the Metropolitan Magistrate to exercise his functions under Section 239 or Section 240 of the Code as he deems fit in the light of the observations made above. (Para 13). *Kanti Bhadra Shah* v. *State of W.B.*, (2000) 1 SCC 722: 2000 SCC (Cri) 303: AIR 2000 SC 522: 2000 Cri LJ 746.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 5-1-2000]

[2934] — Ss. 239 & 240 and 228 — Matters to be considered at stage of framing charge — At the stage of framing of charge court is required to consider only police report and documents sent with it under S. 173 — *Accused has right of being heard and the court may examine him, if it thinks necessary — However, the High Court not justified in looking into the documents filed by the accused and relying upon them to conclude that no offence was committed by them*

At the time of framing of a charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 CrPC and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that. Of course, at that stage the accused may be examined but that is a prerogative of the court only. (Para 5)

In the present case the High Court in quashing the proceedings not only looked into the documents filed by the respondent in support of his claim that no case was made out against him even before the trial had commenced — but relied upon them to conclude that no offence was committed by him. This approach of the High Court is also contrary to the settled law of the land. (Para 8). *State Anti-Corruption Bureau* v. *P. Suryaprakasam*, (2008) 14 SCC 13.

Bench Strength 2. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 2-5-1996]

Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142: 1994 SCC (Cri) 1181, followed

[2935] — Ss. 239, 227, 245 and 482 — Application for discharge — Considerations therefor — Strong suspicion of complicity/culpability if enough to refuse application — *Held, complicity of accused person is required to be taken into consideration for purpose of determining application for discharge upon taking a realistic view of the matter — While considering application, it is for the Judge to go into details of allegations made against accused person so as to form an opinion as to whether any case at all is made out as a strong suspicion in regard thereto shall subserve the requirements of law* (Para 17). *Rumi Dhar* v. *State of W.B.*, (2009) 6 SCC 364.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sinha*, JJ. [Date of decision: 8-4-2009]

[2936] — Ss. 239 and 240 — Mere suspicion of motive not a sufficient ground for framing charges — Absence of direct evidence to prove conspiracy — *Circumstantial evidence, even if unrebutted or totally accepted creating only a suspicion of motive — Held, accused persons rightly discharged by the courts below*

The mere suspicion of motive cannot serve as a sufficient ground for framing the charges in the absence of any material, prima facie showing that the particular motive has passed into action and that the accused is connected with that action in question.

In the present case there is no direct evidence to prove conspiracy except by circumstantial evidence. The circumstantial evidence even if accepted in its entirety creates only a suspicion of motive. Needless to point out that the motive which induces a man to do any particular act is known to him and to him alone. *State of U.P.* v. *Sanjay Singh (Dr)*, 1994 Supp (2) SCC 707: 1994 SCC (Cri) 1701.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and *M.M. Punchhi*, JJ. [Date of decision: 27-1-1994]

[2937] — Ss. 239 & 240 and 227 & 228 — The standard of proof required at the final stage is not required before taking a decision to frame the charge or discharge the accused — Accused therefore can produce any reliable material at this stage as would affect the very sustainability of the case

It is trite law that the standard of proof normally adhered to at the final stage is not to be insisted upon at the stage where the consideration is to be confined to find out a prima facie case and decide whether it is necessary to proceed to the next stage of framing the charges and making the accused to stand trial for the same. The Supreme Court has already cautioned against undertaking a roving inquiry into the pros and cons of the case by weighing the evidence or collecting materials, as if during the course or after trial. Ultimately, this would always depend upon the facts of each case and it would be difficult to lay down a rule of universal application and for all times. The fact that in one case the court thought fit to exercise such powers is no compelling circumstance to do so in all and every case before it, as a matter of course and for the mere asking. The court concerned must be allowed a large latitude in the matter of exercise of discretion and unless in a given case the court was found to have conducted itself in so demonstrably an unreasonable manner unbecoming of a judicial authority, the court superior to that court cannot intervene very lightly or in a routine fashion to interpose or impose itself even at that stage. The reason being, at that stage, the question is one of mere proprieties involved in the exercise of judicial discretion by the court and not of any rights concretised in favour of the accused. (Para 6). *Om Parkash Sharma* v. *CBI*, (2000) 5 SCC 679: 2000 SCC (Cri) 1014: AIR 2000 SC 2335: 2000 Cri LJ 3478.

Bench Strength 2. Coram: *S. Saghir Ahmad* and **Doraiswamy Raju**, JJ. [Date of decision: 24-4-2000]

Satish Mehra v. Delhi Admn., (1996) 9 SCC 766: 1996 SCC (Cri) 1104; Ashok Kaushik v. State, (1999) 49 DRJ 202, distinguished

Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4: 1979 SCC (Cri) 609, relied on

But see State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568

[2938] — **Ss. 239 & 240 and 228 — At the stage of framing of charge court is required to consider only police report and documents sent with it under S. 173 — Accused has right of being heard and the court may examine him, if it thinks necessary** — *However, the High Court not justified in looking into the documents filed by the accused and relying upon them to conclude that no offence was committed by them*

At the time of framing of a charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 CrPC and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that. Of course, at that stage the accused may be examined but that is a prerogative of the court only. (Para 5)

In the present case the High Court in quashing the proceedings not only looked into the documents filed by the respondent in support of his claim that no case was made out against him even before the trial had commenced — but relied upon them to conclude that no offence was committed by him. This approach of the High Court is also contrary to the settled law of the land. (Para 8). *State Anti-Corruption Bureau, Hyderabad* v. *P. Suryaprakasam*, 1999 SCC (Cri) 373.

Bench Strength 2. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 2-5-1996]

Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142: 1994 SCC (Cri) 1181, followed

[2939] — **Ss. 239 and 482 — Criminal proceedings when to be dropped or quashed — Appellants, senior officers of Bank charged under Ss. 467, 468, 420 and 120-B IPC — Appellants applying under S. 239 CrPC to trial Magistrate for being discharged on the ground that no case was made out against them — Rejection of appellant's petitions under Ss. 239 and 482 CrPC, by trial Magistrate and High Court respectively** — *Held, questions regarding the sufficiency or reliability of the evidence to proceed further are not required to be considered by the trial court under S. 239 and High Court under S. 482 — However, if upon the admitted facts and documents relied upon by the complainant or prosecution, without sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed — Setting aside impugned orders appellants discharged in terms of S. 239 CrPC — Penal Code, 1860, Ss. 467, 468, 420 and 120-B*

The inherent powers of the High Court under Section 482 of the Code of Criminal Procedure can be exercised to quash proceedings, in appropriate cases either to prevent the abuse of process of any court or otherwise to secure the ends of justice. Ordinarily the criminal proceedings which are instituted against the accused must be tried and taken to logical conclusions under the Code of Criminal Procedure and the High Court should be reluctant to interfere with the proceedings at an interlocutory stage. However, there may be cases where the inherent jurisdiction to quash proceedings can and should be exercised. Where there is a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence, the High Court should not be reluctant to exercise the inherent jurisdiction. Similarly where the allegations in the FIR or the complaint, even if they are taken at their face value do not constitute the offence alleged, or without appreciating the evidence but only merely by looking at the complaint or the FIR or the accompanying documents, the offence alleged is not disclosed, the person proceeded against in such a frivolous criminal litigation has to be saved. (Para 3)

The trial court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed. (Para 4)

On facts on a perusal of FIR, the final report under Section 173 of the Code of Criminal Procedure and all other documents accompanying it, no case is made out against any of the appellants and the pendency of the proceedings against them before the Magistrate is an abuse of the process of court. The appeal is allowed and the order of the

High Court dated 8-4-1997 and Magistrate dated 6-7-1996 are quashed and the appellants discharged in terms of Section 239 of the Code of Criminal Procedure. (Para 6). *K. Ramakrishna* v. *State of Bihar*, (2000) 8 SCC 547: 2001 SCC (Cri) 27: AIR 2000 SC 3330.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **R.P. Sethi**, JJ. [Date of decision: 22-9-2000]

Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401, relied upon

[2940] — Ss. 239 to 249 and 401 & 300 — Trial of warrant cases — Held, 'discharge' and 'acquittal' are distinct concepts — *After framing of charge there cannot be a 'discharge' but only an 'acquittal' based on a finding of not guilty turning on the merits of the case — Hence, High Court could rightfully interfere in revision under S. 439 with an order of discharge passed after the framing of the charge and order retrial — High Court was not barred by plea of autrefois acquit under S. 403(1) — CrPC, 1898, Ss. 253, 254-A & 258 and 439 & 403*

In a warrant case instituted otherwise than on a police report 'discharge' or 'acquittal' of accused are distinct concepts applicable to different stages of the proceedings in Court. The legal effect and incidents of 'discharges' and 'acquittal' are also different. An order of discharge in a warrant case instituted on complaint, can be made only after the process has been issued and before the charge is framed. Section 253(1) shows that as a general rule there can be no order of discharge unless the evidence of all the prosecution witnesses has been taken and the Magistrate considers for reasons to be recorded, in the light of the evidence, that no case has been made out. Sub-section (2) which authorises the Magistrate to discharge the accused at any previous stage of the case if he considers the charge to be groundless, is an exception to that rule. A discharge without considering the evidence taken is illegal.

Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Ss. 349 and 562 of the Code of 1898 (which correspond to Ss. 325 and 360 of the Code of 1973).

So that if after framing charge the Magistrate whimsically, without appraising the evidence and without permitting the prosecution to produce all its evidence 'discharges' the accused, such an acquittal, without trial, even if clothed as 'discharge' will be illegal. This is precisely what has happened in the instant case.

[That the Magistrate in discharging the accused was acting in accordance with the judgment of the High Court in revision, is based on a misreading of that judgment.]

Even assuming that the said order of discharge was one of 'acquittal' since it was not passed on merits and without a trial, it was illegal. The High Court has undoubtedly the power to interfere with such a patently illegal order of acquittal in the exercise of its revisional jurisdiction under S. 439, and direct a retrial.

The High Court's order under appeal, directing the Magistrate to take de novo proceedings against the accused was not barred by the provisions of S. 403, Criminal Procedure Code, 1898, the earlier proceedings taken by the Magistrate being no trial at all and the order passed therein being neither a valid "discharge" of the accused, nor their acquittal as contemplated by S. 403(1). *Ratilal Bhanji Mithani* v. *State of Maharashtra*, (1979) 2 SCC 179: 1979 SCC (Cri) 405: AIR 1979 SC 94: 1979 Cri LJ 41.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *O. Chinnappa Reddy* and *A.P. Sen*, JJ. [Date of decision: 28-9-1978]

Followed in Bharat Parikh v. CBI, (2008) 10 SCC 109: (2008) 3 SCC (Cri) 609

— S. 240 *See also* S. 251-A, Criminal Procedure Code, 1898, pp. 1118 et seq. in Vol. 2

— S. 240 *See* Ss. 91, 227, 228, 239 and 240
See also Ss. 190 to 210, 225 to 235 and 238 to 250
See also Ss. 190, 193, 238 to 250
See also Ss. 190, 198-A, 209, 239, 240, 242 and 323
See also Ss. 204, 228 and 240
See also Ss. 207, 238, 228 & 240 and S. 227
See also Ss. 211 and 240
See also Ss. 212 and 240
See also Ss. 227 & 228, 239 & 240, 91 and 482
See also Ss. 227, 228, 239, 240 & 226 and 482
See also Ss. 227, 228, 239, 240 and 245
See also Ss. 227, 228, 239, 240 and 482
See also Ss. 227, 239 & 245 and 228 & 240
See also S. 228, above
See also Ss. 228 & 227 and 239 & 240 and 245(1) & (2)
See also Ss. 228, 227 and 240

See also Ss. 228 & 227 and 240 & 239
See also Ss. 228 and 240
See also Ss. 228 & 240 and Ch. III (Ss. 26 to 35)
See also Ss. 228, 240 and 173
See also Ss. 228, 240 and 227
See also Ss. 238 to 240 and 211
See also Ss. 239 and 240
See also Ss. 239, 240, 227, 190(1), 156(3) and 468
See also Ss. 239 & 240 and 227 & 228
See also Ss. 239, 240, 227 and 245
See also Ss. 239 & 240 and 228
See also Ss. 239 to 249 and 401 & 300
See also Ss. 321, 228, 240 & 173
See also Ss. 340(1)(b) and 341 to 344 & 238 to 243
See also Ss. 482, 173 and 240
See also Ss. 482, 190, 228, 240 & 246
See also Ss. 482, 225 to 247
See also Ss. 482, 228 and 240
See also Ss. 482 and 239, 240, 245
See also Ss. 482, 309, 228 and 240
See also Ss. 482, 397, 401, 239, 240 and 173

[2941] — S. 240 — Framing of charge — Powers and functions of Magistrate — Police report to the effect that investigation has not made out any offence against the accused — *Framing of charge by Magistrate ignoring the said report — Held, permissible — Not mandatory for the Magistrate to always accept the final police report — There can and has to be an independent examination and application of mind by the judicial officer — Hence, conclusion by the High Court that in view of the final report, the charge-sheet on the basis of which cognisance was taken had lost its force, erroneous*

In the instant case, the order framing charge shows that the learned Special Judge was fully alive to the two reports, the different scope of power and functions exercisable by the Magistrate and the police and on facts came to the prima facie view that charge is liable to be framed though reasons thereof have not been mentioned in the order. After perusing the two reports filed by the investigating officer it is evident therefrom that neither the prima facie view reached by the Special Judge can be faulted nor can it be said that the second report was altogether ignored by the Special Judge as was sought to be contended. What has been done by the judge is to ignore and brush aside the conclusion in the second report so as to form an independent opinion on the facts emerging from the report that charge deserves to be framed against the respondent. The course adopted by the Special Judge is permissible in law. (Para 5)

It is not necessary for the Magistrate to always accept the final report. It depends on facts and circumstances of each case. There can and has to be an independent examination and application of mind by the judicial officer. On examination of facts, the judge has to decide to accept or not to accept the conclusion of the police that there is no material to prove the charge. The decision of the judge, at this stage, is prima facie. But the conclusion of the High Court that in view of the final report, the charge-sheet on the basis of which cognisance was taken lost its force is incorrect. (Para 6). *State of Orissa* v. *Habibullah Khan*, (2003) 12 SCC 129.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *B.N. Agrawal*, JJ. [Date of decision: 16-12-2003]

[2942] — Ss. 240, 228, 238, 227 and 482 — Whether at the time of framing of charge material produced on behalf of accused can be considered — *Held, while framing charges the trial court can only look into the materials produced by the prosecution while giving an opportunity to the accused to show that the said materials were insufficient for the purpose of framing charge — At the stage of framing of charge the submissions on behalf of the accused have to be confined to the material produced by the investigating agency — Accused would get an opportunity to prove the documents subsequently produced by the prosecution on the order of the Court, but the same cannot be relied upon to reopen the proceedings once charge has been framed or for invocation of the High Court's powers under S. 482* (Paras 2 and 19). *Bharat Parikh* v. *CBI*, (2008) 10 SCC 109: (2008) 3 SCC (Cri) 609: 2008 Cri LJ 3540.

Bench Strength 2. Coram: **Altamas Kabir** and *Dr. M.K. Sharma*, JJ. [Date of decision: 14-7-2008]

[2943] — Ss. 240, 241, 251 and 252 — Effect of plea of guilty — *Facts set out in the charge are thereby admitted — Exculpatory and extenuating arguments thereby excluded — Only legal defences permissible — Practice of plea-bargaining condemned. Kisan Trimbak Kothula* v. *State of Maharashtra*, (1977) 1 SCC 300: 1977 SCC (Cri) 97: AIR 1977 SC 435: 1977 Cri LJ 267: (1977) 2 SCR 102.

Bench Strength 3. Coram: *P.N. Bhagwati*, **V.R. Krishna Iyer** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 17-11-1976]

[2944] — Ss. 240 and 228 — Manner of examination of material placed on record by prosecution at the stage of framing charge — Restated

It is well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At this stage of charge the court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 CrPC seeking for the quashing of charge framed against them the court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the court the charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. (Para 7). *State of Delhi* v. *Gyan Devi*, (2000) 8 SCC 239: 2000 SCC (Cri) 1486: AIR 2001 SC 40.

Bench Strength 2. Coram: **D.P. Mohapatra** and *Ruma Pal*, JJ. [Date of decision: 18-10-2000]

— S. 240(1) *See also* Ss. 227 & 228(1) and 239 & 240(1)

[2945] — Ss. 240(1), 246(1) and 211 — Framing of charge — Mode of passing the order for — *Held, it is not necessary for the trial court to write a reasoned or lengthy order while framing the charges. Munna Devi* v. *State of Rajasthan*, (2001) 9 SCC 631: AIR 2002 SC 107.

Bench Strength 2. Coram: *M.B. Shah* and **R.P. Sethi**, JJ. [Date of decision: 6-11-2001]

Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722: 2000 SCC (Cri) 303, relied on

[2946] — S. 240(2) — Framing of charge in the absence of accused who had obtained anticipatory bail — Held, defeats the very purpose of S. 240(2) (Para 21). *HDFC Bank Ltd.* v. *J.J. Mannan*, (2010) 1 SCC 679.

Bench Strength 2. Coram: **Altamas Kabir** and *Deepak Verma*, JJ. [Date of decision: 16-12-2009]

— S. 241 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193, 238 to 250

See also Ss. 229, 235, 241 and 248

See also Ss. 229, 241 and 223

See also Ss. 229, 241, Ch. XX-A (Ss. 265-A to 265-L) and 368, 399 and 401

See also Ss. 239 to 249 and 401 & 300

See also Ss. 240, 241, 251, 252

See also Ss. 340(1)(b) and 341 to 344 & 238 to 243

See also Ss. 482, 225 to 247

— S. 242 *See also* S. 251-A, Criminal Procedure Code, 1898, pp. 1118 et seq. in Vol. 2

See also PENAL CODE, 1860, S. 302

See also CRIMINAL TRIAL in Vol. 3

— S. 242 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193, 238 to 250

See also Ss. 190, 198-A, 209, 239, 240, 242 and 323

See also Ss. 226 and 242

See also Ss. 226, 242 and 311

See also Ss. 231, 233, 242 and 243

See also Ss. 231, 234, 242, 244 and 293

See also Ss. 231 and 242

See also Ss. 231 & 242 and 173 & 157

See also Ss. 231, 242 and 243

See also Ss. 231, 242, 243, 244 and 247

See also Ss. 231, 242, 243, 246 and 326

See also Ss. 231, 242 and 244

See also Ss. 231, 242, 244, 309 and 437 & 439

See also Ss. 235, 231 & 233 and 248, 242 & 243

See also Ss. 239 to 249 and 401 & 300

See also Ss. 313, 242 and 243

See also Ss. 327, 231, 233, 242 to 244, 247, 273 and 283

See also Ss. 340(1)(b) and 341 to 344 & 238 to 243

See also Ss. 391 and 231, 242, 244, 233, 243 & 247

See also Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247

See also Ss. 482, 225 to 247

[2947] — Ss. 242, 309 and 313 — Evidence for prosecution — Deferment of examination of accused under S. 313 — Permissibility — *Where several charge-sheets had been filed against the same accused for similar offences though pertaining to different periods, but only one case reached the stage of examination of the accused under S. 313, held, court has no power to order that* *recording of statement of accused under S. 313 in that case be deferred till all the other cases against him reach the same stage and then hold trial and record evidence in all the cases simultaneously*

Against the accused-respondent 11 charge-sheets relating to misappropriation of bank fund for different periods were filed and cases registered. However, when only one such case reached the stage of arguments, the respondent filed an application under Section 309 CrPC requesting the court to defer the recording of his statement under Section 313 CrPC till all the other 10 cases against him reach the stage of the statement of the accused. The trial court dismissed the application and the revisional court dismissed the revision petition filed by the accused. But petition under Section 482 CrPC filed by the accused was allowed by a Single Judge of the High Court by issuing a direction to the trial court to hold trial and record evidence in all the aforesaid cases simultaneously and dispose of the same simultaneously as far as possible. Submission made on behalf of the respondent that he could not be forced to reveal his defence as it would enable the prosecution to cover up the lacunae in other cases which are pending in trial was accepted. This direction has been issued in the purported exercise of power conferred under Section 242 CrPC which according to the Single Judge gives the jurisdiction to a court to defer cross-examination of the material witnesses until all the material witnesses are examined by the prosecution as part of fair trial.

Allowing the State's appeal,

Held :

The proviso to sub-section (3) of Section 242 CrPC does not deal with either the clubbing of cases registered against the accused or simultaneous trial of different cases registered against an accused. There is no provision in the Code of Criminal Procedure which enables the court to postpone the examination of the accused under Section 313 CrPC till the completion of the trial in other cases. Merely because certain other charge-sheets have been filed against the same accused for similar offences cannot be a ground to postpone the examination of the accused under Section 313 CrPC. The apprehension of the accused-respondent that if his statement is recorded under Section 313 CrPC he would be required to divulge his defence and in that event he would be prejudiced in the trial of other cases filed against him is without any basis and foundation. It may be taken note of that as many as 25 witnesses have already been examined and the witnesses have already been cross-examined by the advocate for the accused. It is reasonable to infer that during the course of his cross-examination the accused-respondent must have disclosed his defence. The charges in other cases against the accused may be under the same provisions of the Penal Code and may also be similar, but documentary or oral evidence may be different which ultimately has to be appreciated and evaluated by the court separately in each case. It can be taken judicial note of and kept in mind that completion of trial in other ten charge-sheets may take some more time. The High Court has materially erred in coming to the conclusion that under the provisions of Section 242 CrPC recording of statement of the accused-respondent under Section 313 could be deferred till the trial in other cases involving similar transactions against the accused is completed. (Paras 7 and 8)

Accordingly, the judgment and order of the Single Judge of the High Court is set aside and those of the courts below are restored. The trial court may now proceed in accordance with law. (Para 9). *State of Karnataka* v. *Annegowda*, (2006) 5 SCC 716: (2006) 3 SCC (Cri) 59: AIR 2006 SC 2641: (2006) 5 All LJ 403.

Bench Strength **2**. Coram: **Ashok Bhan** and *Markandey Katju*, JJ. [Date of decision: 13-7-2006]

[2948] — Ss. 242 and 244 — Murder trial — Investigating officer must be present at the time of the trial — *If he fails to be present, Sessions Judge must issue summons*

It was the duty of the Sessions Judge to issue summons to the investigating officer if he failed to remain present at the time of trial of the case. The presence of investigating officer at the time of trial is must. It is his duty to keep the witnesses present. If there is failure on the part of any witness to remain present, it is the duty of the court to take appropriate action including issuance of bailable/non-bailable warrants, as the case may be. It should be well understood that the prosecution cannot be frustrated by such methods and victims of the crime cannot be left in a lurch. In a murder trial it is sordid and repulsive matter that without informing the police station officer-in-charge, the matters are proceeded with by the court and by the APP and tried to be disposed of as if the prosecution has not led any evidence. (Para 9). *Shailendra Kumar* v. *State of Bihar*, (2002) 1 SCC 655: 2002 SCC (Cri) 230: AIR 2002 SC 270: 2002 Cri LJ 568: (2002) 1 CHN (Supp) 104.

Bench Strength **3**. Coram: **M.B. Shah**, *B.N. Agrawal* and *Arijit Pasayat*, JJ. [Date of decision: 28-11-2001]

[2949] — Ss. 242 and 244 — Not necessary for prosecution to produce all the witnesses who had joined the chase after the accused had attacked the victim. *Shyam Behari* v. *State of U.P.*, (1976) 2 SCC 206: 1976 SCC (Cri) 261: AIR 1976 SC 400: 1976 Cri LJ 342.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 9-9-1975]

[2950] — S. 242(3) — Non-examination of a witness who was also injured in the occurrence, held, would not be fatal to the prosecution case if the evidence of other eyewitnesses is credible enough to found the case — *It is not necessary to multiply witnesses to prove the case. State of U.P.* v. *Hakim Singh*, (1980) 3 SCC 55: 1980 SCC (Cri) 534: AIR 1980 SC 184: 1980 ALJ 16.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.P. Sen*, JJ. [Date of decision: 12-10-1979]

— **S. 243** *See also* S. 251-A, Criminal Procedure Code, 1898, pp. 1118 et seq. in Vol. 2

— **S. 243** *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193, 238 to 250
See also Ss. 231, 233, 242 and 243
See also Ss. 231, 242 and 243
See also Ss. 231, 242, 243, 244 and 247
See also Ss. 231, 242, 243, 246 and 326
See also Ss. 235, 231 & 233 and 248, 242 & 243
See also Ss. 239 to 249 and 401 & 300
See also Ss. 303, 304, 233 and 243
See also Ss. 311, 233, 243 and 315
See also Ss. 313, 242 and 243
See also Ss. 327, 231, 233, 242 to 244, 247, 273 and 283
See also Ss. 340(1)(b) and 341 to 344 & 238 to 243
See also Ss. 391 and 231, 242, 244, 233, 243 & 247
See also Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247
See also Ss. 482, 190(1), 204, 233 & 243
See also Ss. 482, 225 to 247

[2951] — S. 243 — "Fair trial" — Meaning and scope of — *Held, it includes fair and proper opportunities allowed by law to prove innocence of accused — Adducing evidence in support of the defence is a valuable right — Denial of that right means denial of fair trial — "fair trial" — Constitution of India — Art. 21* (Para 12). *Kalyani Baskar* v. *M.S. Sampoornam*, (2007) 2 SCC 258: (2007) 1 SCC (Cri) 577: (2007) 135 Comp Cas 197: (2007) 50 AIC 381 (SC).

Bench Strength **2**. Coram: *G.P. Mathur* and **L.S. Panta**, JJ. [Date of decision: 11-12-2006]

[2952] — S. 243(1) [as amended for S. 22 of Prevention of Corruption Act, 1988] — Defence witnesses — Number of witnesses to be examined — *Requirement to file list of witnesses before Special Judge — Object of, is to ensure speedy trial of cases — Accused has no right to examine any number of witnesses — Court has power to peruse the list and if it considers that some unnecessary persons have been included in the list then it is the duty of the court to shortlist such persons — If court considers that the list is intended to delay the proceedings, then it can reject even the entire list — Accused-appellant submitting a list of 267 persons for the defence — Trial court shortlisting the same on ground of delay and High Court only marginally increasing the number — Held, Supreme Court's interference not called for — After examining the witnesses as permitted by orders of the courts, accused can seek trial court's permission to examine some more witnesses in the interest of justice, if he considers such a course necessary — Trial court can either grant such permission or can exercise powers under S. 311 CrPC in respect of such witnesses — Prevention of Corruption Act, 1988, S. 22(a) — Prevention of Corruption Act, 1947, S. 7-A*

The appellant and three persons were arraigned before the Special Court for facing a charge for offence under Section 13(1)(*c*) of the Prevention of Corruption Act, 1988 read with Section 109 IPC. Section 5(1) of the PC Act requires the Special Judge to follow the procedure prescribed by the court for trial of warrant cases by Magistrates. Chapter XIX of the Code contains the provisions for such trial and Section 243 falls within the said chapter. The prosecution examined a number of witnesses by summoning 41 persons. When the case reached the stage envisaged in Section 243(1) CrPC the appellant submitted a list of 267 witness for defence. The Special Judge made a scrutiny of the list and dissected the names into four divisions. The first division consisted of names shown as Nos. 1 to 8. The second division consisted of names shown as Nos. 9 to 117 in the list. The third division consisted of names figuring in the list as Nos. 118 to 177. The fourth division consisted of names of 178 to 267 witnesses. The Special Judge permitted persons shown as Nos. 4 and 8 in the first division to be examined as he found them alone in the said division as necessary witnesses and the others were found unnecessary for the purpose of defence plea. As regards the second division, the court felt that instead of examining the huge number of witnesses for speaking about the masonry works, wood-works, painting works etc., examination of one or two engineers would be sufficient as that would save time also. About the third division the Special Judge observed that since all of them were cited only to speak about the "agriculture and business income" of the accused the appellant could advisedly confine to ten witnesses in that division. Regarding the last division the Special Judge opined that a huge list of witnesses was unnecessary in view of Section 134 of Evidence but he allowed 10 witnesses for examination. When the appellant approached the High Court, a Single Judge of the High Court felt that from the first division mentioned above the appellant can examine witnesses shown as Nos. 6 and 7 also and from the remaining divisions the appellant can choose ten more persons. Disposing of the present appeal,

Held :

The position of an accused who is involved in a trial under the PC Act is more cumbered than an accused in other cases due to legislative curbs. One of them is envisaged in Section 22 of the PC Act which amended sub-section (1) of Section 243 CrPC. Unlike an accused in other cases, the accused under the PC Act need be called upon to enter on his defence only after the trial Judge has occasion to peruse the names of the witnesses as well as the purpose of examination of each one of them, and also the nature of the documents which he proposed to adduce as his evidence. The legislative intent for the aforesaid change in the procedure is mainly for achieving expeditiousness of the trial. It is true that the concept of speedy trial must apply to all trials, but in the trials for offences relating to corruption the pace must be accelerated with greater momentum due to a variety of reasons. Parliament expressed grave concern over the rampant ever-growing corruption among public servants which has been a major cause for the demoralisation of the society. When corrupt public servants are booked they try to take advantage of the delay-proned procedural trammels of our legal system by keeping the penal consequences at bay for a considerable time. It was this reality which impelled Parliament to chalk out measures to curb procrastinating procedural clues. Section 22 of the PC Act is one of the measures evolved to curtail the delay in corruption cases. So the construction of Section 243(1) CrPC as telescoped by Section 22 of the PC Act must be consistent with the aforesaid legislative intent. (Paras 13 and 16)

The purpose of furnishing a list of witnesses and documents to the court before the accused is called upon to enter on his defence is to afford an occasion to the court to peruse the list. On such perusal, if the court feels that examination of at least some of the persons mentioned in the list is quite unnecessary to prove the defence plea and the time which would be needed for completing the examination of such witnesses would only result in procrastination, it is the duty of the court to shortlist such witnesses. We may also add that if the court feels that the list is intended only to delay the proceedings, the court is well within its powers to disallow even the whole of it. (Para 17)

In the present case it was the ground of delay which the Special Judge countenanced as the ground for pruning down the massive list of witnesses presented by the appellant. No doubt the time which would consume for completely examining all the 267 witnesses on the defence side would be unimaginably long if a court is compelled by law to exhaust such a whopping list in its full swing. The criminal trial would only limp badly and procrastination would be the inevitable consequence. Normally no court would mind if the list contains only a handful of names because the court would not then bother much about the delay factor. But when the list contains such a crowd of names of witnesses the court will certainly make a serious exercise to ascertain whether examination of all those witnesses is necessary in the interest of justice even at the risk of such procrastination. The High Court as per the impugned order has further enlarged the number of witnesses to be examined on the defence side. As it is, the appellant cannot complain now that he did not get the opportunity to adduce his evidence. At any rate, it is not necessary for the Supreme Court to interfere with the impugned orders as the pruning exercise undertaken by the trial court and the High Court was within the limits permitted by law. (Paras 10 and 19)

Nevertheless, after the appellant completes his evidence in accordance with the permission now granted as per the impugned orders, it is open to the appellant to convince the trial court that some more persons need to be examined in the interest of justice, if the appellant then thinks that such a course is necessary. The trial court will then decide whether it is essential for a just decision of the case to examine more witnesses on the defence side. If the Court is so satisfied, the Special Judge can permit the appellant to examine such additional witnesses the examination of whom he considers essential for a just decision of the case or he can exercise the powers envisaged in Section 311 CrPC in respect of such witnesses. At present it is not possible to oversee the situation as to how the trial court could then reach such a satisfaction. Hence, it is left to the trial court to do the needful at the appropriate stage. (Para 20). *Arivazhagan* v. *State*, (2000) 3 SCC 328: 2000 SCC (Cri) 638: AIR 2000 SC 1198: 2000 Cri LJ 1714.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 8-3-2000]

Ronald Wood Mathams v. State of W.B., AIR 1954 SC 455: (1955) 1 SCR 216: 1954 Cri LJ 1161, distinguished

[2953] — S. 243(2) — Right to fair trial — Accused has a right to defend himself as a part of his human as also fundamental right as enshrined under Art. 21 of the Constitution of India — *Right to defend oneself and for that purpose to adduce evidence is recognised by Parliament in terms of S. 243(2) CrPC — Constitution of India — Art. 21* (Para 8). *T. Nagappa* v. *Y.R. Muralidhar*, (2008) 5 SCC 633: (2008) 2 SCC (Cri) 677: AIR 2008 SC 2010: (2008) 3 KLT 158.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 24-4-2008]

[2954] — S. 243(2) — Appellant filed application under S. 243 CrPC wrongly mentioned as S. 293 CrPC — Effect — *Held, it is now a well-settled principle of law that non-mentioning or wrong mentioning of provision of law would not be of any relevance, if the court had the requisite jurisdiction to pass an order* (Para 13). *T. Nagappa* v. *Y.R. Muralidhar*, (2008) 5 SCC 633: (2008) 2 SCC (Cri) 677: AIR 2008 SC 2010: (2008) 3 KLT 158.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 24-4-2008]

[2955] — S. 243(2) — Power of Magistrate under — Issuance of process at the instance of accused, scope of — Discussed — *What should be the nature of evidence is not a matter which should be left only to the discretion of the court — It is the accused who knows how to prove his defence — Court being the master of the proceedings must determine as to whether the application filed by the accused in terms of S. 243(2) is bona fide or not or whether thereby he intends to bring on record a relevant material — But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses, etc. — If permitted to do so, steps therefor, however, must be taken within a limited time as the accused should not be allowed to unnecessarily protract the trial or summon witnesses whose evidence would not at be all relevant — Rejection of bona fide application of appellant under S. 243(2) for issuing process to substantiate his defence in respect of the cheque, held, improper — S. 20 of the NI Act confers only a prima facie right upon the holder of the negotiable instrument and the same being subject to the right of the accused to defend his case — Negotiable Instruments Act, 1881, S. 20* (Paras 9 and 10). *T. Nagappa* v. *Y.R. Muralidhar*, (2008) 5 SCC 633: (2008) 2 SCC (Cri) 677: AIR 2008 SC 2010: (2008) 3 KLT 158.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 24-4-2008]

Kalyani Baskar v. M.S. Sampoornam, (2007) 2 SCC 258: (2007) 1 SCC (Cri) 577, followed

[2956] — S. 243(2) — Presumption in favour of holder of cheque, extent of, discussed — *A complaint was filed by respondent against appellant under S. 138 of the NI Act — Appellant filed an application under S. 243 CrPC, wrongly mentioned as S. 293 CrPC, for referring the cheque in question for examination by the Director of Forensic Science Laboratory for determining the age of his signature, contending that the respondent had obtained a signed cheque from him in the year 1999 as a security for a hand loan of Rs 50,000 which had been paid back, but instead of returning the cheque, the same had been misused by entering a huge amount, which he did not owe to the appellant — Magistrate dismissed the said application, a revision application filed thereagainst had also been dismissed by the High Court — Held, regardless of the presumption that can be raised under S. 118(a) or S. 139 of the NI Act, opportunity of rebuttal must be granted to the accused for adducing evidence — Law places the burden on the accused, he must be given an opportunity to discharge it — Negotiable Instruments Act, 1881, Ss. 118(a), 138 and 139* (Para 7). *T. Nagappa* v. *Y.R. Muralidhar*, (2008) 5 SCC 633: (2008) 2 SCC (Cri) 677: AIR 2008 SC 2010: (2008) 3 KLT 158.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 24-4-2008]

[2957] — S. 243(2) — Sending of document for expert opinion — Cheque bouncing and proceedings initiated under S. 138 of NI Act, 1881 — Accused (appellant) denying execution of disputed documents (exhibits) — Whether court obliged to permit accused to take all defences to establish a document as not genuine — *Appellant praying for sending exhibits for examination by handwriting expert — Trial court rejecting appellant's plea in view of possibility of variance because of time gap between execution of two signatures — Sustainability — Held, right of accused to lead evidence in his defence is not absolute —*

Such right has to be used only for furthering the cause of justice but not subverting it — Accused cannot take recourse to such right for purpose of delaying proceedings — On facts, accused filing successive applications for the same purpose — Held, it shows intention of accused to delay disposal of the matter — However, in view of peculiar facts and circumstances of the case, opportunity to examine expert at own cost of appellant granted — Evidence Act, 1872, Ss. 73 and 45 (Paras 11, 12, 14 and 15). *G. Someshwar Rao* v. *Samineni Nageshwar Rao*, (2009) 14 SCC 677.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 29-7-2009]

[2958] — S. 243(2) — Power of Magistrate under — Scope of — Sending of document for expert opinion — Dishonoured cheque an offence under S. 138, NI Act — *Prayer by accused to send that cheque for opinion of handwriting expert to ascertain genuineness of signature on it — Rejection of — Propriety of — Held, was improper — Magistrate should have granted such a request unless he considered that the object of the accused was vexation or delaying the criminal proceedings — Accused was entitled to rebut the case of complainant — Cheque on which complainant relied upon for initiating criminal proceedings against the accused furnished good material for rebutting that case — By declining to send the said document for examination and opinion of handwriting expert, the Magistrate deprived the accused of an opportunity of rebutting it — Accused could not be convicted without an opportunity being given to her to present her evidence — Denial of the said opportunity would lead to an unfair trial — Evidence Act, 1872, S. 45*

The present appeal involved a question with regard to the scope of the powers of the Magistrate under Section 243 CrPC.

A complaint was filed against the appellant and her husband for the offence under Section 138 of the Negotiable Instruments Act, 1881. In the complaint it was alleged that the appellant along with her husband jointly signed and issued a cheque for discharging their liability, but the said cheque got dishonoured due to "insufficient funds" in the account. The accused appeared before the Magistrate and filed an application under Section 245 CrPC raising *inter alia* preliminary objections that: (*1*) the accused had not signed the cheque nor issued it to the complainant, (*2*) the cheque in question was drawn from the individual account of the accused and therefore, as alleged by the complainant, the appellant and her husband could not have jointly signed and issued the cheque; (*3*) the signature on the cheque may be sent for expert opinion to ascertain *bona fides* of the same; and (*4*) neither the appellant nor her husband owe any debt to the complainant.

The Magistrate dismissed the said application on the ground that the genuineness of the signature could be questioned only at the time of trial of the complaint. During the trial, the appellant preferred an application under Section 243 CrPC, requesting the Magistrate to send the cheque in question for expert opinion to ascertain the correctness and genuineness of the appellant's signature appearing thereon. The Magistrate dismissed the said application on the ground that it was not mandatory that every disputed document or signature must be sent to an expert for opinion, that the original document filed in the court cannot be sent out for any reason and that every document filed before the court should be safe till the disposal of the litigation. The challenge made to the said order was rejected by the High Court. Hence, the present appeal.

Allowing the appeal,

Held :

Section 243(2) CrPC is clear that a Magistrate holding an inquiry under CrPC in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach to his own conclusion with the assistance of the expert. (Para 12)

The appellant in this case requested for sending the cheque in question for the opinion of the handwriting expert after the respondent had closed her evidence. The Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right and denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them. The view of the High Court that the petitioner has filed application under Section 243 CrPC without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination, could not be appreciated. (Para 12). *Kalyani Baskar* v. *M.S. Sampoornam*, (2007) 2 SCC 258: (2007) 1 SCC (Cri) 577: (2007) 135 Comp Cas 197: (2007) 50 AIC 381 (SC).

Bench Strength **2**. Coram: *G.P. Mathur* and **L.S. Panta**, JJ. [Date of decision: 11-12-2006]

***Followed** in T. Nagappa v. Y.R. Muralidhar, (2008) 5 SCC 633*

— **S. 244** *See also* S. 252, Criminal Procedure Code, 1898, pp. 1119 et seq. in Vol. 2

— **S. 244** *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193, 238 to 250

See also Ss. 231, 234, 242, 244 and 293

See also Ss. 231, 242, 243, 244 and 247

See also Ss. 231, 242 and 244

See also Ss. 231, 242, 244, 309 and 437 & 439

See also Ss. 239 to 249 and 401 & 300

See also Ss. 242 and 244

See also Ss. 246(6) and 244

See also Ss. 327, 231, 233, 242 to 244, 247, 273 and 283

See also Ss. 391 and 231, 242, 244, 233, 243 & 247

See also Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247

See also Ss. 482, 225 to 247

See also Ss. 482 and 244 & 245

[2959] — Ss. 244 to 247 — Nature of safeguard provided in procedure under — *CrPC, 1898, Ss. 252 to 258*

When cognizance is taken on a private complaint, that is, otherwise than on a police report, the Special Judge has to try the case according to the procedure prescribed for trial of warrant cases instituted otherwise than on police report by a Magistrate. The procedure in this regard under Ss. 252 to 258, CrPC provides more adequate safeguard than the investigation by police officer of designated rank and therefore, search for fresh or additional safeguard is irrelevant. *A.R. Antulay* v. *Ramdas Sriniwas Nayak*, (1984) 2 SCC 500: 1984 SCC (Cri) 277: AIR 1984 SC 718: 1984 Cri LJ 647: 1984 Bom LR 228.

Bench Strength **5**. Coram: **D.A. Desai**, *R.S. Pathak*, *O. Chinnappa Reddy*, *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

— **S. 245** *See also* S. 253, Criminal Procedure Code, 1898, p. 1120 in Vol. 2

— **S. 245** *See* Ss. 11(1) proviso, 4(1) & (2), 3(4)(a), 26 and 245

See also Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193, 238 to 250

See also Ss. 197, 220, 221, 227, 239 and 245

See also Ss. 197 and 245

See also Ss. 200, 203, 204 and 245

See also Ss. 202 and 245

See also Ss. 227, 228, 239, 240 and 245

See also Ss. 227 and 239, above,

See also Ss. 227, 239 & 245 and 228 & 240

See also Ss. 227, 239, 245 and 482

See also Ss. 227 and 245

See also Ss. 239, 227, 245 and 482

See also Ss. 239, 240, 227 and 245

See also Ss. 239 to 249 and 401 & 300

See also Ss. 244 to 247

See also Ss. 319, 245 and 398

See also Ss. 482, 190, 203, 211, 227, 239 and 245

See also Ss. 482 and 202, 203 & 245

See also Ss. 482, 203, 227 and 245

See also Ss. 482, 225 to 247

See also Ss. 482 and 227, 239 & 245

See also Ss. 482 and 239, 240, 245

See also Ss. 482 and 244 & 245

See also Ss. 482, 245, 397 and 399

[2960] — Ss. 245, 227 and 239 — Compared with Ss. 227 and 239

Per Ranganath Misra, J. (Bhagwati, C.J., concurring)

Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under S. 245, on the other hand, is reached only after the evidence referred to in S. 244 has been taken. *R.S. Nayak* v. *A.R. Antulay*, (1986) 2 SCC 716: 1986 SCC (Cri) 256: AIR 1986 SC 2045: 1986 Cri LJ 1922.

Bench Strength 2. Coram: **P.N. Bhagwati, C.J.**[1] and *Ranganath Misra*[2], J. [Date of decision: 17-4-1986]

[2961] — Ss. 245, 258 and 300(1) & (5) — Summons case — Stopping of proceedings and its subsequent reopening — Reasons for — Necessary requirement of — Effect of the order passed under S. 258 whether is either acquittal or discharge — *Held, reasons have to be assigned for reopening the case against accused — Further held, since appellant was not arrested in the present case, she cannot claim the benefit of discharge as no release order was passed — As such proceedings could be revived — But revival by an unreasoned order was bad — Hence matter remitted for fresh consideration — Constitution of India — Art. 20(2) — Penal Code, 1860, Ss. 447, 341, 323 and 427*

A first information report was lodged for commission of offences punishable under Sections 447, 341, 323 and 427 IPC. On filing of the charge-sheet cognizance of offences was taken in 2002. Processes were issued against the appellant-accused. The same having not been served, non-bailable warrant was issued. In 2004 the Magistrate, in view of non-service of non-bailable warrant passed an order under Section 258 CrPC that further proceedings against the appellant be stopped.

In 2006, a requisition was filed praying for issuance of non-bailable warrant of arrest to the accused upon reopening the case. On the basis of the said purported requisition, the case was reopened and a non-bailable warrant of arrest was issued against the appellant.

The appellant filed an application under Section 482 CrPC before the High Court which was dismissed.

Disposing of the appeal,

Held :

An order of discharge can be passed in terms of Section 245 CrPC. For passing an order under the aforesaid provision, reasons are required to be recorded. It was obligatory on the part of the Magistrate to apply his mind with regard thereto. (Para 14)

In this case, no order for release of the accused was passed. No order of releasing the accused was necessary to be passed as the appellant was not before the court. She had not even been arrested. Non-bailable warrant of arrest issued against her had not been executed. The benefit of effect of discharge could have been claimed by the appellant had she been directed to be released, the effect of discharge being correlated with release. If she had not been released, the question of her obtaining the benefit of the effect of discharge does not arise. (Paras 13 and 14)

Although the High Court was correct that the Magistrate in a situation of this nature could revive the proceedings, but, the Magistrate committed an error in not recording the reasons therefor. The Magistrate is directed to pass an appropriate order upon consideration of the requisition filed by the police authorities afresh. (Paras 14 and 15). *Renuka* v. *State of Karnataka*, (2009) 14 SCC 345: (2009) 76 AIC 147 (SC): 2009 Cri LJ 2245.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 18-2-2009]

Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288: 1987 SCC (Cri) 82, relied on

[2962] — Ss. 245, 227, 397 and 482 — Discharge — Private complaint — *Discharge of 3 out of 4 accused persons perusing same evidence against all of them — Propriety of — Trial court discharging all the accused persons (Respondents 1-4) against whom a complaint under Ss. 506/452/323/34 r/w S. 120-B IPC was filed by the petitioner's husband — Sessions Court dismissing petitioner's revision petition against Respondents 1-3, but allowing it only as against Respondent 4 — High Court upholding order passed by the courts below — Under the circumstances, when there was no justification to proceed against Respondents 1-3, held, courts below were justified in discharging them — Matter, held, was not liable to be interfered with under Art. 136 — Constitution of India — Art. 136 — Penal Code, 1860, Ss. 506/452/323/34 r/w S. 120-B*

The learned Additional Sessions Judge has considered both oral and documentary evidence. It is no doubt true that referring to the statements of the complainant and his wife, the learned Additional Sessions Judge has said that their evidence is positive. But, on scrutiny and after examination of evidence, both oral and documentary, he did not find any justification to proceed with the criminal case against Respondents 1-3. On perusal of the impugned order, it appears that the complainant was bearing some ill will against one of the respondents. It has also been pointed out that the names of Respondents 1-3 have not been anywhere mentioned by the complainant. Further, neither the medical examination has been got done nor the photographs of the alleged breaking of the door have been placed on the record. Under the circumstances, Additional Sessions Judge rightly dismissed the revision petition against Respondents 1-3 after considering both oral and documentary evidence. (Para 4). *Surjit Kaur v. D.S. Kapoor*, (2001) 9 SCC 468.

Bench Strength 2. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 28-9-2001]

[2963] — Ss. 245, 239 and 227 — Discharge — On facts not justified — *Former Chief Minister, Minister and certain officers of State Government and of State Electricity Board arraigned under Ss. 120-B and 409 IPC and S. 13(2), Prevention of Corruption Act for entering into a conspiracy to import coal for State Electricity Board for securing huge pecuniary gains for themselves and thereby causing loss of 6.5 crore rupees to the State exchequer — Tenders invited from foreign suppliers but after opening, the standards of the requisite coal relaxed and prices permitted to be enhanced — Government Secretary raising strong objections against the proposal to import coal at so high prices but the Chief Minister granting approval to the proposal — Trial court discharging the Chief Minister and the Minister on the ground that they could not notice the Secretary's objections as the pages containing the said objections had been mysteriously removed from the file before, and were restored therein after the Minister's and Chief Minister's approval — However, against the remaining accused persons, the trial court framing the charge of criminal conspiracy to misappropriate government funds — High Court upholding the decision — Meanwhile the accused Minister dying — However, Supreme Court finding that a GO required the State undertakings to refer to the Chief Minister for scrutiny and prior approval of tenders involving more than one crore rupees — Moreover, material in the said file showing that the Chief Minister was persuaded by the then Union Minister for Coal as well as by the Prime Minister not to import coal as the stock position was comfortable and even further supply was available locally — Documents in the file further showing that on the insistence of the Chief Minister, the Central Government permitted the import subject to the condition that the import would be routed through the Central Government but the Chief Minister did not follow that condition — Moreover, the said file found to contain letters from State Government Secretary and Secretary Ministry of Coal addressed to State Electricity Board, warning against import of poor quality coal — The file contained recommendations from Joint Secretary and Secretary to State Government for rejecting the tenders — In the presence of such materials in the file, and in view of the charge of criminal conspiracy framed by the trial court against the other accused persons, discharge of the Chief Minister at this premature stage, held, was improper — Until a satisfactory explanation was given, held, the Court could presume that the Chief Minister knew the resulting loss to the State and that reasonable grounds existed to believe that the Chief Minister was involved in the conspiracy as per S. 10, Evidence Act — However, such presumptions were rebuttable — Evidence Act, 1872, Ss. 10 and 114 — Penal Code, 1860, Ss. 120-B and 409 — Prevention of Corruption Act, 1988, S. 13(2)* (Paras 28 to 35). *State of T.N.* v. *J. Jayalalitha*, (2000) 5 SCC 440: 2000 SCC (Cri) 981: AIR 2000 SC 1589.

Bench Strength 2. Coram: **K.T. Thomas** and *R.C. Lahoti*, JJ. [Date of decision: 9-5-2000]

[2964] — Ss. 245, 397, 399 and 482 — Prosecution under S. 276-B, Income Tax Act, 1961 for failure to credit TDS amount in time — AY 1989-1990 — Oldness of the case — If a ground for relief — Complaint filed more than 15 long years ago — *Delay in trial attributable to accused assessee and not to failure, negligence or inaction on the part of the prosecuting agency — In such circumstances, plea for dropping the criminal trial on the ground of delay, rejected — IT Act, 1961, Ss. 276-B and 194-C*

It is true that the matter related to remote past. Alleged non-payment of TDS pertained to 1989-1990. The complaint was filed in the beginning of 1992 and more than fifteen years have passed. But, it cannot be ignored that prosecution could not be over because applications were made by the appellants for their discharge under Section 245 CrPC initially in the trial court, then in the Sessions Court and then in the High Court. Even after dismissal of the petition by the High Court, the appellants approached the Supreme Court and obtained interim stay of further proceedings. It was because of the pendency of proceedings and grant of interim relief that the case remained pending. It, therefore, cannot be urged that there was failure, negligence or inaction on the part of the prosecuting agency in not proceeding with the matter. The ground of delay, therefore cannot help the appellants. (Para 52). *Madhumilan Syntex Ltd.* v. *Union of India*, (2007) 11 SCC 297: (2008) 1 SCC (Cri) 143: AIR 2007 SC 1481: (2007) 210 ELT 484: (2007) 290 ITR 199.

Bench Strength 2. Coram: **C.K. Thakker** and *P.K. Balasubramanyan*, JJ. [Date of decision: 23-3-2007]

[2965] — Ss. 245 and 473 — Discharge — Application filed by accused under S. 245 for being discharged on ground that cognisance of offence could not be taken under S. 13(3) of Official Secrets Act as complaint regarding offence under S. 5(4) r/w Ss. 5(2) and (3) of the Act was barred by limitation — *Held, mere expiry of limitation period would not entitle the accused to be discharged as complainant has right to seek extension of time under S. 473 by explaining the cause of delay — On facts, held, delay properly explained*

The mere fact that the complaint was filed 25 days after the expiry of the period of limitation, did not entitle the accused to seek his discharge under Section 245 CrPC because the complainant has, under law, a right to seek for extension of time under Section 473 CrPC. The complainant could satisfy the Magistrate on the facts and circumstances of the case that the delay was explainable which was occasioned on account of their bona fide belief to obtain the sanction for the purpose of filing the complaint. After noticing the averments made in the complaint and perusing the record particularly the order of the Government of India dated 21-4-1988, authorising the Deputy Superintendent of Police, Central Bureau of Investigation, New Delhi to lodge the complaint, it can be safely held that the complainant was entitled to extension of period of limitation under Section 473 CrPC. No useful purpose would be served by again directing the complainant to approach the trial Magistrate for the purposes of seeking extension of the period of limitation. The complainant is held to have explained the delay in filing the complaint which required extension. The complaint is, therefore, held to be within time and the petitioner is not entitled to be discharged on this ground. (Para 10). *Rakesh Kumar Jain* v. *State*, (2000) 7 SCC 656: 2001 SCC (Cri) 208: AIR 2000 SC 2754: 2000 Cri LJ 3973.

Bench Strength 2. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 8-8-2000]

Electrical Mfg. Co. Ltd. v. D.D. Bhargava, AIR 1968 SC 247: 1968 Cri LJ 236: (1968) 1 SCR 394, relied on

(1998) 75 Delhi LJ 741, reversed

— S. 245(1) *See* Ss. 228 & 227 and 239 & 240 and 245(1) & (2)

See also Ss. 482 & 399(3) and 245(1) & 246(1)

[2966] — S. 245(1) — Whether charges to be framed or not has to be considered only after taking all prosecution evidence — *But non-observance of this procedure, on facts held, not fatal*

Per Ranganath Misra, J. (Bhagwati, C.J., concurring)

The use of the words "if, upon taking of the evidence referred to in S. 244" in S. 245(1) is suggestive of the statutory intention that until "all such evidence as may be produced in support of the prosecution" is taken, the stage for judicial consideration as to whether charge is to be framed is not reached. Although in the present case several prosecution witnesses remained to be examined when the trial court framed the charges, but since the prosecution instead of objecting to the premature framing of charges had itself invited the court to take up the matter of framing charges, no complaint could be made by the prosecution in that regard. *R.S. Nayak* v. *A.R. Antulay*, (1986) 2 SCC 716: 1986 SCC (Cri) 256: AIR 1986 SC 2045: 1986 Cri LJ 1922.

Bench Strength 2. Coram: **P.N. Bhagwati, C.J.**[1] and *Ranganath Misra*[2], J. [Date of decision: 17-4-1986]

[2967] — Ss. 245(1), 245(2) and 244(1) — Discharge of accused in a warrant case instituted otherwise than on police report — Discharge under S. 245(1) on ground that no case had been made out against accused and discharge under S. 245(2) on ground that charge is groundless — Significance of expression "(discharge) at any previous stage of the case" occurring in S. 245(2) — *Held, "previous stage" under S. 245(2) is before prosecution evidence under S. 244(1) is completed, or at any stage prior to that, namely, the stages prescribed in Ss. 200 to 204 CrPC — Magistrate can therefore discharge accused after recording reasons, even at stage when accused appears in response to summons or warrant but no prosecution evidence has been led — Application for discharge is therefore maintainable at that stage*

On the issue whether the court can discharge an accused before examining prosecution evidence under Section 244(1),

Held :

There is difference in Sections 245(1) and 245(2) CrPC. Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244 and he has to consider whether, the conviction of the accused would be warranted if the evidence remains unrebutted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1) CrPC. The situation under Section 245(2) CrPC is, however, different. There, the Magistrate has the power of discharging the accused at any previous stage of the case i.e. even before such evidence is led. However, for discharging an accused under Section 245(2) CrPC, the Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage, because there is none. The Magistrate can take this decision before the accused appears or is brought before the court or the evidence is led under Section 244 CrPC. The previous stage would be before the evidence of the prosecution under Section 244(1) CrPC is completed or any stage prior to that. Previous stage could be from Sections 200 to 204 CrPC and till the completion of the evidence of prosecution under Section 244 CrPC. Thus, the Magistrate can discharge the accused even when the accused appears, in pursuance of the summons or a warrant and even before the evidence is led under Section 244 CrPC, and makes an application for discharge. (Paras 24 to 26, 29 and 31)

The Magistrate has the power to discharge the accused under Section 245(2) CrPC at any previous stage i.e. before the evidence is recorded under Section 244(1) CrPC. An accused can thus make an application for discharge at that stage. (Paras 35 to 37). *Ajoy Kumar Ghose* v. *State of Jharkhand*, (2009) 14 SCC 115: AIR 2009 SC 2282: 2009 Cri LJ 2824.

Bench Strength 2. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 18-3-2009]

Cricket Assn. of Bengal v. State of W.B., (1971) 3 SCC 239: 1971 SCC (Cri) 446, relied on

Luis de Piedade Lobo v. Mahadev Vishwanath Parulekar, 1984 Cri LJ 513 (Bom); Manmohan Malhotra v. P.M. Abdul Salam, 1994 Cri LJ 1555 (Ker); Mohd. Sheriff Sahib v. Abdul Karim Sahib, AIR 1928 Mad 129 (1); Gopal Chauhan v. Satya, 1979 Cri LJ 446 (HP), approved

[2968] — Ss. 245(1), 227, 239 and 246 — Whether accused should be discharged or not — Test to be applied by trial court and appellate court — *Held, on facts, prima facie case made out against accused-respondent and trial court erred in refusing to frame charges in respect of some of the alleged offences and discharging him in respect thereof — S. 245 compared with Ss. 227 and 239 — Constitution of India — Article 136*

The respondent at the material time was the Chief Minister of Maharashtra. The appellant lodged a complaint against the respondent and others alleging commission of offences under Ss. 161, 165, 384 and 420 r/w 120-B, IPC as also Ss. 5(2) r/w 5(1)*(d)* of the Prevention of Corruption Act. It was alleged that during the respondent's tenure as Chief Minister, he created seven trusts, one of them being the Indira Gandhi Pratibha Pratishthan shown to be a Government trust, and that he extended favours to those who made donations to the said trusts. The complaint was registered as a special case and transferred to the High Court of Bombay for trial under an order of the Supreme Court. A Single Judge of the High Court commenced the trial. As many as 43 draft charges were placed before the trial court on the basis of the evidence of 57 prosecution witnesses and a large volume of documents. The trial court framed 21 charges against the respondent and discharged him in respect of the remaining 22 charges relating to cheating, extortion and conspiracy. The appellant thereupon filed the present appeal by special leave against the order of the Single Judge of the High Court refusing to frame charges on 22 heads of charges.

The stage at which the magistrate is required to consider the question of framing of charge under S. 245(1) is a preliminary one and for the purposes of all the aforesaid three sections the test to be applied by the trial court should be that of its prima facie satisfaction regarding making out a case against the accused. The trial court has to sift and weigh the evidence for this limited purpose only. If it is satisfied that the prosecution evidence in support of the charges is such that a prima facie case is made out against the accused which unless rebutted, would make the accused liable to conviction, then the charges have to be framed under S. 246.

In order to decide whether the order of discharge should be sustained or set aside. Supreme Court will also have to consider whether on the material on record, a prima facie case had been made out on behalf of the prosecution.

Even if the accused makes a statement in appeal before Supreme Court about his willingness to face trial on those charges also in respect of which trial court had made a discharge order, Supreme Court in exercise of its appellate jurisdiction under Art. 136 would direct the trial Judge to frame charges only after vacating the trial court's order of discharge and setting aside its reasons therefor. Such direction would be on the footing that prosecution evidence in support of the charges was such that unless rebutted the accused would be liable to be convicted.

In the present case the trial court had prima facie taken a wrong view and it was a fit case where the charges in respect of which the trial court had made a discharge order should have also been framed. The trial court extracted at great length both the oral evidence as also the contents of documents but there was not much of analysis to justify rejection of the material. It adopted two different standards in the matter of weighing the same evidence, when it agreed to frame 21 charges which were interlinked and interconnected with the rest of the prosecution story with reference to which the 22 draft charges had been given. *R.S. Nayak* v. *A.R. Antulay*, (1986) 2 SCC 716: 1986 SCC (Cri) 256: AIR 1986 SC 2045: 1986 Cri LJ 1922.

Bench Strength 2. Coram: **P.N. Bhagwati, C.J.**[1] and *Ranganath Misra*[2], J. [Date of decision: 17-4-1986]

[2969] — Ss. 245(1) & (2), 227, 239, 228, 240, 231 and 242 — Framing of charges — Appreciation of evidence — Scope for — *Held, charges can be framed where two views are possible — But where only one view is possible, accused should not be put to trial considering his right to fair inquiry and trial under Art. 21 of Constitution* (Para 54). *State of M.P.* v. *Sheetla Sahai*, (2009) 8 SCC 617: (2009) 3 SCC (Cri) 901.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 4-8-2009]

State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659: 1996 SCC (Cri) 820, relied on

[2970] — Ss. 245(1) and 246 — Whether charges should be framed against named and unnamed Government officers alleged to be involved as co-conspirators — *Facts that a long period elapsed and meanwhile some of the officers already retired from service, relevant for determining the question. R.S. Nayak* v. *A.R. Antulay*, (1986) 2 SCC 716: 1986 SCC (Cri) 256: AIR 1986 SC 2045: 1986 Cri LJ 1922.

Bench Strength 2. Coram: **P.N. Bhagwati, C.J.**[1] and *Ranganath Misra*[2], J. [Date of decision: 17-4-1986]

[2971] — S. 245(1) — Presumption under S. 4, PC Act, 1947 to be taken into account both when court considers whether charge should be framed or not as well as after charge is framed — *Prevention of Corruption Act, 1947, S. 4*

Per Bhagwati, C.J. (Ranganath Misra, J. concurring)

When the court is called upon to consider whether a charge should be framed or not the question to which the court has to address itself under S. 245(1), CrPC is whether the evidence led on behalf of the prosecution is such that if unrebutted it would justify the conviction of the accused and the court has, therefore, to examine the evidence as it stands without rebuttal and come to a conclusion whether on the basis of such evidence the court would convict the accused and where the offence charged against the accused is under S. 161 or S. 165, IPC or clause (*a*) or (*b*) of S. 5(1), PC Act the court must necessarily apply the presumption under S. 4, PC Act while considering whether on the basis of the unrebutted evidence which is before it the court would convict the accused. *R.S. Nayak* v. *A.R. Antulay*, (1986) 2 SCC 716: 1986 SCC (Cri) 256: AIR 1986 SC 2045: 1986 Cri LJ 1922.

Bench Strength 2. Coram: **P.N. Bhagwati, C.J.**[1] and *Ranganath Misra*[2], J. [Date of decision: 17-4-1986]

[2972] — S. 245(1) — Offence under Ss. 380, 465, 467, 468 and 471 IPC alleged — *On facts held, trial court was justified in concluding that evidence adduced was insufficient to make out a prima facie case against appellant and on that basis discharging the appellant under S. 245(1) CrPC — High Court was not justified in setting aside the order of discharge. Tomy Jacob Kattikkaran* v. *Dr. Thomas Manjaly*, (1997) 11 SCC 24: 1997 SCC (Cri) 1184: AIR 1998 SC 366.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S. Saghir Ahmad*, JJ. [Date of decision: 8-8-1997]

— S. 245(2) *See* Ss. 228 & 227 and 239 & 240 and 245(1) & (2)

See also Ss. 482 and 245(2)

[2973] — S. 245(2) — Dishonour of cheque — Offence by partnership firm — Vicarious liability of partners — Burden of proof — Requisite averments in complaint — Absence of — Discharge — Legality of — *Held, S. 141, Negotiable Instruments Act, 1881 does not make all partners liable — Liability is fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible to the firm for the conduct of its business — Primary responsibility is on complainant to make necessary averments in complaint and establish the fact that when the offence was committed the accused were in charge of and responsible to the firm for the conduct of its business — Obligation of accused to prove to the contrary arises thereafter only — There is no presumption that every partner knows about the transaction — On facts, except stating in the title of the complaint that appellant sisters were partners in firm, no averments against them made in the complaint — Partnership deed not filed with complaint or made part thereof but filed later — Held, partnership deed filed later is of no consequence for deciding the issue and hence in the absence of requisite averments, the order of Magistrate discharging the appellants was proper — Hence, restored — Negotiable Instruments Act, 1881, Ss. 138 and 141 — Evidence Act, 1872, Ss. 101 and 103* (Paras 6 to 8). *Monaben Ketanbhai Shah* v. *State of Gujarat*, (2004) 7 SCC 15: 2004 SCC (Cri) 1857: AIR 2004 SC 4274: (2004) 3 KLT 428.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *D.M. Dharmadhikari*, JJ. [Date of decision: 10-8-2004]

K.P.G. Nair v. Jindal Menthol India Ltd., (2001) 10 SCC 218: 2002 SCC (Cri) 1038; Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd., (2002) 7 SCC 655: 2003 SCC (Cri) 151, relied on

[**Ed.:** *See also* (1981) 2 SCC 335: 1981 SCC (Cri) 453: (1998) 5 SCC 343: 1998 SCC (Cri) 1315: (2000) 1 SCC 1: 2001 SCC (Cri) 174]

[2974] — S. 245(2) — Offence by company, under S. 276-B of IT Act — Maintainability of prosecution against company and nature of sentence to be imposed on the company and the individuals liable for the offence — *Such prosecution, held, maintainable — However, the company (in this case, a firm) would be punished only with fine, while the mandatory sentence of imprisonment and fine would be imposed on the individuals — Harmonious construction applied and Law Commission's 47th Report also taken into consideration for the purpose of interpretation of S. 276-B — Income Tax Act, 1961, Ss. 276-B, 278-B and 279(1)— Law Commission Report — 47th Report, paras 8.1 and 8.3*

The appellant, an Assistant CIT, filed a complaint in the Special Court for Economic Offences alleging the commission of an offence under Section 276-B read with Section 278-B of the IT Act by the respondent-firm and its three partners. The Special Court discharged all the accused persons, under Section 245(2), CrPC on the ground of denial of hearing to them by the sanctioning authority before granting sanction for prosecution under Section 279(1) of the IT Act. Without examining the ground stated by the Special Court, the High Court upheld the order of acquittal on a different ground, viz., that the prosecution of the respondent-firm under Section 276-B was not maintainable as even if found to be guilty the respondent-firm could not be awarded the mandatory substantive sentence. Allowing the appeal,

Held :

From a plain reading of Section 276-B of the IT Act, it is manifest that if an offence under the Act is committed by a company the persons who are liable to be proceeded against and punished are: (*i*) the company, (which includes a firm); (*ii*) every person, who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business; and (*iii*) any director (who in relation to a firm means a partner), manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom, the offence has been committed. The words "as well as the company" appearing in the section also make it unmistakably clear that the company alone can be prosecuted and punished even if the persons mentioned in categories (*ii*) and (*iii*), who are for all intents and purposes vicariously liable for the offence, are not arraigned, for it is the company which is primarily guilty of the offence.

Even though in view of Section 278-B, a company can be prosecuted and punished for an offence committed under Section 276-B (besides other offences under the Act), the sentence of imprisonment which has got to be imposed thereunder cannot be imposed, it being a juristic person. This apparent anomalous situation can be resolved only by a proper interpretation of the section. Keeping in view the recommendations contained in paras 8.1 and 8.3 of 47th Report of Law Commission of India and principles of interpretation, the only harmonious construction that can be given to Section 276-B is that the mandatory sentence of imprisonment and fine is to be imposed where it can be imposed, namely on persons coming under categories (*ii*) and (*iii*) above, but where it cannot be imposed, namely on a company, fine will be the only punishment. Two other alternative interpretations could also be given: (*i*) that a company cannot be prosecuted (as held in the impugned judgment); or (*ii*) that a company may be prosecuted and convicted but not punished, but these interpretations will be dehors Section 278-B or wholly inconsistent with its plain language.

Therefore, it is not possible to sustain the impugned order of the High Court so far as it held that the prosecution of the respondent-firm was legally impermissible. Equally unsustainable is the order of the High Court dismissing the revision petition qua the other respondents in absence of any finding to indicate that it agreed with the reasoning of the trial court for their discharge. *M.V. Javali* v. *Mahajan Borewell & Co.*, (1997) 8 SCC 72: 1997 SCC (Cri) 1239: AIR 1997 SC 3964.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *M. Jagannadha Rao*, JJ. [Date of decision: 26-9-1997]

[2975] — S. 245(3) (as inserted by W.B. Act 24 of 1988) — Discharge of accused on ground of complainant's failure to adduce evidence within the period of 4 years — *Complaint under Ss. 494/109 IPC by the wife against her husband and others — Delay caused by dilatory tactics adopted by the accused in raking up a vexatious enquiry under S. 340 CrPC — Evidence of complainant already recorded, which could be treated as evidence within the meaning of S. 245(3), though she was not subjected to cross-examination — Held, in the circumstances of the case, the accused cannot take advantage of their own wrong — It would not be in the interest of justice to discharge the accused — Matter restored on file of Magistrate — Directed to undertake the trial and conclude it expeditiously. Swarnalata Sarkar (Smt)* v. *State of W.B.*, (1996) 4 SCC 733: 1996 SCC (Cri) 855: AIR 1996 SC 2158.

Bench Strength **2**. Coram: **M.M. Punchhi** and *K.T. Thomas*, JJ. [Date of decision: 1-5-1996]

[2976] — S. 245(3) (as inserted by W.B. Amendment Act 24 of 1988) — Nature & scope — Discharge of accused in warrant case — Discharge not automatic on prosecution's failure to adduce all evidence within the prescribed period of four years — *Magistrate, on being satisfied on the basis of evidence that discharge would not be in the interest of justice, can reject the application for discharge — Deposition of complainant already recorded, even in absence of cross-examination, can be treated as evidence for the purposes of sub-section (3) — Nature of offence relevant factor which can be taken into account by Magistrate — Private complaint filed in 1977 by respondent alleging inhuman torture by appellant police officials — High Court in 1980 directing that the matter be tried as warrant case — Since then case not proceeding beyond examination-in-chief of the complainant due to various proceedings taken by the accused in superior courts — Application filed by accused under sub-section (3) soon after its insertion by the Amending Act in 1988 — Magistrate as well as High Court on consideration of relevant evidence and circumstances satisfied that discharge would not be in the interest of justice — Held, no interference under Art. 136 called for*

Section 245, which occurs in Chapter XIX-B relating to procedure for trial of warrant cases, recognises and incorporates the principle of speedy trial implicit in Art. 21 of the Constitution. The section applies only to private complaints.

The evidence of complainant already recorded is 'evidence' within the meaning of S. 245(3) of the Act, though the complainant has not yet been subjected to cross-examination. The nature of offence alleged is relevant and should be taken into consideration.

Discharge of the accused under sub-section (3) is not automatic once it is found that the prosecution has failed to adduce all the evidence referred to in S. 244 within four years of the appearance of the accused. If the Magistrate is satisfied that it will not be in the interest of justice to do so, he will not discharge the accused. But the said satisfaction has to be formed on the basis of evidence already recorded and for special reasons which, of course, he may have to record in his order. In this case, both the Magistrate and the High Court have referred to the nature of the crime, the several attempts made by the accused to protract the trial by various means and all other relevant circumstances in support of their satisfaction that discharging the accused would not be in the interest of the justice. On the basis of the facts relating to the progress of the case over the last several years, it is clear that the Magistrate has exercised his discretion and judgment properly in dismissing the application filed by the accused under S. 245(3). The High Court sitting in revision did not find any error in the approach and conclusion arrived at by the Magistrate. Therefore, no interference is called for in the matter by the Supreme Court under Art. 136 of the Constitution. *Santosh De* v. *Archna Guha*, (1994) 2 SCC 420: 1994 SCC (Cri) 546: (1994) 1 Crimes 548: (1994) 31 ACC 250.

Bench Strength 2. Coram: **B.P. Jeevan Reddy** and *B.L. Hansaria*, JJ. [Date of decision: 3-2-1994]

— S. 246 *See also* Ss. 254, 255 and 256, Criminal Procedure Code, 1898, pp. 1120 et seq. in Vol. 2

— S. 246 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193, 238 to 250

See also Ss. 231, 242, 243, 246 and 326

See also Ss. 239 to 249 and 401 & 300

See also Ss. 244 to 247

See also Ss. 245(1), 227, 239 and 246

See also Ss. 245(1) and 246

See also Ss. 482, 190, 228, 240 & 246

See also Ss. 482, 225 to 247

— S. 246(1) *See* Ss. 240(1), 246(1) and 211

See also Ss. 482 & 399(3) and 245(1) & 246(1)

[2977] — Ss. 246(1) and 401 — Magistrate's order framing charges under S. 254 CrPC, 1898 when not open to interference by High Court in exercise of its revisional jurisdiction under S. 439 — *CrPC, 1898, Ss. 254, 438 and 439*

The Magistrate on consideration of evidence formed an opinion that there was ground for presuming that the accused had committed an offence triable by him and accordingly framed a charge under S. 254, CrPC, 1898 against him in each of four matters. Four revisional applications filed under S. 435 of the Code by the accused against the Magistrate's order framing the charges were rejected by the Sessions Judge. However, in one of the revisional applications the Sessions Judge formed the opinion that the Magistrate's order was not legal and proper and made a report to the High Court under S. 438. The High Court in an elaborate judgment allowed the applications, accepted the opinion of the Sessions Judge and quashed the charge framed against the accused.

Allowing the State's special leave appeals Supreme Court,

Held :

Since the Magistrate had formed the opinion that there were grounds to presume that the accused had committed the offence and since it cannot be said that the prosecution was false, frivolous or vexatious or one which was by way of abuse of the process of law, the High Court should not have quashed the charge in exercise of the revisional and reference powers. *State of U.P.* v. *Man Mohan*, (1986) 2 SCC 587: 1986 SCC (Cri) 214: AIR 1986 SC 1652: 1986 Cri LJ 1245.

Bench Strength 2. Coram: **M.P. Thakkar** and *G.L. Oza*, JJ. [Date of decision: 23-4-1986]

Man Mohan v. State of U.P., 1975 Cri LJ 1241 (All), reversed

[2978] — Ss. 246(1), 245(2) and 244 — Rejection of discharge application filed under S. 245(2) — Thereafter, framing of charge straightaway by trial court under S. 246(1) without evidence being taken under S. 244, held, improper — Significance of expression "at any previous stage of the case" occurring in S. 246(1) — *Held, right of cross-examining prosecution witness before framing of charge is a valuable right available to accused — He has to be afforded this opportunity so that he may argue that no charge should be framed against him and he should be discharged — Charge can therefore be framed only after accused has been afforded this opportunity — Further held, import of expression "at any previous stage of the case", in S. 245(2) and S. 246(1), is different*

The Registrar General of Patna High Court filed an official complaint against appellant and some other officials of Indian School of Mines that they produced before the High Court a letter dated 9-6-1992 which was not genuine. The appellant at the relevant time was Director of the School. The allegation against the appellant was that he as a Director was "fully involved and in the know of all material concerned". The Chief Judicial Magistrate took cognizance of the offence. At one stage, the matter reached the Supreme Court in SLP. The Supreme Court dismissed the SLP permitting the petitioners to raise all their contentions before trial court including their plea for discharge. The Supreme Court also directed that petitioners would be released on bail in case they appeared before trial court and applied for bail. The appellant applied for discharge but his application was rejected and the trial court straightway proceeded to frame charge against him. The order of the trial court was upheld by the High Court.

Issue before the Supreme Court was whether trial court, after rejecting appellant's discharge application, could straightway proceed to frame charge against appellant, without first asking the prosecution to lead evidence and allowing appellant to cross-examine prosecution witnesses.

Partly allowing the appeal,

Held :

The language of Section 246 suggests that it is on the basis of evidence offered by the complainant at the stage of Section 244(1) CrPC that the charge is to be framed, if the Magistrate is of the opinion that there is any ground for presuming that the accused has committed an offence triable under Chapter XIX, CrPC (trial of warrant cases by Magistrate). Therefore, ordinarily, when the evidence is offered under Section 244 CrPC by the prosecution, the Magistrate has to consider the same, and if he is convinced, the Magistrate can frame the charge. (Para 39)

The word used in Section 246 CrPC is "evidence", so also, in Section 244 CrPC the word used is "evidence". Therefore, ordinarily, the scheme of Section 246 CrPC is that it is only on the basis of any evidence that the Magistrate has to decide as to whether there is a ground to presume that the accused has committed an offence triable under Chapter XIX CrPC. (Para 40)

While Section 245(2) CrPC speaks about the discharge of the accused on the ground that the charge is groundless, Section 246(1) operates in an entirely different sphere. An order under Section 245(2) CrPC results in discharge of the accused, whereas an order under Section 246 CrPC creates a situation for the accused to face a full-fledged trial. Therefore, the two sections would have to be interpreted in slightly different manner, keeping in mind the different spheres in which they operate. The words "or at any previous stage of the case" appearing in Section 246 CrPC would include Section 245 also, where the accused has not been discharged under Section 245 CrPC while the similar term in Section 246(2) can include the stage even before any evidence is recorded. It cannot, therefore, be held that the words "at any previous stage of the case" as appearing in Section 245 CrPC would have to be given the same meaning when those words appear in Section 246 CrPC. (Para 41)

The right of cross-examination is a very salutary right and the accused would have to be given an opportunity to cross-examine the witnesses, who have been offered at the stage of Section 244(1) CrPC. The accused can show by way of cross-examination that there is no justifiable ground against him for facing the trial and for that purpose the prosecution would have to offer some evidence.

While interpreting Section 246(1), the prejudice likely to be caused to the accused in his losing an opportunity to show to the court that he is not liable to face the trial on account of there being no evidence against him, cannot be ignored. (Para 51)

Opportunity to the accused in the present case to cross-examine witnesses is lost as the trial court has straightaway proceeded to frame the charge. In that view, the order framing the charge has to be quashed. The matter will go back before the trial court where the prosecution may offer the witnesses under Section 244(1) CrPC and opportunity to cross-examine would be offered to the accused. It is only thereafter, that the trial court would proceed to decide as to whether the charge is to be framed or not. (Paras 53 and 55). *Ajoy Kumar Ghose* v. *State of Jharkhand*, (2009) 14 SCC 115: AIR 2009 SC 2282: 2009 Cri LJ 2824.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 18-3-2009]

Sambhaji Nagu Koli v. State of Maharashtra, 1979 Cri LJ 390 (Bom); T.K. Appu Nair v. Earnest, AIR 1967 Mad 262; Malepati Srihari Rao, In re, AIR 1964 AP 226; P. Ugender Rao v. J. Sampoorna, 1990 Cri LJ 762 (AP), approved

Verendra Kumar v. Aashraya Makers, 1999 Cri LJ 4206 (AP), overruled

— S. 246(5) *See* Ss. 231(2) and 246(5), 162(1) proviso, Expln. and Ss. 161 & 172

[2979] — Ss. 246(6) and 244 — Scope — Supplementary list of witnesses — Power of Magistrate to entertain — *Held, power of Magistrate should not be fettered either under S. 244 or S. 246(6) CrPC and full latitude should be given to the Magistrate to exercise discretion to entertain supplementary list of witnesses — However, while accepting supplementary list, Magistrate shall exercise his discretion judiciously for advancement of the cause of justice and not to give a handle to the complainant to harass the accused — Also, discretion conferred on Magistrate should only be used in appropriate cases for reasons to be recorded — Penal Code, 1860, Ss. 323, 406 and 498-A — Dowry Prohibition Act, 1961, Ss. 3 and 4*

The question was whether a supplementary list of witnesses could be furnished by the complainant and the Magistrate could summon those witnesses to be examined. The question was whatever witnesses who had been examined under Section 244 CrPC, whether the Magistrate could not entertain any further list of witnesses to be examined by the complainant to substantiate his allegation in the complaint. It is true that under Section 244 CrPC, if the charge is framed, then the prosecution has to examine the evidence produced by it in support of its case. After that the accused will have the right to cross-examine and the matter will proceed to be decided under Section 246 CrPC. But before the matter is decided and during the pendency of the trial could the Magistrate entertain any petition filed by the prosecution for examining additional evidence in support of its case. (Para 9)

The discretion of the Magistrate is nowhere fettered by any of the provisions contained in CrPC. In Section 244(1) CrPC, the expression used is, "the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution". Similarly, in Section 246(6) CrPC, the expression used is, "the evidence of any remaining witnesses for the prosecution shall next be taken". Therefore, the Magistrate has discretion, before he closes the trial, to summon the witnesses if it advances the cause of justice. However, there is a word of caution that the discretion which has been conferred on the Magistrate under Section 244(2) and Section 246(6) CrPC should only be used in appropriate cases for reasons to be recorded. The discretion should not be used fancifully and for a mala fide purpose to harass the accused. It is quite possible that sometimes when the complainant fails to substantiate the allegation, he may resort to dilatory tactics and thereby harass the accused by giving supplementary list to prolong the continuance of the case. This should be checked but in case it is found that in fact the application for summoning the additional witnesses is made for bona fide purpose and to substantiate the allegations made in the complaint, then the Magistrate may exercise such power in appropriate case. (Para 11)

The power of the Magistrate should not be fettered either under Section 244 or under Section 246(6) CrPC and full latitude should be given to the Magistrate to exercise the discretion to entertain a supplementary list of witnesses. But while accepting the supplementary list, the Magistrate shall exercise his discretion judiciously for the advancement of the cause of justice and not to give a handle to the complainant to harass the accused. (Para 19). *Sayeeda Farhana Shamim* v. *State of Bihar*, (2008) 8 SCC 218: (2008) 3 SCC (Cri) 449: AIR 2008 SC 2373: (2008) 2 KLT 1011.

Bench Strength **2**. Coram: **A.K. Mathur** and *Aftab Alam*, JJ. [Date of decision: 16-5-2008]

Jamuna Rani v. S. Krishna Kumar, 1993 Cri LJ 32; Nawal Kishore Shukla v. State of U.P., 1992 Cri LJ 1554; S. Vivekanantham v. R. Viswanathan, 1977 Cri LJ 425; V. Ratna Shenoy v. S.A. Prabhu, AIR 1967 Ker 233; State of Bombay v. Janardhan, AIR 1960 Bom 513; K. Somasundaram v. Gopal, AIR 1958 Mad 341, approved

Hari Pada Banerjee v. Hem Kanta Sen, AIR 1969 Cal 421, overruled

— S. 247 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193, 238 to 250

See also Ss. 231, 242, 243, 244 and 247

See also Ss. 239 to 249 and 401 & 300

See also Ss. 244 to 247

See also Ss. 327, 231, 233, 242 to 244, 247, 273 and 283

See also Ss. 386, 401 and 247

See also Ss. 391 and 231, 242, 244, 233, 243 & 247

See also Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247

See also Ss. 482, 225 to 247

— S. 248 *See also* Ss. 251-A & 258, Criminal Procedure Code, 1898, pp. 1118 et seq. in Vol. 2

— S. 248 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193, 238 to 250

See also Ss. 229, 233, 235, 241 and 248

See also Ss. 232, 235, 248 and 255

See also Ss. 235, 231 & 233 and 248, 242 & 243

See also Ss. 239 to 249 and 401 & 300

See also Ss. 401, 397, 235, 248 and 255

[2980] — S. 248 — Raid by Excise and Customs party in the jewellery shop of the complainant and adjoining chaubara where two licensed gold-smiths were present — *Raiding party receiving injuries by blunt weapons mostly in the head region, and one of the gold-smiths sustaining gun-shot wounds on the dorsal aspect of his right forearm — Complaint, held prima facie false as the complainant party appears to have resisted the raid and manhandled the raiding party before the raiding party themselves resorted to violence — In view of Section 108, Gold (Control) Act, 1968 complainant alleging offences under Sections 387, 452, 504, 342 and 148 read with Section 149, IPC cannot be pursued to its logical conclusion i.e. to that of conviction or acquittal — Gold (Control) Act, 1968, S. 108 — Penal Code, 1860, S. 76. Bhappa Singh* v. *Ram Pal Singh*, 1981 Supp SCC 12: 1981 SCC (Cri) 602: AIR 1982 SC 779.

Bench Strength **3**. Coram: **A.D. Koshal**, *V. Balakrishna Eradi* and *R.B. Misra*, JJ. [Date of decision: 6-2-1981]

— S. 248(2) *See* Ss. 235(2), 248(2) and 255(2)

See also Ss. 235(2), 248(2), 255(2) and 360

See also Ss. 235(2), 248(2), 325, 360 and 361

See also Ss. 235(2), 248(2) and 357

[2981] — Ss. 248(2) and 235(2) — Courts should personalize the sentence under, from a reformative angle

There is a great discretion vested in the Judge, especially when pluralistic factors enter his calculations. Even so, the Judge must exercise this discretionary power, drawing his inspiration from the humanitarian spirit of the law, and living down the traditional precedents which have winked at the personality of the crime-doer and been swept away by the features of the crime. What is dated has to be discarded. What is current has to be incorporated. Therefore innovation, in all conscience, is in the field of judicial discretion. *Mohd. Giasuddin* v. *State of A.P.*, (1977) 3 SCC 287: 1977 SCC (Cri) 496: AIR 1977 SC 1926: 1977 Cri LJ 1557.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision: 6-5-1977]

— S. 249 *See also* S. 259, Criminal Procedure Code, 1898, p. 1123 in Vol. 2

— S. 249 *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193, 238 to 250

See also Ss. 239 to 249 and 401 & 300

See also Ss. 256 and 249

See also Ss. 256, 249, 2(y) and Ch. XV

[2982] — Ss. 249, 256(1) and 482 — Dismissal of complaint — Accused acquitted for non-compliance — *Held, magistrate has no jurisdiction to restore and revive the dismissed complaint on a subsequent application of the complainant*

So far as the accused is concerned, dismissal of a complaint for non-appearance of the complainant or his discharge or acquittal on the same ground is a final order and in the absence of any specific provision in the Code, a magistrate cannot exercise any inherent jurisdiction. The magistrate cannot restore a complaint to his file by revoking his earlier order dismissing it for the non-appearance of the complainant and proceed with it when an application is made by the complainant to revive it. A second complaint is permissible in law if it could be brought within the limitations imposed by Supreme Court in *Pramatha Nath Taluqdar* v. *Saroj Ranjan Sarkar.* Filling of a second complaint is not the same thing as reviving a dismissed complaint after recalling the earlier order of dismissal. The CrPC does not contain any provision enabling a magistrate to exercise an inherent jurisdiction which he otherwise does not have. *A.S. Gauraya* v. *S.N. Thakur*, (1986) 2 SCC 709: 1986 SCC (Cri) 249: AIR 1986 SC 1440: 1986 Cri LJ 1074.

Bench Strength **2**. Coram: *V. Khalid* and *M.M. Dutt*, JJ. [Date of decision: 25-4-1986]

Bindeshwari Prasad Singh v. Kali Singh, (1977) 1 SCC 57: 1977 SCC (Cri) 33, followed

Ram Prosad Maitra v. Emperor, AIR 1928 Cal 569: 48 CLJ 90: 29 Cri LJ 798, approved

B.D. Sethi v. V.P. Dewan, (1971) 7 DLT 162, overruled

[2983] — Ss. 249 and 482 — Complaint filed by respondent alleging cutting of fishing nets and taking away fish caught in those nets by a foreign trawler dismissed and accused discharged under S. 249 — *On a second complaint on the same allegations, process issued against appellant by Judicial Magistrate — Appellant then approaching High Court under S. 482 — High Court holding that the second complaint not barred and that defendant-appellant required to establish his innocence by showing his absence at the time of occurrence — Neither appellant mentioned in the complaint, nor was he present at the time of occurrence in the trawler, nor was he captain of the trawler — Held, on facts, matter involved civil liability hence criminal proceedings quashed. Anees Noorani* v. *Jadav Dava Ghola*, 1987 Supp SCC 70: 1987 SCC (Cri) 628.

Bench Strength **2**. Coram: *B.C. Ray* and *S. Natarajan*, JJ. [Date of decision: 25-2-1987]

[2984] — **S. 249 — Continuance of criminal proceedings under S. 138, Negotiable Instruments Act, 1881, by complainant company?s successor — Permissibility** — *Cheques issued by appellants to BCCI bouncing — BCCI lodging complaint under S. 138 and the Magistrate taking cognizance thereof -Subsequently, BCCI wound up and succeeded by SBICIB — In such circumstances, SBICIB, held, fully entitled to pursue the said criminal proceedings — More so when there was an agreement between BCCI and SBICIB to that effect — Negotiable Instruments Act, 1881, S. 138* (Para 5). *Bombay Offshore Services Ltd.* v. *Shankar Narayan*, (2000) 10 SCC 375.

Bench Strength **3**. Coram: *G.B. Pattanaik, M. Srinivasan* and *N. Santosh Hegde*, JJ. [Date of decision: 16-9-1999]

— **S. 250** *See also* S. 250, Criminal Procedure Code, 1898, p. 1117 in Vol. 2

— **S. 250** *See* Ss. 190 to 210, 225 to 235 and 238 to 250

See also Ss. 190, 193, 238 to 250

See also Ss. 482 and 250

[2985] — **S. 250 — Compensation for accusation without reasonable cause** — *Succeeding Magistrate cannot continue with the proceeding initiated by his predecessor — Same Magistrate alone competent to initiate action and pass final orders*

The pecuniary jurisdiction of the Magistrate is equivalent to his jurisdiction to impose fine on an accused. The Magistrate of the First Class can impose fine to the extent of Rs 2000 only and a Magistrate of lesser denomination can impose lesser fines as enjoined under the law. In this case the Chief Judicial Magistrate had acquitted the appellant. His jurisdiction to impose fine was only up to Rs 2000. Thus, the scope of enquiry under Section 250 CrPC is only an effort to award to the accused a bare sum of Rs 2000, if at all, after hearing the complainant. The enquiry in the nature being so small and narrow, the legislature perhaps thought that it should be in the nature of an addenda to the main enquiry or trial. Therefore, the same Magistrate alone can initiate action and pass final orders. *Nandkumar Krishnarao Navgire* v. *Jananath Laxman Kushalkar*, (1998) 2 SCC 355: 1998 SCC (Cri) 637.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Venkataswami*, JJ. [Date of decision: 23-7-1997]

Rajaram Majhi v. Panchanan Ghosh, AIR 1929 Cal 762: 33 CWN 861; Emperor v. Mohd. Alan, AIR 1935 Sind 321 (sic); Ram Nath v. Bashir-Ud-Din, AIR 1953 Punj 213: 55 Punj LR 218, approved

[2986] — Ch. XX (Ss. 251 to 259) — Discharge from summons case — *Held, not contemplated — Once plea of accused is recorded under S. 252, procedure contemplated under Ch. 20 has to be followed, which is to take the trial to its logical conclusion*

Once a plea is recorded in a summons case it is not open to the accused person to seek a discharge. The case involving a summons case is covered by Chapter 20 CrPC which does not contemplate a stage of discharge like Section 239 which provides for a discharge in a warrant case. Therefore once the plea of the accused is recorded under Section 252 CrPC the procedure contemplated under Chapter 20 has to be followed which is to take the trial to its logical conclusion. The only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extraordinary remedy under Section 482 CrPC and not by way of an application to recall the summons or to seek discharge, which is not contemplated in the trial of a summons case. (Paras 16 and 17). *Subramanium Sethuraman* v. *State of Maharashtra*, (2004) 13 SCC 324: 2005 SCC (Cri) 242: AIR 2004 SC 4711: 2004 Cri LJ 4609: (2005) 1 Mah LJ 626.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *Tarun Chatterjee*, JJ. [Date of decision: 17-9-2004]

Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927, affirmed

K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88, held to have been overruled

— S. 251 *See also* S. 242, Criminal Procedure Code, 1898, p. 1116 in Vol. 2

— S. 251 *See* Ss. 240, 241, 251, 252

See also Ss. 262 (Ch. XXI), 251, 254(1)(Ch. XX), 319 and 2(g)

See also Ss. 317 and 273, 251 & 205

See also Ss. 482 and 251

[2987] — Ss. 251, 254 and 273 — Departure from, in Negotiable Instruments Act, 1881 — Nature and scheme of the provisions discussed in detail — *Departure from and overriding of CrPC — Extent to which summary procedure may be adopted under Ss. 143 to 147: only "as far as possible" — Protection available to accused — Negotiable Instruments Act, 1881*, Ss. 143 to 147 [as inserted by Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002]

The provisions of the newly inserted Chapter XVII, on coming into force with effect from 1-4-1989, brought in a veritable deluge of cases in the criminal court system. Complaints under Section 138 of the Act came to be filed in such large numbers that it became impossible for the courts to handle them within a reasonable time and it also had a highly adverse effect on the courts' normal work in ordinary criminal matters. Therefore, the legislature took action by introducing further amendments in the Act by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 which inserted in the Act Sections 143 to 147. These newly introduced sections laid down a special code for trial of offences under Chapter XVII of the Act and intended to do away with all the stages and processes in a regular criminal trial that normally cause inordinate delay in its conclusion and to make the trial procedure as expeditious as possible without in any way compromising on the right of the accused for a fair trial. Thus, Sections 143 to 147 were designed especially to lay down a much simplified procedure for the trial of dishonoured cheque cases with the sole object that the trial of those cases should follow a course even swifter than a summary trial. (Paras 15, 16, 25 and 29)

The provisions of Sections 143, 144, 145 and 147 expressly depart from and override the provisions of the Code of Criminal Procedure, the main body of adjective law for criminal trials. The provisions of Section 146 similarly depart from the principles of the Evidence Act. Section 143 makes it possible for the complaints under Section 138 of the Act to be tried in the summary manner, except, of course, for the relatively small number of cases where the Magistrate feels that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily. (Para 20)

It is, however, significant that the procedure of summary trials is adopted under Section 143 subject to the qualification "as far as possible", thus, leaving sufficient flexibility so as not to affect the quick flow of the trial process. Even while following the procedure of summary trials, the non obstante clause and the expression "as far as possible" used in Section 143 coupled with the non obstante clause in Section 145 allow for the evidence of the complainant to be given on affidavit, that is, in the absence of the accused. This would have been impermissible (even in a summary trial under the Code of Criminal Procedure) in view of Sections 251 and 254 and especially Section 273 CrPC. The accused, however, is fully protected, as under sub-section (2) of Section 145 he has the absolute and unqualified right to have the complainant and any or all of his witnesses summoned for cross-examination. (Para 21). *Mandvi Cooperative Bank Ltd.* v. *Nimesh B. Thakore*, (2010) 3 SCC 83.

Bench Strength **2**. Coram : *Tarun Chatterjee* and **Aftab Alam**, JJ. [Date of decision : 11-1-2010]

[2988] — Ss. 251 and 205 — Where attendance of accused is dispensed with, Magistrate can record plea of the accused

Sections 251 and 205(1) make it clear that in appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel. The Magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. *Bhaskar Industries Ltd.* v. *Bhiwani Denim & Apparels Ltd.*, (2001) 7 SCC 401: 2001 SCC (Cri) 1254: AIR 2001 SC 3625.

Bench Strength **2**. Coram: **K.T. Thomas** and *K.G. Balakrishnan*, JJ. [Date of decision: 27-8-2001]

— S. 252 *See* Ss. 240, 241, 251, 252

— S. 253(2) *See* Ss. 354(3) and 253(2)

— S. 254(1)(Ch. XX) *See* Ss. 262 (Ch. XXI), 251, 254(1)(Ch. XX), 319 and 2(g)

— S. 255 *See* Ss. 232, 235, 248 and 255

See also Ss. 401, 397, 235, 248 and 255

— S. 255(2) *See* Ss. 235(2), 248(2) and 255(2)

See also Ss. 235(2), 248(2), 255(2) and 360

— S. 256 *See also* S. 247, Criminal Procedure Code, 1898, p. 1117 in Vol. 2

[2989] — S. 256 — Complaint case for dishonour of cheque — Dismissal on the ground of default of complainant — Tenability — *Complainant closing case without examining herself and without cross-examining defence witnesses — Accused had been examined under S. 311 CrPC — Personal attendance and cross-examination of defence witnesses by prosecution, held, were not absolutely necessary — Dismissal on those grounds, therefore, was improper — The case should have been disposed of on the merits of the matter — Negotiable Instruments Act, 1881, Ss. 138 and 143*

Dismissing the appeal,

Held :

The complainant did not examine herself as a witness. She was sought to be summoned again for cross-examination. The said prayer had not yet been allowed. But, that would not mean that on that ground the court would exercise its discretionary jurisdiction under Section 256 CrPC at that stage or the defence would not examine his witnesses. When the prosecution has closed its case and the accused has been examined under Section 311 CrPC, the court was required to pass a judgment on merit of the matter. (Paras 14 and 15)

Before passing the impugned order of acquittal, the High Court did not choose to serve notice upon the appellant opining that no useful purpose would be served in keeping the appeal pending and appointed a legal aid counsel. Although, the manner in which the appeal had been disposed of by the High Court was not approved, it is not a fit case for exercise of jurisdiction under Article 136 of the Constitution of India. (Paras 6 and 19). *S. Anand* v. *Vasumathi Chandrasekar*, (2008) 4 SCC 67: (2008) 2 SCC (Cri) 178: AIR 2008 SC 1296: 2008 Cri LJ 1943.

Bench Strength 2. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 14-2-2008]

[2990] — S. 256 — Death of complainant — Effect — *Complaint filed under S. 138, Negotiable Instruments Act — Dismissal of complaints for non-prosecution — Challenge to, by brother of complainant — Whether such orders can be recalled — Having regard to the facts and circumstances, held, interests of justice required that the order of the Magistrate acquitting the accused for non-prosecution, as affirmed by the High Court, deserved to be recalled so that the complaints could be tried on merits — Further held, there is no hard-and-fast rule for recalling of such orders — Negotiable Instruments Act, 1881, S. 138* (Paras 3 and 4). *Aseem Shabanli Merchant* v. *Brij Mehra*, (2005) 11 SCC 412.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 18-4-2005]

[2991] — Ss. 256, 249, 2(y) and Ch. XV — Complainant — Meaning of — Complaint by a company — *Complainant would be the person who represents such company in the court — Different persons may represent such company at different times — Only Magistrate's permission necessary — Magistrate cannot insist that the person whose statement was taken on oath at the first instance alone can represent the company — Position under old Code same — CrPC, 1898, Ss. 247 and 259 — Penal Code, 1860, S. 11*

The scheme of Chapter XV of the new Code makes it clear that complainant must be a corporeal person who is capable of making physical presence in the court. Its corollary is that even if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court and it is that natural person who is looked upon, for all practical purposes, to be the complainant in the case. In other words, when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in court proceedings.

However, no magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. There may be occasions when a different person can represent the company e.g. the particular person who represents the company at the first instance may either retire from the company's services or may otherwise cease to associate therewith or he would be transferred to a distant place. In such cases it would be practically difficult for the company to continue to make the same person represent the company in the court. In any such eventuality it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court. At any rate, absence of the complainant envisaged in Section 249 or Section 256 of the new Code would include absence of the corporeal person representing the incorporeal complainant.

As the corresponding provisions in the old Code are the same for all practical purposes, the legal position discussed above is applicable to the complaint filed under the old Code as well. *Associated Cement Co. Ltd.* v. *Keshvanand*, (1998) 1 SCC 687: 1998 SCC (Cri) 475: AIR 1998 SC 596: (1998) 91 Comp Cas 361: 1998 Cri LJ 856: (1998) 1 KLT 179.

Bench Strength 2. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 16-12-1997]

Associated Cement v. Keshav Nand, 1997 Cri LJ 3898 (J&K), reversed

[2992] — Ss. 256 and 200 — Offence under S. 138, Negotiable Instruments Act — One singular default in appearance on the part of complainant — Dismissal of complaint — *Held, not proper — Cause shown by the complainant that he wrongly noted the date was not disbelieved and therefore it was a valid ground for restoration of the complaint — Further, even if the complainant failed to examine the witnesses on earlier dates, held, the same could not be a ground to dismiss his complaint for his absence on one single day — Negotiable Instruments Act, 1881, S. 138. Mohd. Azeem* v. *A. Venkatesh*, (2002) 7 SCC 726.

Bench Strength 2. Coram: *M.B. Shah* and *D.M. Dharmadhikari*, JJ. [Date of decision: 16-8-2002]

[2993] — Ss. 256 and 249 — Non-appearance of complainant — Magistrate not justified in acquitting the accused unless presence of complainant on that date found necessary — *Discretion to acquit the accused or proceed with the trial must be exercised judicially and fairly — On facts, held, Magistrate not justified in acquitting the accused particularly when the complainant and another witness had already been examined — CrPC, 1898, Ss. 247 and 259*

The appellant-Company prosecuted the respondent in the Court of Judicial Magistrate (First Class), Jammu, alleging the offence under Section 138 of the Negotiable Instruments Act, but the learned Magistrate acquitted the respondent on 24-8-1996 solely on the ground that the complainant was absent. The appellant-Company filed an appeal before the High Court of Jammu & Kashmir with leave but that appeal was dismissed. Allowing the appeal,

Held :

Section 247 of the Criminal Procedure Code, 1898 (Section 256 of new Code) affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary. The section, therefore, affords protection to an accused against such tactics of the complainant. But that does not mean if the complainant is absent, the court has a duty to acquit the accused in invitum.

Reading Section 247 of the Criminal Procedure Code, 1898 (Section 256 of new Code) in its entirety would reveal that two constraints are imposed on the court for exercising the power under the section. The first is, if the court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. The second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice. *Associated Cement Co. Ltd.* v. *Keshvanand*, (1998) 1 SCC 687: 1998 SCC (Cri) 475: AIR 1998 SC 596: (1998) 91 Comp Cas 361: 1998 Cri LJ 856: (1998) 1 KLT 179.

Bench Strength 2. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 16-12-1997]

Associated Cement v. Keshav Nand, 1997 Cri LJ 3898 (J&K), reversed

[2994] — Ss. 256 and 302 — Permission to continue prosecution after complainant's death — Right of legal heirs of deceased complainant — *Held, they can file petition under S. 302 CrPC seeking the said permission — If any such permission is sought for by the said heirs, the same has to be considered in its perspective by the court dealing with the matter — CrPC, 1898, S. 495* (Para 7). *Balasaheb K. Thackeray* v. *Venkat*, (2006) 5 SCC 530: (2006) 2 SCC (Cri) 630: (2006) 102 Cut LT 323: (2006) 3 KLT 509.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 5-7-2006]

Ashwin Nanubhai Vyas v. State of Maharashtra, (1967) 1 SCR 807: AIR 1967 SC 983: 1967 Cri LJ 943; Jimmy Jahangir Madan v. Bolly Cariyappa Hindley, (2004) 12 SCC 509: 2004 SCC (Cri) Supp 317, followed

— S. 256(1) *See also* Ss. 249, 256(1) and 482

[2995] — S. 256(1) — Right to speedy trial — Is a fundamental right of the accused — Complainant cannot allow case to remain pending indefinitely — *Constitution of India — Art. 21*

There exists a distinction between a civil case and a criminal case. Speedy trial is a fundamental right of an accused. The orders passed by the competent court of law as also the provisions of the Code of Criminal Procedure must be construed having regard to the constitutional scheme and the legal principles in mind. (Para 16). *S. Rama Krishna* v. *S. Rami Reddy*, (2008) 5 SCC 535: (2008) 2 SCC (Cri) 645: AIR 2008 SC 2066: 2008 Cri LJ 2625.

Bench Strength 2. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 29-4-2008]

[2996] — Ss. 256(1) and 378(1) — Ingredients of S. 256(1) — Acquittal of accused on non-appearance of complainant — Exercise of jurisdiction by Magistrate under S. 256(1) — Scope of — Conduct of the complainant significant — *Interference of High Court under S. 378(1) in appeal against acquittal of accused recorded by Magistrate in exercise of discretion under S. 256(1) whether justified — Complaint filed against appellant for dishonour of cheque on 6-6-2001 — After death of complainant his heirs did not press their application for substitution — On 14 dates between 18-4-2005 to 23-1-2006 nobody represented the complainant — Accused kept appearing on most dates — Noticing respondent heirs' failure to attend court for a long time, Magistrate under S. 256 acquitted the appellant on 23-1-2006 — High Court in appeal under S. 378(1), despite finding that respondent heirs were not interested in getting the matter prosecuted, set aside the order of acquittal on ground that lis between the parties should be decided on merits and directed that respondents be given one more opportunity — Held, High Court in appeal against acquittal erred in interfering with the discretion exercised by Magistrate under S. 256(1)*

The ingredients of Section 256(1) are: (*i*) summons must have been issued on a complaint; (*ii*) the Magistrate should be of the opinion that for some reasons, it is not proper to adjourn the hearing of the case to some other date; and (*iii*) the date on which the order under Section 256(1) can be passed is the day appointed for appearance of the accused or any day subsequent thereto, to which the hearing of the case has been adjourned. (Para 9)

Section 256(1) mandates the Magistrate to acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case. If an exceptional course is to be adopted, it must be spelt out. The discretion conferred upon the Magistrate, however, must be exercised with great care and caution. The conduct of the complainant for the said purpose is of immense significance. He cannot allow a case to remain pending for an indefinite period. (Para 13)

There exists a distinction between a civil case and a criminal case. Speedy trial is a fundamental right of an accused. The orders passed by the competent court of law as also the provisions of the Code of Criminal Procedure must be construed having regard to the constitutional scheme and the legal principles in mind. (Para 16)

In this case it is not a case where the proviso appended to Section 256(1) CrPC was applicable. (Para 10)

The matter remained pending for more than five years. It was obligatory on the part of the respondents to press their application for substitution. They did not file attendance of their witnesses. The case was fixed for hearing. On the other hand the appellant had been attending the court for a long time, except on some dates where he remained absent or was otherwise represented by his advocate. He had to remain present in court. He attended the court on not less than 20 occasions after the death of the original complainant. If in the aforementioned situation, the Magistrate exercised his discretionary jurisdiction, the same should not have been ordinarily interfered with. The Magistrate in terms of Section 256(1) exercises wide jurisdiction. Although an order of acquittal is of immense significance, the discretion in this case had been properly exercised by the Magistrate. (Paras 11, 13 and 12)

The appeal preferred by the respondents was against a judgment of acquittal. The High Court should have, therefore, exercised its jurisdiction keeping in view the limited role it had to play in the matter. (Para 14)

The High Court itself had come to the finding that the respondents were not interested in getting the matter prosecuted. Despite the same, it allowed their appeal, opining that any lis between the parties should be decided on merits rather than on technicalities. On what basis such a statement of law was made is not known. No precedent was cited; no reason has been assigned. The High Court failed to take into consideration the fact that it was dealing with an order of acquittal and, thus, the principle of law which was required to be applied was that, if two views are possible, a judgment of acquittal should not ordinarily be interfered with. (Para 15)

The High Court therefore, misdirected itself in passing the impugned judgment. It cannot therefore be sustained. (Para 17). *S. Rama Krishna* v. *S. Rami Reddy*, (2008) 5 SCC 535: (2008) 2 SCC (Cri) 645: AIR 2008 SC 2066: 2008 Cri LJ 2625.

Bench Strength 2. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 29-4-2008]

—**S. 257** *See also* S. 248, Criminal Procedure Code, 1898, p. 1117 in Vol. 2

— **S. 257** *See also* Ss. 406, 257 and 320

[2997] — S. 257 — Withdrawal of complaint — *Complainant after pursuing his case against quashing of the criminal proceedings up to Supreme Court, not justified in seeking withdrawal of his complaint — Instead he ought to have submitted to the discipline of the court, especially when he had initiated the proceedings as a public interest litigant — Constitution of India, Art. 136. Sampat Singh* v. *State of Haryana*, (1993) 1 SCC 561: 1993 SCC (Cri) 376.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 18-12-1992]

[2998] — S. 257 — Withdrawal of complaint — Prerequisite for permitting withdrawal — *Trial Magistrate acquitting the accused, in absence of any request for the withdrawal of the case, without complying with the provisions of S. 257 CrPC — Refusal by High Court to grant leave against the order of acquittal — Having regard to the possibility of the amount in question being paid during the pendency of criminal proceedings, held, for exercising power under S. 257 CrPC, there must exist a request of the complainant with sufficient grounds and recording to the satisfaction of the Magistrate on such grounds that are good for allowing the complainant to withdraw the complaint — In absence of the compliance with pre-condition for exercising jurisdiction under the section, order passed by the Magistrate and thereafter refusal by High Court to grant leave in matter concerned, held, erroneous — Matter directed to be decided by the trial court in accordance with law. Provident Fund Inspector, Tirupati* v. *Madhusudana Chaudhury*, (2000) 9 SCC 506: 2001 SCC (Cri) 637.

Bench Strength 2. Coram: *G.B. Pattanaik* and *M.B. Shah*, JJ. [Date of decision: 23-2-1999]

[2999] — Ss. 257, 199 and 482 — Withdrawal of prosecution for purported defamation of Chief Minister, Ministers and other public officials — *Appellants agreeing to telecast clarification in respect of allegedly defamatory telecast, and State agreeing to withdraw prosecution — Penal Code, 1860, Ss. 499 and 500. Ramoji Rao* v. *State of A.P.*, (2006) 8 SCC 321: (2006) 3 SCC (Cri) 480: AIR 2006 SC 3384.

Bench Strength 2. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 13-10-2006]

—**S. 258** *See also* S. 249, Criminal Procedure Code, 1898, p. 1117 in Vol. 2

— **S. 258** *See* Ss. 309, 311, 258 and 482

See also Ss. 482, 309, 311 and 258

[3000] — S. 258 — Applicability — *Does not apply to cases instituted upon complaint — Words "and in any other case" in last part of the section — Import of*

Summons cases are generally of two categories: those instituted upon complaints and those instituted otherwise than upon complaints. The latter category would include cases based on police reports. Section 258 of the Code is intended to cover those cases belonging to one category alone i.e. "summons cases instituted otherwise than upon complaints". Thus it has no application to cases instituted upon complaints. The segment separated at the last part of the section by the words "and in any other case" is only a sub-category or division consisting of "summons cases instituted otherwise than upon complaints". That sub-category is not intended to cover all summons cases other than those instituted on police report. In fact, Section 258 vivisects only "summons cases instituted otherwise than on complaints" into two divisions. One division consists of cases in which no evidence of a material witness was recorded. The section permits the court to acquit the accused prematurely only in those summons cases instituted otherwise than on complaints wherein the evidence of material witnesses was recorded. But the power of the court to discharge an accused at midway stage is restricted to those cases instituted otherwise than on complaints wherein no material witness was examined at all. (Paras 9 and 8)

The present is a case which was instituted on a complaint. Hence the endeavour made by the accused to find help from Section 258 of the Code is of no avail. (Para 9). *John Thomas* v. *Dr. K. Jagadeesan*, (2001) 6 SCC 30: 2001 SCC (Cri) 974: AIR 2001 SC 2651: (2001) 106 Comp Cas 619.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 12-7-2001]

[3001] — S. 258 — True import of, deciphered with the aid of S. 249 of 1898 Code which is a corresponding provision

A first information report was lodged for commission of offences punishable under Sections 447, 341, 323 and 427 IPC. On filing of the charge-sheet cognizance of offences was taken in 2002. Processes were issued against the appellant-accused. The same having not been served, non-bailable warrant was issued. In 2004 the Magistrate, in view of non-service of non-bailable warrant passed an order under Section 258 CrPC that further proceedings against the appellant be stopped.

In 2006, a requisition was filed praying for issuance of non-bailable warrant of arrest to the accused upon reopening the case. On the basis of the said purported requisition, the case was reopened and a non-bailable warrant of arrest was issued against the appellant.

The appellant filed an application under Section 482 CrPC before the High Court which was dismissed.

Disposing of the appeal,

Held :

An order of discharge can be passed in terms of Section 245 CrPC. For passing an order under the aforesaid provision, reasons are required to be recorded. It was obligatory on the part of the Magistrate to apply his mind with regard thereto. (Para 14)

In this case, no order for release of the accused was passed. No order of releasing the accused was necessary to be passed as the appellant was not before the court. She had not even been arrested. Non-bailable warrant of arrest issued against her had not been executed. The benefit of effect of discharge could have been claimed by the appellant had she been directed to be released, the effect of discharge being correlated with release. If she had not been released, the question of her obtaining the benefit of the effect of discharge does not arise. (Paras 13 and 14)

Although the High Court was correct that the Magistrate in a situation of this nature could revive the proceedings, but, the Magistrate committed an error in not recording the reasons therefor. The Magistrate is directed to pass an appropriate order upon consideration of the requisition filed by the police authorities afresh. (Paras 14 and 15). *Renuka* v. *State of Karnataka*, (2009) 14 SCC 345: (2009) 76 AIC 147 (SC): 2009 Cri LJ 2245.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 18-2-2009]

Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288: 1987 SCC (Cri) 82, relied on

[3002] — Ss. 258, 239, 245, 249, 118 and 300 — Discharge/Release — Accused not arrested though purportedly discharged, held, cannot be released — Hence, discharge shall not come into effect — Case can be reopened against such accused

A first information report was lodged for commission of offences punishable under Sections 447, 341, 323 and 427 IPC. On filing of the charge-sheet cognizance of offences was taken in 2002. Processes were issued against the appellant-accused. The same having not been served, non-bailable warrant was issued. In 2004 the Magistrate, in view of non-service of non-bailable warrant passed an order under Section 258 CrPC that further proceedings against the appellant be stopped.

In 2006, a requisition was filed praying for issuance of non-bailable warrant of arrest to the accused upon reopening the case. On the basis of the said purported requisition, the case was reopened and a non-bailable warrant of arrest was issued against the appellant.

The appellant filed an application under Section 482 CrPC before the High Court which was dismissed.

Disposing of the appeal,

Held :

An order of discharge can be passed in terms of Section 245 CrPC. For passing an order under the aforesaid provision, reasons are required to be recorded. It was obligatory on the part of the Magistrate to apply his mind with regard thereto. (Para 14)

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Although the High Court was correct that the Magistrate in a situation of this nature could revive the proceedings, but, the Magistrate committed an error in not recording the reasons therefor. The Magistrate is directed to pass an appropriate order upon consideration of the requisition filed by the police authorities afresh. (Paras 14 and 15). *Renuka* v. *State of Karnataka*, (2009) 14 SCC 345: (2009) 76 AIC 147 (SC): 2009 Cri LJ 2245.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 18-2-2009]

Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288: 1987 SCC (Cri) 82, relied on

[3003] — Ss. 262 (Ch. XXI), 251, 254(1)(Ch. XX), 319 and 2(g) — Court's power to implead a dealer, manufacturer or distributor under S. 20-A, Prevention of Food Adulteration Act, 1954 held, can neither be invoked before the stage of adducing evidence in the trial nor after the conclusion of trial — *Further held, "trial" for offences under the PFA Act begins when under S. 251 CrPC the Magistrate asks the accused whether he pleads guilty or not — Evidence can be adduced only after recording the plea of the accused — Hence, exercise of the power under S. 20-A before the evidence was adduced, held, premature and without jurisdiction — However, the trial court not barred from considering the question afresh at the appropriate stage — Distinction between the court's power under S. 20-A of the Act and under S. 319 CrPC pointed out — Prevention of Food Adulteration Act, 1954, Ss. 20-A, 16-A, 16(1), 20 and 2(l)*

A sample of toor dal drawn by the Food Inspector from the business premises of the first accused was found by the public analyst to be not conforming to the prescribed standards and was found to contain kesari dal, a prohibited substance. Since the first accused alleged to have purchased the same from the second and third accused and the latter alleged the same to have purchased from the fourth and fifth accused, a complaint under Section 16(1) of the Prevention of Food Adulteration Act was filed by the Food Inspector against all the said five persons. The 5th accused soon after entering appearance in the Court filed a petition to implead the appellant firm as an accused in the case on the premise that the 5th accused had purchased the toor dal from the appellant Company. Although by then the plea of any of the accused was not recorded nor was any of them asked by the Magistrate to plead, the Magistrate ordered impleadment of the appellant. The High Court upheld that order. Allowing the appeal,

Held :

One of the differences between Section 319 CrPC and Section 20-A of the Prevention of Food Adulteration Act is that while in the former even if it appears to the court from the evidence (either during inquiry or trial of the offence), that another person is to be tried along with the already arraigned accused, then the court can proceed against that other person, while in the latter the satisfaction of the court that such manufacturer (distributor or dealer) is also concerned with that offence must be gathered from "the evidence adduced before it during the trial". In other words, the power under Section 20-A cannot be invoked until the trial begins and after the trial ends. (Para 8)

The word "trial" is not defined either in the Act or in CrPC. However, CrPC has distinguished the trial from inquiry as could be noted from Section 2(*g*) CrPC wherein the word "inquiry" is defined. The term "trial" cannot be given a fixed meaning to be applied in all cases uniformly. The connotation of that word changes with the difference in the context in which the term is employed in a particular provision of any statute. (Paras 9 and 10)

The scrutiny of Section 16-A of the Act and Sections 262 (Ch. XXI), 251 and 254(1) (Ch. XX) CrPC reveals that the trial of offences under the Act begins when the Magistrate asks the accused whether he pleads guilty or not as envisaged in Section 251 CrPC, if the Magistrate opts to hold summary trial. Hence, evidence in a trial under the Act can be adduced only after recording the plea of the accused as envisaged in the said section. Thus, it is clear that a Magistrate can implead any person under Section 20-A of the PFA Act only after reaching the stage envisaged in Section 254(1) CrPC. (Para 12)

Therefore, Section 20-A cannot be invoked before the stage of adducing evidence in the trial, nor can it be invoked after the conclusion of the trial. In the present case, the Magistrate has chosen to exercise the power prematurely and hence the action is without jurisdiction. However, the instant decision would not preclude the Magistrate from considering the question afresh at the appropriate stage. (Para 16). *Omparkash Shivprakash* v. *K.I. Kuriakose*, (1999) 8 SCC 633: 2000 SCC (Cri) 1: AIR 1999 SC 3870.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 1-11-1999]

State of Bihar v. Ram Naresh Pandey, AIR 1957 SC 389: 1957 SCR 279, relied on

Bhagwan Das Jagdish Chander v. Delhi Admn., (1975) 1 SCC 866: 1975 SCC (Cri) 410, clarified

Delhi Cloth and General Mills Co. Ltd. v. State of M.P., (1995) 6 SCC 62: 1995 SCC (Cri) 1024, distinguished

MCD v. R. Sahai, (1979) 2 SCC 387: 1979 SCC (Cri) 504, followed

Omprakash Shivprakash v. K.I. Kuriakose, 1999 Cri LJ 3836 (Ker), reversed

— S. 264 *See also* Ss. 354, 355, 361, 264, 412 and 384(3)

[3004] — S. 264 — Summary trial — Magistrate not obliged to write a judgment containing a brief statement of reasons but he must record the substance of the evidence — *When substance of accusation is not put to the accused his entering upon any kind of plea is no plea at all*

When the accused does not plead guilty, Section 264 of the Code of Criminal Procedure enjoins upon the Magistrate that he shall (*i*) record the substance of the evidence; and (*ii*) a judgment containing a brief statement of the reasons for the finding. Conversely put, when the accused pleads guilty, the Magistrate may not be obliged to write a judgment containing a brief statement of the reasons, but the Magistrate is not absolved of the obligation to record the substance of the evidence. Otherwise, it would be difficult to conceive as to what could the accused have pleaded to. His plea of guilt is an admission to whatever factual data the prosecution lays before the court about the commission of the offence. Pleading guilty by the accused to the violation of a provision of law is no plea at all, as he would have to be confronted with the substance of the allegation, in order to enter upon a plea, one way or the other. When the substance of the allegations is not put to the accused, his entering any kind of plea is no plea legally, due to the non-observance of such procedural requirement of utmost importance. Sections 375 and 376 CrPC provide a sequitur to it. *Pawan Kumar* v. *State of Haryana*, (1996) 4 SCC 17: 1996 SCC (Cri) 583: AIR 1996 SC 3300.

Bench Strength **2**. Coram: **M.M. Punchhi** and *K.S. Paripoornan*, JJ. [Date of decision: 7-5-1996]

[3005] — S. 264 — Conviction for offence involving moral turpitude — Moral turpitude — What amounts to — Policy decision of Haryana Govt. laying down tests for determination of moral turpitude — *Summary trial of the appellant for offence under S. 294 IPC — Appellant sentenced to a fine of Rs 20 on his pleading guilty — Copy of summary register neither disclosing the substance of allegations nor the words in which the plea of guilt was entered — Held, conviction of the appellant under S. 294 IPC per se would not establish moral turpitude unless the tests laid down in the policy decision are satisfied — Need for making provision that punishment of fine up to a certain limit, say up to Rs 2000 or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose, especially entering govt. service, stressed — Penal Code, 1860, S. 294*

The appellant was appointed on a Class IV post on ad hoc basis. While in service, the appellant came to be convicted in a summary trial for offence under Section 294 IPC (for causing annoyance to others by doing an obscene act in public or singing/reciting an obscene song in public) and was ordered to pay a fine of Rs 20 which he paid there and then. When steps were afoot to regularise his services, papers were moved to the office of the Superintendent of Police to verify about the character and antecedents of the appellant. The office of the Superintendent of Police reported back the factum of conviction of the appellant under Section 294 IPC, but otherwise verified that the appellant was of a good character. The services of the appellant were terminated as no longer required. The appellant challenged the order of his termination before the civil court. The trial court decided the case against him and the appellate court and the High Court in second appeal affirmed the same. Allowing the appeal,

Held :

"Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. The Government of Haryana while considering the question of rehabilitation of ex-convicts took a policy decision on 2-2-1973 that ex-convicts who were convicted for offences involving moral turpitude should not however be taken in government service. Significantly Section 294 IPC is not found enlisted in the list of offences constituting moral turpitude.

The copy of the summary register neither discloses the substance of the allegations put to the appellant, nor the words in which the plea of guilt was entered. It is of no significance that the appellant treats himself a convict as he had pleaded guilty. Assuming that the conviction is not open to challenge at the present juncture one cannot but deprecate the action of the respondents in having proceeded to adversely certify the character and antecedents of the appellant on the basis of the conviction per se, opining to have involved moral turpitude, without satisfying the tests laid down in the policy decision of the Government. All the three courts below, even when invited to judge the matter in the said perspective, went on to hold that the act/s involved in conviction under Section 294 IPC per se established moral turpitude. They should have been sensitive to the changing perspectives and concepts of morality to appreciate the effect of Section 294 IPC on today's society and its standards, and its changing views of obscenity.

The attention of Parliament was drawn to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine up to a certain limit, say up to Rs 2000 or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever. *Pawan Kumar* v. *State of Haryana*, (1996) 4 SCC 17: 1996 SCC (Cri) 583: AIR 1996 SC 3300.

Bench Strength **2**. Coram: **M.M. Punchhi** and *K.S. Paripoornan*, JJ. [Date of decision: 7-5-1996]

— S. 273 *See also* S. 353, Criminal Procedure Code, 1898, p. 1168 in Vol. 2

— S. 273 *See* Ss. 164, 273 and 327(2)

See also Ss. 285, 284 and 273

See also Ss. 303 and 2(q), 205, 273

See also Ss. 317 and 273, 251 & 205

See also Ss. 327, 231, 233, 242 to 244, 247, 273 and 283

— S. 273 Expln. *See also* Ss. 167, 202(1), 204, 273 Expln. and 319

[3006] — S. 273 — Evidence to be taken in presence of accused — The term "presence" used in S. 273 — Meaning of — *Held, does not mean actual physical presence in court — Since plain meaning brought out what was intended, dictionary meaning not considered* (Para 12). *State of Maharashtra* v. *Dr. Praful B. Desai*, (2003) 4 SCC 601: 2003 SCC (Cri) 815: AIR 2003 SC 2053: 2003 Cri LJ 2033: (2003) 2 Mah LJ 868: (2003) 2 MPLJ 434.

Bench Strength **2**. Coram: **S.N. Variava** and *B.N. Agrawal*, JJ. [Date of decision: 1-4-2003]

[3007] — S. 273 — Object of — Recording of evidence by way of video-conferencing — *Held, satisfies the object of S. 273 that evidence be recorded in the presence of the accused*

Recording of evidence by video- conferencing also satisfies the object of Section 273 that evidence be recorded in the presence of the accused. The accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact the accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded courtroom. They can observe his or her demeanour. In fact the facility to play back would enable better observation of demeanour. They can hear and rehear the deposition of the witness. The accused would be able to instruct his pleader immediately and thus cross-examination of the witness is as effective, if not better. The facility of play back would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in court. Thus no prejudice, of whatsoever nature, is likely to be caused to the accused. (Para 20). *State of Maharashtra* v. *Dr. Praful B. Desai*, (2003) 4 SCC 601: 2003 SCC (Cri) 815: AIR 2003 SC 2053: 2003 Cri LJ 2033: (2003) 2 Mah LJ 868: (2003) 2 MPLJ 434.

Bench Strength **2**. Coram: **S.N. Variava** and *B.N. Agrawal*, JJ. [Date of decision: 1-4-2003]

[3008] — S. 273 — Recording of evidence by way of video-conferencing — Held, permissible — *So long as the accused and/or his pleader are present when the evidence is recorded by the said way, held, that evidence is being recorded in the "presence" of the accused and would thus fully meet the requirements of S. 273 — Hence, recording of such evidence would be as per the "procedure established by law" — No prejudice caused to the accused by recording of evidence in such manner*

The prosecution made an application before the trial court to examine a witness, who was in USA, through video-conferencing. The trial court allowed the said application. But the High Court, on an interpretation of Section 273 CrPC, held that the evidence could not be recorded by way of video-conferencing.

Setting aside the impugned judgment of the High Court

Held :

The first duty of the court is to do justice. As has been held by this Court in the case of *Nageshwar Shri Krishna Ghobe* v. *State of Maharashtra*, (1973) 4 SCC 23 courts must endeavour to find the truth. It has been held that there would be failure of justice not only by an unjust conviction but also by acquittal of the guilty for unjustified failure to produce available evidence. Of course the rights of the accused have to be kept in mind and safeguarded, but they should not be overemphasized to the extent of forgetting that the victims also have rights. (Para 13)

The question for consideration is whether in a criminal trial, evidence can be recorded by video-conferencing. (Para 3)

Section 273 contemplates constructive presence. This shows that actual physical presence is not a must. This indicates that the term "presence", as used in this section, is not used in the sense of actual physical presence. (Para 12)

Further, evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can also be by way of electronic records. This would include video-conferencing. (Para 12)

That apart, the doctrine "*contemporanea expositio est optima et fortissima in lege*" has no application when interpreting a provision of an ongoing statute/Act like CrPC. (Para 18)

It was submitted that video-conferencing could not be allowed as the rights of an accused under Article 21 cannot be subjected to a procedure involving "virtual reality". Such an argument displays ignorance of the concept of virtual reality and also of video-conferencing. Virtual reality is a state where one is made to feel, hear or imagine what does not really exist. Video-conferencing has nothing to do with virtual reality. Video-conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence. In fact he/she is present before you on a screen. Except for touching, one can see, hear and observe as if the party is in the same room. In video-conferencing both parties are in the presence of each other. So long as the accused and/or his pleader are present when evidence is recorded by video-conferencing, that evidence is being recorded in the "presence" of the accused and would thus fully meet the requirements of Section 273 CrPC. Recording of such evidence would be as per "procedure established by law". (Para 19)

Recording of evidence by video- conferencing also satisfies the object of Section 273 that evidence be recorded in the presence of the accused. The accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact the accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded courtroom. They can observe his or her demeanour. In fact the facility to play back would enable better observation of demeanour. They can hear and rehear the deposition of the witness. The accused would be able to instruct his pleader immediately and thus cross-examination of the witness is as effective, if not better. The facility of play back would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in court. Thus no prejudice, of whatsoever nature, is likely to be caused to the accused. (Para 20)

The advancement of science and technology is such that now it is possible to set up video-conferencing equipment in the court itself. In that case evidence would be recorded by the Magistrate or under his dictation in open court. If that is done then the requirements of Sections 274 and 275, requiring evidence be taken down in writing by the Magistrate himself or by his dictation in open court, would be fully met. To this method there is, however, a drawback. As the witness is now in court there may be difficulties if he commits contempt of court or perjures himself and it is immediately noticed that he has perjured himself. Therefore, as a matter of prudence, evidence by video-conferencing in open court should be only if the witness is in a country which has an extradition treaty with India and under whose laws contempt of court and perjury are also punishable. (Para 21)

That apart, in cases where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience, the court could consider issuing a commission to record the evidence by way of video-conferencing. In the present case *G* has refused to come to India to give evidence. His evidence appears to be necessary for the ends of justice. (Para 22)

Since *G* is willing to give evidence, an official of the court can be deputed to record evidence on commission by way of video-conferencing. The evidence will be recorded in the studio/hall where the video-conferencing takes place. The court in Mumbai would be issuing commission to record evidence by video-conferencing in Mumbai. Hence the commission would be addressed to the Chief Metropolitan Magistrate, Mumbai who would depute a responsible officer (preferably a judicial officer) to proceed to the office of VSNL and record the evidence of the witness *G* (Dr. Greenberg) in the presence of the accused-respondent. The officer shall ensure that the accused and his counsel are present when the evidence is recorded and that they are able to observe the demeanour and hear the deposition of *G*. The officers shall also ensure that the respondent has full opportunity to cross-examine *G*. It must be clarified that adopting such a procedure may not be possible if the witness is out of India and not willing to give evidence. (Para 24)

Further, fixing of time for recording evidence on commission is always the duty of the officer who has been deputed to so record evidence. Thus the officer recording the evidence would have the discretion to fix up the time in consultation with VSNL, who are experts in the field and who will know which is the most convenient time for video-conferencing with a person in USA. The respondent and his counsel will have to make it convenient to attend at the time fixed by the officer concerned. If they do not remain present, the Magistrate will take action, as provided in law, to compel attendance. The officer who will be deputed would be one who has authority to administer oaths. That officer will administer the oath. By now science and technology has progressed enough to not worry about a video image/audio interruptions/distortions. Even if there are interruptions they would be of temporary duration. Undoubtedly, an officer would have to be deputed, either from India or from the Consulate/Embassy in the country where the evidence is being recorded who would remain present when the evidence is being recorded and who will ensure that there is no other person in the room where the witness is sitting whilst the evidence is being recorded. That officer will ensure that the witness is not coached/tutored/prompted. It would be advisable, though not necessary, that the witness be asked to give evidence in a room in the Consulate/Embassy. The officer deputed will ensure that the respondent, his counsel and one assistant are allowed in the studio when the evidence is being recorded. The officer will also ensure that the respondent is not prevented from bringing into the studio the papers/documents which may be required by him or his counsel. It is possible to put documents or written material to the witness in cross-examination. One can show to a party, with whom video-conferencing is taking place, any amount of written material. The officer concerned will ensure that once video-conferencing commences, as far as possible, it is proceeded with without any adjournments. Further, if it is found that *G* is not attending at the time(s) fixed, without any sufficient cause, then it would be open for the Magistrate to disallow recording of evidence by video-conferencing. If the officer finds that *G* is not answering questions, the officer will make a memo of the same. Finally, when the evidence is read in court, this is an aspect which will be taken into consideration for testing the veracity of the evidence. (Para 26)

As the evidence is being recorded on commission, that evidence will subsequently be read in court. Thus no question arises of the witness insulting the court. If on reading the evidence the court finds that the witness has perjured himself, just like in any other evidence on commission, the court will ignore or disbelieve the evidence. (Para 26)

Undoubtedly, the costs of video-conferencing would have to be borne by the State. (Para 26). *State of Maharashtra* v. *Dr. Praful B. Desai*, (2003) 4 SCC 601: 2003 SCC (Cri) 815: AIR 2003 SC 2053: 2003 Cri LJ 2033: (2003) 2 Mah LJ 868: (2003) 2 MPLJ 434.

Bench Strength **2**. Coram: **S.N. Variava** and *B.N. Agrawal*, JJ. [Date of decision: 1-4-2003]

Nageshwar Shri Krishna Ghobe v. State of Maharashtra, (1973) 4 SCC 23: 1973 SCC (Cri) 664, relied on

Francis Bennion: Statutory Interpretation, 2nd Edn., p. 617, relied on

National Textile Workers' Union v. P.R. Ramakrishnan, (1983) 1 SCC 228: 1983 SCC (Tax) 2: 1983 SCC (L&S) 72; CIT v. Podar Cement (P) Ltd., (1997) 5 SCC 482; State v. S.J. Choudhary, (1996) 2 SCC 428: 1996 SCC (Cri) 336; SIL Import, USA v. Exim Aides Silk Exporters, (1999) 4 SCC 567: 1999 SCC (Cri) 600; Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, followed

A.K. Gopalan v. State of Madras, AIR 1950 SC 27; Nazir Ahmad v. King Emperor, AIR 1936 PC 253 (2): 37 Cri LJ 897, distinguished

Ratilal Bhanji Mithani v. State of Maharashtra, (1972) 3 SCC 793: 1972 SCC (Cri) 861, considered and distinguished on facts

[3009] — Ss. 273 and 284 — Evidence — Recording of, on commission by video-conferencing — Costs — *Held, costs of video-conferencing would have to be borne by the State* (Para 26). *State of Maharashtra* v. *Dr. Praful B. Desai*, (2003) 4 SCC 601: 2003 SCC (Cri) 815: AIR 2003 SC 2053: 2003 Cri LJ 2033: (2003) 2 Mah LJ 868: (2003) 2 MPLJ 434.

Bench Strength **2**. Coram: **S.N. Variava** and *B.N. Agrawal*, JJ. [Date of decision: 1-4-2003]

[3010] — Ss. 273 and 294 — Admission of items of evidence (documents, explosives, guns, etc.) without formal proof — Discretion of counsel for accused — Necessity of instructions in this regard from accused — *Objections raised by accused — Later formal identification of evidence concerned — Opportunity of cross-examination to accused — Relevance*

On 5-6-2002 all the counsel appearing for the accused agreed that all the items of evidence (documents, explosives, guns, etc.) should be considered as undisputed evidence without formal proof which resulted in dropping of considerable number of witnesses for the prosecution. Whether or Afzal's counsel had instructions in this regard there is nothing wrong in the conduct of the advocate in agreeing for admission of formal documents without formal proof or in agreeing for the framing of charges. The counsel had exercised her discretion reasonably. The accused-appellant did not object to this course adopted by the amicus throughout the trial. No doubt, some of the documents admitted contained particulars of identification of the deceased terrorists by the appellant Afzal, but, the factum of identification was independently proved by the prosecution witnesses and opportunity of cross-examination was available to the accused. In the circumstances it cannot be said that there was a reasonable possibility of prejudice on account of admission of the said documents without formal proof. (Para 166). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Strickland v. Washington, 466 US 668 (1984); Engle v. Isaac, 456 US 107 (1982), followed

[3011] — Ss. 273 and 317 — Applicability — Video conference facilities — Provision of — *On facts, as appellant lodged in jail in Delhi while trial being conducted in Patna, video conference facilities being provided to appellant in order to enable him to oversee proceedings in trial — Held, while every effort be made to provide video conference facilities to appellant but in light of Ss. 273 and 317 trial will go on to its conclusion even if they are not available* (Para 11). *Rajesh Ranjan Yadav* v. *CBI*, (2008) 1 SCC 667: (2008) 1 SCC (Cri) 305: AIR 2008 SC 942: 2008 Cri LJ 1033.

Bench Strength 2. Coram: *S.B. Sinha* and **H.S. Bedi**, JJ. [Date of decision: 30-11-2007]

[3012] — Ss. 273 to 275, 284, 285 and 327 — Requirements of — If can be met by video-conferencing — Physical presence of accused during taking of evidence — Exception to rule — When permissible — *Transfer of undertrial prisoner to prison outside State in interest of justice — Frequent visits from place of detention (Tihar Jail, Delhi) to court of trial (in Bihar) likely to prejudice security of both respondent and others involved in case, apart from being a heavy burden on State exchequer — Hence, held, given peculiar circumstances of the case under which respondent had been transferred to Tihar Jail, requirements of said sections could be met by holding trial by video-conferencing — However, respondent permitted to apply to Sessions Judge for transfer to court of trial for sole purpose of being present during recording of statement of any particular witness, but in a rare and important situation only — In case of such transfer of respondent to court of trial, special police were to be deputed by authorities of Tihar Jail, who were at all times to bear in mind circumstances in which respondent had been transferred from Patna to Delhi — Evidence Act, 1872, Ss. 137 and 138*

It is true that in a normal trial the Criminal Procedure Code requires the accused to be present at the trial but in the peculiar circumstances of this case a procedure will have to be evolved, which will not be contrary to the rights given to an accused under the Criminal Procedure Code but at the same time protect the administration of justice. The requirements and provisions of Sections 273 to 275, 284, 285 and 327 could be met by directing the trial to be held by video-conferencing facility. This is one of those rare cases wherein a frequent visit from the place of detention to the court of trial in Bihar would prejudice the security of both the respondent and others involved in the case, apart from being a heavy burden on the State exchequer. (Para 43)

The trial of the case in Patna shall continue without the presence of the appellant by the court, dispensing such presence, and to the extent possible shall be conducted with the aid of video-conferencing. However, in the event of the respondent making any application for his transfer for the sole purpose of being present during the recording of the statement of any particular witness, the same will be considered by the Sessions Judge on its merit and if he thinks it appropriate, he may direct the authorities of Tihar Jail to produce the accused before him for that limited purpose. This, however, will be in a rare and important situation only and if such transfer order is made the respondent shall be taken from Tihar Jail to the court concerned and if need be, detained in an appropriate jail at the place of trial and under the custody and charge of the police to be specially deputed by the authorities of Tihar Jail who shall bear in mind the factual situation in which the respondent has been transferred from Patna to Delhi. (Para 45). *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2005) 3 SCC 284: 2005 SCC (Cri) 705: AIR 2005 SC 972: 2005 Cri LJ 1441.

Bench Strength 2. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 14-2-2005]

— S. 274 *See also* Ss. 273 to 275, 284, 285 and 327

[3013] — Ss. 274 and 275 — Recording of evidence — By way of video-conferencing in open court — *Held, would satisfy the requirements of the provisions requiring the recording of the evidence by the Magistrate himself or under his dictation in open court — But considering the drawback of this method in case the witness commits contempt of* *court or perjures himself, held, evidence by video-conferencing in open court should be only if the witness is in a country which has an extradition treaty with India and under whose laws contempt of court and perjury are also punishable*

The advancement of science and technology is such that now it is possible to set up video-conferencing equipment in the court itself. In that case evidence would be recorded by the Magistrate or under his dictation in open court. If that is done then the requirements of Sections 274 and 275, requiring evidence be taken down in writing by the Magistrate himself or by his dictation in open court, would be fully met. To this method there is, however, a drawback. As the witness is now in court there may be difficulties if he commits contempt of court or perjures himself and it is immediately noticed that he has perjured himself. Therefore, as a matter of prudence, evidence by video-conferencing in open court should be only if the witness is in a country which has an extradition treaty with India and under whose laws contempt of court and perjury are also punishable. (Para 21). *State of Maharashtra* v. *Dr. Praful B. Desai*, (2003) 4 SCC 601: 2003 SCC (Cri) 815: AIR 2003 SC 2053: 2003 Cri LJ 2033: (2003) 2 Mah LJ 868: (2003) 2 MPLJ 434.

Bench Strength 2. Coram: **S.N. Variava** and *B.N. Agrawal*, JJ. [Date of decision: 1-4-2003]

— S. 275 *See* Ss. 273 to 275, 284, 285 and 327

See also Ss. 274 and 275

[3014] — Ss. 276, 281 and 378 & 386 — Appeal against acquittal — Reconstructed records of the case before High Court — *Non-consideration of merits of the case and acquittal by giving benefit of doubt on surmises and conjectures, on facts, held not justified — Records of the case including those called for from trial court, found missing before hearing of the appeal — Records reconstructed by trial court in compliance with order of High Court — High Court doubting genuineness of the reconstructed case file and without going into merits of the case allowing the appeal and acquitting the accused — Held on facts, High Court erred in doubting the authenticity of the reconstruction of records which were made by trial court after due verification and in acquitting the accused without going into merits of the case*

The respondents were convicted and awarded punishment for various offences under IPC. The respondents preferred appeals before the High Court. In regard to hearing of the appeals the High Court passed an order to expedite the preparation of records and to list the appeals for final hearing. But before actual hearing of those appeals, all the records including those which were called for from the trial court, were found missing in the High Court. The High Court directed the trial court to reconstruct the record. Accordingly the trial court took steps to reconstruct the records. The fact that the copies of the statements and other documents were given to the complainant, had been spoken to by the advocates of the parties before the Sessions Judge. That fact was corroborated by verifying the authenticity of the carbon copies of the statements of the witnesses produced by the appellant appearing along with his advocate. To dispel the doubt expressed by one of the respondents who appeared before the Sessions Judge, time was granted to him to produce copies of the statements which he admitted to be in his possession. In the absence of such copies being filed the Sessions Judge satisfied himself about the correctness of the copies produced by the complainant by examining all those persons connected with the reconstructed records. He gave notice to both the counsel for the prosecution as well as of the accused to render necessary assistance in the construction of the file. The counsel rendered assistance to the extent they could. On the basis of statements recorded by him in the course of reconstruction of records, the Sessions Judge concluded that the copies of the statement of witnesses supplied to the complainant were in the handwriting of one of the Readers of his court, who in his statement identified the originals having been prepared by him and that the copies were also in his handwriting. Accordingly, he submitted the reconstructed file to the High Court along with all other necessary papers. When the case came up for hearing, the High Court without going into the merits of the case, allowed the appeals by setting aside the conviction and sentences ordered by the trial court and acquitted the respondents of all the charges. There were two reasons for the High Court for doing so. The first was that the carbon copies of the statements of the witnesses were not countersigned by the Reader of the court and that there was no endorsement on the carbon copies as contemplated in the circulars of the High Court, so it was doubted that the copies were supplied to the complainant. The second was that even a seemingly slight variation in the evidence recorded at the trial with the alleged carbon copies can change the entire complexion of the case.

Allowing the complainant's appeals,

Held :

The reason given by the High Court for doubting the authenticity of the reconstructed records, is untenable. There is no valid reason to doubt the genuineness of the copies of the statements of witnesses examined at the trial. The Additional District and Sessions Judge had reconstructed the file in the best possible manner. On the facts of the case it is not possible to accept the contention that as the respondents did not have an opportunity to cross-examine the Peshkar (Reader) and that before the accused appeared in court the statement of the Peshkar was already recorded, so it cannot be relied upon in verification of the copies furnished by the complainant to reconstruct the record. Mere suspicion or doubt expressed by the advocates of the respondents (appellants before the High Court) cannot destroy or discredit the authenticity of the record reconstructed by the Sessions Judge. Since there was a properly reconstructed file, the High Court erred in not going into the merits of the case and acquitting the appellant convicts before it by allowing the appeals. (Paras 21 to 23 and 25)

A distinction must be made between a case where the trial court reports that the reconstruction of file is impossible or the reconstructed file is scanty and incomplete lacking in material documents of which no extracts are to be found in the judgment of the trial court and a case where the trial court after due verification reconstructs the file. In the former case, declining to go into the merits may be justifiable but in the latter case, it is impermissible. (Para 24)

There can be no doubt that jurisprudentially, an accused is presumed to be innocent till he is found to be guilty by a competent court. In giving its verdict the court will give benefit of doubt arising on consideration of evidence brought on record by the prosecution or on account of absence of material evidence which ought to have been adduced but is not brought on record, to the accused person and acquit him of the offence charged against. But a doubt arising on the basis of surmises and conjectures should never be allowed to influence the verdict of the court as in such cases giving benefit of doubt to the accused will be counterproductive and destructive of the system of delivery of justice in criminal cases having repercussions on the existence of every civilised and peaceful society. The courts will have to be cautious and prudent to secure the ends of justice. (Para 24). *Kunwar Bahadur Singh* v. *Shiv Baran Singh*, (2001) 9 SCC 149: 2002 SCC (Cri) 428: AIR 2003 SC 2066.

Bench Strength **2**. Coram: *S.S.M. Quadri* and *S.N. Phukan*, JJ. [Date of decision: 29-11-2000]

— **S. 278** *See also* S. 360, Criminal Procedure Code, 1898, p. 1169 in Vol. 2

[3015] — S. 278 — Object and scope of — Corrections in recorded statement of witness intended to change earlier version not permissible — *Where correction slips unsigned and not properly filed failure of trial judge to make memorandum thereon of objection, held, inconsequential — Substantial compliance of provisions sufficient*

The object of S. 278 is twofold: firstly to ensure that the evidence of the witness as recorded is accurate and secondly to give the witness concerned an opportunity to point out mistakes, if any. If the correction suggested by the witness is one which the judge considers necessary he will make it at once as required by sub-section (1) but if the correction is such that the judge does not consider necessary, sub-section (2) requires that a memorandum of the objection be made and the judge add his remarks, if any, thereto. In the present case, the trial Judge corrected all the typographical errors which he considered necessary but, refused to carry out the substantive part of the deposition. The section is not intended to permit a witness to resile from his statement in the name of correction. The trial Judge was justified in refusing to effect the change which he thought was intended to change the earlier version. He did not make a memorandum as the correction slip was unsigned and was not properly filed. Now, since the correction slip as well as the remarks of the trial Judge submitted to the High Court on appeal have become a part of the record, nothing more need be done as the provisions of S. 278 are substantially complied with. *Mir Mohd. Omar* v. *State of W.B.*, (1989) 4 SCC 436: 1989 SCC (Cri) 750: AIR 1989 SC 1785: 1989 Cri LJ 2070: (1989) 2 Crimes 698.

Bench Strength **2**. Coram: **K. Jagannatha Shetty** and *A.M. Ahmadi*, JJ. [Date of decision: 8-8-1989]

— **S. 281** *See* Ss. 164, 281 and 463

See also Ss. 276, 281 and 378 & 386

— **S. 283** *See* Ss. 327, 231, 233, 242 to 244, 247, 273 and 283

— **S. 284** *See also* S. 503, Criminal Procedure Code, 1898, pp. 1276 et seq. in Vol. 2

— **S. 284** *See* Ss. 273 to 275, 284, 285 and 327

See also Ss. 273 and 284

See also Ss. 285, 284 and 273

[3016] — S. 284 — Commission to record the evidence by way of video-conferencing — *Held, can be issued by the court where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience* (Para 22). *State of Maharashtra* v. *Dr. Praful B. Desai*, (2003) 4 SCC 601: 2003 SCC (Cri) 815: AIR 2003 SC 2053: 2003 Cri LJ 2033: (2003) 2 Mah LJ 868: (2003) 2 MPLJ 434.

Bench Strength 2. Coram: **S.N. Variava** and *B.N. Agrawal*, JJ. [Date of decision: 1-4-2003]

Ratilal Bhanji Mithani v. State of Maharashtra, (1972) 3 SCC 793: 1972 SCC (Cri) 861, considered and distinguished on facts

— S. 285 *See also* S. 504(3), Criminal Procedure Code, 1898, p. 1277 in Vol. 2

— S. 285 *See also* Ss. 273 to 275, 284, 285 and 327

[3017] — Ss. 285, 284 and 273 — Evidence — Recording of, on commission by way of video-conferencing — Commission to whom to be issued — Such evidence how to be recorded — *Trial at Mumbai — Witness in USA and willing to give evidence — Held, an official of the court can be deputed to record evidence on commission by way of video-conferencing — Evidence would be recorded in the studio/hall where the video-conferencing takes place — The court in Mumbai would be issuing commission to record evidence by video-conferencing in Mumbai — Hence, the commission would be addressed to the Chief Metropolitan Magistrate, Mumbai who would depute a responsible officer (preferably a judicial officer) to proceed to the office of VSNL and record the evidence of the witness in the presence of the accused-respondent — Duties and responsibilities of the officer deputed to record the evidence in the said manner, stated — Adopting such a procedure when may not be possible, clarified*

In cases where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience, the court could consider issuing a commission to record the evidence by way of video-conferencing. In the present case *G* has refused to come to India to give evidence. His evidence appears to be necessary for the ends of justice. (Para 22)

Since *G* is willing to give evidence, an official of the court can be deputed to record evidence on commission by way of video-conferencing. The evidence will be recorded in the studio/hall where the video-conferencing takes place. The court in Mumbai would be issuing commission to record evidence by video-conferencing in Mumbai. Hence the commission would be addressed to the Chief Metropolitan Magistrate, Mumbai who would depute a responsible officer (preferably a judicial officer) to proceed to the office of VSNL and record the evidence of the witness *G* (Dr. Greenberg) in the presence of the accused-respondent. The officer shall ensure that the accused and his counsel are present when the evidence is recorded and that they are able to observe the demeanour and hear the deposition of *G*. The officers shall also ensure that the respondent has full opportunity to cross-examine *G*. It must be clarified that adopting such a procedure may not be possible if the witness is out of India and not willing to give evidence. (Para 24)

Further, fixing of time for recording evidence on commission is always the duty of the officer who has been deputed to so record evidence. Thus the officer recording the evidence would have the discretion to fix up the time in consultation with VSNL, who are experts in the field and who will know which is the most convenient time for video-conferencing with a person in USA. The respondent and his counsel will have to make it convenient to attend at the time fixed by the officer concerned. If they do not remain present, the Magistrate will take action, as provided in law, to compel attendance. The officer who will be deputed would be one who has authority to administer oaths. That officer will administer the oath. By now science and technology has progressed enough to not worry about a video image/audio interruptions/distortions. Even if there are interruptions they would be of temporary duration. Undoubtedly, an officer would have to be deputed, either from India or from the Consulate/Embassy in the country where the evidence is being recorded who would remain present when the evidence is being recorded and who will ensure that there is no other person in the room where the witness is sitting whilst the evidence is being recorded. That officer will ensure that the witness is not coached/tutored/ prompted. It would be advisable, though not necessary, that the witness be asked to give evidence in a room in the Consulate/Embassy. The officer deputed will ensure that the respondent, his counsel and one assistant are allowed in the studio when the evidence is being recorded. The officer will also ensure that the respondent is not prevented from bringing into the studio the papers/documents which may be required by him or his counsel. It is possible to put documents or written material to the witness in cross-examination. One can show to a party, with whom video-conferencing is taking place, any amount of written material. The officer concerned will ensure that once video-conferencing commences, as far as possible, it is proceeded with without any adjournments. Further, if it is found that *G* is not attending at the time(s) fixed, without any sufficient cause, then it would be open for the Magistrate to disallow recording of evidence by video-conferencing. If the officer finds that *G* is not answering questions, the officer will make a memo of the same. Finally, when the evidence is read in court, this is an aspect which will be taken into consideration for testing the veracity of the evidence. (Para 26). *State of Maharashtra* v. *Dr. Praful B. Desai, (2003) 4 SCC 601: 2003 SCC (Cri) 815: AIR 2003 SC 2053: 2003 Cri LJ 2033: (2003) 2 Mah LJ 868: (2003) 2 MPLJ 434.*

Bench Strength **2**. Coram: **S.N. Variava** and *B.N. Agrawal*, JJ. [Date of decision: 1-4-2003]

Ratilal Bhanji Mithani v. State of Maharashtra, (1972) 3 SCC 793: 1972 SCC (Cri) 861, considered and distinguished on facts

— S. 286 *See* Ss. 235 and 286

— S. 293 *See also* S. 510, Criminal Procedure Code, 1898, p. 1278 in Vol. 2

— S. 293 *See also* Ss. 231, 234, 242, 244 and 293

[3018] — S. 293 — Examination of the scientific expert — If obligatory — Smuggling of liquor — *Report of Excise Control Laboratory confirming samples submitted tested positive as whisky — Absence of examination of witnesses to prove the laboratory report in trial court — Necessity of — Held, a bare reading of Ss. 293(1) and (2) shows that it is not obligatory that an expert who furnishes his opinion on the scientific issue of the chemical examination of substance, should be of necessity made to depose in proceedings before the court — Punjab Excise Act, 1914 (1 of 1914), S. 61*

The appellants were alleged to have been indulging in smuggling of liquor from Haryana to Delhi. The raising party recovered eighteen cartons containing 12 bottles of "Bonnie Scot" special malt whisky, each being an 750 ml bottle. Two sample bottles were taken out separately as samples from each carton. An FIR was lodged and a site plan was prepared. The appellants were arrayed as the accused and arrested. The Excise Control Laboratory opined that the samples submitted tested positive as whisky. The appellants were charged with having committed offence under Section 61 of the Punjab Excise Act, 1914.

The Metropolitan Magistrate by judgment and order found the appellants guilty and sentenced them to six months' simple imprisonment with fine of Rs 2000 and in default a further three months' simple imprisonment. The appeal preferred by the petitioners to the Additional Sessions Judge was dismissed. Before the High Court the only stand was that there was delay in dispatch of the sample and none was examined to prove the reports. The High Court found that there was no substance in the plea. It was noted that there was no necessity for examining any witness to prove the Excise Control Laboratory report as documents were marked in terms of Section 293 CrPC.

The appellants are in appeal thereagainst before the Supreme Court by special leave.

Disposing the appeal, in terms below,

Held :

A bare reading of sub-sections (1) and (2) of Section 293 shows that it is not obligatory that an expert who furnishes his opinion on the scientific issue of the chemical examination of substance, should be of necessity made to depose in proceedings before the court. There is no substance in the revision petition so far as the conviction is concerned. (Para 9)

As the appellants have already suffered custody for more than three months, and the occurrence took place nearly 13 years back, while upholding the conviction, the sentence is reduced to the period already undergone. (Para 10). *Rajesh Kumar* v. *State Govt. of NCT of Delhi*, (2008) 4 SCC 493: (2008) 2 SCC (Cri) 366: (2008) 1 KLT 985.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 25-2-2008]

Ukha Kolhe v. State of Maharashtra, AIR 1963 SC 1531; Bhupinder Singh v. State of Punjab, (1988) 3 SCC 513: 1988 SCC (Cri) 694, followed

[3019] — S. 293 — Conviction reversed — Reliance on opinion of handwriting expert without examining him in court — Effect of — *Appellant and other co-accused **K** and **M** employees of State Electricity Board — **K** and **M** demanded Rs 2000 from complainant — Appellant neither demanded money nor present at spot when raid conducted — He connected with offence on basis of Ext. PR, a piece of paper on which he had allegedly jotted down meter reading — Ext. PR proved by handwriting expert that it was handwriting of appellant, but expert not examined in court — Held, when trial court relied on report of handwriting expert, it ought to have examined handwriting expert in order to give accused opportunity of cross-examining the expert — There is no material to indicate that accused admitted report of expert — Furthermore, trial court and High Court erred in shifting onus onto appellant to disprove said expert opinion without it being formally proved — Expert opinion cannot be relied upon unless expert is examined —*

PW 5 also stating that he had not authorised appellant and **K** *to check meter reading — Therefore appellant excluded from operation of S. 7 — As appellant neither received amount nor was he present at spot, his case has to be treated differently — Benefit of doubt given to appellant — Conviction set aside — Penal Code, 1860 — Ss. 120-A and 120-B — Corruption cases, Ss. 120-B and 34 — Evidence Act, 1872, Ss. 45, 73 and 101 — Prevention of Corruption Act, 1988, Ss. 7 and 13(1)(d)* (Paras 14 to 17, 11 and 19). *Keshav Dutt* v. *State of Haryana*, (2010) 9 SCC 286.

Bench Strength **2**. Coram: **Altamas Kabir** and *Dr. M.K. Sharma*, JJ. [Date of decision: 19-8-2010]

State of Maharushtra v. Damu, (2000) 6 SCC 269: 2000 SCC (Cri) 1088, relied on

[3020] — S. 293 — Opinion of doctor based on report of chemical examiner — *Report of chemical examiner available in records — Held, such report can be used by the court in evidence. State of A.P.* v. *Gangula Satya Murthy*, (1997) 1 SCC 272: 1997 SCC (Cri) 325: AIR 1997 SC 1588: 1997 Cri LJ 774.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 19-11-1996]

[3021] — Ss. 293 and 294 — Documents sought to be relied upon must be originals — Photocopy of ballistic report — Admissibility in evidence — Effect of tampering — *Evidence not produced to show that said photocopy had been compared and scrutinised with original and then placed on record — Held, assuming though not admitting that photocopy was admissible, but still the same loses credence in light of fact that perusal of forwarding letter and report show that there was some tampering with said documents since sequence of numbering of parcel as between forwarding letter and report was changed, which fact remained unexplained, casting doubt on genuineness of said report — Evidence Act, 1872, Ss. 64, 65 and 45* (Paras 170 and 171). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

[3022] — S. 293 — Report of chemical examiner in murder by poisoning case — Should be read with the doctor's opinion on the report — *Mere absence of statement in the report that lethal dose of the poison was detected would not render the report unreliable where the Doctor conducting autopsy opined that death was by poisoning — Evidence Act, 1872, S. 45 — Penal Code, 1860 — S. 302*

It was submitted that it was not enough for the chemical examiner merely to state in his report that the organo-phosphorus compound was present in the substance sent to him for examination. He should have also stated that a lethal dose of the organo-phosphorus compound was detected in the substance. Further, his report should be full and complete to take the place of evidence which he would have given if he were called to court as witness, and in the absence of such particulars, the death by poisoning cannot be inferred

Held :

No hard and fast rule can be laid down as regards the value to be attached to the report of the chemical examiner. The chemical examiner does not, as a rule, give an opinion as to the cause of death but merely gives report of the chemical examination of the substance sent to him. The report by itself is not crucial. It is a piece of evidence. The only protection to it is that it does not require any formal proof. It is, however, open to the court, if it thinks fit, to call the chemical examiner and examine him as to the subject-matter of the report. The report should normally be forwarded to the doctor who conducted the autopsy. In the instant case, that was done. The doctor who conducted the autopsy was given a copy of the report of the chemical examiner. The doctor in the light of the report gave his opinion that the death of the deceased was by poisoning i.e. organo-phosphorus compound. The report of the chemical examiner coupled with the opinion of the doctor is, therefore, sufficient to hold that it was a death by poisoning. *Bhupinder Singh* v. *State of Punjab*, (1988) 3 SCC 513: 1988 SCC (Cri) 694: AIR 1988 SC 1011.

Bench Strength **2**. Coram: *M.M. Dutt* and **K. Jagannatha Shetty**, JJ. [Date of decision: 6-4-1988]

Followed in Rajesh Kumar v. State Govt. of NCT of Delhi, (2008) 4 SCC 493

[3023] — S. 293 — Report of Serologist — *Held, can be used as evidence without any formal proof* (Para 39). *Dhanajaya Reddy* v. *State of Karnataka*, (2001) 4 SCC 9: 2001 SCC (Cri) 652: AIR 2001 SC 1512: 2001 Cri LJ 1712.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 14-3-2001]

[3024] — S. 293 — Recovery of pistol at the instance of the accused — Opinion of ballistic expert that the bullet recovered from the body of the deceased could have been fired from the said pistol — *Held, this circumstance should be kept in mind while considering the legal implication of the evidence relating to the recovery of the pistol — Evidence Act, 1872, S. 27. State of Rajasthan* v. *Bhup Singh*, (1997) 10 SCC 675: 1997 SCC (Cri) 1032: (1997) 1 An LT (Cri) 588.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 13-1-1997]

[3025] — **S. 293 — Certified copies of sale deeds regarding similarly situated or neighbouring land — Held, it is open to court to treat such copies as evidence, but court is under no compulsion to accept them as such** — *To weigh pros and cons and decipher the true significance of such documents in relation to the market value of the land concerned is within court's jurisdiction — Reference Court fixing market value of disputed land at Rs 65,762 per acre after taking into account certified copies of only those sale deeds whose vendor or vendee had been examined as witnesses — Held, Division Bench of High Court was within jurisdiction in allowing respondent's appeal, taking into account two other sale deeds for which nobody connected with the transactions had been examined and in enhancing land value to Rs 75,000 per acre — Land Acquisition Act, 1894, Ss. 23 and 51-A — Prevention of Food Adulteration Act, 1954, S. 13(5) — Registration Act, 1908, S. 57(5) — Evidence Act, 1872, Ss. 64 and 65(f)*

If the only purpose served by Section 51-A is to enable the court to admit the copy of the document in evidence there was no need for a legislative exercise because even otherwise the certified copy of the document could have been admitted in evidence. (Para 11)

The State has the burden to prove the market value of the lands acquired by it for which the State may have to depend upon the prices of lands similarly situated which were transacted or sold in the recent past, particularly those lands situated in the neighbouring areas. The practice had shown that for the state officials it was a burden to trace out the persons connected with such transactions mentioned in the sale deeds and then to examine them in court for the purpose of proving such transactions. It was in the wake of the aforesaid practical difficulties that the new Section 51-A was introduced in the LA Act. When the section says that certified copy of a registered document "may be accepted as evidence of the transaction recorded in such document" it enables the court to treat what is recorded in the document, in respect of the transactions referred to therein, as evidence. (Para 13)

The words "may be accepted as evidence" in the section indicate that there is no compulsion on the court to accept such transaction as evidence, but it is open to the court to treat them as evidence. Merely accepting them as evidence does not mean that the court is bound to treat them as reliable evidence. What is sought to be achieved is that the transactions recorded in the documents may be treated as evidence, just like any other evidence, and it is for the court to weigh all the pros and cons to decide whether such transaction can be relied on for understanding the real price of the land concerned. (Para 14)

There are similar enabling provisions in other statutes by which the courts are allowed to treat the facts stated in certain documents as evidence. However what value is to be attached to such evidence must necessarily be for the court to consider and decide. (Para 15)

Under Section 51-A of the Land Acquisition Act it is open to the court to act on the documents regarding the transaction recorded in such documents. However, that will not prevent any party who supports or opposes the said document or the transaction recorded therein to adduce other evidence to substantiate their stand regarding such transactions. But it is not possible to hold that even after the introduction of Section 51-A the position would remain the same as before. (Para 16)

The High Court cannot, therefore, be faulted for relying on the transactions recorded in Exts. A-2 and A-4 though no one was examined for proving such transactions. No evidence had been adduced by the State for creating any doubt regarding the bona fides or genuineness of the transactions mentioned therein. It is true that the area of lands involved in those sale deeds were relatively very small. Nonetheless, learned Judges persuaded themselves to consider the sale price indicated therein along with the prices shown in other transactions mentioned in Exts. A-1 and A-3 also, for reaching the conclusion that the market value of the acquired land should have been Rs 75,000 per acre. The increase made by the High Court is not so substantial as to warrant interference from the Supreme Court. (Para 18). *Land Acquisition Officer & Mandal Revenue Officer* v. *V. Narasaiah*, (2001) 3 SCC 530: AIR 2001 SC 1117.

Bench Strength **3**. Coram: **K.T. Thomas**, *R.P. Sethi* and *B.N. Agrawal*, JJ. [Date of decision: 27-2-2001]

Collector, Raigarh v. Dr. Harisingh Thakur, (1979) 1 SCC 236: AIR 1979 SC 472, distinguished by implication

Inder Singh v. Union of India, (1993) 3 SCC 240; P. Ram Reddy v. Land Acquisition Officer, (1995) 2 SCC 305, overruled by implication

Mangaldas Raghavji Ruparel v. State of Maharashtra, AIR 1966 SC 128: 1966 Cri LJ 106, relied on

See fully Cement Corpn. of India Ltd. v. Purya, (2004) 8 SCC 270

[3026] — **Ss. 293 and 391 — Expert opinion — Ballistic reports — Reliability — Use of word "appear" in report — Failure of accused to cross-examine the expert — Effect** — *On facts held, the reports were vague and ambiguous and hence, could not be relied upon — Submissions,* *inter alia, by accused rejected that: (i) prosecution tried to suppress report of ballistic expert **R** Ext. PW 89-DB since it was not favourable to them; (ii) weapon of offence was not required to show whether two empties were fired from same gun; (iii) Ext. PW 89-DB supports PW 2; (iv) prosecution sought favourable expert opinion from PW 95; and (v) in spite of application under S. 391 CrPC, prosecution chose not to call **R** and cross-examine him — Evidence Act, 1872, S. 45*

The opinion of *R*, ballistic expert exhibited as Ext. PW 89-DB only says that "*it appears that the two cartridge cases are from two different pistols*". Such a vague opinion of the expert can neither be relied upon nor can be any basis to come to a conclusion that there were two persons who had fired two different shots. [Paras 163, 164 and 303(5)]

The moment *R* uses the word "appear" his opinion unsupported by reasons becomes inconclusive and stands discredited for the purpose of placing reliance on. Besides, clearly an option was available to the accused under Section 293 CrPC to call for the witness and ascertain from him for sure that the two empties were in fact fired from two different weapons. However, the accused did not choose to do so. (Para 179)

Similar is the case with the expert opinion of PW 95 which is again inconclusive. There is no evidence on record to suggest that PW 95 gave an opinion to oblige the prosecution. On the contrary, his response to the court question reveals that he was extremely confused as to the issue which had to be addressed by him in the capacity of an expert. In the concluding part of his testimony he reaffirms the opinion given by him which is that without test firing the empties from the weapon of offence no conclusive opinion can be given. (Para 180)

The stand of the defence that to opine whether the two cartridge cases are from the same weapon or not the pistol is not required, and the pistol is only required when the opinion is sought whether they are from that particular weapon or not, cannot be accepted. It is well settled that when pressure is built inside the cartridge case, which results in the pushing out of the bullet from the barrel, there is difference in the marks to the extent that it may be either clear or unclear and flattened or deepened thus no opinion can be rendered on account of this dissimilarity in the absence of the weapon of offence and test firing, as in the present case. Further, once the report of *R* is rendered inadmissible the two gun theory of the defence becomes wholly inadmissible and what remains is that the two empties found at the spot were .22" bore cartridges, that the live bullet found in the Tata Safari (used by the principal accused, the appellant *M* to commute to and from the place of the incident) was a .22" cartridge and that the gun belonging to the appellant was a .22" bore pistol which was used for the commission of the crime of murder of Jessica Lal. (Paras 172 and 178)

The argument that the weapon of offence is not required to determine whether the two bullets have been fired from the same gun is based on the wrong premise that the two empties would necessarily consist of features which would enable an expert in determining the said fact. For instance, as in the case of a handwriting expert who has to give an opinion about two different sets of near identical questioned documents and as to whether the same belong to different persons, if the argument of the accused has to be accepted then the expert should be able to give such an opinion without having in his possession the specimen handwriting and the admitted handwriting of the accused. It is stated that such an approach would render the opinion as that of a layman and not an expert. Similar would be case of a fingerprint expert who undertakes the process of discovering two different sets of fingerprint which are in question, without having the specimen or the admitted fingerprint of the accused in question. In other words, an expert is only an expert if he follows the well-accepted guidelines to arrive at a conclusion and supports the same with logical reasoning. (Para 178)

It is well settled that while giving reports after the ballistic examination, the bullets, cartridge cases and the cartridges recovered and weapon of offence recovered are carefully examined and test firing is done at the FSL by the said weapon of offence and then only a specific opinion is given. (Para 164)

The defence sought to rely upon the testimony of PW 2 with regard to the two gun theory and sought to corroborate that part of PW 2's testimony with the testimony of the two ballistic experts. It has also been contended by the defence that the testimony of a hostile witness must be corroborated by the other reliable evidence on record in order to be admissible. The law is very clear that where a witness for the prosecution turns hostile, the court may rely upon so much of the testimony, which supports the case of the prosecution and is corroborated by other evidence. PW 2's testimony as regards the identity of the person shooting, is certainly not corroborated by the testimony of the experts since both the experts have given opinions which cannot qualify as conclusive opinion of experts. (Paras 182 and 97). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength 2. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

A.E.G. Carapiet v. A.Y. Derderian, AIR 1961 Cal 359, referred to

[3027] — Ss. 293(1) and (4) — Report of ballistic expert — Signed by Junior Scientific Officer (Ballistic) — *Held, can be used as evidence in terms of sub-section (1) — View that he being not an officer enumerated under sub-section (4), his evidence cannot be read in evidence, cannot be accepted — Sub-section (4) envisages that court is to accept the documents issued by any of the six officers enumerated therein as valid evidence without examining the author of the documents* (Para 6). *State of H.P.* v. *Mast Ram*, (2004) 8 SCC 660.

Bench Strength 2. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 10-9-2004]

— S. 293(4) *See also* Ss. 293(1) and (4)

[3028] — S. 293(4)(e) — "Director" — *Held, includes Joint Director — Report signed by Joint Director of Forensic Science Laboratory is admissible in evidence*

On a true construction of Section 293(4) CrPC it has to be held that Joint Director is comprehended by the expression "Director". The amendment made in clause (*e*) of Section 293(4) now indicates that clearly. If the Joint Director was not comprehended within the expression Director then the legislature would have certainly named him while amending the clause and providing that Section 293 applies to the Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory. A Joint Director is a higher officer than a Deputy Director or an Assistant Director and, therefore, it would be unreasonable to hold that a report signed by Joint Director is not admissible in evidence though a report signed by the Deputy Director or Assistant Director is now admissible. The High Court was right in holding that the report made by the Joint Director was admissible in evidence and that it deserved to be relied upon. *Ammini* v. *State of Kerala*, (1998) 2 SCC 301: 1998 SCC (Cri) 618: AIR 1998 SC 260: 1998 Cri LJ 481.

Bench Strength 2. Coram: **G.T. Nanavati** and *M. Jagannadha Rao*, JJ. [Date of decision: 18-11-1997]

— S. 294 *See also* Ss. 273 and 294

[3029] — S. 294 — Complainant giving evidence on affidavit — Admissibility and proof of enclosed documents — Affidavit should contain formal proof of enclosed documents — *If objections are raised by accused as regards proof of the documents and objections are sustained by court, prosecution can seek to summon the witnesses and get the defect in proof of documents corrected — Negotiable Instruments Act, 1881, S. 145(1)*

There is also no merit in the submission that in giving evidence on affidavit, the deponent (the complainant or any of his witnesses) can introduce hearsay or irrelevant facts in evidence to which the accused could have objected if the deposition was made in court as examination-in-chief and hence the accused must have the right to call the complainant (or his witness giving evidence on affidavit) into the witness box for examination-in-chief so as to get the inadmissible parts in the affidavit excluded from his evidence. Section 145 with its non obstante clause makes it possible for the evidence of the complainant to be taken in the absence of the accused. But the affidavit of the complainant (or any of his witnesses) may be read in evidence "subject to all just exceptions". "Subject to all just exceptions" simply means that the evidence given on affidavit must be admissible and it must not include inadmissible materials such as facts not relevant to the issue or any hearsay statements. In case the complainant's affidavits contain statements that are not admissible in evidence, it is always open to the accused to point those out to the court and the court would then surely deal with the objections in accordance with law. (Paras 40 and 23)

There is no substance in the further submission that when the complainant gives his evidence on affidavit, then the documents produced along with the affidavit(s) are not proved automatically and unless the accused admits those documents under Section 294 CrPC, the documents must be proved by oral testimony. There is no reason why the affidavits should not also contain the formal proof of the enclosed documents. In case, however, the accused raises any objections with regard to the validity or sufficiency of the proof of the documents submitted along with the affidavit and if the objections are sustained by the court, it is always open to the prosecution to have the witness concerned summoned and get the lacuna in the proof of the documents corrected. (Para 41). *Mandvi Cooperative Bank Ltd.* v. *Nimesh B. Thakore*, (2010) 3 SCC 83.

Bench Strength 2. Coram : *Tarun Chatterjee* and **Aftab Alam**, JJ. [Date of decision : 11-1-2010]

[3030] — Ss. 294, 242, 243 and 244 — Proof of a document — Held, a document is proved by examining its author — A document is therefore not admissible unless it is proved — *Further held, if a document has been marked as an exhibit and it is not objected to by the opposite party, such party is estopped from questioning its admissibility later on — Evidence Act, 1872, Ss. 64, 62, 67 and 115*

Ordinarily if a party to an action does not object to a document being taken on record and the same is marked as an exhibit, he is estopped and precluded from questioning admissibility thereof at a later stage. However, a document becomes inadmissible in evidence unless its author is examined; contents thereof cannot be held to have been proved unless he is examined and subjected to cross-examination in court of law. The document which is otherwise inadmissible cannot be taken in evidence only because no objection to admissibility thereof was taken. In a criminal case, subject to shifting of burden depending upon statutes and/or the decisions of superiors courts, right of an accused is protected in terms of Article 21 of the Constitution. The procedure laid in that behalf, therefore, must be strictly complied with. Exhibits 4, 5 and 6 (medical opinions relating to proper treatment that ought to have been given to the deceased patient in the present case) are not admissible in evidence in criminal trial. The said exhibits are however admissible before the Consumer Court. This is because provisions of the Evidence Act are not applicable to the Consumer Court. The Commission is merely to comply with the principles of natural justice, save and except the ones laid down under Section 13(4) of the Consumer Protection Act. Proceedings before the National Commission are although judicial proceedings, yet at the same time, it is not a civil court within the meaning of the Code of Civil Procedure. It may have all the trappings of a civil court yet it cannot be called a civil court. (Paras 37 to 39, 43 and 45). *Malay Kumar Ganguly* v. *Dr. Sukumar Mukherjee*, (2009) 9 SCC 221: (2009) 3 CPJ 17 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 7-8-2009]

Bharat Bank Ltd. v. Employees, AIR 1950 SC 188: 1950 SCR 459; Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corpn., (2009) 8 SCC 646; J.J. Merchant (Dr.) v. Shrinath Chaturvedi, (2002) 6 SCC 635; R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752, relied on

[3031] — S. 294(3) — Non-examination of medical officer concerned — Effect — *Held, where genuineness of injury report and post-mortem report had been admitted by defence, the same could be read as substantive evidence to prove correctness of its contents without doctor being examined*

Argument that non-examination of the medical officers concerned is fatal for the prosecution also liable to be rejected because defence admitted the genuineness of the injury reports and the post-mortem examination reports before the trial court. So the genuineness and authenticity of the documents stands proved and would be treated as valid evidence under Section 294 CrPC. It is settled position of law that if the genuineness of any document filed by a party is not disputed by the opposite party it can be read as substantive evidence under sub-section (3) of Section 294 CrPC. Accordingly, the post-mortem report, if its genuineness is not disputed by the opposite party, the said post-mortem report can be read as substantive evidence to prove the correctness of its contents without the doctor concerned being examined. (Para 21). *Akhtar* v. *State of Uttaranchal*, (2009) 13 SCC 722: (2009) 78 AIC 172 (SC): (2009) 4 All LJ 544.

Bench Strength **3**. Coram: *S.B. Sinha, B. Sudershan Reddy* and **Dr. M.K. Sharma**, JJ. [Date of decision: 9-4-2009]

— S. 296 *See also* S. 510-A, Criminal Procedure Code, 1898, p. 1278 in Vol. 2

— S. 296 *See also* Ss. 313 and 296

[3032] — S. 296 — Evidence of formal character given by affidavit — *Failure of prosecution to examine the deponent police official — Rejection of said evidence — Propriety of — Stating the object and purpose of S. 296, held, High Court erred in using such a premise for setting aside the conviction and sentence of the accused-respondent — Opium Act, 1878, S. 9*

The respondent was charge-sheeted by the police for the offence under Section 9 of the Opium Act. He was found in possession of 4.5 kg of opium wrapped in glazed paper, the sample of which was forwarded to the Chemical Examiner, who, after testing the same, reported that it was opium. Two police personnel produced affidavits regarding the role played by them in forwarding the sample to the Chemical Examiner. The trial Magistrate found that the evidence of the prosecution was enough to convict him of the offence under Section 9 of the Opium Act. The Sessions Court upheld the conviction and sentence passed by the trial court. In revision, the High Court quashed the conviction and sentence passed on the accused-respondent by rejecting the evidence of policemen tendered by means of affidavit. The prosecution challenged the said verdict of the High Court in the instant appeal. Setting aside the impugned judgment,

Held :

The normal mode of giving evidence is by examining the witness in court. But that course involves, quite often, spending of time of the witness, the trouble to reach the court and wait till he is called by the court, besides all the strain in answering questions and cross-questions in open court. It also involves costs which on many occasions are not small. The enabling provision of Section 296 is thus a departure from the usual mode of giving evidence. The object of providing such an exception is to help the court to gain the time and cost, besides relieving the witness of his troubles, when all that the said witness has to say in court relates only to some formal points. (Para 7)

Quite often different steps adopted by police officers during the investigation might relate to formalities prescribed by law. Evidence, if necessary on those formalities, should normally be tendered by affidavits and not by examining all such policemen in court. If any party to a lis wishes to examine the deponent of the affidavit, it is open to him to make an application before the court that he requires the deponent to be examined or cross-examined in court. When any such application is made, it is the duty of the court to call such person to the court for the purpose of being examined. (Para 8)

In the present case, the facts stated in the affidavit were purely of a formal character. At any rate, even the defence could not dispute that aspect because no request or motion was made on behalf of the accused to summon the deponents of those affidavits to be examined in court. In such a situation, it was quite improper that the High Court used such a premise for setting aside the conviction and sentence passed on the respondent. (Para 10). *State of Punjab* v. *Naib Din*, (2001) 8 SCC 578: 2002 SCC (Cri) 33: AIR 2001 SC 3955.

Bench Strength 2. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 28-9-2001]

Shankaria v. State of Rajasthan, (1978) 4 SCC 453: 1979 SCC (Cri) 74, relied on

[3033] — S. 296 — Police Officer taking fingerprints of accused not examined — He however submitting an affidavit — *Held, to be admissible evidence — Evidence Act, 1872, S. 45 — CrPC, 1898, S. 510-A. Shankaria* v. *State of Rajasthan*, (1978) 4 SCC 453: 1979 SCC (Cri) 74: AIR 1978 SC 1399: 1978 Cri LJ 1414.

Bench Strength 3. Coram: **R.S. Sarkaria**, *N.L. Untwalia* and *P.S. Kailasam*, JJ. [Date of decision: 26-4-1978]

[3034] — S. 296 — Provisions under S. 296 for giving evidence of formal nature by affidavit — Object and purpose of — *Held, apart from relieving the witness of his troubles, it is to help the court to gain the time and cost.* (Para 7). *State of Punjab* v. *Naib Din*, (2001) 8 SCC 578: 2002 SCC (Cri) 33: AIR 2001 SC 3955.

Bench Strength 2. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 28-9-2001]

Shankaria v. State of Rajasthan, (1978) 4 SCC 453: 1979 SCC (Cri) 74, relied on

[3035] — S. 296 — Time-bound expeditious disposal in criminal cases — Applicability and implications of S. 145(2), NI Act and S. 296 CrPC. *Radhey Shyam Garg* v. *Naresh Kumar Gupta*, (2009) 13 SCC 201: (2009) 80 AIC 54 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

[3036] — S. 296 — Non obstante clause of S. 143, NI Act, held, bars applicability of pari materia provision of S. 296 CrPC — *Negotiable Instruments Act, 1881, Ss. 143 and 145. Radhey Shyam Garg* v. *Naresh Kumar Gupta*, (2009) 13 SCC 201: (2009) 80 AIC 54 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

[3037] — Ss. 296 and 61 — Whether S. 145(2), NI Act permits directing examination-in-chief of person whose evidence has been given on affidavit — Pre-summoning and post-summoning evidence of complainant recorded by way of affidavits — Complainant cross-examined — *Accused's application under S. 145(2) for examination-in-chief of complainant — Maintainability — Held, S. 145(2), NI Act does not include within its scope examination-in-chief — Reasons for, discussed — S. 145(2) however includes the complainant's right to re-examination in terms of Evidence Act — Evidence Act, 1872, Ss. 137 and 138 — CPC, 1908, Or. 19 R. 1 and Or. 18 R. 4 — Negotiable Instruments Act, 1881, S. 145(2)*

The respondent filed a complaint petition against the appellant-accused for commission of an alleged offence under Section 138, NI Act. Pre-summoning evidence by the complainant was recorded by way of an affidavit. Cognizance of the offence was taken and summons was issued. Post-summoning evidence was also adduced by the complainant by way of an affidavit. The appellant-accused's application under Section 145(2), NI Act was dismissed by the Magistrate and was not interfered with by the High Court by reason of the impugned order under Section 482 CrPC.

Dismissing the appeal with costs assessed at Rs 25,000,

Held :

The words "examine any person giving evidence on affidavit as to the facts contained therein" in Section 145(2), NI Act, would mean for the purpose of cross-examination and not examination-in-chief. Although Section 145(1) uses the term "may" and Section 145(2) uses the term "shall", both the clauses must be read together. If an affidavit in terms of the provisions of Section 145 is to be considered to be an evidence, it is difficult to comprehend as to why the court will ask the deponent of the said affidavit to examine himself with regard to the contents thereof once over again. He may be cross-examined and upon completion of his evidence, he may be re-examined. (Paras 19 and 10)

Section 145(2), NI Act and Section 296 CrPC should be interpreted assuming the possibilities that a party examining his own witnesses including the complainant may not affirm an affidavit or would like to examine himself in court. (Para 15)

There is no dispute with regard to the proposition of law that the court only interprets the law and cannot legislate it. However, while interpreting a provision, the court must be able to assign a meaning thereto. A plain meaning or literal interpretation should not lead to absurdity or an anomalous situation. (Para 16)

Section 145, NI Act, which seeks to attend a salutary purpose, must be read reasonably. The Statement of Objects and Reasons of the NI Act is for the purpose of expedition of the trial. A criminal trial even otherwise is required to be expeditiously held. Therefore, there is no justification for arriving at a finding that a witness can again be summoned for his examination-in-chief in the court despite affirming affidavit in that behalf. Further Section 145, NI Act contains a non obstante clause. Thus the provisions of CrPC like the pari materia Section 296 CrPC are not attracted. (Paras 10, 19 and 20)

On the other hand, the issue of exemption from summoning a complainant by having regard to Section 61 CrPC also has no application to the facts and circumstances of this case. (Para 21)

The appellant has not been prejudiced in any manner whatsoever. The respondent was cross-examined at length. His cross-examination runs into nine typed pages. Evidence by way of an affidavit was filed both in the civil proceedings as also in the criminal proceedings. (Paras 9 and 3). *Radhey Shyam Garg* v. *Naresh Kumar Gupta*, (2009) 13 SCC 201: (2009) 80 AIC 54 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

Ameer Trading Corpn. Ltd. v. Shapoorji Data Processing Ltd., (2004) 1 SCC 702, relied on

State of Jharkhand v. Govind Singh, (2005) 10 SCC 437: 2005 SCC (Cri) 1570, clarified and distinguished

Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281: 2005 SCC (Cri) 1473, distinguished

[3038] — S. 296(1) — "Evidence of formal character" — Meaning of — *Held, depends upon the facts of the case* (Para 8). *State of Punjab* v. *Naib Din*, (2001) 8 SCC 578: 2002 SCC (Cri) 33: AIR 2001 SC 3955.

Bench Strength 2. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 28-9-2001]

[3039] — S. 296(2) — Not identical to S. 145(2), Negotiable Instruments Act — Distinguishing features — *Negotiable Instruments Act, 1881, S. 145(2)*

There is no merit in the submission that Section 145(2) of the Act is identical to Section 296(2) CrPC. Neither Section 296(2) CrPC nor the decision in *Naib Din case*, (2001) 8 SCC 578, has any relevance or application to the trial concerning a dishonoured cheque under Sections 143 to 146 of the Act. (Para 38)

Moreover, the crucial difference between Section 296(2) CrPC and Section 145(2) of the Act is that the former deals with the evidence of a *formal nature* whereas under the latter provision, all evidences including substantive evidence may be given on affidavit. Section 296 is part of the elaborate procedure of a regular trial under CrPC while the whole object of Section 145(2) of the Act is to design a much simpler and swifter trial procedure departing from the elaborate and time-consuming trial procedure of CrPC. Hence, notwithstanding the apparent verbal similarity between Section 145(2) of the Act and Section 296(2) CrPC, it would be completely wrong to interpret the true scope and meaning of the one in the light of the other. (Para 39)

There is also no merit in the submission that in giving evidence on affidavit, the deponent (the complainant or any of his witnesses) can introduce hearsay or irrelevant facts in evidence to which the accused could have objected if the deposition was made in court as examination-in-chief and hence the accused must have the right to call the complainant (or his witness giving evidence on affidavit) into the witness box for examination-in-chief so as to get the inadmissible parts in the affidavit excluded from his evidence. Section 145 with its non obstante clause makes it possible for the evidence of the complainant to be taken in the absence of the accused. But the affidavit of the complainant (or any of his witnesses) may be read in evidence "subject to all just exceptions". "Subject to all just exceptions" simply means that the evidence given on affidavit must be admissible and it must not include inadmissible materials such as facts not relevant to the issue or any hearsay statements. In case the complainant's affidavits contain statements that are not admissible in evidence, it is always open to the accused to point those out to the court and the court would then surely deal with the objections in accordance with law. (Paras 40 and 23). *Mandvi Cooperative Bank Ltd.* v. *Nimesh B. Thakore*, (2010) 3 SCC 83.

Bench Strength **2**. Coram : *Tarun Chatterjee* and **Aftab Alam**, JJ. [Date of decision : 11-1-2010]

State of Punjab v. Naib Din, (2001) 8 SCC 578: 2002 SCC (Cri) 33, distinguished

[3040] — S. 296(2) — Evidence of formal nature given by affidavit — *Duty of court, when application is made for examining the deponent — Held, is to call such person to the court for the purpose of being examined.* (Paras 7 and 8). *State of Punjab* v. *Naib Din*, (2001) 8 SCC 578: 2002 SCC (Cri) 33: AIR 2001 SC 3955.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 28-9-2001]

Shankaria v. State of Rajasthan, (1978) 4 SCC 453: 1979 SCC (Cri) 74, relied on

[3041] — S. 299(1) — Evidence of witnesses recorded in absence of accused — *S. 299(1) is an exception to S. 33 of Evidence Act and therefore, all the conditions precedent for utilising such evidence viz. (1) accused absconded; and (2) "deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured" must be established by the prosecution — First condition proved by prosecution in this case — As regards the second condition, prosecution case was that summons were issued but process-server reported that the deponents were dead — But trial court not recording its conclusion that on material it was satisfied that the deponents were dead — However, High Court, having regard to the original records, finding that the factum of death of the deponents was proved — In view of the appellate court's finding, held, the pre-conditions of S. 299(1) satisfied — Evidence Act, 1872, S. 33*

According to the FIR version the appellant, who was serving in the army, came and indiscriminately fired with the army rifle killing four persons. However, the appellant could not be found and was declared a proclaimed offender. The Sub-Divisional Magistrate thereupon recorded statement of 27 witnesses under Section 299 CrPC. The appellant was later arrested and then on being committed by the Magistrate to the Court of Session, the Sessions Judge tried him for the offences charged. Out of the 27 witnesses who had been examined under Section 299 CrPC, five of them had died by the time charges were framed against the appellant. Their statements recorded under Section 299 CrPC were, therefore, exhibited during the trial. 22 other witnesses who had also been examined under Section 299 CrPC were examined as prosecution witnesses during trial but they did not support the prosecution and, therefore, they were cross-examined by the Public Prosecutor and were declared hostile. So far as the appellant, being the author of the crime, was concerned, the Sessions Judge relied upon the statement of the five deceased eyewitnesses, which had been recorded under Section 299 CrPC. Though according to the prosecution case, it was only after summons being issued and the process-server having reported those persons to be dead, their former statements were tendered as evidence in trial, no order was made by the trial court, recording a conclusion that on the materials, he was satisfied that the persons who were examined by the Magistrate under Section 299(1) were dead. On the basis of the evidence of the deceased witnesses the Sessions Judge convicted the appellant under Section 302 and under Section 307 IPC as well as under Sections 25 and 27 of the Arms Act. On appeal, the High Court upheld the conviction of the appellant, relying upon the selfsame materials namely the statement recorded under Section 299 CrPC of those five persons. The High Court looked into the original records and it was found that the summons had been sent by the trial Judge, summoning the witnesses repeatedly to appear before the trial court and on every occasion, the summons were received back with the report that the persons had already died. The sole question that arose for consideration was under what circumstances and by what method, the statements of five persons could have been tendered in the case for being admissible under Section 33 of the Evidence Act and whether they can form the basis of conviction. Dismissing the appeal of the accused,

Held :

Section 299(1) CrPC consists of two parts: The first part speaks of the circumstances under which witnesses produced by the prosecution could be examined in the absence of the accused and the second part speaks of the circumstances when such deposition can be given in evidence against the accused in any inquiry or trial for the offence with which he is charged. This procedure contemplated under Section 299 CrPC is thus an exception to the principle embodied in Section 33 of the Evidence Act inasmuch as under Section 33, the evidence of a witness, which a party has no right or opportunity to cross-examine is not legally admissible. Being an exception, it is necessary, therefore, that all the conditions prescribed, must be strictly complied with. For taking the benefits of Section 299, the conditions precedent therein must be duly established and the prosecution, which proposes to utilise the said statement as evidence in trial, must, therefore, prove about the existence of the preconditions before tendering the evidence. It is only then, the statements of witnesses recorded under Section 299 CrPC before the arrest of the accused can be utilised in evidence in trial after the arrest of such accused. In other words, before recording the statement of the witnesses produced by the prosecution, the court must be satisfied that the accused has absconded or that there is no immediate prospect of arresting him, as provided under the first part of Section 299(1). When the accused is arrested and put up for trial, if any such deposition of any witness is intended to be used as evidence against the accused in any trial, then the court must be satisfied that either the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience, which would be unreasonable. (Para 4)

In the case in hand, there is no grievance about non-compliance with any of the requirements of the first part of sub-section (1) of Section 299 CrPC. As regards the second part of Section 299(1), it is true that the Sessions Judge had not recorded any order and it would have certainly been in compliance with the requirement of Section 299 that the Court, while such statements are tendered in evidence should have recorded as to how the preconditions of the second part of Section 299 had been complied with. But when the appellate court examines the records of the proceedings and comes to a conclusion that in fact those persons have died long before the summons on them to appear as witness, could be issued, the evidence thus tendered cannot be ignored from consideration, particularly, in a case like the one where all other eyewitnesses, 22 in number did not support the prosecution on being examined and there has been a gruesome murder inasmuch as the appellant killed four persons by indiscriminately shooting at them from his rifle, which was given to him in the cantonment. The accused never raised the contention even in the Supreme Court that the persons are not dead but raised the sole contention that it had not been established by the prosecution that the persons were not dead. The High Court did record a conclusion on examining the records of the proceedings that the witnesses were dead and, therefore, their former statements under Section 299 could be treated as evidence. There is no infirmity with the said conclusion of the High Court and, therefore, the preconditions of Section 299(1) have been complied with. Once the statements of those witnesses, are considered, and the Sessions Judge as well as the High Court have relied upon the same and based the conviction, there is no infirmity requiring the Supreme Court's interference with the conviction and sentence recorded by the High Court. In the aforesaid circumstances, it must be held that the prosecution case has been proved beyond reasonable doubt. (Paras 4 and 5). *Nirmal Singh* v. *State of Haryana*, (2000) 4 SCC 41: 2000 SCC (Cri) 740: AIR 2000 SC 1416: 2000 Cri LJ 1803.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *R.P. Sethi*, JJ. [Date of decision: 30-3-2000]

Chainchal Singh v. Emperor, AIR 1946 PC 1: 1945 All LJ 550; Jose v. State of Kerala, (1973) 3 SCC 472: 1973 SCC (Cri) 372, relied on

Nirmal Singh v. State of Haryana, 1998 Cri LJ 1008 (P&H), affirmed

[3042] — S. 299 — Application — Deprivation of an absconding accused's right of cross-examination — Ground of estoppel on account of waiver of right of cross-examination — If established — *When cognizance under S. 14(1) had not been taken and there was no chance of trial, the accused cannot be presumed to have waived his right of cross-examination — Further, ordinarily, an accused would not be presumed to have waived such valuable right — Evidence Act, 1872, Ss. 137 and 138 — Terrorist and Disruptive Activities (Prevention) Act, 1987, Ss. 14(5) and (1)*

The issue of waiver of the appellant-accused's right to cross-examination could have arisen only if he had been facing trial. Undoubtedly in the order dated 30-12-1993, while framing charges his name had been shown as an absconding accused. He was, therefore, not before the court. He could not have taken part in the trial. He was arrested formally in certain other cases only on 4-8-1993 and charges were framed against him only on 15-11-2003. All the witnesses expired prior to framing of charges on 15-11-2003. It is not the contention of the respondents that the Magistrate despite the said chargesheet dated 27-8-1993 filed in the instant case had taken cognizance against the appellant-accused. It is incorrect to contend that such a right to cross-examination could be exercised at any date prior thereto. (Paras 52 and 51)

Ordinarily, an accused would not be presumed to have waived his right to cross-examination. The right of an accused to watch the prosecution witnesses deposing before a court of law indisputably is a valuable right. Such a valuable right cannot create any prejudice. A right to examine, cross-examine and re-examine a witness, apart from being a natural right is a statutory right under Sections 137 and 138 of the Evidence Act. Such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed thereabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary implication. There are statutes like the Extradition Act, 1962 which excludes taking of evidence vis-à-vis opinion. (Paras 49, 18, 57 and 24)

Further, an order which is a nullity cannot be brought into effect for invoking the principles of estoppel, waiver or res judicata. Where an order is passed without jurisdiction as in the present case, the same would be a nullity and would not attract these procedural principles. (Para 49). *Jayendra Vishnu Thakur* v. *State of Maharashtra*, (2009) 7 SCC 104.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

Sarabjit Rick Singh v. Union of India, (2008) 2 SCC 417: (2008) 1 SCC (Cri) 449; Chief Justice of A.P. v. L.V.A. Dixitulu, (1979) 2 SCC 34: 1979 SCC (L&S) 99; Noor Aga v. State of Punjab, (2008) 16 SCC 417; Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241: 2005 SCC (L&S) 395; Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel, (2008) 4 SCC 649; S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379; A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602: 1988 SCC (Cri) 372; State of Haryana v. State of Punjab, (2004) 12 SCC 673; Rajasthan SRTC v. Zakir Hussain, (2005) 7 SCC 447: 2005 SCC (L&S) 945, relied on

[3043] — S. 299 — Applicability — Proof of jurisdictional facts under — Relevant date — *Held, for the purposes of S. 299, the jurisdictional facts must be existing on the date of passing of the order*

Jurisdictional facts for invoking Section 299 CrPC must be existing on the date of passing of the order. For invoking Section 299 CrPC, the Designated Judge was required to hold on the date of passing of the order, namely, 1-1-1994 that the appellant-accused had been absconding on that date. In view of the nature of evidence which had been brought on record, it was not possible for him to hold so. (Paras 33 and 42). *Jayendra Vishnu Thakur* v. *State of Maharashtra*, (2009) 7 SCC 104.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

[3044] — S. 299 — Application under — Non-absconding accused (in custody of other investigating agencies), held, has a right to know about any application under S. 299 — Scope of accused's right and entitlements under, discussed — *Prosecution when informed that accused not absconding, held, is duty-bound to inform accused of S. 299 CrPC application — Constitution of India — Arts. 21 and 22. Jayendra Vishnu Thakur* v. *State of Maharashtra*, (2009) 7 SCC 104.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

[3045] — S. 299 — Approach to be followed in exercising power under — Relevance of conduct of accused — Judicial dignity and decorum prescribed — *Constitution of India, Art. 21 — Prescription for judges — Considering the valuable nature of rights arising out of Art. 21, judicial dignity and decorum, prescribed for infringing such rights on the abovestated grounds — Relevance of conduct of accused*

Though the present case has been decided on the basis that the right of confrontation is not a fundamental right or whereby the accused's fundamental right has not been breached, Article 21 envisages a fair trial, a fair procedure and a fair investigation. By reason of such a right alone the appellant-accused was entitled not only to be informed about his fundamental rights and statutory rights but it was obligatory on the part of the Special Public Prosecutor to place on record the requisite materials before the Designated Judge to show that the appellant, after his arrest in certain Delhi cases on 23-7-1993 was not an absconder and thus the provisions of Section 299 CrPC were not attracted. (Para 53)

For invocation of the provisions of Section 299 CrPC, the principle of natural justice is inbuilt in the right of an accused. Although the accused is entitled to fair and speedy trial, he cannot, by his conduct, interfere with the governmental priority to proceed with the trial. In such an event several options are open to courts. What, however, is necessary is to maintain judicial dignity and decorum by taking within its umbrage the principle of natural justice. (Para 23)

The larger question, namely, as to whether right to confront a witness by an accused is a fundamental right or not, need not be gone into in these proceedings as the appellant does not question the constitutionality of either Section 299 CrPC or Section 14(5) TADA or Section 33, Evidence Act. There is no express provision for such a right in our Constitution nor have the courts accepted it as a fundamental right within the meaning of Article 21 of the Constitution. Therefore, in the present case, it has to be considered as a statutory right. (Paras 19 and 18)

Fundamental rights are not absolute being subject to reasonable restrictions. Even in the United States of America, the accused's right of confrontment under the Sixth Amendment is not absolute and is subject to just exceptions, including an orderly behaviour in the courtroom. (Paras 20 and 22). *Jayendra Vishnu Thakur* v. *State of Maharashtra*, (2009) 7 SCC 104.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

Sixth Amendment of the United States Constitution, relied on

Goldberg v. Kelly, 25 L Ed 2d 287: 397 US 254 (1969); Greene v. McElroy, 3 L Ed 2d 1377: 360 US 474 (1958); Illinois v. Allen, 397 US 337 (1970), relied on

[**Ed.**: Though Art. 19 itself provides for reasonable restrictions on the freedoms mentioned therein, the issue as to whether the rights of undertrials under Art. 21 are subject to reasonable restrictions provided for by different statutory schemes came up for consideration in *Kalyan Chandra Sarkar case*, (2005) 3 SCC 284, wherein it was held that the rights of undertrials under Art. 21 are not absolute and are circumscribed by relevant statutes imposing reasonable restrictions thereon.]

[3046] — S. 299 — Constitutionality of — Issue, left open — *Terrorist and Disruptive Activities (Prevention) Act, 1987, Ss. 19 and 14(5). Jayendra Vishnu Thakur* v. *State of Maharashtra*, (2009) 7 SCC 104.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

[3047] — S. 299 — Deprivation of an absconding accused's right of cross-examination — Approach and conditions precedent — Duty of court/prosecution in proving establishing the jurisdictional fact i.e. the fact of absconding — Recording of evidence in absence of accused — Procedural safeguards — Compliance with — Extreme importance of — Necessity of recording reasons — *Procedural safeguards of the nature of just manner and approach and mandatory duty of court/prosecution in establishing the existence of the jurisdictional fact i.e. fact of absconding, stressed — The accused's right of cross-examination being a valuable right, its deprivation, held, is an exception which should be for just causes — The approach should be judicious with total application of mind — The duty of court/prosecution should be to prove and establish by way of leading and appreciating evidence, respectively, regarding existence of the jurisdictional fact i.e. the fact of absconding — And the final imperative duty of court should be to record the evidence and rationale requiring the urgency involved in such deprivation — Evidence Act, 1872, S. 33 — Constitution of India — Arts. 21, 22 and 14 — Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 14(5). Jayendra Vishnu Thakur* v. *State of Maharashtra*, (2009) 7 SCC 104.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

[3048] — S. 299 — Invocation of — Relative scope vis-à-vis S. 14(5), TADA — Procedure for — Imperative necessity to record reasons — *Evidence Act, 1872, S. 33 — Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 14(5)*

The main issue in these appeals was the applicability of Section 299 CrPC, Section 14(5) TADA and Section 33 of the Evidence Act, 1872. The appellant-accused was involved in several cases. In the present case offence of alleged murder which took place in Mumbai in 9-10-1989, the appellant-accused was declared as an absconder under Section 82 CrPC on 9-2-1993 and was also booked under TADA.

On 27-8-1993 charge-sheet was filed against twelve accused persons, but eight accused persons including appellant were shown to be absconding. On 23-7-1993, the appellant-accused was arrested in Delhi in connection with other cases. Investigating officer in his letter dated 1-9-1993 informed the Special Judge, TADA (Mumbai) that the appellant had been arrested in Delhi cases. On 23-10-1993, the appellant was arrested by Maharashtra Police in connection with other cases of 1992. On 24-10-1993, the appellant was produced before CJM and was remanded to police custody. On 20-11-1993, the appellant was arrested in two other cases and remained in judicial custody till 21-12-1993. On 23-11-1993, an SLP order (arising out an SLP filed by appellant) directed splitting of the present case of absconding accused from other cases. On 30-12-1993 charges were framed by the Magistrate in the present case. On 1-1-1994, an application under Section 299 CrPC was presented before the Special Judge, TADA and which was allowed on the same day. On 19-12-1994, the Delhi High Court dismissed a writ filed by State of Maharashtra to secure the custody of the appellant. On 11-7-1995, the investigating officer (through Public Prosecutor) filed a Section 83 CrPC application that the appellant was not absconding. On 4-8-1997, the appellant was formally arrested in the present case. A supplementary charge-sheet was filed on 19-8-1997. Charges were framed against six accused persons including the appellant on 15-11-2003. In the said proceeding two applications were filed by the Public Prosecutor on 25-9-1996 and 11-10-2006 for exhibiting the depositions of PW 36 and nine other witnesses, who had since expired, which by reason of the impugned order dated 6-3-2007 had been allowed. These ten witnesses had been examined starting from 6-11-1995 (PW 36) and 18-12-1995 (PW 60) to 22-1-1997 (PW 83). And they had died between 5-9-1997 (PW 72) and 22-6-2004 (PW 83).

Allowing the appeal,

Held :

For the purpose of passing an order, be it under Section 299 CrPC or Section 14(5), TADA, the court is required to exhibit total application of mind to arrive at a definitive finding as regards the existence of the jurisdictional facts, in absence whereof, the order must be held to be arbitrary and without jurisdiction. Mere existence of evidence is not enough. Application of mind by the court for analysing/appreciating such evidence/material and recording of cogent reasons for the urgency of recording evidence in absence of an accused or his pleader is imperative in character. Supposing there is evidence regarding absconding (which is not the case in the present case) and absence of prospects of arrest, even then there can be no presumption in law that the Magistrate has done his duty if he fails to record evidence. (Paras 25, 28, 29, 35 and 44)

The accused ordinarily and subject to just exceptions must be facing trial. The alleged fact of absconding has to be tried and established. It is the only safeguard to check an arbitrary exercise of power. It expressly preserves the right of the accused to recall the witness for cross-examination. A judicious approach is imperative. The courts must bear in mind that an accused has fundamental rights as also human rights. (Paras 14, 35, 36, 44, and 45)

It is not a case wherein Section 14(5) of the Act would have been attracted since the order of the TADA Court specifically invoked Section 299 CrPC. No application was filed under Section 14(5). For invocation of Section 14(5), NDPS Act, materials are required to be brought on record so as to enable the court to arrive at a finding that it is necessary so to do. The condition precedent therefor is "if it thinks fit". For the said purpose the Designated Court is to record reasons. Such an order could be passed with a view to continue with the trial. It may be for a day or for a few days. The accused ordinarily and subject to just exceptions must be facing the trial. In other words, the court is required to opine that recording of evidence is urgent or there existed certain and cogent reasons which would enable him to record evidence in absence of an accused or his pleader. Recording of reasons is imperative in character. It is the only safeguard which had been provided to check an arbitrary exercise of power. TADA was enacted to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected or incidental thereto. It does not contemplate a situation like the one under Section 299 CrPC. By reason of the said provision even the relevance of the evidence as envisaged under Section 33 of the Evidence Act is not taken away. (Paras 52, 44 and 12)

On a bare perusal of the provisions of Section 299 CrPC and Section 14(5), TADA, it would be evident that they operate in different fields. The ingredients of the said provisions are different. Materials, which are, thus, required to be brought on record by the prosecution for application of the aforementioned provisions may be different, although they may be overlapping to some extent. (Para 50). *Jayendra Vishnu Thakur* v. *State of Maharashtra*, (2009) 7 SCC 104.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

Shiv Chander Kapoor v. Amar Bose, (1990) 1 SCC 234; Nirmal Singh v. State of Haryana, (2000) 4 SCC 41: 2000 SCC (Cri) 740, relied on

Rustom v. Emperor, AIR 1915 All 411; State of Mysore v. Sanjeeva, AIR 1956 Mys 1; Manbodh v. Emperor, AIR 1944 Nag 274; Nazir Ahmad v. Emperor, AIR 1936 PC 253(2): 17 Lah 629; Ghurbin Bind v. Queen Empress, ILR (1884) 10 Cal 1097, approved

Bhagwati v. Emperor, AIR 1918 All 60, disapproved

[3049] — S. 299 — Word "absconding" — Meaning and implication for the purposes of S. 299

The term "absconding" has been defined in several dictionaries. The primary meaning of the word is to hide. It means to depart secretly or suddenly, especially to avoid arrest, prosecution or service of process. (Para 40). *Jayendra Vishnu Thakur* v. *State of Maharashtra*, (2009) 7 SCC 104.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

Black's Law Dictionary; P. Ramanatha Aiyar; Oxford English Dictionary; Words and Phrases, referred to

[3050] — Ss. 299 and 82 — Recording of evidence in absence of absconding accused — Conditions precedent for i.e. (1) proof that accused has absconded, and (2) there is no immediate prospect of arresting the accused, whether conjunctive or disjunctive — Importance of the word "proved" in S. 299(1) — Material that must be placed before court and considered by it before passing order under S. 299 — *Special Judge allowing recording of evidence under S. 299 in the absence of the accused* *only on the ground that he had been declared a proclaimed absconder under S. 82 — Legality — Special Judge passing order under S. 299 without considering prospects of accused's immediate arrest in the background that accused was already in custody of other investigating agencies/authorities in connection with other cases — Held, both conditions contained in the first part of S. 299 must be read conjunctively and not disjunctively — Therefore, invocation of S. 299 without considering the second condition as to whether there was immediate prospect of securing the presence of accused, held, was unjust and unsustainable — Further held, the term "proved" in S. 299, providing for an exception to the general rule, is required to be strictly construed — An ipse dixit of the court would not be sufficient for attracting an extraordinary provision*

Section 299(1) CrPC is in two parts—the first part provides for proof of jurisdictional fact in respect of absconding of an accused person and the second that there was no immediate prospect of arresting him. Both the conditions contained in the first part of Section 299 CrPC must be read conjunctively and not disjunctively. Satisfaction of one of the requirements is not sufficient. (Paras 29, 30 and 16)

The term "absconding" has been defined in several dictionaries. The primary meaning of the word is to hide. It means to depart secretly or suddenly, especially to avoid arrest, prosecution or service of process. (Para 40)

Whether there was no prospect of securing the appellant-accused's immediate presence was required to be considered by the Special Judge before passing an order under Section 299 CrPC. However, despite the fact that the appellant had already been in custody of Delhi Police vis-à-vis Maharashtra Police, he was termed as an absconder. The application under Section 299 CrPC having been filed by the Special Public Prosecutor and the order having been passed on the same date (i.e. on 1-1-1994), it is beyond any cavil that no other material was placed before the Special Court except the fact that a proclamation of absconding under Section 82 CrPC had been issued against the appellant. (Paras 28 and 26)

The facts regarding arrest and custody of the appellant in other cases were required to be brought to the notice of the court. Much prior to the Section 299 CrPC application dated 1-1-1994 filed by the Special Public Prosecutor, the appellant had been arrested as far back as on 23-7-1993. By a letter dated 1-9-1993 the investigating officer himself had informed the court in regard thereto. Admittedly, at least in two cases the appellant had been arrested and produced before the courts in Maharashtra and remanded to the police custody. The court's attention should have also been drawn to these facts and the aforementioned letter dated 1-9-1993. There are enough materials on record to show that the appellant had made all attempts to be tried along with the other accused persons. (Paras 27 and 45 to 48)

Although Section 299 CrPC expressly provides for the power of the court to record evidence in absence of the accused, Section 299 CrPC must be strictly construed considering the effect of Section 273 CrPC which mandates recording of evidence in the presence of the accused or his pleader. Scrupulous compliance therewith is imperative in character. It is a well-known principle of interpretation of statute that any word defined in the statutory provision should ordinarily be given the same meaning while construing the other provisions thereof where the same term has been used. The term "proved" in Section 299, providing for an exception to the general rule, is required to be strictly construed. It is not an ipse dixit of the court that would be sufficient for attracting an extraordinary provision. In the present case moreover the appellant had not been absconding after he was arrested. (Paras 25, 16, 15, 35 and 39)

Jurisdictional facts for invoking Section 299 CrPC must be existing on the date of passing of the order. For invoking Section 299 CrPC, the Designated Judge was required to hold on the date of passing of the order, namely, 1-1-1994 that the appellant-accused had been absconding on that date. In view of the nature of evidence which had been brought on record, it was not possible for him to hold so. (Paras 33 and 42)

Once a person is arrested and/or is otherwise capable of being brought to court, a proclamation declaring accused as an absconder under Section 82 CrPC ceases to have any effect. It is not a law that once a proclaimed offender shall all along be treated to be so. If he had a right to take part in the trial, the trial court was duty-bound to provide for the same. In any event, in the present case the Designated Judge did not rely on the proclamation issued under Section 82 in February 1993. (Para 43). *Jayendra Vishnu Thakur* v. *State of Maharashtra*, (2009) 7 SCC 104.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

Black's Law Dictionary; P. Ramanatha Aiyar; Oxford English Dictionary; Words and Phrases, referred to

Janu v. Emperor, AIR 1947 Sind 122, approved

[3051] — Ss. 299 and 273 — S. 299 being an exception to S. 273, held, should be strictly construed

Although Section 299 CrPC expressly provides for the power of the court to record evidence in absence of the accused, Section 299 CrPC must be strictly construed considering the effect of Section 273 CrPC which mandates recording of evidence in the presence of the accused or his pleader. Scrupulous compliance therewith is imperative in character. It is a well-known principle of interpretation of statute that any word defined in the statutory provision should ordinarily be given the same meaning while construing the other provisions thereof where the same term has been used. The term "proved" in Section 299, providing for an exception to the general rule, is required to be strictly construed. It is not an ipse dixit of the court that would be sufficient for attracting an extraordinary provision. In the present case moreover the appellant had not been absconding after he was arrested. (Paras 25, 16, 15, 35 and 39). *Jayendra Vishnu Thakur* v. *State of Maharashtra*, (2009) 7 SCC 104.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-5-2009]

Janu v. Emperor, AIR 1947 Sind 122, approved

— **S. 300** *See also* S. 403, Criminal Procedure Code, 1898, pp. 1181 et seq. in Vol. 2

— **S. 300** *See* Ss. 200, 190(1)(a), 204, 300 and 482

See also Ss. 239 to 249 and 401 & 300

See also Ss. 303, 300, 202 and 319

See also Ss. 437, 439, 300 and Chs. XXIX (Ss. 372 to 394) and XXX (Ss. 395 to 405)

See also Ss. 437(1) & 439(2) and S. 300

[3052] — S. 300 — Double jeopardy — Protection against, when available — Protection not available where conviction and sentence in earlier case not yet recorded — *Same act or omission may constitute offences under two different Acts — Wild Life (Protection) Act, 1972, S. 56 proviso — Constitution of India, Art. 20(2) — General Clauses Act, 1897, S. 26 — Penal Code, 1860, S. 71*

The proviso to S. 56 is a facet of the fundamental and salutary principle that permeates penology and is reflected in analogous provisions of S. 26 of General Clauses Act, 1897; S. 71 IPC; S. 300 of the CrPC, 1973, and constitutionally guaranteed under Art. 20(2).

Broadly speaking, a protection against a second or multiple punishment for the same offence, technical complexities aside, includes a protection against re-prosecution after acquittal, a protection against re-prosecution after conviction and a protection against double or multiple punishment for the same offence. These protections have since received constitutional guarantee under Art. 20(2).

In order that the prohibition is attracted the same act must constitute an offence under more than one Act. If there are two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred.

The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time constitute an offence under any other law.

However, in the present case there had been no prior conviction and sentence for an offence under S. 429 IPC even assuming that the two offences, one under S. 9(1) r/w S. 50 of the Wild Life (Protection) Act and the other under S. 429 IPC are substantially the same offence. Therefore, the bar of double jeopardy will not operate. *State of Bihar* v. *Murad Ali Khan*, (1988) 4 SCC 655: 1989 SCC (Cri) 27: AIR 1989 SC 1.

Bench Strength **2**. Coram: *Ranganath Misra* and **M.N. Venkatachaliah**, JJ. [Date of decision: 10-10-1988]

[3053] — S. 300 — Double jeopardy — Nature and scope — Principles reiterated — Burden of proof — *Initial burden of proof to benefit from plea of double jeopardy, held, is on accused — General Clauses Act, 1897, S. 26 — Evidence Act, 1872, Ss. 101 and 102 — Constitution of United States of America — Vth Amendment — Constitution of India, Art. 20(2)* (Paras 26 to 39)

Article 20(2) embodies protection against a second trial and conviction for the same offence. The fundamental right guaranteed under Article 20(2) has its roots in the common law maxim *nemo debet bis vexari* — a man shall not be brought into danger for one and the same offence more than once. If a person is charged again for the same offence, he can plead, as a complete defence, his former conviction, or as it is technically expressed, take the plea of *autrefois convict*. In order for the protection of Article 20(2) to be invoked there must be a prosecution as well as punishment in respect of the same offence before a court of law of competent jurisdiction or a tribunal. The proceedings contemplated are in the nature of criminal proceedings and prosecution in this context would mean initiation of criminal proceedings in accordance with prescribed procedure in the statute. (Paras 22 to 25)

Furthermore, the fundamental right guaranteed under Article 20(2) of the Constitution is in the nature of an injunction against the State prohibiting it to prosecute and punish any person for the same offence more than once but the initial burden is upon the accused to take the necessary plea and establish the same. (Para 36). *Monica Bedi* v. *State of A.P.*, (2011) 1 SCC 284.

Bench Strength 2. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 9-11-2010]

Maqbool Hussain v. State of Bombay, AIR 1953 SC 325: 1953 Cri LJ 1432: 1953 SCR 730, relied on

S.A. Venkataraman v. Union of India, AIR 1954 SC 375: 1954 Cri LJ 993: 1954 SCR 1150, considered

[3054] — S. 300 — Double jeopardy — Expression "for the same offence" occurring in Art. 20(2) of Constitution — Import of — *Held, a person can be prosecuted and punished more than once even on substantially same facts, provided ingredients of both offences are totally different and they did not form same offence — Test is to ascertain whether the two offences are the same and it is not identity of allegations that matters but identity of ingredients of the offences — Thus, same facts may give rise to different prosecutions and punishment and in such an event protection afforded by Art. 20(2) is not available — A-3 was alleged to have obtained a fake passport by submitting false documents with help of A-4 to A-9, which was used by her to travel to Lisbon, Portugal — She had to face prosecution and suffer conviction and sentence in Portugal therefor — On facts held, prosecution and punishment by a competent court of jurisdiction at Lisbon was no bar for appellant A-3's prosecution and punishment under relevant provisions of IPC as conviction of appellant in Portugal was not for the same offence — Moreover, no factual foundation was laid as such by appellant taking plea of double jeopardy before trial court, nor was any such statement made in her examination under S. 313 CrPC — Lastly, perusal of judgment of Constitutional Court at Lisbon clearly shows that A-3's plea of double jeopardy is totally untenable — Constitution of India, Art. 20(2)* (Paras 26 to 39)

A-3 was alleged to have obtained a fake passport by submitting false documents with the help of A-4 to A-9, which was used by her to travel to Lisbon, Portugal. She had to face the prosecution and suffer conviction and sentence in Portugal.

The trial court found her guilty of the offences punishable under Sections 120-B, 419 and 420 IPC, A-5 was found guilty of the offences under Section 120-B, Section 419 read with Section 109, Section 420 read with Section 109, Section 468 IPC and Section 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act, A-7 guilty of the offence under Section 468 IPC, while A-8 was held guilty of the offences under Sections 120-B, 420, Section 419 read with Section 109 IPC, Section 420 read with Section 109 IPC and under Section 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act. In appeal filed thereagainst, the High Court while confirming conviction of A-3, reduced the sentence of RI on all counts while maintaining the fine imposed. The conviction of A-5 and A-8 was also upheld but sentence imposed was reduced. As far as A-7 is concerned his conviction was altered from Section 468 IPC to Section 465 IPC and sentence of RI for 6 months and fine of Rs 500 with default stipulation was imposed. Hence, instant appeals by the appellant-accused. *Monica Bedi* v. *State of A.P.*, (2011) 1 SCC 284.

Bench Strength 2. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 9-11-2010]

Leo Roy Frey v. Supdt., District Jail, AIR 1958 SC 119: 1958 Cri LJ 260: 1958 SCR 822; State of Bombay v. S.L. Apte, AIR 1961 SC 578: (1961) 1 Cri LJ 725: (1961) 3 SCR 107; Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra, AIR 1965 SC 682: (1965) 1 Cri LJ 608; State of Rajasthan v. Hat Singh, (2003) 2 SCC 152: 2003 SCC (Cri) 451; T.W. Morgan v. Alfonso J. Devine, 59 L Ed 1153: 237 US 632 (1914); United States v. Vito Lanza, 67 L Ed 314: 260 US 377 (1922), relied on

United States v. Rabinowich, 59 L Ed 1211: 238 US 78 (1914), referred to

Halsbury's Laws of England, 2nd Edn., Vol. IX, relied on

[3055] — S. 300 — Double jeopardy — Applicability of S. 300(1) CrPC and Art. 20(2) of the Constitution — Same facts giving rise to distinct and separate offences — *Offences for which appellant was tried and convicted in USA and for which he was now being tried in India, were distinct and separate — In this view, the provisions of S. 300(1) CrPC or Art. 20(2) of the Constitution, held, not attracted — Hence, the order of High Court dismissing the appellant's writ petition seeking quashing of the present proceedings and grant of interim bail on the ground of double jeopardy, not liable to be interfered with — General Clauses Act, 1897, Ss. 26 and 3(38) — Penal Code, 1860, Ss. 3 and 4 — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 29, 8(c), 12, 20(b)(ii)(C), 23 and 24 — Controlled Substances Act (USA) — Constitution of India — Art. 20(2) — International Covenant on Civil and Political Rights, 1966, Art. 14(7)*

The question involved in the present appeal pertained to applicability of the concept of double jeopardy within the meaning of Article 20(2) of the Constitution of India and Section 300 CrPC.

On 17-10-2002, the officers of the US Drug Enforcement Agency, along with officers of the

Narcotics Bureau, India, seized a consignment of 565.2 kg of hashish in Newark, USA. During the investigation, it transpired that one *N* and the appellant were engaged in trafficking hashish out of India into USA and Europe and that the seized contraband had been smuggled out of India by the appellant and *N* along with one *K*. The officers of the Drug Enforcement Agency, USA arrested the appellant in Austria on 5-12-2002 and extradited him to the USA. Soon thereafter, the Deputy Director General of the Narcotics Control Bureau (NCB) visited USA and recorded the appellant's statement. Thereafter, the officers of NCB arrested *N*, *K* and one *G* in India and prosecution was launched against the said persons in India.

While *N* and others were being proceeded with before the Special Judge in Mumbai, the appellant, who had been extradited to the USA, was tried before the District Court at Michigan, USA. On pleading guilty of the charge of conspiracy to possess with intention to distribute controlled substances, which was an offence under Section 846 of Title 21, United States Code (USC) (Controlled Substances Act), the appellant was sentenced to imprisonment for a total term of 54 months. Although the appellant could have been prosecuted for other offences under Title 21 USC, the other charges against the appellant were dropped as he had pleaded guilty to the offence of conspiring to possess controlled substances. After serving out the aforesaid sentence, the appellant was deported to India on 5-4-2007, and on his arrival at New Delhi, he was arrested by officers of NCB and was taken to Mumbai and on 10-4-2007, he was produced before the Chief Metropolitan Magistrate and was remanded to judicial custody.

While dealing with the appellant's application that the proceedings against him in India would amount to double jeopardy, the Special Judge, Mumbai, rejected the appellant's contention upon holding that the charges which had been dropped against the appellant in the proceedings in the USA had not been dealt with while imposing sentence against him in the District Court of Michigan, USA. The Special Judge extended the judicial custody of the appellant and subsequently rejected his prayer for bail. The appellant then approached the High Court by filing a writ petition seeking quashing of the proceedings initiated by NCB and grant of interim bail in the said matter on the ground of double jeopardy. The said petition was dismissed upon holding that the ingredients of the offences with which the appellant had been charged in India were totally different from the offences with which he had been charged and punished in the USA. The High Court concluded that merely because the same set of facts gave rise to different offences in India under the NDPS Act and in the USA under its drug laws, the different circumstances and the law applicable would not debar the Special Judge, Mumbai, from dealing with matters which attracted the provisions of the local laws and hence the application of the principle of double jeopardy was not available in the facts of the present case. Aggrieved by the said order, the appellant preferred the present appeal.

Dismissing the appeal,

Held :

The offences for which the appellant was tried and convicted in the USA and for which he is now being tried in India, are distinct and separate and do not, therefore, attract either the provisions of Section 300(1) CrPC or Article 20(2) of the Constitution. (Para 42)

The offence for which the appellant was tried in the USA was in respect of a charge of conspiracy to possess a controlled substance with the intention of distributing the same, whereas the appellant is being tried in India for offences relating to the importation of the contraband article from Nepal into India and exporting the same for sale in the USA. While the first part of the charges would attract the provisions of Section 846 read with Section 841 of Title 21 USC (Controlled Substances Act), the latter part, being offences under the NDPS Act, 1985, would be triable and punishable in India, having particular regard to the provisions of Sections 3 and 4 of the Penal Code read with Section 3(38) of the General Clauses Act, which has been made applicable in similar cases by virtue of Article 367 of the Constitution. Apart from the offence for which the appellant had been tried and convicted in the USA, he could not have been tried in the USA for commission of offences which were also triable under the NDPS Act, 1985, as the contents thereof are different from the provisions of Title 21 USC (Controlled Substances Act) which deal with possession and distribution of controlled substances within the USA. (Paras 41 to 43)

Thus, in view of the above, there is no reason to interfere with the order of the High Court rejecting the appellant's prayer for quashing the instant proceedings and grant of interim bail on the ground of double jeopardy. (Paras 40 and 45). *Jitendra Panchal* v. *Narcotics Control Bureau*, (2009) 3 SCC 57.

Bench Strength 2. Coram: **Altamas Kabir** and *Markandey Katju*, JJ. [Date of decision: 3-2-2009]

[3056] — S. 300 — Simultaneous prosecution under these provisions of 1949 Act as well as under IPC — *Can be initiated but accused cannot be punished twice in view of Art. 20(2) of Constitution r/w S. 26 of General Clauses Act and S. 300 CrPC — Constitution of India, Art. 20(2) — General Clauses Act, 1897, S. 26 — Chartered Accountants Act, 1949', Ss. 24, 24-A and 26*

The respondent could have been simultaneously prosecuted for contravention of Sections 24, 24-A and 26 of the Act and for the offences defined under IPC but in view of the bar contained in Article 20(2) of the Constitution read with Section 26 of the General Clauses Act, 1897 and Section 300 CrPC, he could not have been punished twice for the same offence. (Para 25). *Institute of Chartered Accountants of India* v. *Vimal Kumar Surana*, (2011) 1 SCC 534.

Bench Strength **2**. Coram: **G.S. Singhvi** and *A.K. Ganguly*, JJ. [Date of decision: 1-12-2010]

[3057] — S. 300 — Applied — Distinction with Art. 20(2), Constitution of India, stated — Appellant having been convicted under S. 138, NI Act, held, cannot be prosecuted under S. 420 IPC for the same set of facts — *Constitution of India — Art. 20(2) — Negotiable Instruments Act, 1881, S. 138* (Paras 3, 5 and 6). *Kolla Veera Raghav Rao* v. *Gorantla Venkateswara Rao*, (2011) 2 SCC 703.

Bench Strength **2**. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 1-2-2011]

[3058] — S. 300 — Bar under — When operates — *A-1 and A-2 tried and convicted for offence of bigamy on complaint made by wife of A-2 — Second trial at the instance of husband of A-1 is barred — Penal Code, 1860, S. 494*

Sub-section (1) of S. 300 bars a fresh trial if a person had been tried and convicted or acquitted by a court of competent jurisdiction for the same offence. The offence of bigamy is committed when a husband or wife in the lifetime of his spouse marries. When a person is tried and convicted for such an offence on the complaint of a person, authorised by law to do so, he or she cannot be prosecuted and tried a second time for the same offence on another complaint filed by another person. The bar under S. 300 is for trial and conviction of the same offence. Since offence remains the same the appellants cannot be tried and convicted for it once again. *Vijayalakshmi* v. *Vasudevan*, (1994) 4 SCC 656: 1994 SCC (Cri) 1317.

Bench Strength **2**. Coram: *R.M. Sahai* and *B.L. Hansaria*, JJ. [Date of decision: 5-4-1994]

[3059] — S. 300 — Doctrine of *autrefois acquit* — Applicability — Instant case closely connected with another case of kidnapping of one $^{\underline{V}}$ for ransom — *Arrest of appellant **M** with arms and ammunition in a notified area when he came to receive ransom amount — Conviction under S. 5, TADA Act and S. 25(1-B), Arms Act by TADA Court — Said court proceeding on the allegation of the prosecution and observing that it was **M** who masterminded the kidnapping of **V** — **M** already acquitted in kidnapping case by a competent court — Said decision became final — In such circumstances, held, doctrine of* **autrefois acquit** *was attracted — Conviction not proper — Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 5 — Arms Act, 1959, S. 25(1-B) — Constitution of India — Art. 20(2)* (Paras 28, 25 and 26). *Mukhtiar Ahmed Ansari* v. *State (NCT of Delhi)*, (2005) 5 SCC 258: 2005 SCC (Cri) 1037: AIR 2005 SC 2804: 2005 Cri LJ 2569.

Bench Strength **2**. Coram: *B.N. Agrawal* and **C.K. Thakker**, JJ. [Date of decision: 21-4-2005]

Pritam Singh v. State of Punjab, AIR 1956 SC 415: 1956 Cri LJ 805, relied on

[3060] — S. 300 — Issue estoppel — Cannot apply to appeal against the lower court proceedings. *Brathi* v. *State of Punjab*, (1991) 1 SCC 519: 1991 SCC (Cri) 203: AIR 1991 SC 318: 1991 Cri LJ 402.

Bench Strength **2**. Coram: *Kuldip Singh* and **M. Fathima Beevi**, JJ. [Date of decision: 31-10-1990]

[3061] — S. 300 — Issue-estoppel — Does not apply in case of acquittal of co-accused in a separate trial — *In both trials approver's evidence submitted to base the conviction — Issue-estoppel distinct from operation of autrefois acquit — CrPC, 1898 — S. 403*

In order to invoke the rule of issue-estoppel not only the parties in the two trials must be the same but also the fact-in-issue proved or not in the earlier trial must be identical with what is sought to be reagitated in the subsequent trial.

Issue-estoppel does not prevent the trial of an offence as does *autrefois acquit* but only precludes evidence being led to prove a fact-in-issue as regards which evidence has already been led and a specific finding recorded at an earlier criminal trial before a court of competent jurisdiction. *Ravinder Singh* v. *State of Haryana*, (1975) 3 SCC 742: 1975 SCC (Cri) 202: AIR 1975 SC 856: (1975) 3 SCR 453: 1975 Cri LJ 765.

Bench Strength **3**. Coram: *V.R. Krishna Iyer*, **P.K. Goswami** and *R.S. Sarkaria*, JJ. [Date of decision: 7-2-1975]

Manipur Admn. v. Thakchom, Bira Singh, (1964) 7 SCR 123, 133: (1965) 1 Cri LJ 120, followed

[3062] — S. 300 — Issue-estoppel — Principle of — *Two separate trials of accused — One for murder and the other for offence under S. 27 of Arms Act — Main case of murder decided first and that under Arms Act subsequently — In both the cases accused admitting that gun in question was recovered from his possession — In the case under Arms Act trial Court erroneously acquitting accused — Appeal filed against the murder case but not against the acquittal in the case under Arms Act — Held — Appellate Court while deciding the murder case not precluded from holding that the accused was in possession of the gun — Principle of issue-estoppel not applicable — CrPC, 1898, S. 403. Bhoor Singh* v. *State of Punjab*, (1974) 4 SCC 754: 1974 SCC (Cri) 664: AIR 1974 SC 1256: 1974 Cri LJ 929.

Bench Strength 2. Coram: *V.R. Krishna Iyer* and **R.S. Sarkaria**, JJ. [Date of decision: 28-2-1974]

[3063] — S. 300 — Overlapping between the two offences contained in IPC and other enactment — Effect of — Overlapping between the two offences contained in IPC and other enactment — Effect of — *Held, merely because there may be some overlapping between the two offences, it would not mean that the accused could not be tried in relation to offence under IPC — Said issue would be decided by the court concerned on the basis of the evidence led before it — Thus, merely because the appellant could be tried under S. 132, Customs Act, 1962, it did not mean that he could not be tried for the offence committed under IPC — Customs Act, 1962, S. 132 — Prevention of Corruption Act, 1988, S. 13(2) r/w S. 13(1)(d) — Constitution of India — Art. 20(2) — Penal Code, 1860, S. 1 and S. 120-B r/w Ss. 420, 467 and 471* (Para 39). *M. Natarajan* v. *State*, (2008) 8 SCC 413: (2008) 3 SCC (Cri) 507: (2008) 226 ELT 679.

Bench Strength 2. Coram: *P.P. Naolekar* and **V.S. Sirpurkar**, JJ. [Date of decision: 7-5-2008]

[3064] — S. 300 — Scope — Double jeopardy — Maxim "nemo debet bis vexari pro eadem causa" — S. 300 compared with Art. 20(2) of the Constitution — Second trial, on mere ground that some more allegations were not made in the first trial, cannot be allowed — *Constitution of India, Art. 20(2)*

Per Thomas, J.

The well-known maxim "*nemo debet bis vexari pro eadem causa*" (no person should be twice vexed for the same offence) embodies the well-established common law rule that no one should be put to peril twice for the same offence. The principle which is sought to be incorporated into Section 300 CrPC is that no man should be vexed with more than one trial for offences arising out of identical acts committed by him. When an offence has already been the subject of judicial adjudication, whether it ended in acquittal or conviction, it is negation of criminal justice to allow repetition of the adjudication in a separate trial on the same set of facts. (Para 236)

Though Article 20(2) of the Constitution of India embodies a protection against a second trial after a conviction of the same offence, the ambit of the clause is narrower than the protection afforded by Section 300 CrPC. If there is no punishment for the offence as a result of the prosecution, Article 20(2) has no application. While clause (2) of Article 20 embodies the principle of *autrefois convict* Section 300 CrPC combines both *autrefois convict* and *autrefois acquit*. (Para 237)

Section 300 has further widened the protective wings by debarring a second trial against the same accused on the same facts even for a different offence if a different charge against him for such offence could have been made under Section 221(1) CrPC, or he could have been convicted for such other offence under Section 221(2) CrPC. (Para 238)

As the contours of the prohibition are so widely enlarged it cannot be contended that the second trial can escape therefrom on the mere premise that some more allegations were not made in the first trial. (Para 239). *State* v. *Nalini*, (1999) 5 SCC 253: 1999 SCC (Cri) 691: AIR 1999 SC 2640: 1999 Cri LJ 3124.

Bench Strength 3. Coram: **K.T. Thomas**[1], **D.P. Wadhwa**[2] and **S.S.M. Quadri**[3], JJ. [Date of decision: 11-5-1999]

[3065] — Ss. 300 and 319 — Applicability — Expression "any person not being the accused" — Scope — Power under S. 319(1) — Nature of — Said power when to be exercised — *Person accused in another case, though in respect of the same occurrence but with different version, held, can be summoned under S. 319 — Petitioners not accused in complaint case summoned under S. 319 by the trial court in that case — But petitioners were accused in police case in respect of the same occurrence — Version of both the said cases different — Power under S. 319(1), held, discretionary in nature and is required to be used sparingly — On facts, said power, held, rightly exercised — Order of High Court upholding trial court's order and directing the said cases before the trial court to be decided at the same time, held, justified — No violation of Art. 20(2) of the Constitution*

Power under Section 319 of the Code can be resorted to only when a person is not an accused before court and in the course of any inquiry into, or trial of, an offence, it appears from the evidence that such person has committed any offence for which he can be tried together with the accused. The court has discretion to proceed against such person for the offence which he appears to have committed. The inquiry into or trial is of "an offence" and not the offender. (Para 7)

Section 319 does not exclude from its purview a person who is not an accused before court in a case in which order for his summoning is passed despite the fact of such a person being an accused in another case though in respect of the same occurrence but with a different version. The words "any person not being the accused" in Section 319 would cover any person who is not already before the court in the case in which order under Section 319 is passed. It is the duty of the court to bring before it any person who appears to have committed an offence and to convict and pass an appropriate order of sentence on proof of such person having committed the offence. (Para 8)

The power of summoning under Section 319(1) is required to be sparingly used, it being a discretionary power but on facts of the present case, it cannot be held that the discretionary power has not been properly and legally used. The power is to be exercised to achieve criminal justice. Though the occurrence is the same but there are two versions — one in the police case and the other in the case in which the petitioners have been directed to be summoned. In case the petitioners are not before the Court as accused in the case in hand, the Court would not be in a position to convict and appropriately sentence them even if the version of the occurrence as given by Respondent 2 is accepted and held proved beyond reasonable doubt against the petitioners. (Para 15)

The High Court, while noticing that the police case and the complaint case are before the trial court, has observed that both cases must necessarily be decided at the same time. (Para 6)

The principles laid down in *Harjinder Singh case*, (1985) 1 SCC 422, are squarely applicable to the present case as well. The High Court in principle and in substance has adopted a similar course in the impugned order. The course adopted would not result in causing any prejudice to the accused-petitioners. It is the duty of the court to sift the grain from the chaff and punish the guilty while, at the same time, ensuring that there is no violation of Article 20(2) of the Constitution. The impugned order squarely satisfies all these requirements. (Para 14). *Jarnail Singh* v. *State of Haryana*, (2003) 9 SCC 328: 2003 SCC (Cri) 1814: AIR 2003 SC 4081: 2003 Cri LJ 2307.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *H.K. Sema*, JJ. [Date of decision: 9-4-2003]

S.S. Khanna (Dr.) v. Chief Secy., Patna, (1983) 3 SCC 42: 1983 SCC (Cri) 562, distinguished and limited to its facts

Harjinder Singh v. State of Punjab, (1985) 1 SCC 422: 1985 SCC (Cri) 93, applied

[3066] — Ss. 300, 319, 202 and 203 — Proceedings under S. 319 can be initiated against a person even after inquiry under S. 202 and dismissal of complaint under S. 303 — *Principle of autrefois convict or acquit not applicable — Constitution of India, Art. 20*

An inquiry under S. 202 is not in the nature of a trial for, a trial can commence only after process is issued to the accused. The proceedings under S. 202 are not strictly proceedings between the complainant and the accused. A person against whom a complaint is filed does not become an accused until it is decided to issue process against him. Even if he participates in the proceedings under S. 202, he does so not as an accused but as a member of the public. The object of the inquiry under S. 202 is the ascertainment of the fact whether the complaint has any valid foundation calling for the issue of process to the person complained against or whether it is a baseless one on which no action need be taken.

There is therefore, no legal bar based on the principle of issue estoppel to proceed under S. 319 against a person complained against if on the same material the court has dismissed a complaint under S. 203. But it is not necessary to express any final opinion on that question since in the instant case, the magistrate decided to take action under S. 319 on the basis of fresh evidence which was brought on record in the course of the proceedings that took place after the enquiry contemplated under S. 202 was over and in the course of the trial against the co-accused. The Magistrate had good reason to summon the appellant under S. 319 as it appears from the evidence led at the trial that there was a strong case made out against the appellant for joining him in the criminal case as an accused. The principle of autrefois convict or acquit adumbrated in S. 300 cannot apply to this case. *S.S. Khanna* v. *Chief Secy.*, (1983) 3 SCC 42: 1983 SCC (Cri) 562: AIR 1983 SC 595: 1983 Cri LJ 1044.

Bench Strength 2. Coram: **E.S. Venkataramiah** and *A.N. Sen*, JJ. [Date of decision: 12-4-1983]

Limited to its facts Jarnail Singh v. State of Haryana, (2003) 9 SCC 328

[3067] — **Ss. 300, 482, 465 and 227 — Initiation of fresh trial after the accused was discharged due to invalid sanction for prosecution** — *Contention that since accused faced ordeal of trial for a long time, it would not be in the interest of justice to put them on trial once again, held, not sustainable — However, trial court directed to dispose of the matters at an early date preferably within six months from the date of communication of the instant order — Accused could approach High Court if trial not completed within the said period — Prevention of Corruption Act, 1988, S. 7 and S. 13(1)(d) r/w S. 13(2)* (Paras 26 and 31). *State of Karnataka* v. *C. Nagarajaswamy*, (2005) 8 SCC 370: AIR 2005 SC 4308.

Bench Strength 2. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 7-10-2005]

State of M.P. v. Bhooraji, (2001) 7 SCC 679: 2001 SCC (Cri) 1373, considered and distinguished

Mahendra Lal Das v. State of Bihar, (2002) 1 SCC 149; P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578: 2002 SCC (Cri) 830, relied on

[3068] — **Ss. 300, 482, 465 and 227 — Provision under S. 300 that persons once convicted or acquitted not to be tried again for the same offence — Applicability of — Essential conditions for** — *Fresh proceedings after the accused was discharged on the ground of invalid sanction for prosecution — Initiation of, held, not barred by S. 300 — The trial court was not bound to record either a judgment of conviction or acquittal after holding the sanction to be invalid — Even if a judgment of conviction or acquittal was recorded, S. 300 could not be invoked as the said judgment would have been illegal and without jurisdiction — Constitution of India — Art. 20(2) — Prevention of Corruption Act, 1988, S. 19*

Criminal Appeal No. 1279 of 2002

Proceedings were initiated against the respondent under the Prevention of Corruption Act, 1988. The trial court discharged the respondent on the ground that the sanction for prosecution accorded by PW 11 was illegal. Subsequently, a fresh charge-sheet was filed after obtaining an order of sanction which came to be challenged before the High Court by the respondent in an application filed under Section 482 CrPC.

Criminal Appeal No. 137 of 2003

Criminal proceedings in this case were initiated by alleging that the respondent, a Manager in State Bank of Mysore, misappropriated a sum of Rs 40,000 from the said Bank. The question as regards sanction accorded by the Managing Director of the Bank was raised by the respondent herein before the trial court. The said court released the respondent on the ground that the sanctioning authority was not competent to issue the said sanction order. Thereafter, a second charge-sheet was filed after almost eleven years on the ground that as the respondent had been dismissed from the service, no sanction was required for her prosecution. Cognizance was taken by an order dated 31-8-2001. The respondent filed an application under Section 482 CrPC for quashing the criminal proceedings as also the said order dated 31-8-2001.

In the first matter, the High Court allowed the application under Section 482 CrPC on the ground that when an accused faces a full-fledged trial, having regard to the provisions of CrPC, the trial court must either record a judgment of conviction or acquittal and the accused cannot be discharged in terms of Section 227 CrPC after a full-fledged trial. In the second matter, the High Court observed that no fresh trial is permissible in law. Hence the present appeals by the State.

Allowing the appeals,

Held :

The essential conditions for invoking the bar under Section 300(1) CrPC are:

(*i*) the court had requisite jurisdiction to take cognizance and tried the accused; and

(*ii*) the court has recorded an order of conviction or acquittal, and such conviction/acquittal remains in force. (Para 18)

Section 19 of the Prevention of Corruption Act, 1988 mandates that no court shall take cognizance of offence punishable under the provisions specified therein except with the previous sanction by the authorities specified therein. Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court. (Paras 13, 15, 14 and 16)

In view of the authoritative pronouncements, it is not possible to agree with the decision of the High Court that the trial court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was not valid. Even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking the provisions of Section 300 CrPC as, even then, it would be held to have been rendered illegally and without jurisdiction. (Para 25). *State of Karnataka* v. *C. Nagarajaswamy*, (2005) 8 SCC 370: AIR 2005 SC 4308.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 7-10-2005]

Budha Mal v. State of Delhi, Criminal Appeal No. 17 of 1952 disposed of on 3-10-1952; Baij Nath Prasad Tripathi v. State of Bhopal, 1957 SCR 650: AIR 1957 SC 494: 1957 Cri LJ 597; Mohd. Safi v. State of W.B., (1965) 3 SCR 467: AIR 1966 SC 69: 1966 Cri LJ 75; State of Goa v. Babu Thomas, (2005) 8 SCC 130, followed

Basdeo Agarwalla v. King Emperor, 1945 FCR 93: AIR 1945 FC 16: 46 Cri LJ 510; Yusofalli Mulla Noorbhoy v. R., AIR 1949 PC 264: 50 Cri LJ 889: 76 IA 158; Ashok Sahu v. Gokul Saikia, 1990 Supp SCC 41: 1990 SCC (Cri) 611; Birendra K. Singh v. State of Bihar, (2000) 8 SCC 498: 2001 SCC (Cri) 17; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; K. Kalimuthu v. State, (2005) 4 SCC 512: 2005 SCC (Cri) 1291, relied on

[3069] — S. 300 and Ch. XXIX (Ss. 372 to 394) — Appeal — Finality of judgment under appeal — Res judicata in criminal proceedings — *Finality of judgment under appeal — Finality of judgment where appeal therefrom rendered infructuous — Held, filing of an appeal destroys the finality of the judgment under appeal — Further held, the judgment of the appellate court refusing to dwell upon the correctness of the judgment under appeal due to the lis having been rendered infructuous, had the effect of leaving the matter at large — Constitution of India — Arts. 32 & 226 — CPC, 1908, Ss. 11, 96 and 100*

Filing of an appeal destroys the finality of the judgment under appeal. The decision of the learned Single Judge in CWP No. 9120 of 1990 was not left unchallenged. In fact, the correctness of the judgment of the learned Single Judge was put in issue by the Union of India by filing an intra-court appeal. The issues determined by the learned Single Judge were open for consideration before the Division Bench. However, the Division Bench was denied the opportunity of hearing and the aggrieved party could also not press for decision of the appeal on merits, as before the appeal could be heard it was rendered infructuous on account of the Ordinance itself having ceased to operate. The Union of India, howsoever it may have felt aggrieved by the pronouncement of the learned Single Judge, had no remedy left available to it to pursue. The judgment of the Division Bench refusing to dwell upon the correctness of the judgment of the Single Judge had the effect of leaving the matter at large. Upon the lapsing of the earlier Ordinance pending an appeal before a Division Bench, the judgment of the Single Judge about the illegality of the earlier Ordinance, cannot any longer bar the Supreme Court from deciding about the validity of a fresh law on its own merits, even if the fresh law contains similar provisions. (Para 69). *Dharam Dutt* v. *Union of India*, (2004) 1 SCC 712: AIR 2004 SC 1295.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Brijesh Kumar*, JJ. [Date of decision: 24-11-2003]

Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, (1969) 2 SCC 283; Misrilal Jain v. State of Orissa, (1977) 3 SCC 212: 1977 SCC (Tax) 439; Madan Mohan Pathak v. Union of India, (1978) 2 SCC 50: 1978 SCC (L&S) 103; Union of India v. Raghubir Singh, (1989) 2 SCC 754; Indian Aluminium Co. v. State of Kerala, (1996) 7 SCC 637; Welfare Assn., A.R.P. v. Ranjit P. Gohil, (2003) 9 SCC 358; People's Union for Civil Liberties (PUCL) v. Union of India, (2003) 4 SCC 399; Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1, relied on

President Aharon Barak: A Judge on Judging: The Role of a Supreme Court in Democracy, Harvard Law Review, Vol. 116, No. 1, November 2002, at pp. 135-37, referred to

[3070] — S. 300 — Double jeopardy — Ingredients of — *There must be punishment for the offence as a result of the prosecution and the prosecution must be for the same offence and not for distinct offences — Constitution of India — Art. 20(2).* *Harjinder Singh* v. *State of Punjab*, (1985) 1 SCC 422: 1985 SCC (Cri) 93: AIR 1985 SC 404.

Bench Strength **2**. Coram: **A.P. Sen** and *V. Balakrishna Eradi*, JJ. [Date of decision: 21-12-1984]

[3071] — S. 300 — Second trial — What does not amount to — *Offence committed by appellant while deployed on deputation in BSF — No commencement of trial — Entire proceedings against him before the competent authority under the BSF Act stood abandoned without being taken to any logical conclusion — Appellant repatriated to his parent department and, thus, ceased to be an officer with BSF — Cognizance of the complaint in respect of the same offence taken by the Special Court, CBI after the BSF authorities ceased to have any jurisdiction on the appellant — On facts, held, the trial by the Special Court, CBI did not amount to a second trial — Constitution of India — Art. 20(2)*

There is no question of a second trial by the CBI Court. The entire proceedings against the appellant before the competent authority stood abandoned without being taken to any logical conclusion and, therefore, the appellant is not correct in contending alternatively that a trial under the BSF Act had actually commenced and was pending. Until and unless the competent authority convenes GCM and GCM assembles to consider the charge and examines whether they would proceed with the trial, the trial does not commence. In the instant case, since the competent authority has not even decided to convene a General Court Martial, the contention of the appellant that a trial has commenced by the initiation of a preliminary enquiry cannot be accepted. (Paras 22 to 24). *Shiv Parshad Pandey* v. *CBI*, (2003) 11 SCC 508: 2004 SCC (Cri) 203: AIR 2003 SC 1974: (2003) 4 LLN 491.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 5-3-2003]

Union of India v. Major General Madan Lal Yadav (Retd.), (1996) 4 SCC 127: 1996 SCC (Cri) 592, followed

Delhi Special Police Establishment v. Lt. Col. S.K. Loraiya, (1972) 2 SCC 692: 1973 SCC (Cri) 1101; Supdt. and Remembrancer of Legal Affairs, W.B. v. Usha Ranjan Roy Choudhury, 1986 Supp SCC 190: 1986 SCC (Cri) 311; Union of India v. Major S.K. Sharma, (1987) 3 SCC 490: 1987 SCC (Cri) 584, explained and distinguished

[3072] — **S. 300 — Prosecution and punishment for offences under both Ss. 5 and 6(3) of Rajasthan Sati (Prevention) Ordinance/Act, 1987, held, not violative of Art. 20(2) or rule against double jeopardy as offences under each section are distinct from each other** — *Same set of facts may constitute offence punishable under S. 5 as well as under S. 6(3) — Emphasised that in a situation where offence under S. 6(3) (violation of prohibitory order) is not made out, but ingredients of offence under S. 5, the commission of any act for glorification of sati, are established, accused would be liable to be punished under S. 5 — Held, High Court erred in holding that prosecution under S. 6(3) against respondent-accused persons was not maintainable and in directing that all prosecutions be quashed — Rajasthan Sati (Prevention) Act, 1987 (40 of 1987), Ss. 5 and 6 — Maxims — "Nemo debet bis vexari pro una et eadem causa" — General Clauses Act, 1897, S. 26 — Constitution of India — Art. 20(2) — Penal Code, 1860, S. 71*

On 6-10-1987, the Collector and District Magistrate of Jaipur issued an order under Section 6(2) of the Rajasthan Sati (Prevention) Ordinance, 1987 [later replaced by the Rajasthan Sati (Prevention) Act, 1987] prohibiting "with immediate effect, the glorification of the commission of sati in any manner in District Jaipur, by any person or association of persons". On 8-10-1987, 20-10-1987 and 28-10-1987, incidents, including a mass rally, took place which led to the registration of FIRs against various persons for violation of the prohibitory order under Section 6 and of the provisions under Section 5. Some accused persons filed petitions from jail, which the High Court treated as habeas corpus petitions, whereas some filed petitions under Section 482 CrPC. All challenged the vires of the Ordinance/Act.

The High Court, while upholding the vires of the Ordinance/Act, barring Section 19, held that the provisions of Sections 5 and 6 overlapped each other; that after the issuance of a prohibitory order under Section 6(2) the provisions of Section 5 would merge with those of Section 6; that then a person could be found guilty only of the offence of contravening a prohibitory order under either Section 6(1) or 6(2). The High Court also found that the order had not been published in accordance with law so that the prosecution under Section 6(3) was not maintainable and could not be proceeded with. The High Court directed that all prosecutions be quashed.

Allowing the State's appeal,

Held :

Article 20(2) of the Constitution provides that no person shall be prosecuted and punished for the same offence more than once. To attract applicability of Article 20(2) there must be a *second prosecution* and punishment for the *same offence* for which the accused has been prosecuted and punished previously. A subsequent trial or a prosecution and punishment are not barred if the ingredients of the two offences are distinct. (Para 8)

The rule against double jeopardy is stated in the maxim *nemo debet bis vexari pro una et eadem causa*. It is a significant basic rule of criminal law that no man shall be put in jeopardy twice for one and the same offence. The rule provides foundation for the pleas of *autrefois acquit* and *autrefois convict*. The manifestation of this rule is to be found contained in Section 26 of the General Clauses Act, 1897, Section 300 of the Code of Criminal Procedure, 1973 and Section 71 of the Indian Penal Code. (Para 9)

The offences under Section 5, under Section 6(1) read with Section 6(3) and Section 6(2) read with Section 6(3) of the Rajasthan Sati (Prevention) Act, 1987 are three distinct offences. They are not the same offences. This is clear from a bare reading of Sections 5 and 6. While Section 5 makes the commission of an act an offence and punishes the same; the provisions of Section 6 are preventive in nature and make provision for punishing contravention of prohibitory order so as to make the prevention effective. Commission of sati may or may not have taken place and may not actually take place (after the issuance of prohibitory order), yet the prohibitory order under sub-section (1) or (2) of Section 6 can be issued. Section 5 punishes "any act for the glorification of sati". The words "glorification" and "sati" are both defined in the Act. What is prohibited by the Collector and District Magistrate under Section 6(1) is "any act towards the commission of sati" subject to his forming an opinion that sati is being committed or is about to be committed.

The prohibition is against abetment of sati or doing of any act, which would aid or facilitate the commission of sati. On such prohibitory order being promulgated, its contravention would be punishable under Section 6(3) without regard to the fact whether sati is committed or not and whether such act amounts to glorification of sati or not. Under Section 6(2), the Collector and District Magistrate may prohibit "the glorification in any manner" of the commission of sati. The expression "the glorification in any manner" carries a wider connotation than the expression "the glorification of sati" as employed in Section 5. In case of prosecution under Section 6(2) read with Section 6(3), what would be punishable is such defiance or contravention of the order of the Collector and District Magistrate, as has the effect of the glorification in any manner of the commission of sati. In distinction therewith, it is the actual doing of an act for the glorification of sati which is made punishable under Section 5. (Para 12)

The gist of the offence under Section 5 is the commission of an act, which amounts to glorification of sati. It is the commission of the act by itself, which is made punishable on account of the same having been declared and defined as an offence by Section 5 of the Ordinance/Act. The gist of the offence under Section 6 of the Ordinance/Act is the contravention of the prohibitory order issued by the Collector and District Magistrate. Section 5 punishes the glorification of sati. Section 6 punishes the contravention of prohibitory order issued by the Collector and District Magistrate, which is a punishment for the defiance of the lawful authority of the State to enforce law and order in the society. What is punished under Section 5 is the criminal intention for glorification of sati; what is punishable under Section 6 is the criminal intention to violate or defy the prohibitory order issued by the lawful authority. (Para 13)

It is not possible to agree with the High Court that the ingredients of the offences contemplated by Section 5 and Section 6(3) are the same or that they necessarily and in all cases overlap or that prosecution and punishment for the offences under Sections 5 and 6(3) both are violative of Article 20(2) of the Constitution or of the rule against double jeopardy. (Para 13)

It is therefore concluded that in a given case, same set of facts may give rise to an offence punishable under Section 5 and Section 6(3) both. There is nothing unconstitutional or illegal about it. So also an act which is alleged to be an offence under Section 6(3) of the Act and if for any reason prosecution under Section 6(3) does not end in conviction, if the ingredients of offence under Section 5 are made out, may still be liable to be punished under Section 5 of the Act. (Para 14). *State of Rajasthan* v. *Hat Singh*, (2003) 2 SCC 152: 2003 SCC (Cri) 451: AIR 2003 SC 791: 2003 Cri LJ 884. Bench Strength **2**. Coram: **R.C. Lahoti** and *Brijesh Kumar*, JJ. [Date of decision: 8-1-2003]

Maqbool Hussain v. State of Bombay, AIR 1953 SC 325: 1953 Cri LJ 1432; State of Bombay v. S.L. Apte, AIR 1961 SC 578: (1961) 1 Cri LJ 725; Om Parkash Gupta v. State of U.P., AIR 1957 SC 458: 1957 Cri LJ 575; State of M.P. v. Veereshwar Rao Agnihotri, AIR 1957 SC 592: 1957 Cri LJ 892; Roshan Lal v. State of Punjab, AIR 1965 SC 1413: (1965) 2 Cri LJ 426, relied on

[3073] — S. 300 — Acquittal for offences under S. 409 IPC and S. 5 Prevention of Corruption Act, 1947 — *Held, does not bar trial under S. 135 Customs Act, 1962 and S. 85, Gold (Control) Act, 1968 — Ingredients of offences in the previous and the subsequent trial are distinct — CrPC, 1898, S. 403 — Constitution of India, Art. 20(2) — Double jeopardy — Maxims — 'Nemo debet bis vexari pro eadem causa'*

The appellants were working as Customs Inspector and Sepoys of the Customs Department. It was alleged that they recovered 99 pieces of gold bars from an agricultural field. But they prepared a false panchnama showing recovery of 90 pieces of gold bars. The remaining pieces were distributed by the appellants amongst themselves and a few others. They were tried under Section 409 IPC and Section 5 of the Prevention of Corruption Act. They were acquitted. After obtaining required sanction under Section 137 of the Customs Act another case was filed by the Customs authorities against them. This trial ended in conviction of the appellants under Section 135 Customs Act and Section 85 Gold (Control) Act. Their conviction was confirmed by the appellate court and the High Court and their plea based on Section 403 CrPC, 1898 and Article 20(2) of the Constitution was rejected. Dismissing their special leave petition

Held :

The ingredients of the offences for which the appellants were charged in the first trial are entirely different. The second trial envisages a different fact-situation and the enquiry for finding out facts constituting offences under the Customs Act and the Gold (Control) Act in the second trial is of a different nature. Also, the second trial has been initiated after obtaining necessary sanction for prosecuting the appellants. Not only the ingredients of offences in the previous and the second trial are different, the factual foundation of the first trial and such foundation for the second trial is also not identical. Accordingly, the second trial was not barred under Section 403 CrPC of 1898 as alleged by the appellant. *A.A. Mulla* v. *State of Maharashtra*, (1996) 11 SCC 606: AIR 1997 SC 1441.

Bench Strength **2**. Coram: **G.N. Ray** and *G.B. Pattanaik*, JJ. [Date of decision: 28-10-1996]

V.K. Agarwal, Asstt. Collector of Customs v. Vasantraj Bhagwanji Bhatia, (1988) 3 SCC 467: 1988 SCC (Cri) 679; P.V. Mohd. Barmay Sons v. Director of Enforcement, 1993 Supp (2) SCC 724: 1993 SCC (Cri) 777, applied

[3074] — S. 300(1) — Bar under, against trial for the 'same offence' — Applicability — *Ingredients of the offences have to be seen to determine whether the offences are same or different — Ingredients of offences under S. 111 r/w S. 135 of Customs Act, 1962 and S. 85 of Gold (Control) Act, 1968 are different — Hence after acquittal under Customs Act subsequent trial under Gold (Control) Act not barred — CrPC, 1898, S. 403(1) — Constitution of India, Art. 20(2)*

Section 403(1), CrPC bars trial again for the same offence. In order to ascertain whether the two offences are the same what is necessary is to analyse the ingredients of the two offences and not the allegations made in the two complaints. But the ingredients required to be established in respect of offence under S. 111 r/w S. 135 of the Customs Act are altogether different from those required to be established for offence under S. 85 of the Gold (Control) Act. In regard to the latter offence, unlike the former offence, it is not necessary to establish that there is any prohibition against the import of gold into Indian sea waters. Mere possession of gold of purity not less than 9 carats in any unfinished or semi-finished form would be an offence under the Gold Control Act. *V.K. Agarwal, Asstt. Collector of Customs* v. *Vasantraj Bhagwanji Bhatia*, (1988) 3 SCC 467: 1988 SCC (Cri) 679: AIR 1988 SC 1106: (1988) 16 ECC 164: (1988) 64 Comp Cas 664.

Bench Strength **2**. Coram: **M.P. Thakkar** and *K.N. Singh*, JJ. [Date of decision: 7-4-1988]

[3075] — S. 300(1) — Bar under, against trial again on the same facts for any other offence for which a different charge made under S. 236, CrPC, 1898 — Applicability — *Held, inapplicable where accused found guilty of offences both under S. 111 r/w S. 135 of Customs Act as well as under S. 85 of Gold (Control) Act, 1968 — S. 403(2), CrPC, 1898 would then be attracted — Hence even after acquittal for offences under Customs Act, subsequent trial under Gold (Control) Act not barred — CrPC, 1898, Ss. 403(1) & (3), 236 and 237*

The trial of the accused would be barred by S. 403(1) provided they are sought to be prosecuted on "same facts" for any offence for which a different charge from the one made against them might have been made under S. 236 and for which they might have been convicted under S. 237. Section 236 contemplated framing of an alternative charge where on the facts of the case an offence would fall under one of the two alternative charges, but the act would not constitute an offence under both the charges. In the present case if the ingredients of both the offences are satisfied the same act of possession of the gold would constitute an offence both under the Customs Act as also under the Gold (Control) Act. It cannot, therefore, be said that the accused could have been tried on the same facts for an alternative charge in the context of S. 236, CrPC at the time of the former proceedings.

Thus S. 403(1) is not attracted. Section 403(2) on the other hand clearly concludes the matter against the accused-respondents. *V.K. Agarwal, Asstt. Collector of Customs* v. *Vasantraj Bhagwanji Bhatia*, (1988) 3 SCC 467: 1988 SCC (Cri) 679: AIR 1988 SC 1106: (1988) 16 ECC 164: (1988) 64 Comp Cas 664.

Bench Strength **2**. Coram: **M.P. Thakkar** and *K.N. Singh*, JJ. [Date of decision: 7-4-1988]

[3076] — S. 300(1) — Bar on trial of acquitted/convicted person again for same offence — Ingredients — *In case of want of prior sanction of IG/Commissioner of Police by virtue of S. 20-A(2) of TADA Act court lacks jurisdiction to take cognizance of offence under that Act but for that reason court cannot order acquittal of the accused; it can only discharge the accused — In such case, twin ingredients of S. 300(1) viz. the court should have jurisdiction to take cognizance and try the accused and it should have recorded an order of acquittal/conviction and such acquittal/conviction should remain in force, held, does not apply — Hence Designated Court was justified in holding that the proceedings could be legally continued against accused-appellant and taking cognizance of offence under Ss. 3, 4, 5 and 6 of TADA Act and Ss. 25 and 26 of Arms Act — Submission that after a long passage of time and expiry of currency of TADA Act itself, continuance of the proceedings would be sheer abuse of process of the court not acceptable — Terrorist and Disruptive Activities (Prevention) Act, 1987, Ss. 20-A(2) and 1 to 6 — Arms Act, 1959, Ss. 25 and 26* (Paras 8, 14 and 16). *Balbir Singh* v. *State of Delhi*, (2007) 6 SCC 226: (2007) 3 SCC (Cri) 71: AIR 2007 SC 2397.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 21-6-2007]

Basdeo Agarwalla v. King Emperor, AIR 1945 FC 16: 1945 FCR 93; Yusofalli Mulla Noorbhoy v. King, (1948-49) 76 IA 158: AIR 1949 PC 264; Mohd. Safi v. State of W.B., AIR 1966 SC 69: 1966 Cri LJ 75; P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578: 2002 SCC (Cri) 830, relied on

— **S. 301** *See also* S. 493, Criminal Procedure Code, 1898, p. 1268 in Vol. 2

— **S. 301** *See* Ss. 24 and 301
See also Ss. 321, 301 and 24
See also Ss. 482, 190, 301, 302 & 225

[3077] — Ss. 301, 302 and 225 & 24 — Right of private counsel to conduct prosecution in a Sessions Court — Prosecution in sessions case cannot be conducted by anyone other than the Public Prosecutor — Role of private counsel is limited to act under the direction of the Public Prosecutor — *However, he can submit written arguments after closure of the evidence with prior permission of the court — Object of the provision explained — Duty of the Public Prosecutor to act fairly and not merely to obtain conviction by any means fair or foul — If the accused is entitled to any legitimate benefit the Public Prosecutor should make it available to him or inform the court even if the defence counsel overlooked it*

Unlike Section 302 CrPC, the application of which is confined to Magistrate Courts, Section 301 CrPC is applicable to all the courts of criminal jurisdiction. This distinction can be discerned from employment of the words "any court" in Section 301. In view of the provision made in the succeeding section as for Magistrate Courts the insistence contained in Section 301(2) must be understood as applicable to all other courts without any exception. The first sub-section empowers the Public Prosecutor to plead in the court without any written authority, provided he is in charge of the case. The second sub-section, which is sought to be invoked by the appellant, imposes the curb on a counsel engaged by any private party. It limits his role to act in the court during such prosecution "under the directions of the Public Prosecutor". The only other liberty which he can possibly exercise is to submit written arguments after the closure of evidence in the trial, but that too can be done only if the court permits him to do so. (Para 12)

From the scheme of the Code the legislative intention is manifestly clear that prosecution in a Sessions Court cannot be conducted by anyone other than the Public Prosecutor. The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in a Sessions Court. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle or conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed a free hand to conduct prosecution, would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor. (Para 13)

It is not merely an overall supervision which the Public Prosecutor is expected to perform in such cases when a privately engaged counsel is permitted to act on his behalf. The role which a private counsel in such a situation can play is, perhaps, comparable with that of a junior advocate conducting the case of his senior in a court. The private counsel is to act on behalf of the Public Prosecutor albeit the fact that he is engaged in the case by a private party. If the role of the Public Prosecutor is allowed to shrink to a mere supervisory role the trial would become a combat between the private party and the accused which would render the legislative mandate in Section 225 of the Code a dead letter. (Para 14). *Shiv Kumar* v. *Hukam Chand*, (1999) 7 SCC 467: 1999 SCC (Cri) 1277.

Bench Strength 3. Coram: *S.P. Kurdukar*, **K.T. Thomas** and *N. Santosh Hegde*, JJ. [Date of decision: 30-8-1999]

Queen-Empress v. Durga, ILR (1894-96) 16 All 84: 1894 AWN 7; Medichetty Ramakistiah v. State of A.P., AIR 1959 AP 659: 1959 Cri LJ 1404; Bhupalli Malliah, Re, AIR 1959 AP 477: 1959 Cri LJ 1045, approved

[3078] — Ss. 301 and 302 — Unlike S. 302, S. 301 is applicable to all courts of criminal jurisdiction

Unlike Section 302 CrPC, the application of which is confined to Magistrate Courts, Section 301 CrPC is applicable to all the courts of criminal jurisdiction. This distinction can be discerned from employment of the words "any court" in Section 301. In view of the provision made in the succeeding section as for Magistrate Courts the insistence contained in Section 301(2) must be understood as applicable to all other courts without any exception. (Para 12). *Shiv Kumar* v. *Hukam Chand*, (1999) 7 SCC 467: 1999 SCC (Cri) 1277.

Bench Strength **3**. Coram: *S.P. Kurdukar*, **K.T. Thomas** and *N. Santosh Hegde*, JJ. [Date of decision: 30-8-1999]

Queen-Empress v. Durga, ILR (1894-96) 16 All 84: 1894 AWN 7; Medichetty Ramakistiah v. State of A.P., AIR 1959 AP 659: 1959 Cri LJ 1404; Bhupalli Malliah, Re, AIR 1959 AP 477: 1959 Cri LJ 1045, approved

[3079] — Ss. 301, 302, 225 and 24 — Bride burning case — Trial of father-in-law of the deceased for offence under S. 304-B IPC — Brother of the deceased engaging a private counsel to conduct the trial — *Direction by the High Court that the counsel appointed by the private person to act under the direction from the Public Prosecutor who shall conduct the case — Held, the High Court correctly approached the issue and, therefore, no interference called for*

The appellant's sister was given in marriage to the son of the respondent. But about 4 months after the marriage she met with a tragic death by burns. On a complaint made by the appellant a case was registered against the respondent. After completion of the investigation a charge-sheet was laid against him for the offence under Section 304-B of the Indian Penal Code. The appellant engaged a private counsel which was objected to by the respondent who was not prepared to have his case prosecuted by the complainant's counsel and hence he approached the High Court in revision. The operative portion of the order of the High Court reads thus:

> "I allow this revision and direct that the lawyer appointed by the complainant or private person in this case shall act under the directions from the Public Prosecutor and may with the permission of the Court submit written arguments after evidence is closed in the case. I further direct that the Public Prosecutor in charge of the case shall conduct the prosecution. Revision petition is disposed of accordingly."

Dismissing the criminal appeal, held, the High Court in the impugned order has correctly approached the issue and it does not warrant any interference. (Para 19). *Shiv Kumar* v. *Hukam Chand*, (1999) 7 SCC 467: 1999 SCC (Cri) 1277.

Bench Strength **3**. Coram: *S.P. Kurdukar*, **K.T. Thomas** and *N. Santosh Hegde*, JJ. [Date of decision: 30-8-1999]

Queen-Empress v. Durga, ILR (1894-96) 16 All 84: 1894 AWN 7; Medichetty Ramakistiah v. State of A.P., AIR 1959 AP 659: 1959 Cri LJ 1404; Bhupalli Malliah, Re, AIR 1959 AP 477: 1959 Cri LJ 1045, approved

— **S. 302** *See also* S. 495, Criminal Procedure Code, 1898, p. 1272 in Vol. 2

— **S. 302** *See* Ss. 256 and 302
See also Ss. 301 and 302
See also Ss. 301, 302 and 225 & 24
See also Ss. 482, 190, 301, 302 & 225

[3080] — S. 302 — Scope of private person's participation in conduct of prosecution when trial is before Magistrate's Court

The private person who is permitted to conduct prosecution in the Magistrate's Court can engage a counsel to do the needful in the court on his behalf. Further if a private person is aggrieved by the offence committed against him or against anyone in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself. It is open to the court to consider his request. If the court thinks that the cause of justice would be served better by granting such permission the court would generally grant such permission. Of course, this wider amplitude is limited to Magistrates' Courts, as the right of such private individual to participate in the conduct of prosecution in the Sessions Court is very much restricted and is made subject to the control of the Public Prosecutor. (Para 12). *J.K. International* v. *State (Govt. of NCT of Delhi)*, (2001) 3 SCC 462: 2001 SCC (Cri) 547: AIR 2001 SC 1142: 2001 Cri LJ 1264: (2001) 90 DLT 157.

Bench Strength **3**. Coram: **K.T. Thomas**, *R.P. Sethi* and *B.N. Agrawal*, JJ. [Date of decision: 23-2-2001]

[3081] — Ss. 302, 205 and 2(q) — Permission to conduct prosecution — Representation to court by power-of-attorney holder — *Persons entitled to continue prosecution (heirs of deceased complainant in the instant case) can be represented by their* "power-of-attorney holder" — *However, if permission for such representation is sought from the court by those persons themselves the same will be granted — Held, no such permission can be granted if the same is sought by the power-of-attorney holder — Similar situation obtaining under S. 205, CrPC — Negotiable Instruments Act, 1881, S. 138*

The question that arose for consideration in the instant case was whether an application under Section 302 CrPC, 1973 to continue the prosecution could be filed by the power-of-attorney holders of heirs of the deceased complainant. Before the trial court, the applications under Section 302 CrPC were filed by the power-of-attorney holders and not by the heirs themselves. The trial court allowed the said applications. In revision, the High Court confirmed the order of the trial court allowing the applications. Hence these appeals.

Allowing the appeals,

Held :

Under Section 302 CrPC, a party can make an application himself to continue the prosecution or the same can be made by a pleader. As provided under Section 2(*q*) CrPC (which defines the word "pleader"), the prayer to continue the prosecution can be made either by a legally qualified person, who is authorised to practise in the court under the Advocates Act; or by any other person which would obviously include a power-of-attorney holder in which eventuality such permission can be granted by the court where the prosecution is pending only if it is sought by the person who is entitled to continue the prosecution and not by the power-of-attorney holder. (Para 9)

The question as to whether the heirs of the complainant can be allowed to file an application under Section 302 to continue the prosecution is no longer *res integra* as the same has been concluded by the Supreme Court in the case of *Ashwin Nanubhai Vyas* v. *State of Maharashtra*, (1967) 1 SCR 807. (Para 5)

In the present case, neither heirs of the complainant filed petition under Section 302 CrPC to continue the prosecution nor was any permission sought by them from the competent court that they should be allowed to continue the prosecution through their power-of-attorney holders, rather the prayer was made by the power-of-attorney holders, which is not permissible under law. Hence, the trial court was not justified in allowing the petitions under Section 302 and the High Court has committed an error in confirming the said order which is liable to be set aside and the petitions under Section 302 CrPC are fit to be dismissed giving liberty to the heirs either to make application themselves before the court concerned to continue the prosecution or apply to the court to grant permission to them to authorise the power-of-attorney holders to continue the prosecution on their behalf. (Para 10). *Jimmy Jahangir Madan* v. *Bolly Cariyappa Hindley*, (2004) 12 SCC 509: (2004) 3 KLT 850.

Bench Strength **2**. Coram: **B.N. Agrawal** and *H.K. Sema*, JJ. [Date of decision: 4-11-2004]

[3082] — Ss. 302 and 205 — Similarity between — Stated

Section 302 CrPC is similar to Section 205 CrPC. Under Section 205, an accused is required to appear in person but his personal appearance can be dispensed with and he can be allowed to be represented by a pleader. Under both the provisions i.e. Sections 302 and 205 CrPC, instead of taking steps personally, a party can be represented through a pleader. Power-of-attorney holder can represent the party concerned under both the said provisions, in case permission for such representation is sought from the court by the person concerned and granted by it. But where no such permission is sought by the person concerned, meaning thereby, in the case of Section 205 — an accused and in the case of Section 302 — a party who has right to continue the prosecution, power-of-attorney holder cannot be allowed to represent the person concerned in the proceeding. (Para 9). *Jimmy Jahangir Madan* v. *Bolly Cariyappa Hindley*, (2004) 12 SCC 509: (2004) 3 KLT 850.

Bench Strength **2**. Coram: **B.N. Agrawal** and *H.K. Sema*, JJ. [Date of decision: 4-11-2004]

T.C. Mathai v. District & Sessions Judge, (1999) 3 SCC 614: 1999 SCC (Cri) 455, relied on

[3083] — Ss. 302 and 239 — Continuation of prosecution by legal heirs of deceased complainant — Pursuant to complaint filed by respondent's father against his daughter and son-in-law (appellants) alleging commission of offences under Ss. 406 and 420 IPC, Magistrate issued process under S. 204 — *But during pendency of proceedings complainant died — Immediately thereafter deceased's sons sought permission to continue the prosecution — Magistrate passed order allowing the application and granting permission to Respondent 1 to continue the prosecution — That order, having not been challenged by appellants, became final — Thereafter witnesses were also examined and written arguments submitted by appellant-accused — Application then filed by appellants under S. 239 for their discharge contending that no case made out against them — Application rejected by trial court holding that there was prima facie case against appellants — Revision thereagainst also dismissed — Held, on death of complainant, the case did not abate and therefore, it was open to deceased's sons to apply for continuation of proceedings against accused- appellants — By granting such prayer no illegality committed by courts — Having regard to the facts of the case and also the fact that the application under S. 239 for discharge of accused was only on ground that no prima facie case made out against them, this is not a fit case to exercise discretionary power under Art. 136 — Constitution of India — Art. 136* (Paras 25 and 26). *Rashida Kamaluddin Syed* v. *Shaikh Saheblal Mardan*, (2007) 3 SCC 548: (2007) 2 SCC (Cri) 63: (2007) 1 Guj LH 621: (2007) 52 AIC 73 (SC): 2007 Cri LJ 2306.

Bench Strength **2**. Coram: **C.K. Thakker** and *L.S. Panta*, JJ. [Date of decision: 2-3-2007]

Ashwin Nanubhai Vyas v. State of Maharashtra, AIR 1967 SC 983: (1967) 1 SCR 807: 1967 Cri LJ 943; Jimmy Jahangir Madan v. Bolly Cariyappa Hindley, (2004) 12 SCC 509: 2004 SCC (Cri) Supp 317; Balasaheb K. Thackeray v. Venkat, (2006) 5 SCC 530: (2006) 2 SCC (Cri) 630, explained and relied on

[3084] — Ss. 302, 24 and 25 — Additional Advocate General — Appointment of — Permissibility — Scope of his functions — *Appointment of Additional Advocate General, held, not contemplated by Art. 165 — However, such appointment although made under Art. 165 can be sustained under Art. 162 — But the Additional Advocate General so appointed cannot perform any constitutional or statutory functions of Advocate General — Literal interpretation applied to Art. 165 — Further held, High Court erred in resorting to S. 13, General Clauses Act and Art. 367 to hold that a provision in singular included plural — The question of interpretation of constitution would arise only in case of vagueness, indefiniteness and ambiguity but not otherwise — Constitution of India, Arts. 165, 162, 367 and 177 — CPC, 1908, S. 92 — Advocates Act, 1961, S. 23*

The appellants herein challenged the appointment of two Advocates General by the A.P. Government on the ground, inter alia, that Article 165 did not contemplate appointment of more than one Advocate General. Relying on Article 367 of the Constitution and Section 13 of the General Clauses Act, the A.P. High Court held that the provision in singular included plural and that the existence of the post of Additional Advocate General did not imply that he could perform the constitutional and statutory functions. The appellants then filed the present appeal. They contended that Article 165 was clear and unambiguous and that therefore Section 13 of the General Clauses Act or Article 367 could not be invoked to interpret it. They further contended that the appointment of Additional Advocate General under Article 165 being without jurisdiction, could not be saved by invoking Article 162.

Dismissing the appeal albeit upholding the impugned order of the High Court for different reasons,

Held :

The power of the Governor of the State under Article 165 is to appoint "a person ...". Similar expressions have been used for the purpose of appointment of holders of constitutional posts including the Attorney General for India, Comptroller and Auditor General of India, the Chief Justice and Judges of the High Courts and the Supreme Court. The constitutional scheme, thus, is that when a constitutional post is required to be filled up by a person having the qualification specified therefor, he alone would perform the duties and functions, be it constitutional or statutory, attached to the said office. The Constitution does not envisage that such functions be performed by more than one person. The office of the Advocate General is a public office. He not only has a right to address the Houses of Legislature under Article 177 but also is required to perform other statutory functions in terms of Section 302 CrPC, Section 92 CPC and Section 23 of the Advocates Act. (Para 10)

The Government of a State as a litigant can appoint as many lawyers as it likes to defend it. For the said purpose, the State is not prohibited from conferring such designation on such legal practitioners as it may deem fit and proper. But, it cannot appoint more than one Advocate General. (Para 11)

In proceeding on the basis that having regard to the provisions of Section 13 of the General Clauses Act and Article 367 of the Constitution, a singular would include a plural, various High Courts committed an error insofar as they failed to take into consideration the crucial words occurring in Article 367 of the Constitution "unless the context otherwise requires". (Para 12)

The question of interpretation of a Constitution would arise only in the event the expressions contained therein are vague, indefinite and ambiguous as well as capable of being given more than one meaning. If by applying the golden rule of literal interpretation, no difficulty arises in giving effect to the constitutional scheme, the question of application of the principles of interpretation of a statute would not arise. (Para 13)

It is not possible to uphold the appellants' contention that the appointment of Additional Advocates General could not be traced to the source of the State's power under Article 162. Non-mentioning or wrong mentioning of a provision of law does not invalidate an order in the event it is found that a power therefor exists. (Para 16)

The matter relating to the appointment of a legal practitioner by a Government may be the subject-matter of a legislation. The State by amending the provisions of Sections 24 and 25 of the Code of Criminal Procedure may make a law regulating the appointment of the Public Prosecutor or Additional Public Prosecutor. Such a law can also be made for regulating appointment of other State counsel. In absence of any legislation in that behalf, various States have laid down executive instructions. Thus, the State in exercise of its jurisdiction under Article 162 is competent to appoint a lawyer of its choice and designate him in such manner as it may deem fit and proper. Once it is held that such persons who are although designated as Additional Advocates General are not authorised to perform any constitutional or statutory functions, indisputably, such appointments must be held to have been made by the State in exercise of its executive power and not in exercise of its constitutional power. Consequently, Additional Advocate General so appointed is not in the constitutional scheme and does not hold constitutional office. (Para 19). *M.T. Khan* v. *Govt. of A.P.*, (2004) 2 SCC 267: (2004) 1 SLR 722: (2004) 2 LLN 103: (2004) 102 FLR 3.

Bench Strength 2. Coram: **V.N. Khare, C.J.** and *S.B. Sinha*, J. [Date of decision: 5-1-2004]

Gurudevdatta VKSSS Maryadit v. State of Maharashtra, (2001) 4 SCC 534; Balram Kumawat v. Union of India, (2003) 7 SCC 628; Union of India v. Khazan Singh, 1993 Supp (1) SCC 583: 1993 SCC (L&S) 287: (1993) 23 ATC 678; State of Karnataka v. Krishnaji Srinivas Kulkarni, (1994) 2 SCC 558, followed

M.K. Padmanabhan v. State of Kerala, 1978 Lab IC 1336: 1977 KLT 916; Regional Transport Authority v. Sita Ram, AIR 1993 Raj 76: (1992) 2 Raj LW 344; Bhadreswar Tanti v. S.N. Choudhury, AIR 1985 Gau 32, impliedly overruled

— **S. 303** *See also* S. 340, Criminal Procedure Code, 1898, pp. 1145 et seq. in Vol. 2

— **S. 303** *See also* Ss. 386, 374, 303, 304 and 162

[3085] — S. 303 — Right of person against whom proceedings are instituted to be defended — Reversal of order of acquittal by High Court in absence of counsel for the accused — Effect — *During the pendency of appeal filed by State against order of acquittal passed by trial court, appellant filing an application for changing the counsel and seeking permission to engage one AS in place of AN — Said application allowed by High Court — However, in the cause-list for the day concerned in respect of the appeal, name of AN appeared and hence, appellant unrepresented in High Court — High Court proceeding to hear the appeal in absence of counsel and reversing the order of acquittal — Held, such an action prejudiced the appellant — Matter remitted to High Court for consideration afresh — Penal Code, 1860 — S. 302 r/w S. 149* (Paras 2, 3, 5 and 6). *Netraj Singh* v. *State of M.P.*, (2007) 12 SCC 520: (2008) 3 SCC (Cri) 287: AIR 2008 SC 14.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 22-3-2007]

[3086] — Ss. 303, 304, 233 and 243 — Defence of accused, if adequate — Counsel's performance — Judicial scrutiny of — Scope — *Though objection of accused that he was not satisfied with his counsel was reiterated, it cannot be that court should dislodge the counsel and go on searching for some other counsel to liking of accused — Right to legal aid cannot be taken thus far — CPC, 1908, Or. 3 R. 1 — Legal Services Authorities Act, 1987, Ss. 12 and 13*

Judicial scrutiny of a counsel's performance must be careful, deferential and circumspect as the ground of ineffective assistance could be easily raised after an adverse verdict at the trial. (Para 167)

No indicia of apparent prejudice is discernible from the manner in which the case against the accused Afzal was defended. Though the objection that he was not satisfied with his counsel was reiterated it cannot be that the Court should dislodge the counsel and go on searching for some other counsel to the liking of the accused. The right to legal aid cannot be taken thus far. It is not demonstrated as to how the case was mishandled by the advocate appointed as amicus except by pointing out stray instances pertaining to the cross-examination of one or two witnesses. (Para 167)

True, the appellant was without counsel till 17-5-2002 but the fact remains that till then, no proceedings except extending the remand and furnishing of documents took place in the court. On 5-6-2002 all the counsel appearing for the accused agreed that all the items of evidence (documents, explosives, guns, etc.) should be considered as undisputed evidence without formal proof which resulted in dropping of considerable number of witnesses for the prosecution. Whether or Afzal's counsel had instructions in this regard there is nothing wrong in the conduct of the advocate in agreeing for admission of formal documents without formal proof or in agreeing for the framing of charges. The counsel had exercised her discretion reasonably. The accused-appellant did not object to this course adopted by the amicus throughout the trial. No doubt, some of the documents admitted contained particulars of identification of the deceased terrorists by the appellant Afzal, but, the factum of identification was independently proved by the prosecution witnesses and opportunity of cross-examination was available to the accused. In the circumstances it cannot be said that there was a reasonable possibility of prejudice on account of admission of the said documents without formal proof. Further Afzal was also given the opportunity to cross-examine the prosecution witnesses in addition to the amicus. In fact, he did avail of that opportunity now and then. On several occasions, there was common cross-examination on behalf of all the accused. The trial Judge did his best to afford effective legal aid to the accused Afzal when he declined to engage a counsel on his own. It cannot be held that the learned counsel who defended the accused at the trial was either inexperienced or ineffective or otherwise handled the case in a casual manner. The criticism against the counsel seems to be an afterthought raised at the appellate stage. It was rightly negatived by the High Court. Taking an overall view of the assistance given by the court and the performance of the counsel, it cannot be said that the accused was denied the facility of effective defence. (Paras 165 to 168). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Strickland v. Washington, 466 US 668 (1984), followed

[3087] — **Ss. 303, 304, 384, 385 and 386 — PIL — Standing — Writ petition by a third party challenging conviction and sentences awarded to certain convicts on ground of violation of their fundamental rights — Petitioner claiming to be a leader of a recognised political party and as such having interest in future of the convicts —** *Held, petition not maintainable — Petitioner being a total stranger to the prosecution, having not even been authorised by the convicts and having not alleged violation of his own fundamental rights, has no locus standi to maintain the petition — Such third party can be allowed to represent the convicts only if they are under some disability recognised by law — Such cases where Court after regular trial orders conviction and sentence are different from preventive detention cases — Constitution of India — Arts. 32 and 51-A*

The conviction and sentence of two assassins of Gen. Vaidya under S. 302 (for murder of the General) and 307 (for causing bullet injuries to his wife) and Ss. 302 and 307 read with S. 34 IPC respectively were affirmed by the Supreme Court vide its judgment dated July 15, 1992, (1992) 3 SCC 700: 1992 SCC (Cri) 705. The present petitioner, claiming to be the President of a recognised political party viz. Akali Dal (M) and 'an acknowledged political leader' and therefore, "vitally interested in upholding the rule of law and ensuring that the same is applied equally with fairness, equity and good conscience to all', filed the writ petition under Art. 32 challenging the conviction and sentences on ground of violation of Arts. 22, 21 and 14 (see para 3).

Dismissing the petition summarily,

Held :

Article 32 empowers the Supreme Court to issue directions or orders or writs for the enforcement of any of the fundamental rights. The petitioner does not seek to enforce any of his fundamental rights nor does he complain that any of his fundamental rights is violated. He seeks to enforce the fundamental rights of others, namely, the two condemned convicts. They themselves have not complained of their violation, nor have they authorised the petitioner to move the Court on their behalf. There is no provision in the Code or the Rules which permits an accused to be represented by a person, other than a lawyer, like the petitioner. The two convicts could, if so minded, have raised the contention in the earlier proceedings but a third party, a total stranger to the trial commenced against the two convicts, cannot be permitted to question the correctness of the conviction recorded against them. If that were permitted any and every person could challenge convictions recorded day in and day out by courts even if the persons convicted do not desire to do so and are inclined to acquiesce in the decision. If the aggrieved party invokes the jurisdiction of the Court under Art. 32, that may stand on a different footing though this does not mean that in all such cases the aggrieved party has a remedy under Art. 32. Unless an aggrieved party is under some disability recognised by law, it would be unsafe and hazardous to allow any third party to question the decision against him. Cases which have ended in conviction by the apex court after a full gamut of litigation are not comparable with preventive detention cases where a friend or next of kin is permitted to seek a writ of habeas corpus. Therefore, neither under the provisions of the Code nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence imposed by the Court after a regular trial. It is difficult to accept the contention that such a public interest litigation commenced by a leader of a recognised political party who has a genuine interest in the future of the convicts should be entertained. The Court must not allow its process to be abused by politicians. Thus the petitioner has no 'locus standi' to invoke the Court's jurisdiction under Art. 32. *Simranjit Singh Mann* v. *Union of India*, (1992) 4 SCC 653: 1993 SCC (Cri) 22: AIR 1993 SC 280.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *K. Ramaswamy*, JJ. [Date of decision: 16-9-1992]

S.P. Gupta v. Union of India, 1981 Supp SCC 87; M. Krishna Swami v. Union of India, (1992) 4 SCC 605; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305, followed

[3088] — Ss. 303 and 2(q) — Appearance by non-advocate — Criteria for consideration by court — Before permitting a non-advocate to appear on behalf of any party the court must consider whether the permission is necessary and satisfy itself as to whether the person proposed to be appointed has the ability to assist the court in reaching proper findings on the issues involved in the case — *In the adversarial system of conducting trials it is very necessary that the court gets proper assistance from both sides — Advocates Act, 1961, S. 32 — Criteria for permitting appearance by non-advocate*

Under Sections 303 and 2(*q*) CrPC it is not necessary that the "pleader" so appointed should be the power-of-attorney holder of the party in the case. What is a condition precedent is that his appointment should have been preceded by grant of permission of the court. It is for the court to consider whether such permission is necessary in the given case and whether the person proposed to be appointed is capable of helping the court by pleading for the party, for arriving at proper findings on the issues involved in the case.

The work in a court of law is a serious and responsible function. The primary duty of a criminal court is to administer criminal justice. Any lax or wayward approach, if adopted towards the issues involved in the case, can cause serious consequences for the parties concerned. It is not just somebody representing the party in the criminal court who becomes the pleader of the party. In the adversary system which is now being followed in India, both in civil and criminal litigation, it is very necessary that the court gets proper assistance from both sides.

If the person proposed to be appointed by the party is not an advocate the court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for Parliament for fixing such a filter in the definition clause [Section 2(*q*) of the Code] that prior permission must be secured before a non-advocate is appointed by the party to plead his cause in the court, is to enable the court to verify the level of equipment of such a person for pleading on behalf of the party concerned. *T.C. Mathai* v. *District & Sessions Judge, Thiruvananthapuram*, (1999) 3 SCC 614: 1999 SCC (Cri) 455: AIR 1999 SC 1385: 1999 Cri LJ 2092.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 31-3-1999]

Harishankar Rastogi v. Girdhari Sharma, (1978) 2 SCC 165: 1978 SCC (Cri) 168: AIR 1978 SC 1019, relied on

[3089] — Ss. 303 and 2(q) — Entitlement to defence by non-advocate, limits to — Under S. 303 an accused is entitled to be defended by a pleader of his choice, who under S. 2(q) can either be a legal practitioner or "any person" — But in the latter case such a person should have been appointed with the permission of the court to act in the proceedings — *This rule is in harmony with S. 32 of the Advocates Act, 1961, which although permits a non-advocate to appear and represent a party before the court, also stipulates that if the appearance is to be before a criminal court, such party must seek and gain permission of the court for the appearance — Not necessary that the 'pleader' so appointed be a power-of-attorney holder of the party he represents — Permission of the court is however a condition precedent — Advocates Act, 1961, S. 32 — Constitution of India, Art. 22(1). T.C. Mathai* v. *District & Sessions Judge, Thiruvananthapuram*, (1999) 3 SCC 614: 1999 SCC (Cri) 455: AIR 1999 SC 1385: 1999 Cri LJ 2092.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 31-3-1999]

[3090] — Ss. 303 and 2(q), 205, 273 — Appearance through power of attorney holder — *Advocates Act, 1961 — S. 32 — S. 2 of the Power of Attorney Act, 1882, held, cannot override the specific provision of a statute which requires that a particular act should be done by a party-in-person — Personal attendance may be dispensed with under the Criminal Procedure Code by the court and appearance by pleader permitted — But accused cannot appear through a power-of-attorney holder unless permission for such appearance is sought by the accused himself and the court expressly grants such permission — Appellant power-of-attorney holder seeking to represent two persons arrayed as respondents in a criminal revision petition — Permission denied by Sessions Judge on ground that the request for permission did not emanate from the parties concerned themselves — Writ petition dismissed by Single Bench of the High Court and writ appeal by the Division Bench — Held, the Division Bench of the High Court rightly dismissed the writ appeal of the power-of-attorney holder — Powers of Attorney Act, 1882, S. 2*

When the Criminal Procedure Code requires the appearance of an accused in a court it is no compliance with it if a power-of-attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with "the personal attendance of the accused, and permit him to appear by his pleader" if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power-of-attorney holder.

The observations made in *M. Krishnammal* v. *T. Balasubramania Pillai* though stated sixty years ago, would represent the correct legal position even now. Thus an agent cannot become a "pleader" for the party in criminal proceedings unless the party secures permission from the court to appoint him to act in such proceedings. *T.C. Mathai* v. *District & Sessions Judge, Thiruvananthapuram*, (1999) 3 SCC 614: 1999 SCC (Cri) 455: AIR 1999 SC 1385: 1999 Cri LJ 2092.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 31-3-1999]

Ravulu Subba Rao v. CIT, AIR 1956 SC 604: (1956) 30 ITR 163, applied

M. Krishnammal v. T. Balasubramania Pillai, AIR 1937 Mad 937: (1937) 2 MLJ 552, approved

[3091] — S. 303 — Right of accused to be defended by a legal practitioner of his choice — Interference with — Effect — *False criminal cases launched against lawyers appearing for defence — Attempt made by prosecution machinery to demoralise and scare the accused's senior counsel by scandalising his reputation and casting a slur on his character and conduct — On facts, held, defence lawyers could not perform their professional duty in a proper and dignified manner on account of hurdles created by the State machinery — It was bound to result in miscarriage of justice — Accused were seriously handicapped in defending themselves — CrPC, 1898, S. 340(1) — Constitution of India — Art. 22(1)*

The affidavits and the documents placed on record conclusively establish that a serious attempt has been made by the State machinery to launch criminal prosecution against lawyers, who may be even remotely connected with the defence of the accused. The police submitted charge-sheet against two lady lawyers (juniors of the counsel for the accused) under various sections of IPC including Section 201 IPC when even accepting every word in the FIR lodged, no offence under the said provision is made out. The Superintendent of Police, SIT and the Police Inspector connected with the investigation even went to the extent of prompting the approver *R* to make insinuation against a very Senior Counsel *KD* who has been practising for over 43 years and is appearing as counsel for the petitioner. *R* during his cross-examination made a statement at the instance of the head of the Special Investigation Team (SIT) that *KD* met his wife at his house and had threatened her that *R* should not give any statement against the petitioner. (Paras 23 and 9)

Article 22(1) of the Constitution gives a guarantee to a person arrested and detained to be defended by a legal practitioner of his choice. Section 303 CrPC, 1973 says that any person accused of an offence before a criminal court or against whom proceedings are instituted under the Code, may of right be defended by a pleader of his choice. Even under the British rule when the Code of Criminal Procedure, 1898 was enacted, Section 340(1) thereof gave a similar right to an accused. It is elementary that if a lawyer whom the accused has engaged for his defence is put under a threat of criminal prosecution he can hardly discharge his professional duty of defending his client in a fearless manner. A senior and respected counsel is bound to get unnerved if an insinuation is made against him in court that he approached the wife of a witness for not giving evidence against the accused in the court. From the material placed the court is prima facie satisfied that a situation has arisen in the present case wherein the lawyers engaged by the petitioner and other co-accused cannot perform their professional duty in a proper and dignified manner on account of various hurdles created by the State machinery. No lawyer would like to get associated with a case where a slur is made on his character and conduct and the reputation, which he has earned by maintaining high professional standards for a long period, is sought to be damaged. Any dignified lawyer would not agree to conduct a case on behalf of the accused in such an atmosphere and even if he does so, he would not be able to discharge his duties properly on account of threat to his personal reputation. The lawyers would be more concerned with shielding their own reputation or their liberty rather than cross-examining the prosecution witnesses for eliciting the truth. The constant fear of not causing any annoyance to the prosecution witnesses specially those of the Police Department would loom large over their minds vitally affecting the defence of the accused. This is bound to result in miscarriage of justice for the accused. Institution of the criminal case against the junior lawyers, whose seniors are appearing as counsel for the accused, undoubtedly shows that in the prevailing conditions the accused will be seriously handicapped in defending themselves on account of threat and intimidation to their counsel. (Paras 23 and 12). *Sri Jayendra Saraswathy Swamigal (II)* v. *State of T.N.*, (2005) 8 SCC 771.

Bench Strength 2. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur**, J. [Date of decision: 26-10-2005]

[3092] — S. 303 — "Pleader of his choice" — Right of accused to have — *Professional misconduct — Refusal to return case files when demanded by client held, amounts to professional misconduct — Advocate has no lien in respect of litigation papers in his keeping even where there is a dispute regarding payment of his fees — Obligation to return the brief is not just a legal duty but a moral imperative — Advocate has other legal remedies to recover such fees — Litigation papers and case files cannot be equated with "goods bailed" under Ss. 171 and 148 of Contract Act — Litigant is free to change his advocate when he feels that the advocate retained cannot espouse his cause efficiently or that the conduct of such advocate is prejudicial to his interest or for any other reason — Moreover, permitting an advocate lien over the case files in view of fees claimed by him, held, would result in serious abuse and exploitation of illiterate litigants — Further, the cause in a court/tribunal is far more important than the right of an advocate to his fees — Held, the Bar Council of India rightly found the appellant guilty of professional misconduct for refusing to return the case files of his client Bank on the basis of the claim that the Bank had still to pay the balance of his fees — However, Supreme Court reducing the punishment awarded (18 months' disbarment and Rs 1000 fine) to reprimand, because this occasion was the first time that the Supreme Court had pronounced a ruling on the question of whether an advocate had a lien over case files for his fees — Clarified that reduced punishment would not count as a precedent — CPC, 1908, Or. 3 R. 4(2) — Constitution of India, Art. 22(1) — Bar Council of India Rules — Pt. VI Ch. II Rr. 24, 28, 29 — Contract Act, 1872, Ss. 171 and 148 r/w Sale of Goods Act, 1930 — S. 2(7) — Advocates Act, 1961, S. 35*

The appellant *R*, was an advocate who was retained by the M.P. State Cooperative Bank in 1990 as a legal advisor and also to conduct cases in which the Bank was a party. In 1993 the Bank terminated the retainership and asked the appellant to return its case files. The appellant did not do so and instead presented a consolidated bill to the Bank seeking Rs 97,100 as the balance owing to him for legal services rendered. He also informed the Bank that he would return the files only after his dues were settled.

The Bank denied that any amount in respect of fees was owed to *R*. After fruitless correspondence it filed a complaint before the State Bar Council on 3-2-1994, accusing the appellant of professional misconduct. In his reply *R* admitted that he had not returned the Bank's files, but he contended that he had a right of lien over them as long as his bills remained unpaid. As the State Bar Council did not dispose of the matter even after the expiry of one year, the proceedings stood transferred to the Bar Council of India, under the provisions of Section 36-B of the Advocates Act. The Bar Council of India held an inquiry and concluded that *R* was guilty of professional misconduct; as punishment the appellant was disbarred for a period of 18 months and finded Rs 1000.

Before the Supreme Court, it was contended for the appellant that a miscarriage of justice had resulted, because the Bar Council of India had not considered the defence set up by the appellant, that he had a lien over his client's files in lieu of his unpaid fees. For the Bank it was contended that no amount was owing to the appellant and that the bill presented by him only showed inflated figures; in the alternative it was contended that an advocate could not retain a client's files after the termination of his engagement and that a lien in respect of such files could not be claimed.

Dismissing the appeal, but reducing the quantum of punishment to a reprimand,

Held :

Per curiam (Thomas and Sethi, JJ.)

After independence, the Advocates Act, 1961 was enacted and it repealed a host of enactments including the Indian Bar Council Act. When the new Bar Council of India came into existence it framed rules called the Bar Council of India Rules as empowered by the Advocates Act. Such Rules contain provisions specifically prohibiting an advocate from adjusting the fees payable to him by a client against his own personal liability to the client. As a rule an advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client (vide Rule 24; see also Rules 28 and 29). (Para 12)

Thus, even after providing a right for an advocate to deduct the fees out of any money of the client remaining in his hand at the termination of the proceeding for which the advocate was engaged, it is important to notice that no lien is provided on the litigation files kept with him. In the conditions prevailing in India with lots of illiterate people among the litigant public it may not be advisable also to permit the counsel to retain the case bundle for the fees claimed by him. Any such lien if permitted would become susceptible to great abuse and exploitation. (Para 13)

Nobody would dispute the proposition that the cause in a court/tribunal is far more important for all concerned than the right of the legal practitioner for his remuneration in respect of the services rendered for espousing the cause on behalf of the litigant. If a need arises for the litigant to change his counsel pendente lite, that which is more important should have its even course flow unimpeded. Retention of records for the unpaid remuneration of the advocate would impede such a course and the cause pending judicial disposal would be badly impaired. If a medical practitioner is allowed a legal right to withhold the papers relating to the treatment of his patient which he thus far administered to him for securing the unpaid bill, that would lead to dangerous consequences for the uncured patient who is wanting to change his doctor. No professional can be given the right to withhold the returnable records relating to the work done by him with his client's matter on the strength of any claim for unpaid remuneration. The alternative is that the professional concerned can resort to other legal remedies for such unpaid remuneration. (Para 14)

A litigant must have the freedom to change his advocate when he feels that the advocate engaged by him is not capable of espousing his cause efficiently or that his conduct is prejudicial to the interest involved in the lis, or for any other reason. For whatever reason, if a client does not want to continue the engagement of a particular advocate it would be a professional requirement consistent with the dignity of the profession that he should return the brief to the client. It is time to hold that such obligation is not only a legal duty but a moral imperative. (Para 15)

The words "of his choice" in Article 22(1) of the Constitution indicate that the right of the accused to change an advocate whom he once engaged in the same case, cannot be whittled down by that advocate by withholding the case bundle on the premise that he has to get the fees for the services already rendered to the client. (Para 16)

If a party terminates the engagement of an advocate before the culmination of the proceedings that party must have the entire file with him to engage another advocate. But if the advocate who is changed midway adopts the stand that he would not return the file until the fees claimed by him are paid, the situation perhaps may turn to dangerous proportions. There may be cases when a party has no resources to pay the huge amount claimed by the advocate as his remuneration. A party in a litigation may have a version that he has already paid the legitimate fee to the advocate. At any rate if the litigation is pending the party has the right to get the papers from the advocate whom he has changed so that the new counsel can be briefed by him effectively. In either case it is impermissible for the erstwhile counsel to retain the case bundle on the premise that fees are yet to be paid. (Para 17)

Even if there is no lien on the litigation papers of his client an advocate is not without remedies to realise the fee which he is legitimately entitled to. But if he has a duty to return the files to his client on being discharged, the litigant too has a right to have the files returned to him, more so when the remaining part of the lis has to be fought in the court. This right of the litigant is to be read as the corresponding counterpart of the professional duty of the advocate. (Para 18)

The word "misconduct" is a relative term. It has to be considered with reference to the subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct. (Para 19)

For understanding the import of the expression "misconduct" in the context in which it is referred to in Section 35 of the Advocates Act a wide canvas should be adopted. (Para 22)

Therefore it is held that the refusal to return the files to the client when he demanded the same amounted to misconduct under Section 35 of the Act. Hence, the appellant in the present case is liable to punishment for such misconduct. (Para 23)

However, regarding the quantum of punishment two broad aspects must be taken into account:

(*1*) This Court has not pronounced, so far, on the question whether the advocate has a lien on the files for his fees.

(*2*) The appellant would have bona fide believed, in the light of decisions of certain High Courts, that he did have a lien.

In such circumstances it is not necessary to inflict a harsh punishment on the appellant. A reprimand would be sufficient in the interest of justice on the special facts of this case. (Para 24)

The punishment awarded to the appellant is therefore altered to one of reprimanding the appellant. However, it is made clear that if any advocate commits this type of professional misconduct in future he would be liable to such quantum of punishment as the Bar Council will determine and the lesser punishment imposed now need not be counted as a precedent. (Para 25)

Per Sethi, J. (supplementing)

While dealing with moneys or any other article or document entrusted to him, an advocate is expected to always keep in mind the high standards of the profession and its values adopted and practised for centuries. "Professional obligations" of a lawyer are distinguished from the "business commitments" followed by the trading community. The legal profession owes social obligations to the society in discharge of professional services to the litigants. (Para 28)

Even under the common law no lien can be claimed with respect to the case file and such documents which are necessary for the further progress of the lis filed in the court. Even in England the right of retention has been much diluted by various exceptions created by decisions, chiefly by the courts of equity on the basis of what may be just and equitable as between the parties with conflicting interests. (Para 35)

In modern India, the rights of an advocate to appear in the court are referable to his enrolment as such under the statute governing the enrolment. The lawyer's rights, obligations and disabilities are, therefore, governed either by the contract or by the statute. He has the right to sue his client for his fees, if not paid, like any other professional. The rights and obligations of an advocate ought to be regulated by keeping the high standards and exalted position of the profession, by not treating the lawyers as ordinary merchants. (Para 38)

Thus, looking from any angle, it cannot be said that the case papers entrusted by the client to his counsel are the goods in his hand upon which he can claim a retaining lien till his fee or other charges incurred are not paid. An advocate is expected, at all times, to conduct himself in a manner befitting his status as an officer and a gentleman by upholding the high and honourable profession to whose privilege he has been admitted after his enrolment. If an advocate departs from the high standards which the profession has set for itself and conducts himself in a manner which is not fair, reasonable and according to law, he is liable to disciplinary action. (Para 41)

In India admittedly, a social duty is cast upon the legal profession to show the people beacon light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country. An advocate is competent to settle the terms of his engagement and his fee by private agreement with his client but it is equally true that if such fee is not paid he has no right to retain the case papers and other documents belonging to his client. Like any other citizen, an advocate has a right to recover the fee or other amounts payable to him by the litigant by way of legal proceedings but subject to such restrictions as may be imposed by law or the rules made in that behalf. It is high time for the legal profession to join heads and evolve a code for themselves in addition to the mandate of the Advocates Act, Rules made thereunder and the Rules made by various High Courts and the Supreme Court, for strengthening the belief of the common man in the institution of the judiciary in general and in their profession in particular. Creation of such a faith and confidence would not only strengthen the rule of law but also result in reaching excellence in the profession. (Para 42). *R.D. Saxena* v. *Balram Prasad Sharma*, (2000) 7 SCC 264: AIR 2000 SC 2912: (2000) 163 CTR 32.

Bench Strength 2. Coram: **K.T. Thomas**[1] and **R.P. Sethi**[1 & 2], JJ. [Date of decision: 22-8-2000]

State of M.P. v. Shobharam, AIR 1966 SC 1910: 1966 Cri LJ 1521; 'G', a Senior Advocate of the Supreme Court, Re, AIR 1954 SC 557: 1954 Cri LJ 1410; M, an Advocate, Re, AIR 1957 SC 149: 1957 Cri LJ 300, relied on

[3093] — Ss. 303, 300, 202 and 319 — Autrefois convict or acquit — Applicability of the principle of — *Proceedings under S. 319 can be initiated against a person even after inquiry under S. 202 and dismissal of complaint under S. 303 — Principles of autrefois convict or acquit not applicable — Constitution of India — Art. 20(2). S.S. Khanna* v. *Chief Secy.*, (1983) 3 SCC 42: 1983 SCC (Cri) 562: AIR 1983 SC 595: 1983 Cri LJ 1044.

Bench Strength 2. Coram: **E.S. Venkataramiah** and *A.N. Sen*, JJ. [Date of decision: 12-4-1983]

— S. 304 *See* Ss. 303, 304, 233 and 243
See also Ss. 303, 304, 384, 385 and 386
See also Ss. 386, 374, 303, 304 and 162

[3094] — S. 304 — Legal aid programme — *Norms or guide-lines laid down for State to follow in giving support and cooperation to voluntary organisations and social action groups in operating legal aid programmes and organising legal aid camps and lok adalats or niti melas — CPC, 1908, Or. 33, Rr. 9-A and 18 — Constitution of India, Art. 39-A. Centre for Legal Research* v. *State of Kerala*, (1986) 2 SCC 706: 1986 SCC (Cri) 246: AIR 1986 SC 2195.

Bench Strength 3. Coram: **P.N. Bhagwati, C.J.** and *V. Khalid* and *M.M. Dutt*, JJ. [Date of decision: 2-5-1986]

[3095] — S. 304 — Free legal aid at State expense to the indigent accused, held, is a constitutional mandate obligating all State Governments to make adequate provisions for it, if not done so already — *Where free legal services are not provided* *to such accused the trial may run the risk of violating Art. 21 — Constitution of India — Arts. 21, 14 and 39-A. Hussainara Khatoon (V)* v. *State of Bihar,* (1980) 1 SCC 108: 1980 SCC (Cri) 50: AIR 1979 SC 1377: 1979 Cri LJ 1052: 1980 MLJ (Cri) 93.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *O. Chinnappa Reddy* and *A.P. Sen*, JJ. [Date of decision: 19-4-1979]

[3096] — S. 304 — Right to free legal services, held, is implicit in Art. 21 without which the procedure cannot be said to be 'reasonable, fair and just' to those who cannot secure such services — *Undertrials who could not secure their release on bail for lack of legal assistance, held, must be provided free legal aid at State expense — Constitution of India — Arts. 21, 14 and 39-A. Hussainara Khatoon (IV)* v. *State of Bihar,* (1980) 1 SCC 98: 1980 SCC (Cri) 40: AIR 1979 SC 1369: 1979 Cri LJ 1045: 1980 MLJ (Cri) 86.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *D.A. Desai*, JJ. [Date of decision: 9-3-1979]

[3097] — S. 304 — Free legal aid in criminal trials — Fundamental right of an indigent accused to be provided with — *Held, cannot be denied on his failure to apply for free legal aid — Magistrate bound to inform every accused, who on conviction is liable to imprisonment, of this right and inquire if he wishes to be represented at State cost — Unless refused by the accused, failure to provide legal aid would vitiate the trial — Exception restated — Constitution of India — Arts. 21 and 39-A*

The appellant Government servant was tried and convicted to suffer imprisonment for two years for offences under S. 506 r/w S. 34, IPC. He was not represented at the trial by any lawyer by reason of his inability to afford legal representation. On appeal the High Court held the trial not to be vitiated since no application for legal aid was made by them. On appeal by special leave Supreme Court.

Held :

Free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Art. 21.

The exercise of this fundamental right is not conditional upon the accused applying for free legal aid and hence cannot be denied if the accused failed to apply for it. Illiteracy, poverty and ignorance of rights and entitlements under the law abounds leading to deception, exploitation and deprivation of rights and benefits under the law. It would be a mockery of the legal aid programme if it were to be left to the poor, ignorant and illiterate accused to ask for free legal services.

Since Supreme Court's judgment in *Khatri (II)* on December 19, 1980 every Magistrate or the Sessions Judge before whom an accused appears is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State, unless he is not willing to take advantage of it. And every State has to make provision for such free legal aid services if it would result in a sentence of imprisonment and is of such nature that the circumstances of the case and the needs of social justice require that he should be given free legal representation.

The High Court therefore was in error in not finding unconstitutionality with the trial merely on the ground that the appellant did not make an application for free legal assistance. That the appellant was not given the opportunity to avail free legal assistance and remained unrepresented by a lawyer at the trial violated his fundamental right under Art. 21. The trial being vitiated, the conviction and sentence must be set aside.

[On the peculiar facts and circumstances the Court ordered that the appellant be reinstated but without back wages and that no fresh trial be held against him.] . *Suk Das* v. *UT, Arunachal Pradesh,* (1986) 2 SCC 401: 1986 SCC (Cri) 166: AIR 1986 SC 991: 1986 Cri LJ 1084: 1986 ALJ 774: 1986 BLJR 394.

Bench Strength **3**. Coram: **P.N. Bhagwati, C.J.** and *D.P. Madon* and *G.L. Oza*, JJ. [Date of decision: 10-3-1986]

Hussainara Khatoon (IV) v. Home Secretary, (1980) 1 SCC 98: 1980 SCC (Cri) 40 1045 ; M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544: 1978 SCC (Cri) 468 and Khatri (II) v. State of Bihar, (1981) 1 SCC 627: 1981 SCC (Cri) 228, followed

[**Ed.**: The present decision has carried the dictum of *Khatri II* a step further by laying down that the plea that the accused failed to apply for legal aid will not stand against breach of the constitutional mandate implicit in Art. 21 of informing and providing free legal aid to every indigent accused likely to suffer imprisonment if convicted. The case clearly lays down that unless refused, failure to provide free legal aid to such accused persons would vitiate their trial, entailing setting aside of the conviction and sentence against them. This would mean that every prisoner, now serving his term of imprisonment who was unrepresented by a lawyer at his trial by reason of his indigency, and had not refused any legal aid offered to him, can have his conviction set aside. Of course he is liable to be retried after being provided free legal aid.

But such a reading of the ruling seems to be qualified. Free legal aid, it appears, may not be granted in certain cases. The grant of free legal aid must satisfy a weighty consideration. This consideration was first spelt out in *Khatri II* in the following words: (SCC p. 632, para 6, bottom)

"The only qualification would be that the offence charged against the accused is such that, on conviction, it would result in a sentence of imprisonment *and* is of such a nature that the circumstances of the case and the needs of social justice require that he should be given free legal representation. There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse *and the like*, where social justice may require that free legal services need not be provided by the State." (emphasis added)

This, so to say, test finds verbatim repetition in the present case in paras 5 and 6.

The above criteria are neither well-defined nor exhaustive and under "and the like" in a large class of cases free legal aid may not be forthcoming. There would be no uniformity and between the different States one can expect wide divergence in the implementation of free legal aid programme. Much would also depend on the response of the Executive in each State.

One would like to think that free legal aid for the indigent and illiterate accused is an end in itself. To make it a means to achieve another end, namely social justice, is fraught with the possibility of its ending up like the many anti-poverty and development programmes of the Government.

The category of offences mentioned by the Court are those which in the present times evoke strong condemnation by the general public. But can certain offences, however grave, despicable or horrendous be put in a separate class being unworthy of free legal aid? Will that be fair and just? No such distinction is made in the United States. In *Hussainara (IV)*, the Supreme Court quoted the decisions of the United States Supreme Court in *Gideon* v. *Waingwright* and *Jon Richard Argersinger* v. *Raymond Hamlin*. From the latter case the following has been quoted: [(1980) 1 SCC 98, 104]

"Both Powell and Gideon involve *felonies*. But their rationale has relevance to *any* criminal trial, where an accused is deprived of his liberty." (emphasis added)

An accused till properly convicted is "presumed to be innocent" and must be proved guilty "beyond reasonable doubt". Can we by an *a priori* condemnation deny to the accused the very free legal aid which alone can in his case prove that the condemnation or charge was false and that he is unworthy of that condemnation?

Even in the categories specifically mentioned there is some difficulty. In *Hussainara (II)* [(1980) 1 SCC 91] the court applauded the effort of the Bihar government in withdrawing certain class of cases and amongst them were cases under the Forest Act and the Excise Act. Offences under the latter would clearly fall under the presently excepted category of "economic offences". Is the indigent and often illiterate milkman, the hawker and petty vendor to be denied legal aid on a mere challan by the Inspector under Prevention of Food Adulteration Act or the Standards of Weights and Measures Act?

In *Haskot*, Krishna Iyer, J. came heavily on soft justice against white-collar criminals and yet strongly argued in that case for free legal aid without drawing any distinction between such offenders and the rest.

Regarding those charged with offences against law prohibiting prostitution or child abuse, the *Hussainara Orders* [(1980) 1 SCC 98] which greatly boosted the cause of free legal aid show from their directions that the Court had before it women and children held in protective custody who were actually 'victims of the offence'. Such offenders were not put in a different class then. In offences tried under SITA the woman or girl being the subject of prostitution can herself be an accused under Ss. 7 and 8. Again will she on a mere challan stand excepted from free legal aid?

Can a consideration be that to defend such *unworthy* offenders is to put unnecessary burden on the State and therefore against social justice? The Court in *Khatri (II)* [(1981) 1 SCC 627, 631] has categorically ruled out the plea of 'financial' burden 'or administrative inability' against providing legal aid.

The whole basis of free legal aid seems to rule out any of these considerations. The object is to ensure equality before the law by ensuring that those who cannot afford legal representation do not suffer merely because of their *indigency or illiteracy. That is the criterion. None else. Art. 39-A is the lodestar and it speaks only of "economic and other disabilities" as the deciding factors.*

What is of course very necessary is that only those who are really *indigent* make use of free legal aid facility. A means and resources statement, on oath if necessary, can be required to be made before the Magistrate and accordingly if he falls below the predetermined poverty line he be provided free legal aid automatically. That is not to rule out coordinate functioning of Legal Aid Boards or involvement of law students and law schools in legal aid.

One would therefore like to believe that the qualifications made in *Khatri (II)* for the grant and denial of free legal aid and which find repetition in the present case are not intended to whittle down free legal aid to the deserving. The whole tenor of developments since Maneka do not support the carving out of *any* exceptions on *any* ground to the rule of free aid to the indigent, illiterate and the ignorant and such legal aid is a constitutional directive, an end in itself and not the means to any other goal.]

[3098] — S. 304 — Free legal aid to accused — Accused not assisted by a lawyer before the trial court in a case in which statute provided minimum sentence of 10 years' R.I. and a fine of Rs 1 lakh — *Conviction set aside and case remanded for* *de novo trial — Accused may make request to the Court to provide him with a lawyer. Tyron Nazareth* v. *State of Goa*, 1994 Supp (3) SCC 321: 1994 SCC (Cri) 1716.

Bench Strength **2**. Coram: *A.M. Ahmadi* and *R.M. Sahai*, JJ. [Date of decision: 26-10-1993]

Khatri II v. State of Bihar, (1981) 1 SCC 627: 1981 SCC (Cri) 228; Suk Das v. UT, Arunachal Pradesh, (1986) 2 SCC 401: 1986 SCC (Cri) 166, relied on

[3099] — S. 304 — Legal aid — When warranted — *Held, need not be provided in each and every case but in the instant case where the appellant had confessed in a large number of cases at the same time, the State could not have denied legal aid to him for a period of three years* (Para 19). *Babubhai Udesinh Parmar* v. *State of Gujarat*, (2006) 12 SCC 268: (2007) 1 SCC (Cri) 702: AIR 2007 SC 420: (2007) 49 AIC 618 (SC): 2007 Cri LJ 786: (2007) 1 Guj LR 742.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

[3100] — S. 304(1) — Right of accused to engage legal practitioner at State expense for defence — *Held, not enforceable by writ petition under Art. 32 — Proper course would be to make application under S. 304(1), CrPC to Sessions Court for fixing counsel and amount of fee to be paid to him — But if the rules framed by (Delhi) High Court regarding the fees payable to lawyers are found to be insufficient, the Sessions Court may make reference to High Court for deciding sufficiency of the fees under Art. 227(3)*

The interpretation of the expression 'the right to be defended by a legal practitioner of his choice' in Art. 22(1) has undergone a change by the enactment of S. 304(1), CrPC, the wide meaning given by the court to Art. 21 and the introduction of Art. 39-A. Primarily the mandate in Art. 39-A is addressed to the legislature and the executive but insofar as the courts of justice can indulge in some judicial law-making within the interstices of the Constitution or any statute before them for construction, the courts too are bound by this mandate. The courts have a responsibility in so interpreting the Constitution as to ensure implementation of the Directives and harmonise the social objective underlying the Directives with individual rights. The Directive Principle in Art. 39-A has been taken cognizance of by the Supreme Court by reading it with Art. 21. It is now well settled that the requirement of compliance with natural justice is implicit in Art. 21 and that if any penal law does not lay down the requirement of hearing before affecting him, that requirement would be implied by the court so that the procedure prescribed by law would be reasonable and not arbitrary procedure. In view of S. 304(1), CrPC when it becomes difficult for the accused to find sufficient means to engage a lawyer of competence, the court possesses power to grant fee legal aid if the interest of justice so requires.

The present petition under Art. 32 is virtually for the grant of a writ of mandamus for the enforcement of Art. 39-A. But the petitioner is not entitled to get the relief sought for under Art. 32. The remedy of the petitioner is to make an application before the Additional Sessions Judge making out a case for the grant of free legal aid and if the Judge is satisfied that the requirements of S. 304, CrPC are fulfilled, he may make necessary directions in that behalf. While fixing the fee of counsel appearing for the petitioner, the Sessions Court shall fix the amount of fee having regard to the interim orders passed by the Supreme Court. But if the Sessions Court feels that it is bound by the constraints of the rules framed by the Delhi High Court prescribing scales of remuneration for empanelled lawyers, it shall make a reference to the High Court for suitable directions. On such reference being made, the High Court shall consider in its jurisdiction under Art. 227(3) whether the scales of remuneration prescribed for empanelled lawyers appearing in sessions trials are not grossly insufficient and call for a revision. That is a matter which vests with the High Court and the Supreme Court will not interfere with it. However, in case the amount so fixed is lower than the scales of fee fixed by the Supreme Court by its interim orders, the excess amount paid to the petitioner in terms thereof shall not be recoverable. *Ranjan Dwivedi* v. *Union of India*, (1983) 3 SCC 307: 1983 SCC (Cri) 581: AIR 1983 SC 624: 1983 Cri LJ 1052.

Bench Strength **2**. Coram: *R.S. Pathak* and **A.P. Sen**, JJ. [Date of decision: 26-4-1983]

— S. 306 *See also* S. 337, Criminal Procedure Code, 1898, pp. 1140 et seq. in Vol. 2

— S. 306 *See* Ss. 209, 193, 26 and 306
See also Ss. 307 and 306
See also Ss. 432, 433, 433-A and 306
See also Ss. 460(g), 306, and 307
See also Ss. 465, 306 and 307

[3101] — S. 306 — Grant of pardon to approver — Object of the provision — *Basis of tender of pardon is not extent of the culpability of the approver but to prevent the escape of the offender from punishment in heinous offences for lack of evidence*

Since many a times the crime is committed in a manner for which no clue or any trace is available for its detection, pardon is granted for apprehension of the other offenders for the recovery of the incriminating objects and the production of the evidence which otherwise is unobtainable. The dominant object being that the offenders of the heinous and grave offences do not go unpunished, the Legislature in its wisdom considered it necessary to introduce Section 306 and confine its operation to cases mentioned in it. The object of Section 306 therefore is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence. There can therefore be no objection against tender of pardon to an accomplice simply because in his confession, he does not implicate himself to the same extent as the other accused because all that Section 306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence. Section 306 thus lays down a clear exception to the principle that no inducement shall be offered to a person to disclose what he knows about the procedure. (Para 42). *Suresh Chandra Bahri* v. *State of Bihar*, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60: AIR 1994 SC 2420: 1994 Cri LJ 3271.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 13-7-1994]

[3102] — S. 306 — Grant of pardon under — Scope of pardon — Transaction or act leading to accused being charged with offence in respect of which pardon granted — *Held, the pardon would operate in respect of all offences pertaining to the said transaction or act — However, the pardon does not operate in respect of a transaction or act entirely unconnected with the offence in respect of which the pardon has been granted — Moreover, the pardon need not be only in respect of an offence under the Penal Code*

Under Section 306 CrPC the pardon is granted in respect of the offence for which he had been charged as an accused. Of course, a pardon need not be only in respect of an offence under the Penal Code. A person may be charged, in respect of the same transaction or act, under the Penal Code and under some other Act e.g. the Prevention of Corruption Act. The pardon would operate in respect of all offences pertaining to that transaction. However, the pardon does not operate in respect of a transaction or act entirely unconnected with the offence in respect of which pardon has been granted. (Para 13). *Dipesh Chandak* v. *Union of India*, (2004) 8 SCC 511: (2004) 270 ITR 85.

Bench Strength 2. Coram: **S.N. Variava** and *A.K. Mathur*, JJ. [Date of decision: 17-9-2004]

[3103] — S. 306 — Point in time from which pardon operates — Held, the High Court was not correct in concluding that until evidence has been given by the pardoned accused, the pardon cannot operate (Para 13). *Dipesh Chandak* v. *Union of India*, (2004) 8 SCC 511: (2004) 270 ITR 85.

Bench Strength 2. Coram: **S.N. Variava** and *A.K. Mathur*, JJ. [Date of decision: 17-9-2004]

State (Govt. of NCT of Delhi) v. Prem Raj, (2003) 7 SCC 121: 2003 SCC (Cri) 1586, distinguished

[3104] — S. 306 — Grant of pardon under — Scope of pardon — *Appellant being granted pardon in respect of misappropriation of funds and fraudulent withdrawals from the State exchequer (the Bihar Fodder Scam) on condition that he make a full and complete disclosure — On basis of said statement of appellant, complaint case being filed against appellant under Ss. 277 and 278, IT Act, 1961, for filing false income tax returns — If pardon operated in respect thereof — Held, the pardon had been granted for misappropriation of funds — This offence has nothing to do with filing of false returns and making false declarations under the said provisions of the IT Act, and the pardon would not operate in respect of these offences — However, to continue with the prosecution under the IT Act would amount to forcing the appellant to give evidence against himself, which is barred by Art. 20(2) of the Constitution, and therefore risk that he would not make a full and complete disclosure for fear of being convicted (which would also lead to the pardon being retracted, the condition wherefor being full and complete disclosure), and risk losing valuable evidence in the Fodder Scam cases — Supreme Court therefore directing stay of the prosecution under the IT case till trial of cases in which pardon had been granted, was over — Held, if the appellant made a full and complete disclosure, then the prosecution under the IT Act should not be allowed to proceed — This was a fit case where the Govt. should consider not prosecuting the appellant under the said provisions of the IT Act — Income Tax Act, 1961, Ss. 277 and 278 — Constitution of India, Art. 20(2)*

The appellant is an accused in a number of cases pertaining to the Fodder Scam in the Animal Husbandry Department of Bihar. He had, along with others, been accused of misappropriation of the funds of the Animal Husbandry Department and of fraudulent withdrawals from the State exchequer by issuing fake bills for supplies never made to the Animal Husbandry Department. The appellant had been, on 28-8-1998, granted a pardon by the Special Judge, CBI, on the condition that he make a full and complete disclosure. On the basis of the statement made by the appellant, the Deputy Commissioner of Income Tax issued a show-cause notice to the appellant as to why prosecution should not be initiated against him, under Sections 277 and 278 of the Income Tax Act, for having filed false returns of income tax. The appellant replied to the show-cause notices, inter alia, stating that he had been granted a pardon under Section 306 of the Criminal Procedure Code and thus the show-cause notice was not maintainable for an offence under Sections 277 and 278 of the Income Tax Act. This contention was not accepted by the CIT, who opined that the pardon was restricted only to offences under the Penal Code. Accordingly, Complaint Case No. 157(C) of 2000 was registered under Sections 277 and 278 of the Income Tax Act. The Court of Economic Offences, Patna, took cognizance and issued summons. The appellant filed a petition under Section 482 of the Criminal Procedure Code for quashing this complaint. By the impugned judgment that petition was dismissed, inter alia, on the ground that as yet the terms of the pardon had not been fulfilled. It is held that till full evidence is given by the appellant and the trial of all cases is concluded he continues to be an accused and, therefore, cannot claim immunity from prosecution. Hence the appeal by special leave.

Disposing of the appeal in the terms below,

Held :

The High Court was not correct in concluding that until evidence has been given by the appellant the pardon could not operate. In this case, the pardon has been granted for the offence of misappropriation of funds. This offence has nothing to do with filing of false returns by the appellant. The prosecution under Sections 277 and 278 is in respect of filing false return and making of false declaration. The pardon which has been granted would not cover those offences. (Para 13)

However, it is clear that to get benefit of the pardon the appellant has to make a full and frank disclosure regarding the offences of misappropriation. If he does not make a full and complete disclosure, the pardon may be cancelled. If he makes a full and complete disclosure he faces the prospect of being convicted in the prosecution under Sections 277 and 278 of the Income Tax Act. Article 20(2) of the Constitution enjoins that no person can be compelled to be a witness against himself. To continue with the prosecution would thus amount to forcing the appellant to give evidence against himself or to risk pardon being cancelled as he cannot make a full and complete disclosure for fear of being convicted in the other case. Thus, even though the pardon may not extend to these offences this is a fit case where the Government should consider not prosecuting the appellant under these sections. To insist on so prosecuting may result in valuable evidence being lost in the fodder scam cases. (Para 14)

It is directed that the prosecution under Sections 277 and 278 of the Income Tax Act will stand stayed till trial of the cases in which pardon is granted is over. If the appellant makes a full and complete disclosure, then the prosecution under Sections 277 and 278 should not be allowed to proceed. (Para 15). *Dipesh Chandak* v. *Union of India*, (2004) 8 SCC 511: (2004) 270 ITR 85.

Bench Strength **2**. Coram: **S.N. Variava** and *A.K. Mathur*, JJ. [Date of decision: 17-9-2004]

[3105] — S. 306 — Tender of pardon to accomplice — Requirements of — Compliance with — Stage and manner of examination of approver — *Statement of approver (PW 6) recorded by CJM under S. 306, and he granted pardon — After committal (ST No. 319 of 1992), Sessions Court on consideration of evidence acquitting two accused, while sentencing accused LP to death and others to RI for life — High Court in appeal setting aside the judgment of conviction and remanding the case to CJM for fresh committal and directing him to examine PW 6 again — After remand, PW 6 again examined by CJM and the case committed to Court of Session (ST No. 156 of 1997) — Submission by appellant-accused that when judgment in ST No. 319 of 1992 was set aside and case was remanded to CJM, procedure under S. 306 should have been started afresh; that PW 6 should have been granted pardon and thereafter he should have been examined as a witness in presence of accused and then cross-examined — Held, so far as pardon portion of the order of CJM is concerned, that was not set aside — It was the other portion whereby L was examined but was not cross-examined nor was his statement recorded in presence of the accused was set aside — Said infirmity was overcome after remand and L was examined in presence of the accused and he was also cross-examined and* *thereafter case was committed to the Court of Session — Hence, there was complete compliance with S. 306 — Stage of examining the approver comes only after he has been granted pardon — On facts, he was so examined in presence of the accused, and was also cross-examined — No illegality in the order and in the procedure adopted by the learned CJM after remand of the case discernible* (Paras 14 and 23). *Sitaram Sao* v. *State of Jharkhand*, (2007) 12 SCC 630: (2008) 3 SCC (Cri) 319: AIR 2008 SC 391.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 12-11-2007]

[3106] — S. 306 — Tender of pardon to approver in one of several similar cases tried together — His evidence as approver cannot be used against him in other cases — *He is protected under proviso to S. 132, Evidence Act — Rule against self incrimination not violated — Approver not "accused" within the meaning of Art. 20(3) of Constitution — Constitution of India, Art. 20(3) — Evidence Act, 1872, S. 132 proviso*

Once an accused is granted pardon under S. 306 of the Code of Criminal Procedure, he ceases to be an accused and becomes a witness for the prosecution. So long as the prosecution does not certify that he has failed to do so he continues to be a witness and the prosecution is under obligation to examine him as a witness both in the Committing Court as well as in the trial court.

The provisions of proviso to S. 132 of the Indian Evidence Act clearly protect a witness from being prosecuted as the basis of the answers given by him in a criminal proceeding which tend to criminate him directly or indirectly. In view of this provision, the apprehension of the respondent that his evidence as approver will be used against him in the other four criminal cases where he figures as an accused is without any basis. On the other hand, he is absolutely protected from criminal prosecution on the basis of the evidence to be given by him when examined by the prosecution as an approver in the said case. *State (Delhi Admn.)* v. *Jagjit Singh*, 1989 Supp (2) SCC 770: 1990 SCC (Cri) 133: AIR 1989 SC 598: 1989 Cri LJ 986.

Bench Strength 2. Coram: **B.C. Ray** and *N.D. Ojha*, JJ. [Date of decision: 16-12-1988]

[3107] — Ss. 306, 307 and 10(3) — Power to direct tender of pardon — Proceeding committed to the Court of Session — *Held, only that court to which commitment is made can grant pardon to the approver — Sessions Judge has no jurisdiction to direct the committing Magistrate or any other Magistrate to grant pardon — Sessions Judge not competent to make such direction even in exercise of power under S. 10(3) unless he himself is absent or unable to act and there is no Additional or Assistant Sessions Judge — Position under S. 338 CrPC, 1898 compared — Expression "trial" in S. 306(1) — Meaning of — CrPC, 1898, S. 338*

Section 307 of the Code corresponds to Section 338 of the Criminal Procedure Code, 1898. If the two provisions are examined in juxtaposition it would be clear that while under Section 338 of the old Code after commitment is made the Court to which the commitment was made could himself tender pardon to an accused or could order the committing Magistrate or the District Magistrate to tender pardon, under Section 307 of the Code of 1973 the Court to whom commitment is made no longer retains the power to order the committing Magistrate or the District Magistrate to tender pardon.

On a plain reading of the provisions contained in Sections 306 and 307 of the Code and on examining the changes that have been brought about by the legislature from the corresponding provisions of the old Code, the conclusion is irresistible that under the new Procedure Code of 1973 once a case is committed to the Court of Session then it is only that Court to which the proceedings have been committed can tender pardon to a person and the Chief Judicial Magistrate cannot be said to have concurrent jurisdiction for tendering pardon.

Under Section 10(3) a Sessions Judge has been empowered to make provision for disposal of any urgent application in certain contingencies by requiring an Additional or Assistant Sessions Judge or in their absence the Chief Judicial Magistrate to deal with an application which otherwise would have been dealt with by the Sessions Judge. This power can be exercised when the Sessions Judge himself is absent or is unable to act. Then again the Chief Judicial Magistrate can be required to act under this sub-section not merely when the Sessions Judge himself is absent or unable to act but also when there is no Additional or Assistant Sessions Judge.

The expression "trial" used in sub-section (1) of Section 306 conveys the meaning those cases which are triable either by a Magistrate or the Chief Judicial Magistrate. In other words, in respect of those cases which are triable by a Magistrate, while the Magistrate of First Class inquiring into or trying the offence can tender pardon at any stage of inquiry or trial, the Chief Judicial Magistrate can tender pardon at any stage of investigation, or inquiring into or the trial. Further a Magistrate, First Class, who is in session of the case can tender pardon in course of inquiry or trial of the said case while the Chief Judicial Magistrate or Metropolitan Magistrate can tender pardon even though the trial is pending before another First Class Magistrate. But by no stretch of imagination can it be construed that under Section 306(1) of the Code a Chief Judicial Magistrate or Metropolitan Magistrate has the power to grant pardon even after the commitment of the proceedings to the Court of Session. *A. Devendran* v. *State of T.N.*, (1997) 11 SCC 720: AIR 1998 SC 2821.

Bench Strength 2. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 21-10-1997]

[3108] — Ss. 306 and 307 — Power to grant pardon to accomplice — Nature and object — *It is a substantive power derived from statutory provisions and not an inherent power of criminal court*

Penal laws require that the punishment shall be inflicted on every person found guilty of an offence under those laws. The grant of pardon results in the grantee escaping the punishment for the offence. The nature of power of pardon under Sections 306 and 307 CrPC is essentially different than the nature of such power under the Constitution of India whereby the President and/or Governor are empowered to grant pardon. Those powers are exercised after a person is found guilty. That is not so here. Under Sections 306 and 307, CrPC the pardon is tendered during the investigation, enquiry or trial, as the case may be. The object is to obtain evidence of an accomplice so as to facilitate conviction of others. The power to grant pardon is not an inherent power of a criminal court and is a substantive power to be specifically conferred. (Para 13). *Harshad S. Mehta* v. *State of Maharashtra*, (2001) 8 SCC 257: 2001 SCC (Cri) 1447: AIR 2001 SC 3774: (2001) 107 Comp Cas 365.

Bench Strength 3. Coram: *S.P. Bharucha*, **Y.K. Sabharwal** and *Brijesh Kumar*, JJ. [Date of decision: 6-9-2001]

[3109] — Ss. 306, 307, 308 and 315 — Evidence of accomplice — Value of evidence of accomplice not complying with conditions of pardon — Discussed — *Evidence Act, 1872, Ss. 114 Ill. (b), 132, 133 and 154 — Constitution of India, Art. 20(3)*

Respondent 3, being tried for offences punishable under Sections 302, 307, 120-B, 23, 114 IPC, Sections 3, 25(1-B)(*a*), 5, 27 of the Arms Act and Sections 3(2)(*i*), 3(2)(*ii*), 3(3), 3(5), 5, 6 of TADA, expressed his desire to disclose truly and fully the facts pertaining to the conspiracy. IO made an application under Section 307 CrPC before the Designated Court that Respondent 3 may be tendered pardon on his readiness and willingness to disclose true and correct facts about conspiracy. Designated Court tendered pardon to Respondent 3 and permitted the prosecution to examine him as witness in the trial.

Respondent 3 (approver) was called as witness for prosecution, after some evidence Public Prosecutor realised witness was not desirous of telling the truth. Public Prosecutor put a specific question to approver as to whether he wanted to tell the court about conspiracy, his answer was in the negative. Immediately, the Special Public Prosecutor issued a certificate under Section 308 CrPC that approver had not complied with condition on which pardon was tendered to him and, therefore, he may be tried separately.

The other accused requested the court to allow him to cross-examine the approver. Public Prosecutor opposed said request on the ground that once the Public Prosecutor forfeits the pardon, witness relegates back to status of accused to be tried separately for same offence and as such loses his status as witness of prosecution, therefore, his entire evidence though still on record but cannot be used for any purpose and as such the question of cross-examining such hostile witness by other accused does not arise. Contrarily it was pleaded that it is not the law that if witness does not support prosecution he is always telling lies. The evidence recorded by the court in the proceedings cannot be wiped out. Trial court concluded that defence has statutory right to cross-examine the hostile witness or approver and as such accused in this case are entitled to exercise the right by cross-examining the Respondent. State was aggrieved by said order, whereby permission has been granted to defence to cross-examine Respondent 3.

Allowing the appeal,

Held :

The salutary principle of tendering a pardon to an accomplice is to unravel the truth in a grave offence so that guilt of the other accused persons concerned in commission of crime could be brought home. It has been repeatedly held by the Supreme Court that the object of Section 306 is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon, the offence may be brought home to rest. (Para 15)

The expression, "on the same condition" occurring in Section 307, obviously refers to the condition indicated in Section 306(1), namely, on the accused making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof. (Para 16)

An accomplice who has been granted pardon under Section 306 or 307 CrPC gets protection from prosecution. When he is called as a witness for the prosecution, he must comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge concerning the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and if he suppresses anything material and essential within his knowledge concerning the commission of crime or fails or refuses to comply with the condition on which the tender was made and the Public Prosecutor gives his certificate under Section 308 CrPC to that effect, the protection given to him is lifted. (Para 17)

The legal position that flows from the provisions contained in Sections 306, 307 and 308 CrPC is that once an accomplice is granted pardon, he stands discharged as an accused and becomes witness for the prosecution. As a necessary corollary, once the pardon is withdrawn or forfeited on the certificate given by the Public Prosecutor that such person has failed to comply with the condition on which the tender was made, he is reverted to the position of an accused and liable to be tried separately and the evidence given by him, if any, has to be ignored in toto and does not remain legal evidence for consideration in the trial against the co-accused, albeit such evidence may be used against him in the separate trial where he gets an opportunity to show that he complied with the condition of pardon. As a matter of fact, it is for this reason that a specific statement was made by the State before the Supreme Court-a similar statement was made before the Designated Court as well-that the evidence of Respondent 3 so far recorded shall not be used by the prosecution in the present trial. (Para 21)

The Evidence Act, CrPC and the Constitution do not bar the proposition that a pardon granted to an accomplice under Section 306 or 307 CrPC protects him from prosecution and he becomes witness for the prosecution but on forfeiture of such pardon, he is relegated to the position of an accused and his evidence is rendered useless for the purposes of the trial of the co-accused. He cannot be compelled to be a witness. There is no question of such person being further examined for the prosecution and, therefore, no occasion arises for the defence to cross-examine him. (Para 28)

The Designated Court seriously erred in treating Respondent 3 as a hostile witness; it failed to consider that the pardon granted and accepted by him was on the condition of his making a true and full disclosure of all the facts concerning the commission of crime and once the pardon granted to him stood forfeited, on the certificate issued by the Special Public Prosecutor, he was relegated to the position of an accused and did not remain a witness. In the circumstances, there was no justification to permit the defence to cross-examine Respondent 3 and to that extent the impugned order cannot be sustained. (Para 29). *State of Maharashtra* v. *Abu Salem Abdul Kayyum Ansari*, (2010) 10 SCC 179. Bench Strength **2**. Coram: *P. Sathasivam* and **R.M. Lodha**, JJ. [Date of decision: 5-10-2010]

State v. Hiralal Girdharilal Kothari, AIR 1960 SC 360: 1960 Cri LJ 524; State (Delhi Admn.) v. Jagjit Singh, 1989 Supp (2) SCC 770: 1990 SCC (Cri) 133, relied on

A.J. Peiris v. State of Madras, AIR 1954 SC 616: 1954 Cri LJ 1638, referred to

Balwant Singh v. State, 1978 Cri LJ NOC 126 (AP), cited

[3110] — Ss. 306 and 308 — Tender of pardon to approver — Examination of approver in committing court as well as in trial court mandatory even if he resiles from his earlier statement or does not make full and true disclosure of facts within his knowledge — *However, his examination not necessary if Public Prosecutor certifies that he is wilfully concealing facts or giving false evidence contrary to condition of pardon — State cannot withdraw nor can approver cast away the pardon granted to him — CrPC, 1898, Ss. 337 and 339*

The power to grant pardon carries with it the right to impose a condition limiting the operation of such a pardon. Hence a pardoning power can attach any condition, precedent or subsequent so long as it is not illegal, immoral or impossible of performance. Section 306 clearly enjoins that the approver who was granted pardon had to comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other concerned whether as principal or abettor, in the commission thereof. It is because of this mandate, the State cannot withdraw the pardon from the approver nor the approver can cast away the pardon granted to him till he is examined as a witness by the prosecution both in the Committing Court as well as in the trial court. The approver may have resiled from the statement made before the Magistrate in the Committing Court and may not have complied with the condition on which pardon was granted to him, still the prosecution has to examine him as a witness in the trial court. It is only when the Public

Prosecutor certifies that the approver has not complied with the conditions on which the tender was made by wilfully concealing anything essential or by giving false evidence, he may be tried under S. 308 of the Code of Criminal Procedure not only for the offence in respect of which pardon was granted but also in respect of other offences. In these circumstances, the question of casting away the pardon granted to an approver and his claim not to be examined by the prosecution as a witness before the trial court is without any substance. *State (Delhi Admn.)* v. *Jagjit Singh*, 1989 Supp (2) SCC 770: 1990 SCC (Cri) 133: AIR 1989 SC 598: 1989 Cri LJ 986.

Bench Strength **2**. Coram: **B.C. Ray** and *N.D. Ojha*, JJ. [Date of decision: 16-12-1988]

Arusami Goundan, In re, AIR 1959 Mad 274: ILR 1954 Mad 320: 1959 Cri LJ 852, explained

Emperor v. Shahdino Dhaniparto, AIR 1940 Sind 114: 41 Cri LJ 747, approved

[3111] — Ss. 306, 307, 308 and 315 — Approver — Pardon withdrawn for failing to make full disclosure — Consequences — Whether accused has a right to cross-examine such accomplice approver — *None of the provisions of Evidence Act, CrPC and Constitution protect such approver from prosecution — On forfeiture of such pardon, he is relegated to position of an accused — However, he cannot be compelled to be a witness — His evidence is rendered useless for purposes of trial of co-accused — Thus, no occasion arises for defence to cross-examine him — Designated Court failed to consider that pardon was granted and accepted by Respondent 3 approver on condition of making a true and full disclosure of all facts concerning commission of crime — Not having done so, pardon granted to him stood forfeited, and he did not remain a witness — Designated Court seriously erred in treating Respondent 3 as hostile witness — Criminal Trial — Witnesses — Accomplice/Approver — Effect of withdrawal of conditional pardon — Evidence Act, 1872, Ss. 114 Ill. (b), 132, 133 and 154 — Constitution of India — Art. 20 — Art. 20(3) — Self Incrimination — Ingredients of cl. (3) — "Self-Incrimination" — Meaning and Scope, Art. 20(3). State of Maharashtra* v. *Abu Salem Abdul Kayyum Ansari*, (2010) 10 SCC 179.

Bench Strength **2**. Coram: *P. Sathasivam* and **R.M. Lodha**, JJ. [Date of decision: 5-10-2010]

State v. Hiralal Girdharilal Kothari, AIR 1960 SC 360: 1960 Cri LJ 524; State (Delhi Admn.) v. Jagjit Singh, 1989 Supp (2) SCC 770: 1990 SCC (Cri) 133, relied on

A.J. Peiris v. State of Madras, AIR 1954 SC 616: 1954 Cri LJ 1638, referred to

Balwant Singh v. State, 1978 Cri LJ NOC 126 (AP), cited

[3112] — S. 306 — Approver not admitting any active participation in the crime but admitting to be a privy to or an abettor in the commission of the offence — *S. 337, held, not violated — CrPC, 1898, S. 337. Maghar Singh* v. *State of Punjab*, (1975) 4 SCC 234: 1975 SCC (Cri) 479: AIR 1975 SC 1320: 1975 Cri LJ 1102.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 16-4-1975]

[3113] — S. 306 — Approver — Evidence of, should be viewed with suspicion — *Evidence Act, 1872, Ss. 133 and 114 Ill. (b)* (Para 31). *Renuka Bai* v. *State of Maharashtra*, (2006) 7 SCC 442: (2006) 3 SCC (Cri) 290: AIR 2006 SC 3056.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *G.P. Mathur*, JJ. [Date of decision: 31-8-2006]

[3114] — S. 306 — Approver not disclosing name of one of the accused in questioning prior to turning an approver — Held, inconsequential when in the confession he implicated himself and such other person including others — *Evidence Act, 1872, Ss. 133 and 114 Ill. (b). Ramprasad* v. *State of Maharashtra*, (1999) 5 SCC 30: 1999 SCC (Cri) 651: AIR 1999 SC 1969: 1999 Cri LJ 2889.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 12-5-1999]

[3115] — S. 306 — Accomplice validly made approver — Reliance upon — Accomplice's evidence — If corroborated in material particulars, can constitute the basis for conviction — *Accomplice becoming approver having been validly granted pardon under S. 306 CrPC, and withstanding cross-examination in committal as well as sessions court — His testimony regarding causing death of the deceased by A-1 corroborated in material particulars by other evidence — Circumstantial evidence sufficient to connect A-1 with commission of the crime — Held on facts, courts below rightly convicted A-1 under S. 302 — Penal Code, 1860 — Ss. 302 and 201 — Evidence Act, 1872, S. 133*

PW 1 has been proved to have been validly granted the pardon under Section 306 of the Code of Criminal Procedure and the appellant-accused afforded sufficient opportunity of cross-examining him both in the committal as well as in the sessions case. He has withstood the cross-examination and proved the factum of the death of the deceased by A-1 and the destruction of his body by all the accused persons. An accomplice is a competent witness and a conviction can be based upon his testimony if it is otherwise corroborated in material particulars. Both the trial court as well as the High Court have found on facts that the death of the deceased was a case of homicide for which A-1 was responsible. The whole of the deposition of PW 1 is a vivid explanation of the manner in which the offence was committed by A-1 in the presence of A-2 and A-3. There is no reason to disbelieve the statement of PW 1. Besides his ocular testimony there is sufficient corroborative evidence which connects A-1 with the commission of the crime of murder of the deceased. Counsel appearing for A-1 could not refer to any alleged weak link to the circumstances relied upon by the courts below to show that the testimony of PW 1, an approver, had not been corroborated. The circumstantial evidence produced in the case is sufficient to connect the accused with the commission of the crime. It does not lead to any other inference than one of his involvement in the crime. There is no reason to disagree with the findings of the trial court as well as the High Court insofar as the involvement of A-1 in the commission of the crime of murder is concerned. (Paras 18 and 19). *State of Kerala* v. *P. Sugathan*, (2000) 8 SCC 203: 2000 SCC (Cri) 1474: AIR 2000 SC 3323.

Bench Strength 2. Coram: *D.P. Mohapatra* and **R.P. Sethi**, JJ. [Date of decision: 26-9-2000]

— S. 306(1) *See* Ss. 307, 306(1) & (4) and 164

— S. 306(4) *See also* Ss. 307, 306(1) & (4) and 164

[3116] — S. 306(4) — Examination of approver as a witness — Object — *Magistrate can examine the approver in his chamber — S. 306(4) does not mandate that the approver must be examined in open court in presence of the accused and that accused must be given opportunity to cross-examine the approver*

The object of Section 304(4) is to provide an opportunity to the accused to show to the Court that the approver's evidence at the trial is untrustworthy in view of the contradictions or improvements made by him during his evidence at the trial. Considering the object and purpose of examining the person accepting tender of pardon as a witness is thus limited. The proceeding which takes place before the Magistrate at that stage is neither an inquiry nor a trial. Therefore, the submission that the approver should be examined as a witness in open court and not in the chamber and that while so examining the Magistrate should keep the accused present and afford him an opportunity to cross-examine the approver cannot be accepted. The provision does not require that the person who is granted pardon must be examined in the presence of the accused and that the accused has a right to appear and cross-examine him at that stage also. However, it is not necessary to deal with this contention any further as the facts of this case show that there is no justification in the grievance that the approver was examined by the Magistrate in the absence of the appellant and the appellant was not afforded an opportunity to cross-examine her. (Para 7). *Ranadhir Basu* v. *State of W.B.*, (2000) 3 SCC 161: 2000 SCC (Cri) 587: AIR 2000 SC 908: 2000 Cri LJ 1417.

Bench Strength 2. Coram: **G.T. Nanavati** and *S.N. Phukan*, JJ. [Date of decision: 7-2-2000]

Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60, relied on

[3117] — Ss. 306(4) and 307 — Nature of S. 306(4) and its applicability — Held, it is procedural and has to be followed by Magistrate and not by Sessions Judge while exercising power under S. 307

Section 306(4) CrPC is procedural in nature. It is necessary to be followed only by a Magistrate as he would not have any jurisdiction to try the case himself. The Sessions Judge before whom the case is committed for trial must be informed as to on what basis pardon had been tendered. Section 307 CrPC does not contain any such condition. The power of the Sessions Judge is independent of the provisions contained in Section 306. The condition mentioned in Section 307 refers to the condition laid down in Section 306(1), namely, that the person in whose favour the pardon has been tendered, will make a full and true disclosure of the whole of the circumstances within his knowledge. The power of a Sessions Court is not hedged with any other condition. (Para 34)

The order of the Sessions Judge granting pardon shows that he not only applied his mind on the application for grant of pardon filed by the investigating officer but also examined the appellant by putting relevant questions to him. The Sessions Judge, therefore, did not pass the order granting pardon only on the basis of the purported confessional statement made by PW 1. It was not done mechanically. (Para 35)

If it is to be held that in each and every case pardon can only be granted at the initial stage, the power conferred upon the Sessions Judge to grant pardon under Section 307 CrPC for all intent and purport shall become otiose. The order of the Sessions Judge granting pardon to the approver is, therefore, legal and valid. (Para 42). *Santosh Kumar Satishbhushan Bariyar* v. *State of Maharashtra*, (2009) 6 SCC 498.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546, followed

Rampal Pithwa Rahidas v. State of Maharashtra, 1994 Supp (2) SCC 73: 1994 SCC (Cri) 851, distinguished

[3118] — S. 306(4)(a) — Nature and object of — Examination of approver in committing court mandatory — *Non-compliance of the same would vitiate the trial — However, if the defect is rectified later, the trial cannot be said to have been vitiated*

A bare reading of clause (*a*) of sub-section (4) of Section 306 of the Code will go to show that every person accepting the tender of pardon made under sub-section (1) has to be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any. The examination of accomplice or an approver after accepting the tender of pardon as a witness in the Court of the Magistrate taking cognizance of the offence is thus a mandatory provision and cannot be dispensed with and if this mandatory provision is not complied with it vitiates the trial. As envisaged in sub-section (1) of Section 306, the tender of pardon is made on the condition that an approver shall make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence. Consequently, the failure to examine the approver as a witness before the committing Magistrate would not only amount to breach of the mandatory provisions contained in clause (*a*) of sub-section (4) of Section 306 but it would also be inconsistent with and in violation of the duty to make a full and frank disclosure of the case at all stages. Thus the provision contained in clause (*a*) of sub-section (4) of Section 306 is of a mandatory nature and not merely directory and, therefore, non-compliance of the same would render committal order illegal. The object and purpose in enacting this mandatory provision is obviously intended to provide a safeguard to the accused inasmuch as the approver has to make a statement disclosing his evidence at the preliminary stage before the committal order is made and the accused not only becomes aware of the evidence against him but he is also afforded an opportunity to meet with, the evidence of an approver before the committing court itself at the very threshold so that he may take steps to show that the approver's evidence at the trial was untrustworthy in case there are any contradictions or improvements made by him during his evidence at the trial. It is for this reason that the examination of the approver at two stages has been provided for and if the said mandatory provision is not complied with, the accused would be deprived of the said benefit. This may cause serious prejudice to him resulting in failure of justice as he will lose the opportunity of showing the approver's evidence as unreliable. (Para 30)

However, if the said defect of not examining the approver at the committal stage by the committing Magistrate is rectified later, no prejudice can be said to be caused to an accused person and therefore the trial cannot be said to be vitiated on that account. (Para 33). *Suresh Chandra Bahri* v. *State of Bihar*, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60: AIR 1994 SC 2420: 1994 Cri LJ 3271.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 13-7-1994]

Kalu Khoda v. State, AIR 1962 Guj 283, FB: (1962) 2 Cri LJ 604: (1962) 3 Guj LR 654; Ramasamy, Re, 1976 Cri LJ 770: 1976 Mad LJ (Cri) 111: 1976 Mad LW (Cri) 36 (Mad); Uravakonda Vijayaraj Paul v. State, 1986 Cri LJ 2104: (1986) 1 Andh LT 364: (1986) 2 APLJ (HC) 19 (AP), approved

[3119] — Ss. 306(4)(a) and 307 — Non-compliance with S. 306(4)(a) — Effect — *Case exclusively triable by Court of Session — Approver tendered pardon before commitment — Compliance of S. 306(4)(a) becomes mandatory — However if pardon is granted by the court to which proceedings committed S. 306(4)(a) is not attracted — Expression "on the same condition" in S. 307 refers to condition indicated in S. 306(1) — Procedural requirement of S. 306(4)(a) is not a condition*

Under Section 307 when pardon is tendered after commitment of the proceedings by the Court to which the commitment has been made the legislative mandate is that the pardon would be tendered on the same condition. The expression "on the same condition" obviously refers to the condition of tendering a pardon engrafted in sub-section (1) of Section 306, the said condition being that the person concerned makes a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence. Sub-section (4) of Section 306 cannot be held to be a condition for tendering pardon. A combined reading of sub-section (4) of Section 306 and Section 307 would make it clear that in a case exclusively triable by the Sessions Court if an accused is tendered pardon and is taken as an approver before commitment then compliance of sub-section (4) of Section 306 becomes mandatory and non-compliance of such mandatory requirements would vitiate the proceedings but if an accused is tendered pardon after the commitment by the Court to which the proceeding is committed in exercise of powers under Section 307 then in such a case the provisions of sub-section (4) of Section 306 are not attracted. The procedural requirement under sub-section (4)(*a*) of Section

306 to examine the accused after tendering pardon cannot be held to be a condition of grant of pardon.

The procedure indicated in sub-section (4)(*a*) of Section 306 is intended to provide a safeguard to an accused inasmuch as the approver has to make a statement disclosing his evidence at the preliminary stage before the committal order is made and thereby the accused becomes aware of the evidence against him and further such evidence of an approver can be ultimately shown as untrustworthy during the trial when the said approver makes any contradictions or improvements to his earlier version. But still when the legislature in Section 307 has made specific reference to only "such conditions" and not to the other procedures in Section 306 it would not be a rule of interpretation to hold that even sub-section (4)(*a*) of Section 306 would also be applicable in such a case. *A. Devendran* v. *State of T.N.*, (1997) 11 SCC 720: AIR 1998 SC 2821.

Bench Strength **2**. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 21-10-1997]

Sardar Iqbal Singh v. State (Delhi Admn.), (1977) 4 SCC 536: 1978 SCC (Cri) 1, relied on

Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60, explained and distinguished

[3120] — Ss. 306(4)(a) and 465(2) — Tender of pardon to accomplice — Ingredients of S. 306(4)(a) — At the time of recording of approver's evidence by Magistrate at pre-committal stage i.e. at the time of investigation or inquiry for offence triable by Sessions Court accused persons have no right to cross-examine the approver — *Use of the word "shall" in S. 306(4)(a) does not mean that non-examination of the approver at that stage would vitiate the trial — On facts, no objection raised at that stage by the accused against the omission to afford opportunity to them to cross-examine the approver — Case committed to Sessions Court for trial — Approver examined as PW and also cross-examined by the accused during trial — But during the course of arguments in Sessions Court contention raised by accused that committing Magistrate's failure to afford them opportunity to cross-examine the approver amounted to non-compliance with S. 306(4)(a) which vitiated the trial — Held, such contention raised for the first time at the belated stage after cross-examining the approver in detail during trial cannot be accepted — In the circumstances S. 465 would be attracted — Evidence Act, 1872, S. 133*

One *S* and some other persons were arrested in connection with murder of two persons. While in custody, he submitted an application through the Superintendent of Jail to the CJM expressing his intention to make a true disclosure of the facts regarding the incident. The CJM issued a notice fixing a date. On that day, the accused was produced before the CJM. It was explained to the approver that his statement could be used against him also and with a view to give time to the accused before becoming an approver, the case was adjourned to another date and on that day he was examined and pardon was granted to him. But at that stage the remaining accused were not asked to cross-examine him. A formal challan was submitted before the Magistrate by the investigating officer. After complying with the objections, the case was committed to the Court of Session. During the trial the approver was examined and on the same day he was cross-examined by the counsel for the accused. Witnesses for the defence were examined. During the period when the arguments were heard and the Sessions Judge visited the spot with a view to appreciate the evidence-on-record the contention was raised for the first time that the procedure prescribed under Section 306(4)(*a*) CrPC was not complied with and therefore, the trial was vitiated. Till then none of the accused raised such an objection and they never felt the need to raise it. The Additional Sessions Judge acquitted the accused-respondents for the offences under Sections 302, 380, 457, 120-B read with Section 34 IPC. The State's appeal before the High Court was dismissed solely on the ground that the Chief Judicial Magistrate had failed to comply with the mandatory directions contained in Section 306(4)(*a*) CrPC as no statement of the approver was recorded by the Chief Judicial Magistrate during the committal proceedings, which vitiated the committal of the accused persons to the Court of Session and consequently the trial by the Sessions Judge. Allowing the State's appeal,

Held :

Acceptance of this objection would only promote technical plea which would adversely affect dispensation of justice. In such circumstances, provisions of Section 465 CrPC would come into operation. Before or after the case was committed to the Sessions Court, the accused had not raised any objection that they were not permitted to cross-examine the approver, nor did they contend so when the approver was examined and cross-examined during the trial. Therefore, at the stage of final arguments, the accused cannot raise the said contention. Further, after cross-examining the approver in detail, there is no question of failure of justice nor any prejudice being caused to the accused on account of that omission. (Para 18)

From Section 306 it can be stated that-

(*1*) the purpose of the section is to obtain the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence "during investigation, inquiry or trial";

(2) the Chief Judicial Magistrate or Metropolitan Magistrate is empowered to tender a pardon to such person "at any stage of investigation or inquiry into or the trial of the offence";

(*3*) the condition for tender of such pardon is that the person is to make a full and true disclosure of the whole circumstances within his knowledge relating to the offence;

(*4*) a person accepting pardon under sub-section (1) is to be "examined" as a witness in the Court of the Magistrate taking cognizance of the offence and in subsequent trial, if any;

(*5*) further, if the case is committed for trial to the Court of Session, Section 307 empowers the Sessions Court trying the case to tender a pardon on the same conditions to such person before the judgment is passed.

From the aforesaid ingredients, it is clear that at the stage of investigation, inquiry or trial of the offence, the person to whom pardon is to be granted, is to be examined for collecting the evidence of a person who is directly or indirectly concerned in or privy to an offence. At the time of investigation or inquiry into an offence, the accused cannot claim any right under law to cross-examine the witness. The right to cross-examination would arise only at the time of trial. During the course of investigation by the police, the question of cross-examination by the accused does not arise. Similarly, under Section 200 CrPC when the Magistrate before taking cognizance of the offence, that is, before issuing process holds the inquiry, the accused has no right to be heard, and, therefore, the question of cross-examination does not arise. Further, the person to whom pardon is granted, is examined but is not offered for cross-examination and thereafter during trial if he is examined and cross-examined then there is no question of any prejudice caused to the accused. In such cases, at the most the accused may lose the chance to cross-examine the approver twice, that is to say, once before committal and the other at the time of trial. (Para 11)

The submission that Section 306(4)(*a*) is couched in mandatory terms by using the word "shall" which indicates that if there is a breach of the said mandatory provision further trial would be vitiated is without any substance. By not examining the approver, the trial would not get vitiated. Such evidence may have to be scrutinised with greater circumspection. If in such scrutiny the evidence is found reliable the court cannot be inhibited from using the evidence. (Para 19). *State of H.P.* v. *Surinder Mohan*, (2000) 2 SCC 396: 2000 SCC (Cri) 400: AIR 2000 SC 1862: 2000 Cri LJ 1429.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B.** Shah, JJ. [Date of decision: 7-2-2000]

A. Devendran v. State of T. N., (1997) 11 SCC 720: 1998 SCC (Cri) 220; Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60, explained and distinguished

Uravakonda Vijayaraj Paul v. State, 1986 Cri LJ 2104: (1986) 1 Andh LT 364 (AP), overruled

Chief Judicial Magistrate, Trivandrum, Re, 1988 Cri LJ 812: (1987) 2 Crimes 647 (Ker), approved

[3121] — S. 306(4)(b) — Release of approver on bail after grant of pardon illegal — *But such a release would not affect the validity of pardon validly granted to the approver — Object of requiring an approver to be detained in custody till the termination of the trial*

It is no doubt true that clause (*b*) of Section 306(4) directs that the approver shall not be set at liberty till the termination of the trial against the accused persons and the detention of the approver in custody must end with the trial. The dominant object of requiring an approver to be detained in custody until the termination of the trial is not intended to punish the approver for having come forward to give evidence in support of the prosecution but to protect him from the possible indignation, rage and resentment of his associates in a crime, whom he has chosen to expose as well as with a view to prevent him from the temptation of saving his one time friends and companions after he is granted pardon and released from custody. It is for these reasons that clause (*b*) of Section 306(4) casts a duty on the court to keep the approver under detention till the termination of the trial and thus the provisions are based on statutory principles of public policy and public interest, violation of which could not be tolerated. But one thing is clear that the release of an approver on bail may be illegal which can be set aside by a superior court, but such a release would not have any affect on the validity of the pardon once validly granted to an approver. (Para 34). *Suresh Chandra Bahri* v. *State of Bihar*, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60: AIR 1994 SC 2420: 1994 Cri LJ 3271.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 13-7-1994]

— S. 307 *See also* S. 338, Criminal Procedure Code, 1898, pp. 1144 et seq. in Vol. 2

— S. 307 *See* Ss. 306 and 307
See also Ss. 306, 307 and 10(3)
See also Ss. 306(4) and 307
See also Ss. 306(4)(a) and 307
See also Ss. 354(3), 235(2) and 307
See also Ss. 460(g), 306, and 307
See also Ss. 465, 306 and 307

[3122] — S. 307 — Grant of pardon to an accused by court — Object — It is for the prosecution to decide necessity of — *If it so decides, court has to agree to tendering of pardon — On facts held, court was not justified in refusing to tender pardon*

Although the power to actually grant the pardon is vested in the court, obviously the court can have no interest whatsoever in the outcome nor can it decide for the prosecution whether particular evidence is required or not to ensure the conviction of the accused. That is the prosecution's job. As was observed by the Supreme Court in *Lt. Commander Pascal Fernandes case*: "Ordinarily it is for the prosecution to ask that a particular accused, out of several, may be tendered pardon. But even where the accused directly applies to the Special Judges he must first refer the request to the prosecuting agency. The proper course for the Special Judge is to ask for a statement from the prosecution on the request of the prisoner. If the prosecution thinks that the tender of pardon will be in the interests of a successful prosecution of the other offenders whose conviction is not easy without the approver's testimony, it will indubitably agree to the tendering of pardon. The Special Judge (or the Magistrate) must not take on himself the task of determining the propriety of tendering pardon in the circumstances of the case." Judged by this standard, the first order of the Sessions Judge refusing pardon to Respondent 1, even though it was actively canvassed for by the Special Public Prosecutor, was wrong. It was not for the Sessions Judge to have considered the possible weight of the approver's evidence, even before it was given. In any case, the evidence of an approver does not differ from the evidence of any other witness except that his evidence is looked upon with great suspicion. But the suspicion may be removed and if the evidence of an approver is found to be trustworthy and acceptable then that evidence might well be decisive in securing a conviction. The Sessions Judge could not and indeed should not have assessed the probable value of the possible evidence of Respondent 1 in anticipation and wholly in the abstract. (Paras 18 and 19). *Jasbir Singh* v. *Vipin Kumar Jaggi*, (2001) 8 SCC 289: 2001 SCC (Cri) 1525: AIR 2001 SC 2734: (2001) 132 ELT 529: (2001) 3 KLT 346.

Bench Strength **2.** Coram: *G.B. Pattanaik* and **Ruma Pal**, JJ. [Date of decision: 16-8-2001]

Lt. Commander Pascal Fernandes v. State of Maharashtra, AIR 1968 SC 594: 1968 Cri LJ 550, applied

Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60: AIR 1994 SC 2420, relied on

[3123] — Ss. 307, 306(1) & (4) and 164 — Scope and applicability — Grant of pardon by Sessions Judge — Condition precedent for — *The only condition for exercise of such power, held, is that laid down in S. 306(1) and none other — Term "on the same condition" occurring in S. 307 refers to the condition laid down in S. 306(1) and not to the condition laid down in S. 306(4) — Grant of pardon by Sessions Judge to approver not mechanically but after examining him by putting relevant questions to him, held, quite valid*

Section 306(4) CrPC is procedural in nature. It is necessary to be followed only by a Magistrate as he would not have any jurisdiction to try the case himself. The Sessions Judge before whom the case is committed for trial must be informed as to on what basis pardon had been tendered. Section 307 CrPC does not contain any such condition. The power of the Sessions Judge is independent of the provisions contained in Section 306. The condition mentioned in Section 307 refers to the condition laid down in Section 306(1), namely, that the person in whose favour the pardon has been tendered, will make a full and true disclosure of the whole of the circumstances within his knowledge. The power of a Sessions Court is not hedged with any other condition. (Para 34)

The order of the Sessions Judge granting pardon shows that he not only applied his mind on the application for grant of pardon filed by the investigating officer but also examined the appellant by putting relevant questions to him. The Sessions Judge, therefore, did not pass the order granting pardon only on the basis of the purported confessional statement made by PW 1. It was not done mechanically. (Para 35)

If it is to be held that in each and every case pardon can only be granted at the initial stage, the power conferred upon the Sessions Judge to grant pardon under Section 307 CrPC for all intent and purport shall become otiose. The order of the Sessions Judge granting pardon to the approver is, therefore, legal and valid. (Para 42). *Santosh Kumar Satishbhushan Bariyar* v. *State of Maharashtra*, (2009) 6 SCC 498.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546, followed

Rampal Pithwa Rahidas v. State of Maharashtra, 1994 Supp (2) SCC 73: 1994 SCC (Cri) 851, distinguished

[3124] — Ss. 307 and 306 — Delay in recording statement of the approver on the basis of which pardon is granted to him — Held, can be a circumstance to be kept in mind by way of caution while appreciating evidence of the approver but it cannot itself be a ground for rejecting his testimony — *Where facts show that the approver was repentant from the very beginning, his testimony cannot be rejected merely on ground of prolonged delay in recording his statement — Evidence Act, 1872, Ss. 133 and 114 Ill. (b)*

The words "at any time after commitment of the case but before judgment is passed" are clearly indicative of the legal position which the legislature intended. No time limit is provided for recording such a statement and delay by itself is no ground to reject the testimony of the accomplice. Delay may be one of the circumstances to be kept in mind as a measure of caution for appreciating the evidence of the accomplice. Human mind cannot be expected to be reacting in a similar manner under different situations. Any person accused of an offence, may, at any time before the judgment is pronounced, repent for his action and volunteer to disclose the truth in the court. Repentance is a condition of mind differing from person to person and from situation to situation. (Para 29)

In the instant case the approver (PW 2) appears to be repenting upon his action from the very beginning as is evident from the two suicidal notes (one addressed to his parents and brother and the other addressed to the police) recovered from his pocket at the time of his arrest. It appears that the apprehension of his colleagues being convicted and sentenced prevented him from taking a final decision at an early stage to make a truthful statement. The defence has not put any question which could suggest that the delay in PW 2 becoming the approver by itself was fatal to the prosecution case. There is, therefore, no substance in the submission that as the statement of the approver was recorded after a prolonged delay, no reliance could be placed upon it. The delay in granting the pardon may be a just criticism, where it is found that the pardon had been tendered at the end of the trial and in effect was intended to fill up the lacunae in the prosecution case. Such is not the present case. (Para 29). *Narayan Chetanram Chaudhary* v. *State of Maharashtra*, (2000) 8 SCC 457: 2000 SCC (Cri) 1546: AIR 2000 SC 3352.

Bench Strength 2. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 5-9-2000]

Lal Chand v. State of Haryana, (1984) 1 SCC 686: 1984 SCC (Cri) 355, distinguished

[3125] — Ss. 307 and 306 — S. 307 is invocable at post-commitment stage while S. 306 is invocable at pre-commitment stage — While granting pardon under S. 307 trial court is obliged to comply with the requirements of S. 306(1) and not with the requirements of S. 306(4)

Section 306 is applicable in a case where the order of commitment has not been passed and Section 307 would be applicable after commitment of the case but before the judgment is pronounced. The provisions of sub-section (4)(*a*) of Section 306 would be attracted only at a stage when the case is not committed to the Court of Session. After the commitment, the pardon is to be granted by the trial court subject to the conditions specified in Section 306(1), i.e., approver making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof. Section 307 provides a complete procedure for recording the statement of an accomplice subject only to compliance with the conditions specified in Section 306(1). When pardon is tendered by trial court, there is no legal obligation on the trial court or a right in favour of the accused to insist for compliance with the requirement of Section 306(4) CrPC. The trial court, in this case has taken all precautions in complying with the provisions of Section 306(1) before tendering pardon to the accused, who later appeared as PW. (Paras 25 and 27). *Narayan Chetanram Chaudhary* v. *State of Maharashtra*, (2000) 8 SCC 457: 2000 SCC (Cri) 1546: AIR 2000 SC 3352.

Bench Strength 2. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 5-9-2000]

Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60, distinguished

[3126] — Ss. 307 and 321 — Grant of pardon and withdrawal from prosecution compared — *Role of prosecutor under each section different*

The role of the prosecutor under Section 307 CrPC is distinct and different from the part he is called on to play under the provisions of Section 321 CrPC. Under Section 321, the Public Prosecutor or the Assistant Public Prosecutor in charge of a case may, with the consent of the court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried. The most noticeable difference between this section and Section 307 of the Act is that unlike the grant of pardon under Section 307, withdrawal from prosecution under Section 321 CrPC is unconditional although it does provide for the express permission of the Central Government in specified cases. Section 321 also does not spell out the circumstances under which the power may be exercised, either by the prosecution or by the court in granting consent. In contrast, the power of tendering pardon under Section 307 CrPC is restricted to one consideration alone, namely, the obtaining of evidence from the person to whom pardon is granted relating to the offences being tried. But the power under Section 321 CrPC not only emphasises the role of the executive in the trial of offences but also that the executive can exercise the power at any time during the trial but before the judgment is delivered. This is relevant in construing the language of Section 64 NDPS Act. (Paras 20 and 21). *Jasbir Singh* v. *Vipin Kumar Jaggi*, (2001) 8 SCC 289: 2001 SCC (Cri) 1525: AIR 2001 SC 2734: (2001) 132 ELT 529: (2001) 3 KLT 346.

Bench Strength 2. Coram: *G.B. Pattanaik* and **Ruma Pal**, JJ. [Date of decision: 16-8-2001]

M.N. Sankarayarayanan Nair v. P.V. Balakrishnan, (1972) 1 SCC 318: 1972 SCC (Cri) 55: AIR 1972 SC 496; Subhash Chander v. State (Chandigarh Admn.), (1980) 2 SCC 155: 1980 SCC (Cri) 376: AIR 1980 SC 423, relied on

[3127] — Ss. 307/34 or Ss. 326/34 — On consideration of report of injuries received by the PWs, causing of grievous hurt found established — *Held, conviction under Ss. 307/34, therefore, ought to be altered in the interest of justice to that under Ss. 326/34 — Sentence also altered to two years' RI without any fine* (Para 35). *Lallan Rai* v. *State of Bihar*, (2003) 1 SCC 268: 2003 SCC (Cri) 301: AIR 2003 SC 333.

Bench Strength 2. Coram: **U.C. Banerjee** and *B.N. Agrawal*, JJ. [Date of decision: 14-11-2002]

[3128] — S. 307 — Power under compared with S. 64, NDPS Act, 1985 — Object of S. 64, NDPS Act, held, is the same as that of S. 307 CrPC — *There is no conflict between the power of Central Govt. under S. 64 of the Act and power of court under S. 307 CrPC — But even assuming there is any conflict, S. 64 would prevail — Hence after rejection of S. 307 CrPC application for grant of pardon, immunity could be granted under S. 64, NDPS Act — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 64*

The object of Section 64 NDPS Act being the same as Section 307 CrPC, it should logically follow that it may be exercised at any time during the course of the trial. It is true that the words "immunity from prosecution" have been used, but the phrase does not mean anything more than the power to withdraw from prosecution. (Para 29)

There is no conflict between the powers exercised by the court under Section 307 CrPC and by the Government under Section 64 NDPS Act. All that Section 64 does is to bring expressly to the fore the role which the executive already has to play under Section 307 CrPC. The only difference is in the authority which orders the pardon or the grant of immunity. Assuming there is a conflict between the powers of the court under Section 307 CrPC and the power of the Central Government under Section 64 of the NDPS Act, then it must be held that Section 64 would prevail both on the ground that the Act being a special Act overrides CrPC which is a general Act and also because the later enactment must prevail over the earlier one. (Paras 38 and 39). *Jasbir Singh* v. *Vipin Kumar Jaggi*, (2001) 8 SCC 289: 2001 SCC (Cri) 1525: AIR 2001 SC 2734: (2001) 132 ELT 529: (2001) 3 KLT 346.

Bench Strength 2. Coram: *G.B. Pattanaik* and **Ruma Pal**, JJ. [Date of decision: 16-8-2001]

Kanta Prashad v. Delhi Admn., AIR 1958 SC 350: 1958 Cri LJ 698: 1958 SCR 1218 and State of U.P. v. Kailash Nath Agarwal, (1973) 1 SCC 751: 1973 SCC (Cri) 698: (1973) 3 SCR 728; Sarwan Singh v. Kasturi Lal, (1977) 1 SCC 750: (1977) 2 SCR 421; Maharashtra Tubes Ltd. v. State Industrial & Investment Corpn. of Maharashtra Ltd., (1993) 2 SCC 144; Allahabad Bank v. Canara Bank, (2000) 4 SCC 406; Solidaire India Ltd. v. Fairgrowth Financial Services Ltd., (2001) 3 SCC 71, relied on

— S. 308 *See also* Ss. 339 and 339-A, Criminal Procedure Code, 1898, p. 1145 in Vol. 2

— S. 308 *See also* Ss. 306 and 308

[3129] — S. 308 first proviso — Approver's evidence — *Approver found to have suppressed some material facts — Even then he cannot be tried with other accused by withdrawing the pardon under the Code — But Court has inherent power to proceed against the approver in such circumstances*

It was submitted that the evidence of the approver should not have been accepted by the Court as it is a tainted evidence. It was argued that there was no satisfactory corroboration of the evidence of the approver and unless there is a corroboration, it should not have been acted upon.

Held :

It is true that the evidence of the approver is always to be viewed with suspicion especially when it is seriously suspected that he is suppressing some material facts. Here the approver's evidence was not fully accepted by the High Court. The High Court was of the view that he had suppressed some material facts. The observation made by the High Court was justified. Despite all, the approver could not be proceeded against and the Public Prosecutor had not taken any step to proceed against the approver. Under such circumstances the Court itself has inherent powers to proceed against the approver in case he is wilfully suppressing material facts or is giving false evidence. When the Court suspected the evidence of the approver, the pardon given to him itself could be withdrawn and he could be tried along with the other accused. But unfortunately the provisions contained in the Criminal Procedure Code do not enable the Court to take such a strong action. (Paras 31 and 33). *Renuka Bai* v. *State of Maharashtra*, (2006) 7 SCC 442: (2006) 3 SCC (Cri) 290: AIR 2006 SC 3056.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *G.P. Mathur*, JJ. [Date of decision: 31-8-2006]

— S. 309 *See also* S. 344, Criminal Procedure Code, 1898, pp. 1163 et seq. in Vol. 2

— S. 309 *See* Ss. 167, 209 and 309
See also Ss. 167, 309, 173 and 190
See also Ss. 167(2) proviso, 309, 173 and 190
See also Ss. 167(2), proviso (a)(i)&(ii), 57 and 309
See also Ss. 190, 309, 320 and 482
See also Ss. 207, 209, 309, 170, 190 and 2(g)
See also Ss. 228, 167, 173, 2(g) & (h), 190 and 309
See also Ss. 231, 242, 244, 309 and 437 & 439
See also Ss. 242, 309 and 313
See also Ss. 437 & 309
See also Ss. 482 and 197, 173, 309, 437(6) and 468
See also Ss. 482, 309, 228 and 240
See also Ss. 482, 309, 311 and 258

[3130] — S. 309 — Adjournment — *When a witness is available and his examination-in-chief is over, unless compelling reasons are there, trial court should not adjourn the matter on the mere asking* (Para 54). *Mohd. Khalid* v. *State of W.B.*, (2002) 7 SCC 334.

Bench Strength **3**. Coram: *B.N. Kirpal*, C.J. and *K.G. Balakrishnan* and **Arijit Pasayat**, JJ. [Date of decision: 3-9-2002]

State of U.P. v. Shambhu Nath Singh, (2001) 4 SCC 667: 2001 SCC (Cri) 798; N.G. Dastane v. Shrikant S. Shivde, (2001) 6 SCC 135, relied on

[3131] — S. 309 — Adjournments — Provisions against are mandatory — When witnesses are in court, they will have to be examined except for "special reasons" which are to be recorded in the order of adjournment — *Inconvenience of advocate is not a special reason — Where after examination of PW he could not be cross-examined as trial court granted adjournments after adjournments at long intervals on mere asking for it on behalf of the accused even though the PW remained present in court and as a result the accused persons were acquitted by trial court for want of evidence, held, there has been a miscarriage of justice — Hence acquittal order set aside and trial court directed to proceed with further examination of the PW and other witnesses*

The respondents were arraigned before the Sessions Court to face charges of murder, attempt to murder and rioting etc. The trial Judge included Sections 302 and 307 read with Section 149 IPC among other offences in the charges framed against the respondents. The prosecution cited three persons including PW 1 as eyewitnesses and offered to examine them and other witnesses to prove the charges against the respondents. Though PW 1 was examined but his cross-examination was not completed on the same day. Hence, the trial court adjourned the case to some other day and then to some other day and like that to so many days. PW 1 had appeared in the court on 9-11-1994, 15-11-1994, 8-12-1994, and then on 12-1-1995, 7-2-1995, 24-6-1995, 25-8-1995 and 25-9-1995 but one or the other accused was absent on most of those days and the cross-examination of PW 1 could not be undertaken for that reason. The Public Prosecutor in the trial court filed an application on 11-7-1995 for adopting punitive action against the accused for the dilatory tactics and the Sessions Court posted the case to 25-8-1995 with a warning to the accused that no further adjournment would be given for cross-examination of PW 1. But the presiding officer happened to be on leave on 25-8-1995 and hence the case was posted to 25-9-1995. Though PW 1 was present on that day also he was not examined. Ultimately the case stood posted on 4-1-1996. But on that day PW 1 happened to be absent and an application for adjournment was presented on his behalf. The trial Judge, while expressing misgivings about the police that they and the accused in the case would have colluded together for not producing evidence against the accused, dismissed the said application and closed the prosecution evidence and pronounced the judgment on 9-1-1996 acquitting the accused for want of evidence. The State moved the High Court seeking leave to appeal but the same was refused by an order which read thus: "Heard learned AGA. Perused the impugned judgment. We do not find any good ground for interference by this Court in appeal. Leave to appeal is refused." Allowing the State's appeal,

Held :

If the Sessions Judge had succumbed to the collusive tactics of the parties in serious offences like murder by acquitting the accused on the ground of want of evidence in spite of witnesses being present on a large number of dates, the public confidence in the efficacy of the administration of criminal justice would be further drained considerably. In the present case, when PW 1 was examined-in-chief the court should have posted the case to the next working day for completion of cross-examination of that witness. In this case a miscarriage of justice has occasioned due to the failure of the trial court to comply with the mandatory directions contained in the Code. Criminal justice cannot be allowed to be defeated solely on account of inaction or lapses of the court in adhering to the mandates of law. When the State of U.P. moved the High Court, in this case, seeking leave to appeal, the above aspect should have been considered by the learned Judges and set right the grave miscarriage of justice occasioned on account of flouting the directions of law. (Paras 8 and 20)

If a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. Section 309 CrPC makes it clear that once examination of witnesses has started, the court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to examine them. Only if there are "special reasons", which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case without examination of witnesses who are present in court. (Paras 9 and 12)

It is almost a common practice and regular occurrence that trial courts flout the said command with impunity. Even when witnesses are present, cases are adjourned on far less serious reasons or even on flippant grounds. Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. The legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a "special reason" for bypassing the mandate of Section 309 of the Code. (Para 13)

If any court finds that the day-to-day examination of witnesses mandated by the legislature cannot be complied with due to the non-cooperation of the accused or his counsel the court can adopt any of the measures indicated in the sub-section i.e. remanding the accused to custody or imposing cost on the party who wants such adjournments (the cost must be commensurate with the loss suffered by the witnesses, including the expenses to attend the court). Another option is, when the accused is absent and the witness is present to be examined, the court can cancel his bail, if he is on bail (unless an application is made on his behalf seeking permission for his counsel to proceed to examine the witnesses present even in his absence provided the accused gives an undertaking in writing that he would not dispute his identity as the particular accused in the case). (Para 14)

It is no justification to glide on any alibi by blaming the infrastructure for skirting the legislative mandates embalmed in Section 309 of the Code. A judicious judicial officer who is committed to his work could manage with the existing infrastructure for complying with such legislative mandates. The precept in the old homily that a lazy workman always blames his tools, is the only answer to those indolent judicial officers who find fault with the defects in the system and the imperfections of the existing infrastructure for their tardiness in coping with such directions. (Para 18)

In some States a system is evolved for framing a schedule of consecutive working days for examination of witnesses in each sessions trial to be followed. Such schedule is fixed by the court well in advance after ascertaining the convenience of the counsel on both sides. Summons or process would then be handed over to the Public Prosecutor in charge of the case to cause them to be served on the witnesses. Once the schedule is so fixed and witnesses are summoned the trial invariably proceeds from day to day. This is one method of complying with the mandates of the law. It is for the presiding officer of each court to chalk out any other methods, if any, found better for complying with the legal provisions contained in Section 309 of the Code. Of course, the High Court can monitor, supervise and give directions, on the administration side, regarding measures to conform to the legislative insistence contained in the above section. (Para 19)

In view of the above position the order of acquittal passed by the trial court is set aside and the trial court is directed to proceed with further examination of PW 1 and examination of other witnesses to whom the court should issue process if so requested by the prosecution. (It is open to the prosecution to produce such witnesses without bothering the court to issue summons to them.) The case shall be disposed of after taking all the remaining steps in accordance with law. (Para 21). *State of U.P.* v. *Shambhu Nath Singh*, (2001) 4 SCC 667: 2001 SCC (Cri) 798: AIR 2001 SC 1403: 2001 All LJ 835: 2001 Cri LJ 1740: (2001) 2 KLT 159.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 29-3-2001]

Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507: 1998 SCC (Cri) 1692; Raj Deo Sharma (II) v. State of Bihar, (1999) 7 SCC 604: 1999 SCC (Cri) 1324, relied on

[3132] — S. 309 — Detention of a large number of persons under Narcotic Drugs and Psychotropic Substances Act for a long period — *Delay in constitution of Special Courts frustrating the objective of S. 36(1) Narcotic Drugs and Psychotropic Substances Act and S. 309 Criminal Procedure Code. Supreme Court Legal Aid Committee* v. *Union of India*, (1994) 6 SCC 731: 1995 SCC (Cri) 39.

Bench Strength 2. Coram: **A.M. Ahmadi** and *B.L. Hansaria*, JJ. [Date of decision: 7-10-1994]

[3133] — S. 309 — Examination of witnesses should be continued from day to day more so where accused party is found to be stronger in money power as well as muscle power

PW who had lodged FIR immediately was under constant threat and was compelled not to speak the truth despite the fact that he was the brother of the deceased. Other witnesses also turned hostile. On that basis the High Court observed that the accused party was stronger in terms of money power and muscle power. The examination-in-chief of the said PW was over on 6-2-1984. The counsel for one of the accused requested the Court that because of his uncle's demise, he would not be in a position to cross-examine the witness and, therefore, recording of further cross-examination might be adjourned. Thereafter, the witness was cross-examined in the month of July 1985.

Held :

This was highly improper. The Sessions Judge ought to have followed the mandate of Section 309 CrPC of completing the trial by examining the witnesses from day to day and not giving a chance to the accused to threaten or win over the witnesses so that they may not support the prosecution. Even if the request for adjournment of the counsel for the accused was accepted, the cross-examination ought not to have been deferred beyond two or three days. (Para 11). *Ambika Prasad* v. *State (Delhi Admn.)*, (2000) 2 SCC 646: 2000 SCC (Cri) 522: AIR 2000 SC 718: 2000 Cri LJ 810.

Bench Strength 2. Coram: *G.B. Pattanaik* and **M.B. Shah**, JJ. [Date of decision: 21-1-2000]

[3134] — S. 309 — Postponement or adjournment of a proceeding for unduly long period on ground of pendency of any other proceeding having bearing on the proceeding before the court not proper

The discretion under S. 309 CrPC should be exercised judicially and in such a way as not to frustrate the object of the criminal proceedings. There is no rigid rule which makes it necessary for a criminal court to adjourn or postpone the hearing of a case before it indefinitely or for an unduly long period only because some proceeding which may have some bearing on it is pending elsewhere. This, however, has no relevance to the question of maintainability of the prosecution. The prosecution in those circumstances cannot be quashed on the ground that it is a premature one. *P. Jayappan* v. *S.K. Perumal, Ist ITO*, 1984 Supp SCC 437: AIR 1984 SC 1693: 1984 Tax LR 1197: (1984) 149 ITR 696.

Bench Strength 3. Coram: *O. Chinnappa Reddy*, *A.P. Sen* and **E.S. Venkataramiah**, JJ. [Date of decision: 17-8-1984]

[3135] — S. 309 — Refusal of adjournment of an old pending case on ground of prosecution's laxity and negligence resulting in inordinate delay in producing and examining witnesses and documentary evidence, held, reasonable and justified. *State (Delhi Admn.) v. Vishwanath Lugnani, 1981 Supp SCC 64: 1982 SCC (Cri) 139: AIR 1981 SC 1239: 1981 Cri LJ 745.*

Bench Strength 2. Coram: **A.C. Gupta** and *P.S. Kailasam*, JJ. [Date of decision: 30-7-1980]

[3136] — Ss. 309 & 190(1) — Simultaneous civil and criminal proceedings in a given matter — Stay of one of the proceedings — Factors to be considered therefor — Primacy of criminal proceeding over civil proceeding — Consideration

of general rule as to — Mode of determination of civil suit, if primacy to be given to criminal proceeding — *Reiterated, in a given case, a civil proceeding as also a criminal proceeding can proceed simultaneously — Whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case — Ordinarily, a criminal proceeding will have primacy over the civil proceeding in view of the fact that disposal of a civil proceeding generally takes a long time — If primacy is to be given to a criminal proceeding, the civil suit must be determined on its own merit, keeping in view the evidence brought therein and not in terms of the evidence brought in the criminal proceeding — Simultaneous pendency of criminal proceeding for forgery of will, etc. as well as probate proceeding as to said will — Having regard to facts as to: (i) institution of criminal case much prior to initiation of probate proceeding, (ii) conduct of appellant-accused (criminal case not proceeding further for the last 7 years in view of pendency of matters before High Courts in different proceedings initiated by accused, though the charge-sheet was filed and cognizance of offence was taken), (iii) stage of pending probate proceeding (absence of much progress therein after about 6 years of filing of proceeding as the will in question was not yet sent to handwriting expert for his opinion), and (iv) the fact that the criminal case involved offence not only of forgery of will but also of house trespass, held, impugned judgment refusing to stay criminal proceeding not liable to be interfered with — CPC, 1908, Ss. 151 & 9 — Succession Act, 1925, S. 276 — Penal Code, 1860, Ss. 420/468/444/34*

A criminal case under Sections 420/468/444/34 IPC was instituted against the appellants alleging commission of forgery of a will by them. Prior to the said case, a civil suit was filed against the appellants, which was still pending, questioning the genuineness of the said will based on which the appellants had claimed mutation in respect of the property concerned.

Cognizance of offences in the said criminal case was taken in the year 2002. The appellants were granted anticipatory bail. On or about 30-1-2003, the appellants filed an application under Section 276 of the Succession Act, 1925 before the Jharkhand High Court for grant of probate in respect of the said will. Thereafter, the appellants preferred a writ petition before the Delhi High Court for quashing of the FIR. The said petition was disposed of making observations that the petitioners therein (i.e. the accused) could move the trial court by filing an application for stay of the criminal trial pending adjudication of the question of genuineness of the will by the civil court.

Pursuant to the said order of the High Court, the appellants filed an application under Section 309 CrPC before the Magistrate concerned seeking stay of the criminal proceedings. But that application was dismissed. Aggrieved thereby, the appellants preferred a criminal revision petition but they did not succeed. Hence, the present appeal.

Dismissing the appeal,

Held :

Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. The question as to whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case. (Para 21)

It is now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible. (Para 22)

If primacy is to be given to a criminal proceeding, the civil suit must be determined on its own merit, keeping in view the evidence brought on record therein and not in terms of the evidence brought in the criminal proceeding. (Para 24)

In the present case, the impugned judgment refusing to stay the criminal proceeding cannot be interfered with. Firstly, because the criminal case was instituted much prior to the initiation of the probate proceeding and secondly, because of the conduct of the appellants and the stage at which the probate proceeding is pending. (Para 41)

Whereas the criminal case is pending before the Delhi Court, the testamentary suit has been filed before the Jharkhand High Court. Since 2003 not much progress has been made therein. The will has not been sent to the handwriting expert for his opinion, which is essential for determination of the question in regard to the genuineness of the will. Further, for the last seven years, in view of the pendency of the matters before the High Courts in different proceedings initiated by the appellants, the criminal case has not proceeded, although charge-sheet has been filed and cognizance of the offence has been taken. (Para 44)

Further, the FIR was lodged not only in regard to forgery of the will but also on the cause of action of a trespaSs. It is, thus, possible that even if the will is found to be genuine and that no case under Section 468 IPC is found to have been made out, the appellants may be convicted for commission of other offences for which they have been charged against, namely, trespass into the property and cheating. (Para 43)

Therefore, in view of the above, the impugned judgment cannot be interfered with exercising discretionary jurisdiction under Article 136 of the Constitution. (Para 46). *Syed Askari Hadi Ali Augustine Imam* v. *State (Delhi Admn.)*, (2009) 5 SCC 528.

Bench Strength 3. Coram: **S.B. Sinha**, *L.S. Panta* and *B. Sudershan Reddy*, JJ. [Date of decision: 3-3-2009]

M.S. Sheriff v. State of Madras, AIR 1954 SC 397; K.G. Premshanker v. Inspector of Police, (2002) 8 SCC 87: 2003 SCC (Cri) 223; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101; P. Swaroopa Rani v. M. Hari Narayana, (2008) 5 SCC 765: (2008) 3 SCC (Cri) 79, relied on

Sardool Singh v. Nasib Kaur, 1987 Supp SCC 146: 1987 SCC (Cri) 672, distinguished

[3137] — S. 309 — Remand — Magistrate's jurisdiction — *Accused arrested in Jamshedpur and remanded by S.D.M., Jamshedpur — Accused transferred to Gaya jail — Magistrate at Gaya would have no jurisdiction to order further remand — CrPC, 1898, S. 344. Sandip Kumar Dey* v. *Officer-in-Charge, Sakchi P.S., Jamshedpur,* (1974) 4 SCC 273: 1974 SCC (Cri) 435: AIR 1974 SC 871: 1974 Cri LJ 740.

Bench Strength 2. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 12-3-1974]

[3138] — S. 309 — Remand — Order of remand passed without physical production of accused not invalid — *However, orders of remand not to be passed mechanically and notwithstanding the above rule Magistrate should require physical production — CrPC, 1898, S. 344. Sandip Kumar Dey* v. *Officer-in-Charge, Sakchi P.S., Jamshedpur,* (1974) 4 SCC 273: 1974 SCC (Cri) 435: AIR 1974 SC 871: 1974 Cri LJ 740.

Bench Strength 2. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 12-3-1974]

[3139] — S. 309 — Remand under, can be only to judicial custody in terms mentioned therein

Section 309 comes into operation after taking cognizance and not during the period of investigation and the remand under this provision can only be to judicial custody and there cannot be any controversy about the same. *CBI* v. *Anupam J. Kulkarni*, (1992) 3 SCC 141: 1992 SCC (Cri) 554: AIR 1992 SC 1768: 1992 Cri LJ 2768: (1992) 2 An WR 15 (SC).

Bench Strength 2. Coram: *A.M. Ahmadi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 8-5-1992]

[3140] — S. 309 — Undertrials, rights of — Right to a speedy trial, held, is part of Art. 21 — *Prolonged detention of those awaiting trial, held, violates Art. 21 — Pre-trial detention must be based on 'reasonable, just and fair', procedure — Constitution of India — Art. 21*

Per Bhagwati and Koshal, JJ.

A procedure which keeps large numbers of people behind bars without trial for long cannot possibly be regarded as reasonable, just or fair so as to be in conformity with the requirement of Art. 21. The law as enacted by the legislature and as administered by the courts must radically change its approach to pre-trial detention and ensure 'reasonable, just and fair' procedure which has creative connotation after *Maneka Gandhi case.*

Since the respondent-State despite notice has not put in appearance, the allegations contained in the newspaper and incorporated in the writ petitions are herein presumed correct.

Such imprisonment of undertrials is a denial of human rights and withholding of basic freedoms. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. Speedy trial though not specifically enumerated as a fundamental right, is implicit in the broad sweep and content of Art. 21. No procedure which dose not ensure a reasonable quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Art. 21. There can, therefore, be no doubt that speedy trial, meaning thereby reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Art. 21.

Per Pathak, J. (concurring)

In regard to the exercise of the judicial power to release a prisoner awaiting trial on bail or on the execution of a personal bond without sureties for his appearance, there is an amplitude of power in this regard within the existing provisions of the Code of Criminal Procedure, and it is for the courts to fully acquaint themselves with the nature and extent of their discretion in exercising it. It is no longer possible to countenance a mechanical exercise of the power. What should be the amount of security required or the monetary obligation demanded in a bond is a matter calling for the careful consideration of several factors. The entire object being only to ensure that the undertrial does not flee or hide himself from trial, all the relevant considerations which enter into the determination of that question must be taken into account.

At present there is the absence of an explicit provision in the Code of Criminal Procedure enabling the release, in appropriate cases, of an undertrial prisoner on his bond without sureties and without any monetary obligation. There is urgent need for a clear provision. The continued incarceration by reason of poverty may be ground for complaining of invidious discrimination. On the peculiar facts of the present case release of the persons mentioned in the newspaper on a personal bond without any monetary obligation is justified. *Hussainara Khatoon (I)* v. *State of Bihar,* (1980) 1 SCC 81: 1980 SCC (Cri) 23: AIR 1979 SC 1360 (Order: 1979 Cri LJ 1036: 1980 MLJ (Cri) 76.

Bench Strength 3. Coram: **P.N. Bhagwati**^{1}, **R.S. Pathak**^{2} and *A.D. Koshal*^{1}, JJ. [Date of decision: 12-2-1979]

[3141] — S. 309 — Right to speedy trial — Held, is part of fair, just and reasonable procedure implicit in Art. 21 and is reflected in S. 309 of CrPC, 1973 — *This right comprehends all stages viz. investigation, inquiry, trial, appeal, revision and retrial — While proceedings must be concluded with reasonable despatch, no outer limit can be prescribed for conclusion of the proceedings — Burden lies on prosecution to justify and explain the delay — Accused cannot be denied the right merely on ground of his failure to demand or insist upon speedy trial — Question of denial of the right has to be decided by balancing the attendant circumstances and relevant factors — In case of infringement of the right, charges or conviction need not be quashed if it is not in the interest of justice — In such case court may fix time limit for concluding the proceedings — Relief based on allegation of denial of the right must first be sought in High Court — High Court should normally, instead of staying the proceeding, dispose of the same on priority basis — On facts held, delay in conclusion of the proceedings in the case of petitioners A.R. Antulay and Ranjan Dwivedi not such as to quash the proceedings — Constitution of India — Art. 21*

On a consideration of all the facts and circumstances of the case it must be held that quashing of charges and/or criminal proceedings at this stage would not be just and proper. However it is directed that the cases be disposed of expeditiously.

Fair, just and reasonable procedure implicit in Art. 21 creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. Social interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable despatch — reasonable in all the circumstances of the case. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

The constitutional guarantee of speedy trial emanating from Art. 21 is properly reflected in S. 309 of the Code of Criminal Procedure. This Section must be read with S. 482 of the Code which saves the inherent powers of the High Court.

Even apart from Art. 21 courts in this country have been cognizant of undue delays in criminal matters and wherever there was inordinate delay or where the proceedings were pending for too long and any further proceedings were deemed to be oppressive and unwarranted, they were put an end to by making appropriate orders.

Right to speedy trial flowing from Art. 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial.

The concerns underlying the right to speedy trial from the point of view of the accused are:

(*a*) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(*b*) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(*c*) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

But it is not possible to accede to the demand rule i.e. an accused who does not demand a speedy trial, who stands by and acquiesces in the delays cannot suddenly turn round after a lapse of period and complain of infringement of his right to speedy trial. The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused.

It is usually the accused who is interested in delaying the proceedings. Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is: who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. But frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called, the systemic delays. Though it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

Ultimately, the court has to balance and weigh the several relevant factors — 'balancing test' or 'balancing process' — and determine in each case whether the right to speedy trial has been denied in a given case.

It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint.

Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order — including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded — as may be deemed just and equitable in the circumstances of the case.

An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

The above propositions are meant to serve as guidelines and are not exhaustive. *Abdul Rehman Antulay* v. *R.S. Nayak*, (1992) 1 SCC 225: 1992 SCC (Cri) 93: AIR 1992 SC 1701: 1992 Cri LJ 2717: (1992) 1 Crimes 193.

Bench Strength **5**. Coram: *K.N. Singh, C.J.* and *P.B. Sawant, N.M. Kasliwal*, **B.P. Jeevan Reddy** and *G.N. Ray*, JJ. [Date of decision: 10-12-1991]

[3142] — Ss. 309, 173(1), 437(6) and 468 — Right to speedy trial — Ingredients of, stated — Duty of court on its infringement, discussed — *Criminal proceedings pending since 1987 for alleged offence committed in 1981 — Appellant was then a minor — His co-accused parents who managed the business involved in the offence since expired — Lackadaisical manner of investigation — On facts,* *appellant's right to speedy trial stood violated — Though plea regarding inordinate delay in investigations and trial raised for the first time before Supreme Court, but at this distant point of time, held, it would be unfair to the appellant to remit the matter back to High Court for examining the said plea — Delay not attributable to the appellant — Also, prosecution failed to show any exceptional circumstance for condoning prolongation to investigation and trial — Thus, as the appellant was denied his valuable constitutional right to a speedy investigation and trial, therefore, criminal proceedings initiated against him, pending in the court below, quashed on this short ground alone, without unnecessarily going into the merits of the accusations against the appellant as also the question of his age at the time of commission of alleged offences — Penal Code, 1860, Ss. 120-B, 409, 420, 465, 468, 471, 477-A, 101 and 34 — Prevention of Corruption Act, 1947, Ss. 5(1)(c) and (d) r/w S. 5(2) — Prevention of Corruption Act, 1988, Ss. 13(1)(c) and (d) r/w S. 13(2) — Constitution of India — Art. 21*

In the instant case, charge-sheet was filed in the court against twelve persons for offences punishable under Sections 120-B, 409, 420, 465, 468, 471, 477-A, 101 and 34 IPC and Sections 5(1)(*c*), (*d*) along with Section 5(2) of the Prevention of Corruption Act, 1947. In addition thereto, Sections 13(1)(*c*), (*d*) read with Section 13(2) of the Prevention of Corruption Act, 1988 were also invoked against Accused 1 to 9. The first nine accused were the employees of the government milk plant and the remaining three being the appellant and his father and mother (since deceased), were arraigned as Accused 11, 10 and 12 respectively. Accused 10 had two concerns supplying spare parts to the milk plant. Allegations related to the misappropriation of huge amounts during sale and purchase of spare parts, etc. for the plant.

The High Court had dismissed the writ petition filed by the appellant and his mother (since deceased) under Article 227 of the Constitution read with Section 482 CrPC, seeking quashing of the charge-sheet and the consequential proceedings initiated against them, pending in the court below. Aggrieved by the decision, the appellant preferred the instant appeal.

Before the Supreme Court, the appellant contended that, firstly, there was sufficient material on record to show that when the alleged acts of malfeasance took place, the appellant was a minor and had nothing to do with it. Secondly, referring to certain portions of the charge-sheet, appellant contended that except for the bald averment that the appellant had prepared bogus bills and had received the payment, no other incriminating material was brought on record, to show that the appellant was looking after the affairs of the concerns/firms owned or managed by his parents and, therefore, the conclusion of the High Court that a *prima facie* case was made out against the appellant was without any basis. Lastly, the appellant pleaded that he was deprived of his constitutional right to have a speedy investigation and trial, inasmuch as FIR was registered on 12-5-1987 for the offences allegedly committed sometime in the year 1981; charge-sheet was filed on 22-2-1991 but till date not a single witness was examined by the prosecution.

Allowing the appeal,

Held :

It is well settled that the right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. (Para 22)

In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for the conclusion of trial. (Para 23)

In the instant case, the appellant's constitutional right recognised under Article 21 of the Constitution stood violated. The FIR was recorded on 12-5-1987 for the offences allegedly committed in the year 1981, and after unwarranted prolonged investigations, involving three financial irregularities, the charge-sheet was submitted in court on 22-2-1991. Nothing happened till April 1999, when the appellant and his deceased mother filed criminal writ petition, seeking quashing of proceedings before the trial court (which was dismissed by the High Court). (Para 24)

Though, the plea with regard to inordinate delay in investigations and trial was raised for the first time before the Supreme Court, but at this distant point of time, it would be unfair to the appellant to remit the matter back to the High Court for examining the said plea of the appellant. Apart from the fact that it would further protract the already delayed trial, no fruitful purpose would be served as the State very fairly stated that there was no explanation to offer for the delay in investigations and the reason why the trial did not commence for eight long years. Nothing, whatsoever, could be pointed out, far from being established, to show that the delay was in any way attributable to the appellant. (Para 25)

Moreover, having regard to the nature of the accusations against the appellant, who was a young boy of about eighteen years of age in the year 1981, when the acts of omission and commission were allegedly committed by the concerns managed by his parents, who have since died, the extreme mental stress and strain of prolonged investigation by the Anti-Corruption Bureau and the sword of Damocles hanging perilously over his head for over fifteen years must have wrecked his entire career. (Para 26)

Be that as it may, the prosecution has failed to show any exceptional circumstance, which could possibly be taken into consideration for condoning the prolongation of investigation and the trial. The lackadaisical manner of investigation spread over a period of four years in a case of this type and inordinate delay of over eight years (excluding the period when the record of the trial court was in the High Court), is manifestly clear. (Para 27)

Thus, on facts in hand, the appellant was denied his valuable constitutional right to a speedy investigation and trial and, therefore, criminal proceedings initiated against him in the year 1987 and pending in the court below, deserve to be quashed on this short ground alone. (Para 28)

It is unnecessary to go into the merits of the accusations against the appellant as also the question of his age, at the time of commission of alleged offences. (Para 29)

Consequently, the proceedings against the appellant in criminal case arising out of FIR are hereby quashed. (Para 30). *Pankaj Kumar* v. *State of Maharashtra*, (2008) 16 SCC 117: AIR 2008 SC 3077: (2008) 68 AIC 93 (SC): 2008 Cri LJ 3944: (2009) 2 LLN 798: (2009) 122 FLR 790.

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 11-7-2008]

Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Hussainara Khatoon (1) v. State of Bihar, (1980) 1 SCC 81: 1980 SCC (Cri) 23; Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93; P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578: 2002 SCC (Cri) 830, relied on

[3143] — S. 309 — Right to speedy trial — Upper time limit for conclusion of trial cannot be fixed — Trial prolonging for six years — *Trial court closing the evidence and acquitting the accused-respondent in the light of Supreme Court's decision in Raj Deo Sharma (I) case, (1998) 7 SCC 507 — High Court affirming the acquittal of respondent taking the view that trial cannot proceed indefinitely — However, by virtue of a subsequent seven-Judge Bench decision of Supreme Court in P. Ramachandra Rao case, (2002) 4 SCC 578, no upper limit for conclusion of trial can be prescribed by court and A.R. Antulay case, [(1992) 1 SCC 225] decision of Supreme Court continues to hold the field — Acquittal of respondent on ground of the trial having not come to an end for six years, held, cannot be sustained — Trial to revive — Court concerned to take up the matter on day-to-day basis, keeping in view the mandate of S. 309 CrPC* (Paras 2, 3, 4 and 5). *State of Rajasthan* v. *Ikbal Hussen*, (2004) 12 SCC 499.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 8-9-2004]

P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578: 2002 SCC (Cri) 830; Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93, followed

[3144] — S. 309 — Speedy trial is an essential ingredient of 'reasonable, fair and just' procedure guaranteed by Art. 21 — *State obliged to provide speedy trial. Hussainara Khatoon (IV)* v. *State of Bihar*, (1980) 1 SCC 98: 1980 SCC (Cri) 40: AIR 1979 SC 1369: 1979 Cri LJ 1045: 1980 MLJ (Cri) 86.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *D.A. Desai*, JJ. [Date of decision: 9-3-1979]

[3145] — S. 309 — Where respondent-accused had gone abroad and come back after being directed to do so by Supreme Court, held on facts, there was nothing to indicate that respondent would try to abscond — *Therefore the following directions issued to ensure speedy progress of trial: (i) respondent to surrender his passport before trial court; (ii) respondent permitted to approach High Court to secure permission to go abroad (Dubai in this case) to attend to his business and meet with his family resident there; (iii) trial court to expedite trial and proceed in strict compliance with S. 309 CrPC and in case departure from provisions of the section necessary, trial court to seek authorisation of High Court. Chief Enforcement Officer/Enforcement Director* v. *Jairaj V. Java*, (2000) 9 SCC 232: 2000 SCC (Cri) 1499.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 10-1-2000]

[3146] — Ss. 309, 311, 258 and 482 — Right to speedy trial — Held, per majority, Supreme Court cannot fix any time-limit as bar beyond which criminal proceedings or trial cannot continue, thereby entitling the accused to be acquitted on ground of delay — *Prescription of such limitation period would amount to judicial legislation which is not permissible — Directions prescribing such time-limit by 2- or 3-Judge Benches of Supreme Court in Common Cause I, (1996) 4 SCC 33, Common Cause II, (1996) 6 SCC 775, Raj Deo Sharma I, (1998) 7 SCC 507 and Raj Deo Sharma II, (1999) 7 SCC 604 cases run counter to the Constitution Bench decision in A.R. Antulay, (1992) 1 SCC 225 and hence deleted — But directions given in the aforesaid cases in respect of enlargement of accused on bail, being not subject-matter of the present case, not deleted — However, by deletion the law relating to speedy trial and speedy conclusion of criminal proceedings not affected — To effectuate speedy trial, powers conferred under Ss. 309, 311 and 258 CrPC should be exercised by criminal courts — High Court has also power to quash the proceedings in appropriate cases in exercise of powers under S. 482 CrPC and Arts. 226 and 227 of the Constitution — But no case or proceeding shall be reopened by setting aside any acquittal or discharge of accused based on the authority of Common Cause or Raj Deo Sharma cases which has already attained finality — Per Raju, J., Constitution Bench of Supreme Court in Antulay case refrained from fixing any time-limit not because the Court had no power to do so but because that was "neither advisable nor practicable" to do so — Since the law laid down by the Constitution Bench still holds the field, any declaration made in derogation thereof fixing time-limit by a smaller Bench are overruled by virtue of the doctrine of binding precedent — Prevention of Corruption Act, 1988, S. 13 — Acquittal due to failure to commence trial despite lapse of two years — Constitution of India — Arts. 21, 32, 141 and 142*

In all the appeals the accused persons, who were facing corruption charges under the Prevention of Corruption Act, were acquitted by the Special Courts for failure of commencement of trial in spite of lapse of two years from the date of framing of the charges in terms of the directions of the Supreme Court in '*Common Cause' A Registered Society* v. *Union of India (I)*, '*Common Cause' A Registered Society* v. *Union of India (II)*, *Raj Deo Sharma* v. *State of Bihar (I)* and *Raj Deo Sharma (II)* v. *State of Bihar.* All the appeals were allowed by the High Court without issuing notice to the respective accused persons. A three-Judge Bench of the Supreme Court took the view that the questions in the appeals were whether the aforesaid decisions of the Court would apply to the prosecutions under the Prevention of Corruption Act and other economic offences and whether time-limits of the nature mentioned in some of these judgments can, under the law, be laid down and that the same should be considered by a Constitution Bench. Accordingly, the Constitution Bench heard the appeals and observed:

"The Constitution Bench judgment in *A.R. Antulay case* holds that 'it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings'. Even so, the four judgments aforementioned lay down such time-limits. Two of them also lay down to which class of criminal proceedings such time-limits should apply and to which class they should not.

In these circumstances the Court opined that a seven-Judge Bench should consider whether the dictum aforementioned in *A.R. Antulay case* still holds the field; if not, whether the general directions of the kind given in these judgments are permissible in law and should be upheld."

The present seven-Judge Bench was, therefore, constituted. Allowing the appeals,

Held :

Per majority

The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far-off peak. Myriad fact situations bearing testimony to denial of such fundamental right to the accused persons, on account of failure on the part of prosecuting agencies and the executive to act, and their turning an almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution have persuaded the Supreme Court in devising solution by engrafting a bar of limitation beyond which the criminal proceedings or trial shall not proceed. Though the bar of limitation, judicially engrafted, is meant to provide solution, but a solution of this nature gives rise to greater problems like scuttling a trial without adjudication, stultifying access to justice and giving easy exit from the portals of justice. Such general remedial measures cannot be said to be apt solutions. (Paras 1 and 23)

Therefore, it must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed up to a given point of time amounted to violation of Article 21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in *A.R. Antulay*, (1992) 1 SCC 225. (Para 28)

The dictum in *A.R. Antulay case*, (1992) 1 SCC 225 is correct and still holds the field. The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in *A.R. Antulay case* adequately take care of right to speedy trial. However, the guidelines laid down in *A.R. Antulay case* are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made. (Para 29)

The two- or three-Judge Bench decisions in *Common Cause cases* and *Raj Deo Sharma cases* run counter to that extent to the dictum of the Constitution Bench in *A.R. Antulay case* and therefore cannot be said to be good law to the extent they are in breach of the doctrine of precedents. The well-settled principle of precedents which has crystallised into a rule of law is that a Bench of lesser strength is bound by the view expressed by a Bench of larger strength and cannot take a view in departure or in conflict therefrom. (Para 28)

Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, howsoever liberally Articles 32, 21, 141 and 142 of the Constitution may be interpreted. (Para 27)

The primary function of the judiciary is to interpret the law. It may lay down principles, guidelines and exhibit creativity in the field left open and unoccupied by legislation. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time-limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of the court. This is permissible for the judiciary to do. But it may not, like the legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973. (Paras 25 and 27)

Legislation is that source of law which consists in the declaration of legal rules by a competent authority. When Judges by judicial decisions lay down a new principle of general application of the nature specifically reserved for the legislature they may be said to have legislated, and not merely declared the law. It is not difficult to perceive the dividing line between permissible legislation by judicial directives and enacting law — the field exclusively reserved for the legislature. (Paras 22 and 25)

Thus, it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in *Common Cause (I)*, *Raj Deo Sharma (I)* and *Raj Deo Sharma (II)* could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in *Common Cause case (I)*, *Raj Deo Sharma cases (I)* and *(II)*. At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in *A.R. Antulay case* and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused. (Para 29)

The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, inherent power of the High Court, under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the

High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 CrPC for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution. (Paras 29 and 21)

It is, however, made clear ex abundanti cautela that here only the directions made by the Supreme Court in *Common Cause cases (I)* and *(II)* and *Raj Deo Sharma cases (I)* and *(II)* regarding trial of cases have been dealt with. The directions made in those cases regarding enlargement of accused persons on bail are not the subject-matter of this reference or these appeals. Secondly, while deleting the directions made respectively by two- and three-Judge Benches of the Supreme Court in the cases under reference, no departure has been made from the law as to speedy trial and speedy conclusion of criminal proceedings of whatever nature and at whichever stage before any authority or the court. Thirdly, the bars of limitation are being deleted here on the twin grounds that it amounts to judicial legislation, which is not permissible, and because they run counter to the doctrine of binding precedents. The larger question of powers of the Supreme Court to pass orders and issue directions in public interest or in social action litigations, specially by reference to Articles 32, 141, 142 and 144 of the Constitution, is not the subject-matter of the reference before the Court and this judgment should not be read as an interpretation of those articles of the Constitution and laying down, defining or limiting the scope of the powers exercisable thereunder by the Supreme Court. And lastly, it is clarified that this decision shall not be a ground for reopening a case or proceeding by setting aside any such acquittal or discharge as is based on the authority of *Common Cause* and *Raj Deo Sharma* cases and which has already achieved finality and reopen the trial against the accused therein. (Paras 31 to 34)

Per Raju, J.

The declaration of law made by the Constitution Bench of five learned Judges of the Supreme Court in the decision reported in *A.R. Antulay case*, (1992) 1 SCC 225 still holds the field and its binding force and authority has not been undermined or whittled down or altered in any manner by any other decision of a larger Bench. Consequently, the Benches of lesser number of constitution of Judges which dealt with the cases reported in *'Common Cause' A Regd. Society* v. *Union of India*, (1996) 4 SCC 33, *'Common Cause' A Regd. Society* v. *Union of India*, (1996) 6 SCC 775, *Raj Deo Sharma* v. *State of Bihar* and *Raj Deo Sharma (II)* v. *State of Bihar* could not have laid down any principles in derogation of the ratio laid down in *A.R. Antulay case* either by way of elaboration, expansion, clarification or in the process of trying to distinguish the same with reference to either the nature of causes considered therein or the consequences which are likely to follow and which, in their view, deserve to be averted. Even where necessities or justification, if any, were found therefor, there could not have been scope for such liberties being taken to transgress the doctrine of binding precedents, which has come to stay firmly in our method of administration of justice and what is permissible even under such circumstances being only to have had the matter referred to for reconsideration by a larger Bench of the Supreme Court and not to deviate by any other means. This solitary reason would suffice by itself to overrule the above decisions, the correctness of which stands referred to for consideration by this Bench. All the more so when there is no reason to doubt the correctness of the decision in *A.R. Antulay case* and this Bench concurs with the principles laid down therein. (Para 36)

Though the Supreme Court does not consider itself to be an *imperium in imperio* or would function as a despotic branch of "the State", the fact that the founding fathers of our Constitution designedly and deliberately, perhaps, did not envisage the imposition of any jurisdictional embargo on the Supreme Court, except in Article 363 of the Constitution of India is significant and sufficient enough to identify the depth and width or extent of its powers. The other fetters devised or perceived on its exercise of powers or jurisdiction to entertain/deal with a matter were merely self-imposed for one or the other reason assigned therefor and they could not stand in the way of or deter the Supreme Court in any manner from rising up to respond in a given situation as and when necessitated and effectively play its role in accommodating the Constitution to changing circumstances and enduring values as a *sentinel on the qui vive* to preserve and safeguard the Constitution, protect and enforce the fundamental rights and other constitutional mandates — which constitute the inviolable rights of the people as well as those features, which formed its basic structure too and considered to be even beyond the reach of any subsequent constitutional amendment. In substance, the Supreme Court is the ultimate repository of all judicial powers at national level by virtue of it being the summit court at the pyramidal height of administration of justice in the country and as the upholder and final interpreter of the Constitution of India and defender of the fundamentals of "rule of law". (Para 37)

It is not only difficult but impossible to foresee and enumerate all possible situations arising, to provide in advance solutions with any hard-and-fast rules of universal application for all times to come. It is well known that where there is right, there should be a remedy. In what exceptional cases, not normally visualized or anticipated by law, what type of an extraordinary remedy must be devised or designed to solve the issue arising would invariably depend upon the gravity of the situation, nature of violation and efficacy as well as utility of the existing machinery and the imperative need or necessity to find a solution even outside the ordinary framework or avenue of remedies to avert any resultant damage beyond repair or redemption, to any person. Apparently, alive to such possibilities only even the Supreme Court in *A.R. Antulay case*, (1992) 1 SCC 225 has chosen to decline the request for fixation of any period of time-limit for trial of offences not on any total want or lack of jurisdiction in the Supreme Court, but for the reason that it is "neither advisable nor practicable" to fix any such time-limit and that the non-fixation does not ineffectuate the guarantee of right to speedy trial. (Para 38)

The prospects and scope to achieve the desired object of a speedy trial even within the available procedural safeguards and avenues provided for obtaining relief, have also been indicated in the said decision as well as in the judgment prepared by learned Brother R.C. Lahoti, J. I am of the firm opinion that the Supreme Court should never venture to disown its own jurisdiction on any area or in respect of any matter or over any one authority or person, when the Constitution is found to be at stake and the fundamental rights of citizens/ persons are under fire, to restore them to their position and uphold the Constitution and the rule of law — for which the Supreme Court has been established and constituted with due primacy and necessary powers, authority and jurisdiction, both express and implied. (Para 38). *P. Ramachandra Rao* v. *State of Karnataka*, (2002) 4 SCC 578: AIR 2002 SC 1856.

Bench Strength 7. Coram: *S.P. Bharucha, C.J.*[1] and *S.S.M. Quadri*[1], **R.C. Lahoti**[1], *N. Santosh Hegde*[1], **Doraiswamy Raju**[2], *Ruma Pal*[1] and *Arijit Pasayat*[1], JJ. [Date of decision: 16-4-2002]

Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93; Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899, relied on

Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93, affirmed

Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507: 1998 SCC (Cri) 1692; Raj Deo Sharma (II) v. State of Bihar, (1999) 7 SCC 604: 1999 SCC (Cri) 1324; 'Common Cause' A Registered Society v. Union of India, (1996) 4 SCC 33: 1996 SCC (Cri) 589; 'Common Cause' A Registered Society v. Union of India, (1996) 6 SCC 775: 1997 SCC (Cri) 42, overruled

[3147] — Ss. 309, 311 and 24, 25 — Right to speedy trial — Delay in conduct of trial — Power of court to close prosecution evidence on completion of 2 years in cases of offences punishable with imprisonment for period not exceeding 7 years and on completion of 3 years in cases of offences punishable with imprisonment for period exceeding 7 years — Directions regarding, issued by Supreme Court in *Raj Deo Sharma (I) case*, (1998) 7 SCC 507 for effective enforcement of right to speedy trial under Art. 21 — Clarification/modification of the said directions sought by CBI — *Held, per Thomas, J. (Srinivasan, J. concurring) following periods can be excluded from the prescribed period of 2/3 years for completion of prosecution evidence: (1) period of pendency of appeal or revision, against interim orders, if any, preferred by the accused to protract the trial; (2) period of absence of Presiding Officer in the trial court, and (3) period of 3 months in case the office of Public Prosecutor falls vacant (for any reason other than expiry of tenure) for enabling the Govt. to appoint a successor in that office — Even if tenure of a Public Prosecutor expires, he will continue to function as such till his successor takes charge — Courts have discretion to grant further time to prosecution to adduce evidence both in cases where the offences are punishable with imprisonment for a period not exceeding 7 years as well as for a period exceeding 7 years — Power of courts under S. 311 CrPC can be invoked by prosecution even after closure of the trial in compliance with the said directions of the Supreme Court — Provisions of S. 309 CrPC to be strictly followed — Administrative action should be taken against the Judge violating the mandates of S. 309 CrPC — Prosecutions which were pending on the date of judgment of* Raj Deo Sharma (I) case *entitled to claim an additional period of one year for completing the prosecution evidence — Since operation of* Raj Deo Sharma (I) *decision was suspended from 14-5-1999 till the date of the present judgment, that time of suspension has to be excluded from the said additional period of one year — Per Shah, J. (contra), prescribing time-limits for completion of prosecution evidence would be contrary to Supreme*

Court's decisions in A.R. Antulay, Kartar Singh *and other decisions — It would not be just and fair to society and the victims to close the prosecution evidence after the said prescribed periods without considering the nature of offence and the others causes for delay such as dilatory procedure, large pendency of cases, insufficient strength of judges or non-availability of counsel — If allowed, law would lose its deterrence and would affect rule of law — It would affect smooth functioning of society in accordance with law and finally the Constitution — S. 309 CrPC should be strictly followed — Constitution of India — Arts. 21 and 32*

In *Raj Deo Sharma (I)* v. *State of Bihar*, (1998) 7 SCC 507 a three-Judge Bench of the Supreme Court had on 8-10-1998 issued certain directions for effective enforcement of the right to speedy trial flowing from Article 21 of the Constitution (as recognised by a five-Judge Bench of the Supreme Court in *Abdul Rehman Antulay* v. *R.S. Nayak*, (1992) 1 SCC 225. Relevant among such directions, for the present purpose, are the following:

Direction (i). In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether prosecution has examined all the witnesses or not, within the said period and the court can proceed to the next step provided by law for the trial of the case.

Direction (iii). If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case, *unless for very exceptional reasons to be recorded and in the interest of justice the court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time-limit.*

The following two exceptions are provided therein

"(*iv*) But if the inability for completing the prosecution evidence within the aforesaid period is attributable to the conduct of the accused in protracting the trial, no court is obliged to close the prosecution evidence within the aforesaid period in any of the cases covered by clauses (*i*) to (*iii*).

(*v*) Where the trial has been stayed by orders of the court or by operation of law, such time during which the stay was in force shall be excluded from the aforesaid period for closing the prosecution evidence. The above directions will be in addition to and without prejudice to the directions issued by the Supreme Court in '*Common Cause' A Registered Society* v. *Union of India*, (1996) 4 SCC 33 as modified by the same Bench through the order reported in '*Common Cause' A Registered Society* v. *Union of India*, (1996) 6 SCC 775."

The present petition was filed by the Central Bureau of Investigation for clarification (and also for some modification) of the above directions, by stating: (*1*) that the said directions are only prospective, and (*2*) that the time taken by the Court on account of its inability to carry on day-to-day trial due to pressure of work should be excluded. In the present petition the following prayers were made requesting the Supreme Court to:

(*a*) order holding in abeyance the operation of the judgment/order in *Raj Deo Sharma (I)*, (1998) 7 SCC 507;

(*b*) clarify that the judgment/order in *Raj Deo Sharma (I)* would only have prospective effect;

(*c*) clarify that the time taken by the courts on account of their inability to carry on day-to-day trial on account of pressure of work will be excluded;

(*d*) clarify that the exceptions made in para 4 of the *1st Common Cause Judgment* (1996) 4 SCC 33 and para III of *2nd Common Cause Judgment*, (1996) 6 SCC 775 would still continue;

(*e*) issue directions to the State Governments and Registrars of the High Court to come up with specific plans for the setting up of Additional Courts/Special Courts (permanent/ad hoc) to cope up with the pending workload.

Held :

Per Thomas, J.

In *Raj Deo Sharma (I) case* (1998) 7 SCC 507 the Court had not fixed an outer time-limit for conclusion of all criminal proceedings in a case. Nor did it go counter to the decisions of the Constitution Benches of the Supreme Court in *A.R. Antulay* v. *R.S. Nayak*, (1992) 1 SCC 225 and *Kartar Singh* v. *State of Punjab* (1994) 3 SCC 569. In paras 12 to 14 of the judgment in *Raj Deo Sharma (I)* the Court had considered the ratio in the afore-cited decisions and by keeping track with the observations therein it made the endeavour to achieve to the possible extent the noble ideal of "speedy trial" which has been held repeatedly by the Supreme Court to be an incidence of Article 21 of the Constitution. The whole idea was to speed up the trial in criminal cases to prevent the prosecution from becoming a persecution of the person arrayed in a criminal trial. No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State machinery and that is the raison d'^tre in prescribing the time-frame within which prosecution evidence must be closed. (Paras 3 and 4)

It may be stated by way of clarification that the discretion of the courts in granting further time [exercisable "for very exceptional reasons to be recorded and in the interest of justice" as per Direction (*iii*) above] can be imported in respect of Direction (*i*) as well. (Para 6)

There is no scope for the apprehension that a procrastinating accused might take advantage of the said excluding provision "by filing appeal or revision against interim orders and it would indirectly delay the trial without obtaining any stay orders from superior courts". The judgment in *Raj Deo Sharma (I) case* has clearly provided that if the inability for completing prosecution evidence was attributable to the conduct of the accused, the court is not obliged to close the prosecution evidence at all. If the trial gets postponed on account of pendency of any appeal or revision filed against any interim order even though there was no order of stay it is open to the trial court to reckon that period also within the ambit of clause (*iv*) extracted above. The power of the court as envisaged in Section 311 CrPC has not been curtailed by the Supreme Court. Neither in the decision of the five-Judge Bench in *A.R. Antulay case* nor in *Kartar Singh case* such power has been restricted for achieving speedy trial. In other words, even if the prosecution evidence is closed in compliance with the directions contained in the main judgment it is still open to the prosecution to invoke the powers of the court under Section 311 CrPC. If evidence of any witness appears to the court to be essential to the just decision of the case it is the duty of the court to summon and examine or recall and re-examine any such person. (Paras 8 and 9)

It is not possible to accept the view that due to systemic causes the prosecutor would be disabled from completing evidence in a trial and hence that time must also be permitted to be discounted. Without concretising which kinds of systemic causes would disable the prosecution from promptly adducing evidence, the prosecutor cannot be permitted to take advantage on any such vague premises. However, the absence of the presiding officer in a trial court (either on account of the physical disability or due to the delay in taking over the charge of the court) is a valid cause which disables the prosecution from adducing evidence. So such time can also be excluded by the court from the period which has been prescribed by the Court for completing the prosecution evidence. (Para 10)

The plea that the interregnum between the date when a public prosecutor demits office due to any eventuality and the date when his successor takes charge should also be excluded cannot be accepted. It is the lookout of the State to see that there is no unnecessary delay in appointing a Public Prosecutor to the existing vacancy. The State cannot take advantage of its own inaction. Nonetheless, to avoid any possible dislocation of the trial on account of any such eventuality, it is made clear that if the tenure of office of a particular person as Public Prosecutor expires he shall continue to hold office and function as Public Prosecutor until his successor takes charge from him. If the office of a Public Prosecutor falls vacant on account of any other reason, a period of 3 months shall be excluded from the periods fixed under Directions (*i*) and (*iii*) for enabling the State Government to appoint a Public Prosecutor to that office. (Para 11)

The trial court cannot be permitted to flout the mandate of Section 309(1) CrPC unless the court has very cogent and strong reasons. No court has permission to adjourn examination of witnesses who are in attendance beyond the next working day. The High Court is requested to remind the trial Judges through a circular of the need to comply with Section 309 CrPC in letter and spirit. The High Court concerned is also requested to take note of the conduct of any particular trial Judge who violates the above legislative mandate and to adopt such administrative action against the delinquent judicial officer as the law permits. (Para 14)

In the context of the plea regarding prospective operation of *Raj Deo Sharma (I)* decision, a rider has to be included that an additional period of one year can be claimed by the prosecution in respect of prosecutions which were pending on the date of judgment in the main appeal, and the court concerned would be free to grant such extension if the court considers it necessary in the interest of administration of criminal justice. As the operation of that judgment has been suspended from 14-5-1999 till the date of the present judgment i.e. 22-9-1999, the said time of suspension will stand excluded from the aforementioned additional period of one year. (Para 15)

Per Srinivasan, J. (concurring)

The present petition is filed only for directions/modifications/clarification of the directions of the Supreme Court dated 8-10-1998 in *Raj Deo Sharma (I)* v. *State of Bihar* (1998) 7 SCC 507. This is not a petition for review of the judgment in the main appeal. There is no occasion for this Bench to consider whether the directions contained in the judgment in the main appeal are against law in the sense that they run counter to the earlier judgments of the Supreme Court rendered by Constitution Benches. It is not open to this Bench to canvass the legality or correctness of the directions contained in the main judgment. The only prayer by the petitioner is to clarify the main judgment, in order that the subordinate courts understand the directions contained therein in the proper perspective and carry out the same in letter and spirit. (Para 18)

The Constitution Bench had in *Antulay case,* (1992) 1 SCC 225 itself contemplated an order to conclude the trial within a fixed time in appropriate cases. In fact, in the judgment in the main appeal in the present case, the Supreme Court has not fixed any time-limit for the conclusion of trial. As such, the Supreme Court has only laid down guidelines for closing the prosecution in certain circumstances. There is a difference between fixing a time-limit for the disposal of a trial and fixing time-limit for the prosecution to complete its evidence. A perusal of the guidelines contained in the main judgment would itself show that there is no hard and fast rule applicable to every case, irrespective of facts and circumstances thereof. If the delay is not due to any fault of the prosecution, it is open to the prosecution to place the relevant facts before the court and seek further time for producing its evidence. The judgment in the appeal cannot be understood as punishing the prosecution and preventing the same from adducing evidence even when it is not responsible for the delay. (Para 20)

Per Shah, J. (dissenting)

It is true that the ideal situation may be where criminal cases are tried within six months from the date of institution, and appeals are disposed of within a period of one year from the date of filing. For achieving this ideal situation, if there is a lack of infrastructure and procedural delays for various reasons, then it would not be justifiable to acquit the accused after lapse of a particular time if the prosecution has failed to examine all witnesses. And to dismiss the appeal, if the appellate authority fails to decide the same within a particular time, would not be just and fair for the society and the victims affected by the crimes. (Para 29)

The said directions issued in the case virtually prescribe a time-limit to close the prosecution evidence in cases where the offence is punishable with imprisonment for a period not exceeding seven years or for a period exceeding seven years. In view of these directions the accused may get acquittal on the ground of delay without considering the fact that in a number of cases delay might be because of a large number of cases pending before the court and insufficient strength of Judges to cope up with the workload. Delay only due to congestion of the court calendar, unavailability of Judges and on occasions non-availability of counsel for either party or any other circumstances beyond the control of the prosecution cannot be a ground for closure of prosecution evidence. (Para 30)

Because of the directions in the said judgment after a lapse of a particular time, undertrial prisoners are not kept in jail, still the question remains of their trial. If their trial is delayed for various reasons, it would not be just, fair and reasonable to direct the trial courts to stop further proceedings in the case and dispose of the same without recording further evidence. In some of the cases, allegations against the accused would be of serious nature, such as, corruption which has affected the entire moral fibre of the society, large-scale frauds and misappropriations by persons in power or authority and offences against the human body including rape. In all such cases, the accused including the dreaded accused would get undeserving benefit by prescribing the time-limit as directed in para 17 in *Raj Deo Sharma case (I)*. This may result in doing injustice to the society, to the victims or the heirs of the victim who is murdered — for such delay in trial they are not responsible. All the beneficiaries of the large-scale frauds, all the employees who have misappropriated large sum of money from the public exchequer or private employer or accused who are tried for corruption cases would get undeserving benefit at the system of implementation of law. (Para 32)

Before appropriate steps are taken for remedying the known causes of delay — without considering the pendency of the matters in all courts and without finding whether the prosecution agency was at fault for delay or delay was caused for any other reasons, it would not be just or fair, equitable or reasonable to prescribe time-limit and give the benefit to the accused persons, against whom serious charges are levelled, solely on the ground of delay in trial. If this is continued and permitted, it would affect the smooth functioning of the society in accordance with law and finally the Constitution. If the victims are left without any remedy, they would resort to taking revenge by unlawful means resulting in further increase in the crimes and criminals. People at large in the society would also feel unsafe and insecure and their confidence in the judicial system would be shaken. Law would lose its deterrent effect on criminals. (Para 40)

Figures of pending criminal cases are easily available. Disposal criterion is known. Applying the said disposal criterion, it would be apparent that the workload of various courts is so heavy in a number of courts that with the present strength of Judges who are required to deal with criminal cases, it would be almost impossible for them to dispose of the cases within the prescribed time. It is true that in such a situation without any further delay or without having the exercise of appointing a committee or committees for finding out how many Judges are required, on ad hoc basis, the strength of Judges who can deal with the criminal cases is required to be increased. Further, until there is a radical simplification and streamlining of the Criminal Procedure Code as well as the method of investigation of crimes, it would not be just and reasonable to close the prosecution evidence solely on the ground of delay in trial. (Para 41)

Delayed trial may not always be unfair to the accused. On occasions, the accused take advantage of such delays and it would depend upon the facts and circumstances in each case. The larger Bench of the Supreme Court has specifically held in *Antulay case* "it is neither advisable nor feasible to draw or to prescribe any outer limit for conclusion of all criminal proceedings". In cases where delay for trial rests not on the prosecution agency then it would not be fair to close the prosecution evidence after the prescribed period. In any case, before directing to close the prosecution evidence, the nature of offence is required to be taken into consideration. (Para 45)

Further, if the provisions of the Criminal Procedure Code, particularly, Section 309 are strictly adhered to, delay in trial could be reduced to some extent. That may be done by the Judge concerned with active cooperation of the prosecuting agency. At present, the said provision is observed in the breach. Once the criminal trial begins, the trial court should see that witnesses are examined continuously in the said case and it should continue from day to day until the witnesses in attendance are examined. In any case, for adjourning the matter, reasons should be recorded. If the practice of allotting certain sessions cases to a particular Judge for trial and disposal is adopted, it would fasten responsibility with the said Judge to dispose of them within the stipulated time. It is also true that under Section 311 CrPC, the court has ample power to examine witnesses who appear to the court to be essential for the just decision of the case, but this may further delay proceedings as the accused is bound to oppose such exercise of power. (Para 46)

Therefore, prescribing time-limit would be against the decisions rendered by the Constitution Bench of this Court in *A.R. Antulay* and *Kartar Singh cases* as well as other decisions stated above. It would be prescribing time-limit which is not provided by the Criminal Procedure Code or by any other statutory provision. And finally, it would have an adverse effect in implementation of criminal law. (Para 47)

In the result, prayer (*a*) of holding in abeyance the operation/order dated 8-10-1998 in Criminal Appeal No. 1045 of 1998 [*Raj Deo Sharma (I) case*] requires to be granted. Secondly, prayer (*e*) also requires to be granted. The Registrars of the High Courts should come up with specific plans for setting up Additional Courts/Special Courts (permanent/ad hoc) to cope up with the pending workload on the basis of available figures of pending cases as well as by taking into consideration the criteria for disposal of criminal cases prescribed by various High Courts. (Para 48). *Raj Deo Sharma (II)* v. *State of Bihar*, (1999) 7 SCC 604: 1999 SCC (Cri) 1324: AIR 1999 SC 3524.

Bench Strength 3. Coram: **K.T. Thomas**[1], **M. Srinivasan**[2] and **M.B. Shah**[3], JJ. [Date of decision: 22-9-1999]

Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93; Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899, explained and relied on

Directions in Raj Deo Sharma (I) v. State of Bihar, (1998) 7 SCC 507: 1998 SCC (Cri) 1692, clarified/modified

Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507: 1998 SCC (Cri) 1692, explained

Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93, relied on

***Partly overruled** in P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578*

See also State v. Narayan Waman Nerukar (Dr.), (2002) 7 SCC 6

***Clarified** in Supdt. of Police, Karnataka Lokayukta v. B. Srinivas, (2008) 8 SCC 580*

[3148] — S. 309 — Communal riots — Stay of trial — When warranted — Investigation by SIT — Trial of post-Godhra riot cases — Stay of trial while investigation by SIT going on — Desirability of — *Held, continuance of trial simultaneously along with investigation is not desirable, for, if fresh evidence/materials surface, it would require de novo trial — Hence, trial stayed* (Para 11). *National Human Rights Commission* v. *State of Gujarat*, (2009) 6 SCC 342.

Bench Strength 3. Coram: *Dr. Arijit Pasayat*, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 26-3-2008]

[3149] — S. 309 — Expeditious trial of cases — Necessity of — Communal riots in the State of Gujarat — Post-Godhra riot cases — Held, in riot cases and cases involving communal factors, trial should be held expeditiously — Chief Justice of Gujarat High Court requested to designate court(s) in each district and if necessary more than one court — *Designated Courts directed to take up cases on a day-to-day basis — SIT to furnish periodic reports to the Designated Courts if there was any further inquiry/investigation — State of Gujarat directed to file status report as to the constitution of the courts within three months*

It is essential that in riot cases and cases involving communal factors the trials should be held expeditiously. Therefore, the Hon'ble the Chief Justice of Gujarat High Court is requested to designate court(s) in each district where the trial of the cases concerned are to be held. The Designated Courts shall take up the cases in question. Taking into account the number of witnesses and the accused persons and the volumes of evidence, it is open to the High Court to designate more than one court in a particular district. Needless to say that these cases shall be taken up by the Designated Court on a day-to-day basis and efforts shall be made to complete the trial with utmost expedition. SIT shall furnish periodic reports if there is any further inquiry/investigation. The State of Gujarat shall also file a status report regarding the constitution of the courts in terms of the directions to be given by the Hon'ble Chief Justice of the High Court within three months. [Paras 37, 38 and 40(*ii*) to (*iv*)]. *NHRC* v. *State of Gujarat*, (2009) 6 SCC 767.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 1-5-2009]

[3150] — Ss. 309 and 314(3) — Adjournment sought by a counsel on the ground that he is not in a position to proceed with the matter inasmuch as he has been engaged recently in the case — *Held, not permissible because if a counsel accepts the engagement knowing fully well that the matter is already on board, then he must be prepared to proceed with the matter — CPC, 1908, S. 148 and Or. 17 R. 1. Skipper Tower (P) Ltd.* v. *Skipper Bhawan Flat Buyers' Assn.*, (2002) 10 SCC 116: 2003 SCC (Cri) 1696.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 17-7-2001]

[3151] — Ss. 309 and 482 — Accused has right to speedy trial under S. 309 — *In case of inordinate delay in conclusion of proceedings, court has discretion under S. 482 to quash proceedings having regard to attendant circumstances and relevant factors — Factors indicated. Abdul Rehman Antulay* v. *R.S. Nayak*, (1992) 1 SCC 225: 1992 SCC (Cri) 93: AIR 1992 SC 1701: 1992 Cri LJ 2717.

Bench Strength 5. Coram: *K.N. Singh, C.J.* and *P.B. Sawant, N.M. Kasliwal*, **B.P. Jeevan Reddy** and *G.N. Ray*, JJ. [Date of decision: 10-12-1991]

Distinguished in Bharat Parikh v. CBI, (2008) 10 SCC 109: (2008) 3 SCC (Cri) 609

[3152] — S. 309(1) — Speedy trial — Having regard to the directions issued in the case of *Raj Deo Sharma* regarding speedy trials and considering the subsequent modifications made in some of the said directions, Supreme Court setting aside the impugned order directing the trial court to proceed with trial — *Constitution of India — Art. 21. State of A.P.* v. *Hanumanthu Santha Rao*, (2000) 10 SCC 603: 2001 SCC (Cri) 1513.

Bench Strength 2. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 22-11-1999]

Raj Deo Sharma (II) v. State of Bihar, (1999) 7 SCC 604: 1999 SCC (Cri) 1324, relied on

— S. 309(2) *See* Ss. 167, 309(2) and 173(8)

See also Ss. 167(2), 309(2) and 173

See also Ss. 167(2), proviso (a), 309(2), 437(5), 439(2), 441, 442(1) and 444

See also Ss. 235(2) and 309(2)

— S. 309(2) third proviso (as introduced by Act 45 of 1978) *See also Ss. 235(2) and 309(2) third proviso (as introduced by Act 45 of 1978)*

[3153] — Ss. 309(2) third proviso and 235(2) — Conviction and sentence should normally be recorded on the same day — *When upon conviction under S. 302, sentence of life imprisonment is proposed to be imposed, court need not proceed to hear the accused on the question of sentence — But when death sentence is proposed, third proviso to S. 309(2) would not preclude the court from granting adjournment to enable the accused to show cause against the proposed sentence — Sessions Courts or Special Courts must direct the accused persons tried and convicted by such courts to be immediately taken into custody, if on bail, and kept in jail till question of sentence is decided*

Per Sethi, J. (Phukan, J. concurring)

The submission that as the sentence and conviction were recorded on the same day, the judgment of the trial court was against the law cannot be accepted. (Para 23)

The third proviso to Section 309(2) CrPC mandates that no adjournment can be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed upon him. In a case punishable with death or imprisonment for life, there is no difficulty for the court where the sentence proposed to be imposed is an alternative sentence of life imprisonment but if it proposes to award the death sentence, it has discretion to adjourn the case in the interests of justice. Despite the bar of third proviso to sub-section (2) of Section 309, the court, in appropriate cases, can grant adjournment for enabling the accused persons to show cause against the sentence proposed to be imposed on them particularly if such proposed sentence is a sentence of death. In all cases where a conviction is recorded in cases triable by the Court of Session or by Special Courts, the court is enjoined upon to direct the accused convict to be immediately taken into custody, if he is on bail, and kept in jail till such time the question of sentence is decided. After the sentence is awarded, the convict is to undergo such sentence unless the operation of the sentence awarded is stayed or suspended by a competent court of jurisdiction. Such a course is necessitated under the present circumstances prevalent in the country and is in consonance with the spirit of law. A person granted bail has no right to insist to remain at liberty on the basis of the orders passed in his favour prior to his conviction. (Para 28)

Per Thomas, J. (concurring)

The trial Judge chose to pronounce the sentence on the same day of pronouncing the verdict of conviction. But the sentence cannot be altered on the reasoning that the trial court did not adjourn the proceedings, after pronouncing the conviction, for the purpose of providing the convicted person time to reflect on the question of sentence. The third proviso to Section 309(2) CrPC does not make a distinction between offences punishable with death or imprisonment for life and the other offences, in relation to the application of the said proviso. The proviso thus reflects the parliamentary concern that the rule in all cases must be that sentence shall be passed on the same day of pronouncement of judgment in criminal cases as far as possible, and perhaps by way of exception the said rule can be relaxed by adjourning the case to another day for passing orders on the sentence. (Para 31)

The legal position regarding the necessity to afford opportunity for hearing to the accused on the question of sentence may be reiterated as follows:

(*1*) When the conviction is under Section 302 IPC (with or without the aid of Section 34 or 149 or 120-B IPC) if the Sessions Judge does not propose to impose death penalty on the convicted person it is unnecessary to proceed to hear the accused on the question of sentence. Section 235(2) of the Code will not be violated if the sentence of life imprisonment is awarded for that offence without hearing the accused on the question of sentence. Two alternative sentences alone are permitted for imposition as for the offence under Section 302 IPC — imprisonment for life or death. Thus no court is permitted to award a sentence less than imprisonment for life as for the offence of murder. The normal punishment for the offence is life imprisonment and death penalty is now permitted to be awarded only "in the rarest of the rare cases when the lesser alternative is unquestionably foreclosed". When the Sessions Judge does not propose to award death penalty to a person convicted of the offence under Section 302 IPC what is the benefit to be secured by hearing the accused on the question of sentence? However much it is argued the Sessions Judge cannot award a sentence less than imprisonment for life for the said offence. If a Sessions Judge who convicts the accused under Section 302 IPC (with or without the aid of other sections) does not propose to award death penalty, the Court need not waste time on hearing the accused on the question of sentence. The requirement contained in Section 235(2) of the Code (the obligation of the Judge to hear the accused on the question of sentence) is intended to achieve a purpose. The said legislative provision is meant for affording benefit to the convicted person in the matter of sentence. (Para 33)

(*2*) In all other cases the accused must be given sufficient opportunity of hearing on the question of sentence.

(*3*) The normal rule is that after pronouncing the verdict of guilty the hearing should be made on the same day and the sentence shall also be pronounced on the same day.

(*4*) In cases where the Judge feels or if the accused demands more time for hearing on the question of sentence (especially when the Judge proposes to impose death penalty) the proviso to Section 309(2) is not a bar for affording such time.

(*5*) If for any reason the court is inclined to adjourn the case after pronouncing the verdict of guilty in grave offences the convicted person shall be committed to jail till the verdict on the sentence is pronounced. Further detention will depend upon the process of law. (Para 33). *Ramdeo Chauhan* v. *State of Assam*, (2001) 5 SCC 714: 2001 SCC (Cri) 915: AIR 2001 SC 2231: 2001 Cri LJ 2902.

Bench Strength 3. Coram: **K.T. Thomas**[2], **R.P. Sethi**[1] and **S.N. Phukan**[3], JJ. [Date of decision: 10-5-2001]

Muniappan v. State of T.N., (1981) 3 SCC 11: 1981 SCC (Cri) 617; Malkiat Singh v. State of Punjab, (1991) 4 SCC 341:

1991 SCC (Cri) 976; State of Maharashtra v. Sukhdev Singh, (1992) 3 SCC 700: 1992 SCC (Cri) 705; Allauddin Mian v. State of Bihar, (1989) 3 SCC 5: 1989 SCC (Cri) 490; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, relied on

[3154] — Ss. 309(2) third proviso and 235(2) — Effect of the third proviso to S. 309(2) — *Held, the proviso does not prohibit grant of adjournment for the purpose of affording opportunity of hearing to the parties before pronouncing sentence in compliance with mandatory provisions of S. 235(2)*

The third proviso to S. 309(2) must be read in the context of the general policy of expeditious inquiry and trial manifested by the main part of the section. That section emphasises that an inquiry or trial once it has begun should proceed from day to day till the evidence of all the witnesses in attendance has been recorded so that they may not be unnecessarily vexed. The underlying object is to discourage frequent adjournments. But that does not mean that the proviso precludes the court from adjourning the matter even where the interest of justice so demands. The proviso may not entitle an accused to an adjournment but it does not prohibit or preclude the court from granting one in such serious cases of life and death to satisfy the requirement of justice as enshrined in S. 235(2) of the Code. Expeditious disposal of a criminal case is indeed the requirement of Art. 21 of the Constitution; so also a fair opportunity to place all relevant material before the Court is equally the requirement of the said Article. Therefore, if the court feels that the interest of justice demands that the matter should be adjourned to enable both sides to place the relevant material touching on the question of sentence before the court, the above extracted proviso cannot preclude the court from doing so. *State of Maharashtra* v. *Sukhdev Singh*, (1992) 3 SCC 700: 1992 SCC (Cri) 705: AIR 1992 SC 2100.

Bench Strength 2. Coram: **A.M. Ahmadi** and *K. Ramaswamy*, JJ. [Date of decision: 15-7-1992]

— **S. 310** *See also* S. 539-B, Criminal Procedure Code, 1898, p. 1297 in Vol. 2

[3155] — S. 310 — Local inspection — Purpose of — Memorandum of spot inspection recorded by trial court — *To be appreciated in conjunction with the evidence already recorded — Any omission and/or commission would not constitute material irregularity*

The local inspection envisaged under Section 310 CrPC is for the purpose of properly appreciating the evidence already recorded during the trial. Memorandum of spot inspection recorded by the trial Judge has to be appreciated in conjunction with the evidence already recorded. Any omission and/or commission in the memorandum recorded by the trial Judge by itself would not constitute material irregularity, which would vitiate the prosecution case. (Para 5). *State of H.P.* v. *Mast Ram*, (2004) 8 SCC 660.

Bench Strength 2. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 10-9-2004]

[3156] — S. 310 — Local inspection by court is no substitute for evidence of proof — *Full reliance on will exceed jurisdiction*

Normally a court is not entitled to make a local inspection and even if such an inspection is made, it can never take the place of evidence or proof but is really meant for appreciating the position at the spot. In the present case the Sessions Judge by making a local inspection converted himself into a witness in order to draw full support to the defence case by what he may have seen. By doing so the Sessions Judge exceeded his jurisdiction. *Keisam Kumar Singh* v. *State of Manipur*, (1985) 3 SCC 676: 1985 SCC (Cri) 446: AIR 1985 SC 1664.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 26-7-1985]

Pritam Singh v. State of Punjab, AIR 1956 SC 415: 1956 Cri LJ 805, relied on

See also in this regard (1976) 3 SCC 672: 1976 SCC (Cri) 502

[3157] — S. 310 — Spot inspection by trial Judge — Recording of memo of inspection — *Provision in respect thereof — Held, mandatory — Recourse to spot inspection, held, clearly indicates deficiency of evidence with regard to place of occurrence — Hence, in such situation, it is incumbent on the part of the trial Judge to record the memo of inspection*

The learned trial Judge made a spot inspection on 11-3-1991. However, the trial Judge did not choose to record the memo of inspection. The judgment was delivered on 16-3-1991. What had prompted the learned trial Judge to have recourse to spot inspection was not spelled out because no memorandum of inspection was prepared. But it is clearly suggestive of deficiency of evidence with regard to place of occurrence. In such a situation, it was incumbent on the part of the learned trial Judge, to have recorded the memo of inspection for proper appreciation of the inspection. Undoubtedly, the mandatory provision has not been followed by the trial court. (Para 9). *State of M.P.* v. *Mishrilal*, (2003) 9 SCC 426: 2003 SCC (Cri) 1829: AIR 2003 SC 4089: 2003 Cri LJ 2312.

Bench Strength 2. Coram: *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision: 2-4-2003]

— **S. 311** *See also* S. 540, Criminal Procedure Code, 1898, pp. 1297 et seq. in Vol. 2

— S. 311 *See* Ss. 157, 161, 164, 311 and 391
See also Ss. 164(1) & (5), 154 to 160, 165 to 173(5) & (8) and 311
See also Ss. 207 and 311
See also Ss. 226, 242 and 311
See also Ss. 231, 311 and 313
See also Ss. 233(3) and 311
See also Ss. 309, 311 and 24, 25
See also Ss. 309, 311, 258 and 482
See also Ss. 344, 311 and 391
See also Ss. 362 and 311
See also Ss. 386, 311 and 391
See also Ss. 391 and 311
See also Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247
See also Ss. 397, 401, 91, 311 and 200
See also Ss. 397(2), 401, 91 and 311
See also Ss. 401 and 311
See also Ss. 406 and 311
See also Ss. 482, 309, 311 and 258
See also Ss. 482 and 311
See also Ss. 482, 311, 391, 173(8), 216 and 24

[3158] — S. 311 — Power of court to summon, examine, recall and re-examine any witness or person present — Nature, scope and applicability of — Provision in two parts, first part being discretionary and the second one being obligatory — Power is in the widest terms exercisable at any stage so long as court is in seisin of the proceeding — *But accused entitled to fair and reasonable opportunity to rebut the evidence brought on record against him pursuant to exercise of such power — Power not unguided but has to be exercised fairly, bona fide, non-arbitrarily, with circumspection and in the exigency of the situation when it appears, in the facts and circumstances, to be essential for a just decision of the case — On facts High Court's order recalling a witness for examination and issuing summons to two more witnesses for examination caused no prejudice to the accused and hence the order valid — CrPC, 1898, S. 540*

Pursuant to a search conducted by the Superintendent of Customs on the strength of warrant issued by the Assistant Collector of Customs, some gold lagadis bearing foreign marks, primary gold, gold ornaments, silver bricks, coins and cash money were seized from the premises of the appellant. Two complaints against the appellant were filed in the Court of Judicial Magistrate for offences under the Customs Act and the Gold Control Act. After examination of the prosecution as well as the defence witnesses and recording of statements of the appellant under S. 342 of CrPC, 1898 arguments were advanced on behalf of the accused-appellant. The prosecution at this stage before commencing its arguments filed two applications in both the cases under S. 540 CrPC, 1898 (corresponding to S. 311 of CrPC, 1973) requesting the trial court to recall the seizing officer for further examination and to issue summons to two more witnesses, namely, the Assistant Collector of Customs and the Deputy Chief Officer (Assayer) of Mint Master, Bombay for examination either as prosecution witnesses or as court witnesses on the ground that fresh evidence was necessary for a just decision of the case. The trial court and the first revision court rejected the request of the prosecution on three grounds, namely, first that the prosecution has attempted to fabricate evidence at a belated stage to fill up the lacuna in the prosecution case and secondly that the request of the prosecution for taking additional evidence was after the closure of the defence and thirdly a substantial prejudice would be caused to the appellant if the prosecution was allowed to adduce fresh evidence. Two criminal revision applications were thereupon preferred by the respondents. The High Court by its common judgment allowed the applications. Dismissing the appeals of the accused,

Held :

Having regard to the depositions of the witnesses already examined that are found on the file, it is clear that the accused-appellant was not prejudiced in any way by examination of the three witnesses. In view of the facts of the case the appellant's grievance that he has been taken by surprise on the request of the prosecution for taking fresh evidence; that the evidence sought to be obtained is only for filling up the lacuna and the judgment impugned is prejudicial to him cannot be countenanced. Of the three witnesses permitted to be summoned and examined on the side of the Union of India, the Mint Master is only an assayer. The facts and circumstances of the case require the examination of these three witnesses for a just decision of the case as held by the High Court. (Para 31)

A court must discharge its statutory functions — whether discretionary or obligatory — according to law in dispensing justice because it is the duty of a court not only to do justice but also to ensure that justice is being done. In order to enable the court to find out the truth and render a just decision, the salutary provisions of S. 540 of the old Code (S. 311 of the new Code) are enacted. Section 540 and S. 165 of the Evidence Act may be said to be complementary to each other and "these two sections between them confer jurisdiction on the judge to act in aid of justice". (Paras 10 and 15)

Section 540 is manifestly in two parts. Whereas the word used in the first part is 'may' the word used in the second part is 'shall'. In consequence, the first part which is permissive gives purely discretionary authority to the Criminal Court and enables it 'at any stage of enquiry, trial or other proceedings' under the Code to act in one of the three ways, mentioned therein. However, the very width requires a corresponding caution that the discretionary power should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part, on the other hand, is mandatory and imposes an obligation on the court of summoning or recalling and re-examining any witness and the only condition prescribed is that the evidence sought to be obtained must be essential to the just decision of the case. (Paras 7, 9 and 16)

Section 540 allows the criminal court to invoke its inherent power at any stage without qualifying any limitation or prohibition. It can summon any person as a witness or recall and re-examine any such person as long as the court retains seisin of the criminal proceedings, even if evidence on both sides is closed. An enquiry or trial in a criminal proceedings comes to an end or reaches its finality when the order or judgment is pronounced and until then the court has power to use this section. (Para 21)

However, whenever any additional evidence is examined or fresh evidence is admitted against the accused, it is absolutely necessary in the interest of justice that the accused should be afforded a fair and reasonable opportunity to rebut that evidence brought on record against him. (Para 30)

The aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or capricious exercise of the power may lead to undesirable results. Further it is incumbent that due care should be taken by the court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by the defence or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties. The jurisdiction of the court must be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case. (Paras 18 and 27). *Mohanlal Shamji Soni* v. *Union of India*, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595: AIR 1991 SC 1346: (1991) 2 GLH 11.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 22-2-1991]

Mir Mohd. Omar v. State of W.B., (1989) 4 SCC 436: 1989 SCC (Cri) 750, distinguished

Channu Lal v. Rex, AIR 1949 All 692: 51 Cri LJ 199: 1950 AWR 147; Rengaswami Naicker v. Muruga Naicker, AIR 1954 Mad 169: 1954 Cri LJ 123: (1952) 2 MLJ 497; Shugan Chand v. Emperor, AIR 1925 Lah 531: 26 Cri LJ 1035: 26 PLR 312; Queen v. Assanoollah, 13 SWR (Cri) 15, approved

[3159] — S. 311 — Power to summon material witness, or examine person present — Power when to be exercised — *Appellant alleging that SHO, PW 1 and other constables had evil eye on his wife, DW 1, and when she resisted their advances she was slapped 2-3 times, and thereafter he was arrested — Fact that DW 1 was sitting near the gate of SP whole night and had given him application in morning, and a telegram was also sent, neither denied nor disputed — Held, in such circumstances, Special Judge in exercise of his jurisdiction under S. 311 should have called SP and recorded his statement; he could have also called for original telegram from SP's office or even from post office* (Para 15). *Sarju* v. *State of U.P.*, (2009) 13 SCC 698: 2009 Cri LJ 4123: (2009) 81 AIC 90 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 7-8-2009]

[3160] — S. 311 — Scope of power of Magistrate under — Additional evidence — *FIR lodged by appellant against respondent alleging offences under Ss. 498-A, 506, 406 and 494 IPC — Though charges framed under Ss. 498-A and 406 IPC but no charge framed under S. 494 IPC — Application filed by appellant seeking permission to lead additional evidence regarding the alleged second marriage of respondent-accused and a child having been born from the second marriage — Held, Magistrate should have allowed the appellant to lead the additional evidence under S. 311*

Under Section 311 CrPC the Magistrate has wide powers regarding examination of material witness during the course of trial at any stage. The only criteria for exercise of this power is that it should appear to the court that the evidence is essential to the just decision of the case. The provision is intended to be wide in view of the repeated use of the word "any" throughout its length. Interest of justice demands that in the facts of the case, the Magistrate should have allowed the additional evidence to be led under Section 311 of the Code as prayed by the appellant. On the basis of the evidence so recorded, the Magistrate might have proceeded to frame a charge under Section 494 IPC against the accused if the material on record justified it. (Para 4). *Prithvi Singh* v. *Randhir Singh*, (2008) 17 SCC 654.

Bench Strength 2. Coram: *M.B. Shah* and *Arun Kumar*, JJ. [Date of decision: 3-3-2003]

Jamatraj Kewalji Govani v. State of Maharashtra, AIR 1968 SC 178: 1968 Cri LJ 231, relied on

[3161] — S. 311 — Nature, scope and object of, restated — Rejection by trial court of appellant's application under S. 311, seeking re-examination of witnesses already examined — Non-interference by High Court — Propriety — *Held, in the facts and circumstances herein, trial court ought to have permitted the prayer of appellant — Rejection of the prayer by trial court and non-interference by High Court, not proper* (Paras 6, 2 and 7). *Godrej Pacific Tech. Ltd.* v. *Computer Joint India Ltd.*, (2008) 11 SCC 108: (2008) 228 ELT 507.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision: 30-7-2008]

Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8, relied on

[3162] — S. 311 — Nature, scope and object of S. 311 — Extensively discussed — *Two parts to S. 311: (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be "essential to the just decision of the case", analysed and dismissed — When power under either part to be exercised, discussed in detail — Need for court to ensure that best evidence is brought on record — Right of cross-examination of witnesses called under S. 311 — Nature and scope — Evidence Act, 1872, Ss. 165, 137 and 154*

It is a cardinal rule in the law of evidence that the best available evidence should be brought before the court. Sections 60, 64 and 91 of the Evidence Act, 1872 are based on this rule. (Para 28)

Section 311 CrPC, 1973 is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequence, the first part gives purely discretionary authority to a criminal court and enables it at any stage of an enquiry, trial or proceeding under the Code of Criminal Procedure (*a*) to summon anyone as a witness, or (*b*) to examine any person present in the court, or (*c*) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts. (Para 26)

The court is not empowered under the provisions of the Code of Criminal Procedure to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the court has to act under the second part of Section 311 CrPC. Sometimes the examination of witnesses as directed by the court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge. (Para 28)

If a witness called by the court gives evidence against the complainant he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a court arises not under the provisions of Section 311 CrPC, but under the Evidence Act, 1872 which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the court could not be termed a witness of any particular party, the court should give the right of cross-examination to the complainant. (Para 29)

The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The object of Section 311 CrPC is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of orderly society. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code of Criminal Procedure and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 CrPC the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind. (Paras 27 and 29). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694: (2006) 2 Guj LR 1493.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

Zahira Habibullah Sheikh (1) v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999; Jamatraj Kewalji Govani v. State of Maharashtra, (1967) 3 SCR 415: AIR 1968 SC 178: 1968 Cri LJ 231, relied on

***Followed** in Iddar v. Aabida, (2007) 11 SCC 211: (2008) 1 SCC (Cri) 22*

[**Ed.**: *See also* Shortnotes L and M in *Zahira (1) case*, (2004) 4 SCC 158.]

[3163] — S. 311 — Nature, scope and object of S. 311 r/w S. 165, Evidence Act, 1872 — Complementary nature of powers under — *Two parts to S. 311: (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be "essential to the just decision of the court" — When power under to be exercised, discussed in detail — Court to separate "grain from chaff" — Explained that "essential" is to be construed as it would be by an active and alert mind and not one which is bent to abandon and abdicate — Held, S. 311 does not confer on any party any right to examine, cross-examine and re-examine any witness — Evidence Act, 1872, S. 165*

The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 CrPC. These sections confer vast and wide powers on presiding officers of courts to elicit all necessary materials by playing an active role in the evidence-collecting process. The object of the section is to enable the court to arrive at the truth, irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case and to uphold the truth. (Paras 43 and 44)

Section 311 CrPC consists of two parts i.e.: (*i*) giving a discretion to the court to examine the witness at any stage, and (*ii*) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution: that the discretionary powers should be invoked as the exigencies of justice require, and exercised judicially with circumspection and consistently with the provisions of the Code of Criminal Procedure, 1973. Section 311 does not confer on any party any right to examine, cross-examine and re-examine any witness. This is a power given to the court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. It is not that the power is to be exercised in a routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received, in exceptional cases or extraordinary situations the court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. The court can certainly be guided by the metaphor — separate the grain from the chaff — and in a case which has telltale imprints of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in. The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case — "essential" to an active and alert mind and not to one which is bent to abandon or abdicate. (Paras 44, 45 and 46)

The power under Section 311 CrPC is exercised and the evidence is examined neither to help the prosecution nor the defence. However, if the prosecutor is remiss in some ways, the court can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishful or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts should not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness. (Paras 43, 46 and 55). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595, relied on

[3164] — S. 311 — Importance of, in administration of criminal justice — Incapacitation of witnesses — Protection of witnesses — Necessity — State's definite role in ensuring — Vast powers conferred on courts to play an active role in evidence collecting process — *Held, Judges cannot act like mere tape recorders to record whatever has been stated by the witnesses — On facts, Judge presiding over trial failed to take participatory role in trial not exercising powers under S. 165 of Evidence Act — Evidence Act, 1872, S. 165*

The necessity of fair trial hardly needs emphasis. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases. The Judge has failed to take participatory role in the trial. He was not expected to act like a mere tape recorder to record whatever has been stated by the witnesses. Section 311 CrPC and Section 165 of the Evidence Act confers vast and wide powers on court to elicit all necessary materials by playing an active role in the evidence collecting process. However, the record does not indicate that the Judge presiding the trial had exercised powers under Section 165 of the Evidence Act which is in a way complimentary to his other powers. (Para 22). *Vikas Kumar Roorkewal* v. *State of Uttarakhand*, (2011) 2 SCC 178.

Bench Strength **2**. Coram: **J.M. Panchal** and *H.L. Gokhale*, JJ. [Date of decision: 11-1-2011]

[3165] — S. 311 — Power of court to summon material witness — Grounds on which may be exercised — *Held, the said power can be exercised only with the object of finding out the truth or obtaining proper proof of facts which may lead to a just and correct decision — When such exercise of power is made, plea that power was exercised to fill the lacuna in the prosecution case cannot be accepted unless exercise of power causes serious prejudice to accused which results in miscarriage of justice — In the instant case, respondent-accused raised before trial court a plea of alibi that at the time of the incident he was present in the chamber of the Collector to attend a meeting there — In support of the plea defence examined two witnesses but the Collector was not examined — Public Prosecutor moved application under S. 311 for summoning the Collector and examining him as a witness — Plea taken on behalf of respondent that prosecution should not be allowed to fill in a lacuna by moving the application — Trial court allowed the application in the interest of just and fair decision in view of the fact that defence had kept behind the best available evidence on this point and that moreover it would not cause any prejudice to respondent as alibi was his own defence — Held on facts, examination of the Collector cannot be termed as filling in lacuna — Trial court having taken a decision in the interest of just and fair decision of the case, High Court erred in interfering therewith*

An FIR was lodged in 1996 alleging that at the instigation of the respondent (A-7) and others (A-8 and A-9), accused A-1 to A-6 had assaulted the deceased and caused injuries to some others. After usual investigation charge-sheet was submitted against all the nine accused and the case was committed to the Court of Session. In his statement under Section 313 CrPC which was recorded after closing of the prosecution evidence, the respondent took a plea of alibi and submitted that he is a prominent member of a political party and at the time of the incident he was present in the chamber of the Collector as a meeting had been called there. The respondent examined the Dy. Collector (DW 1) and the Executive and Sector Magistrate (DW 2) in support of his plea of alibi. The Special Public Prosecutor then moved an application purported to be one under Section 311 CrPC praying that the then Collector may be summoned and examined as a witness. The trial court in 2004 allowed the application taking the view that although the matter was very old and was lingering since long but "this alone will not be sufficient to reject an opportunity to the prosecution particularly when the defence has kept behind the best available evidence of the then Collector who had convened the meeting, according to Accused 7, in which he was present". The trial court further observed: "Moreover, it will not cause any prejudice to Accused 7 as alibi is his own defence. He will have an opportunity to cross-examine the witness. Thus in order to find out the truth, evidence of the then Collector is necessary". The respondent filed an application under Sections 397/401/482 CrPC and Article 227 of the Constitution before High Court for setting aside the order passed by the trial court. The High Court held that the respondent had taken a plea of alibi as far back as in the year 1996 when he had moved an application for anticipatory bail and also when he opposed the application moved by the prosecution for giving him on police remand. In the order passed by the Sessions Judge granting bail to the respondent, it was observed that the investigating agency had not considered it appropriate to place the relevant material or to rebut the plea of alibi taken by the respondent. The High Court accordingly held that the grant of the application moved by the Public Prosecutor for summoning the Collector, under Section 311 CrPC would inevitably result in permitting the prosecution to fill in the lacuna in the prosecution case. It was further observed that the respondent had already examined two witnesses and if the trial court was of the opinion that the said evidence was insufficient, a logical conclusion could be drawn for accepting or not accepting the defence version and merely because the defence has chosen not to examine one more witness, who should also have been examined by the defence, that by itself may not be a sufficient reason for invoking the powers under Section 311 CrPC. The application filed by the respondent was accordingly allowed by the order under challenge and the order passed by the trial court was set aside.

Allowing the appeal, setting aside the judgment and order passed by the High Court and restoring the order passed by the Sessions Court,

Held :

In the circumstances of the case, if the Sessions Judge was of the opinion that in order to find out the truth, the evidence of the Collector was necessary, no exception can be taken to the course adopted by him. It was for the Sessions Judge to decide whether for just and fair decision of the case, the evidence of the Collector was necessary or not and he having come to a conclusion that the evidence of the Collector was necessary for just and fair decision of the case, the order passed by him could not have been set aside by the High Court on the ground that it would amount to filling in a lacuna in the prosecution case. In the facts and circumstances of the case, the examination of the then Collector cannot be termed as filling in lacuna in the prosecution case. The Sessions Judge rightly observed that the evidence of the Collector will not cause any prejudice to the respondent as he had himself pleaded alibi and had led evidence to substantiate the same. Therefore, the High Court clearly erred in setting aside the order passed by the Sessions Judge. (Para 17)

The principle is well settled that the exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the court to arrive at a just decision of the case cannot be dubbed as "filling in a lacuna in the prosecution case" unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused resulting in miscarriage of justice. (Para 15)

The charge-sheet submitted by the police under Section 173 CrPC after completion of investigation contains the statements of the witnesses as recorded under Section 161 CrPC and in a case exclusively triable by the Court of Session there is a duty enjoined on a Magistrate to furnish to the accused, free of cost, a copy of the police report including a copy of the FIR, statement of the witnesses under Section 161 CrPC and other documents as mentioned in Section 207 CrPC. It is on the basis of the charge-sheet that the Magistrate takes cognizance of the offence under Section 190(1)(*b*) CrPC. Normally, the investigating agency cannot visualise at that stage what will be the nature of defence which an accused will take in his statement under Section 313 CrPC as the said stage comes after the entire prosecution evidence has been recorded. The prosecution is only required to establish its case by leading oral and documentary evidence in support thereof. While leading evidence the prosecution may not be in a position to anticipate or foresee the nature of defence which may be taken by the accused and evidence which he may lead to substantiate the same. Therefore, it is neither expected to lead negative evidence nor is it possible for it to lead such evidence so as to demolish the plea which may possibly be taken by the accused in his defence. This being the normal situation, an application moved by the prosecution for summoning a witness under Section 311 CrPC, after the defence evidence has been recorded, should not be branded as "an attempt by the prosecution to fill in a lacuna". (Para 16). *UT of Dadra & Nagar Haveli* v. *Fatehsinh Mohansinh Chauhan*, (2006) 7 SCC 529: (2006) 3 SCC (Cri) 300.

Bench Strength **2**. Coram: **G.P. Mathur** and *A.K. Mathur*, JJ. [Date of decision: 14-8-2006]

Ram Jeet v. State, AIR 1958 All 439: 1958 Cri LJ 716, approved

State of W.B. v. Tulsidas Mundhra, (1964) 1 Cri LJ 443; Jamatraj Kewalji Govani v. State of Maharashtra, (1967) 3 SCR 415: AIR 1968 SC 178: 1968 Cri LJ 231; Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595; Rajendra Prasad v. Narcotic Cell, (1999) 6 SCC 110: 1999 SCC (Cri) 1062; P. Chhaganlal Daga v. M. Sanjay Shaw, (2003) 11 SCC 486: 2004 SCC (Cri) 183, relied on

[3166] — S. 311 — Determination whether witness planted — *Allegations that key witnesses PWs 6, 20 and 24 were planted witnesses who deposed under pressure of false implication because case under Punjab Excise Act was registered against them and they were virtually pressurised to yield to prosecution case; that PW 20 was not made an accused under S. 201 IPC (for removing blood from place of occurrence), because they had agreed to toe line of prosecution; and PW 20 was not an eyewitness since both IOs PWs 100 and 101 admitted same — Held, a witness cannot be discredited without said piece of testimony having been put to her*

The accused had a statutory option available by way of Section 311 of the Code to call PW 20 for the purposes of further examination. The said part of the testimony of PWs 100 and 101 are at best in the nature of opinion evidence which are inadmissible pieces of evidence and for the aforesaid reasons cannot wipe out the unchallenged testimony of PW 20, which is the case of the prosecution. (Para 82)

Further, *M* had also been clearly identified by PW 6 as the person in the white T-shirt who had asked for whisky and thereafter on her refusal to oblige, he misbehaved with her in the most vulgar fashion. (Para 83)

Furthermore, FIR No. 288 of 1999 at PS Mehrauli under the Excise Act was registered on 30-4-1999 itself while her statement under Section 161 CrPC was recorded on 3-5-1999 and thus the question of making PW 6 an accused on 8-5-1999 does not arise. Moreover, the excise offence is a bailable offence. There was nothing on record to suggest that PWs 6, 20 and 24 had been pressurised in any way for deposing in favour of prosecution. It is relevant to point out that the case under the Punjab Excise Act had not been withdrawn by the prosecution against the accused. On the other hand, the accused had pleaded guilty and mere fine amounting to Rs 200 was imposed on them. Hence, allegation that these witnesses were kept under pressure is unacceptable. (Paras 84, 98 and 99). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

[3167] — S. 311 — Power to summon material witness, or examine person present — Scope — *Reiterated* (Para 9). *Iddar* v. *Aabida*, (2007) 11 SCC 211: (2008) 1 SCC (Cri) 22: AIR 2007 SC 3029: (2007) 57 AIC 47 (SC): 2007 Cri LJ 4313.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 25-7-2007]

Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8, followed

[3168] — S. 311 — Powers of court — Additional material relevant for just decision of the case — Grant of permission at the fag end of the trial for production of — Legality — *In a complaint under S. 138 of Negotiable Instruments Act, the complainant completing the evidence including his own examination, cross-examination and re-examination — During such cross-examination, the accused denying the service of statutory notice and disowning the signature contained in the acknowledgement card produced by the complainant — After completion of evidence in the said manner, case posted for judgment — At this stage, the complainant seeking the court to permit him to produce additional material (a postal receipt in this case) — Grant of such permission by trial court even at this stage, held, within the powers of the court — High Court erred in interfering therewith on the assumption that production of the said document at that belated stage was only to fill up a lacuna — Negotiable Instruments Act, 1881, S. 138* (Paras 6, 7 and 4). *P. Chhaganlal Daga* v. *M. Sanjay Shaw*, (2003) 11 SCC 486: 2004 SCC (Cri) 183.

Bench Strength **2**. Coram: *K.T. Thomas* and *S.N. Variava*, JJ. [Date of decision: 5-10-2001]

Rajendra Prasad v. Narcotic Cell, (1999) 6 SCC 110: 1999 SCC (Cri) 1062; Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595; Ram Chander v. State of Haryana, (1981) 3 SCC 191: 1981 SCC (Cri) 683, relied on

[3169] — S. 311 — Re-examination of witness — Delay in application for — Effect — *Application filed by accused to recall the eyewitnesses after a lapse of more than one year and after they were examined, cross-examined and discharged — Held, should not be allowed* (Para 9). *Nisar Khan* v. *State of Uttaranchal*, (2006) 9 SCC 386: (2006) 2 SCC (Cri) 568.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 25-1-2006]

[3170] — S. 311 — Recall of witnesses for cross-examination — Grounds — *PWs recalled because counsel for the accused-respondent had been busy attending to some other case filed against the respondent when the said witnesses were first examined — Held, this could hardly have been a ground for recall of witnesses* (Para 20). *K. Anbazhagan* v. *Supdt. of Police*, (2004) 3 SCC 767: 2004 SCC (Cri) 882: AIR 2004 SC 524: 2004 Cri LJ 583.

Bench Strength **2**. Coram: *S.N. Variava* and **H.K. Sema**, JJ. [Date of decision: 18-11-2003]

Gurcharan Dass Chadha v. State of Rajasthan, AIR 1966 SC 1418: (1966) 2 SCR 678: 1966 Cri LJ 1071; Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 4 SCC 167: 1979 SCC (Cri) 934; Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204: 2000 SCC (Cri) 1048, relied on

[3171] — S. 311 — Recalling of witnesses — Cross-examination with respect to statements given — *PWs 3 and 5 examined in trial of the accused — Also examined by Children's Court as one of the accused was a minor, where they did not support prosecution version — Application filed before trial court by accused to resummon PWs 3 and 5 for cross-examination, rejected — High Court directing the court below to recall and re-examine PWs 3 and 5 to examine their reliability — Validity — Following* Mishrilal case, *(2005) 10 SCC 701 which has great similarity with the facts of the present case, held, High Court's view for accepting the prayer in terms of S. 311 of the Code does not have any legal foundation — Evidence Act, 1872, Ss. 138 and 145* (Para 9). *Hanuman Ram* v. *State of Rajasthan*, (2008) 15 SCC 652: (2009) 3 SCC (Cri) 1149: AIR 2009 SC 69.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *J.M. Panchal*, JJ. [Date of decision: 13-10-2008]

Mishrilal v. State of M.P., (2005) 10 SCC 701: 2005 SCC (Cri) 1712, followed

[3172] — S. 311 — Right of cross-examination of witnesses called under S. 311 — Nature and scope — *Evidence Act, 1872, Ss. 165, 137 and 154*

If a witness called by the court gives evidence against the complainant he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a court arises not under the provisions of Section 311 CrPC, but under the Evidence Act, 1872 which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the court could not be termed a witness of any particular party, the court should give the right of cross-examination to the complainant. (Para 29). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694: (2006) 2 Guj LR 1493.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[3173] — S. 311 — Witnesses can be recalled or resummoned for re-examination though power under this section cannot be exercised to fill up lacuna in prosecution case — Bar against filling "lacuna in prosecution case" as laid down in 1991 Supp (1) SCC 271 — Meaning of — *Oversight or mistakes during conducting of case cannot be understood as lacuna and so can be corrected — Lacuna is the inherent weakness or a latent wedge in the matrix of prosecution case — CrPC, 1898, S. 540*

The appellant was facing trial along with certain other persons for offences under Narcotic Drugs and Psychotropic Substances Act, 1985. As the trial proceeded almost to the end when the prosecution and the defence closed their evidence on 19-9-1997, the case was posted for further steps. Nevertheless, subsequently, the case stood posted to some other days also. On 7-3-1998, at the instance of the prosecution two of the witnesses, who were already examined, were resummoned for the purpose of proving certain documents for prosecution. They were further examined and the evidence was once again closed and the case was posted for hearing arguments. On 7-6-1998, the Public Prosecutor moved an application seeking permission to examine PW 21 and two other persons. Though the application was stoutly opposed by the accused's counsel the trial court allowed it in exercise of its power under Section 311 of the Code. The appellant challenged the said order in revision before the High Court which was dismissed. Dismissing the appeal by special leave,

Held :

A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by a Public Prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage "to err is human" is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a court cannot fill up. (Para 7)

Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better. (Para 8)

It cannot be said as a legal proposition that the court cannot exercise power of resummoning any witness if once that power was exercised, nor can the power be whittled down merely on the ground that the prosecution discovered laches only when the defence highlighted them during final arguments. The power of the court is plenary to summon or even recall any witness at any stage of the case if the court considers it necessary for a just decision. The steps which the trial court permitted in this case for resummoning certain witnesses cannot therefore be spurned down or frowned at. (Para 12). *Rajendra Prasad* v. *Narcotic Cell*, (1999) 6 SCC 110: 1999 SCC (Cri) 1062: AIR 1999 SC 2292: 1999 Cri LJ 3529.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 12-7-1999]

Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595, explained and followed

Jamatraj Kewalji Govani v. State of Maharashtra, AIR 1968 SC 178: (1967) 3 SCR 415; Ram Chander v. State of Haryana, (1981) 3 SCC 191: 1981 SCC (Cri) 683, followed

[3174] — S. 311 — Recalling of witnesses for further cross-examination — Grounds for — Pendente lite death of defence counsel, if is a valid ground — *Trial under S. 20 of NDPS Act, 1985 for possession of a certain quantity of charas — A certain number of witnesses examined for the prosecution and cross-examined by the defence counsel — Defence counsel passing away before completing the trial and a new defence counsel engaged by the accused — New counsel unaware of the scheme of the defence strategy of the former counsel and also unaware of the reasons for which the former counsel had not put to the witnesses further questions on certain aspects — In such circumstances, if in order to evolve a fresh defence strategy, the new counsel sought to have the material witnesses further examined while by then the accused had not been called to enter on his defence, held, his plea could be allowed — Hence, conviction and sentence set aside and case remitted to trial court with detailed directions for disposal afresh — Evidence Act, 1872, Ss. 137, 138 and 145 — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 20*

Normally the Supreme Court would be disinclined to open up a closed trial. But the present case calls for it on account of the passing away of the defence counsel during the trial. The counsel who was engaged for defending the appellant had cross-examined the witnesses but he could not complete the trial because of his death. When the new counsel took up the matter he was under the disadvantage that he could not ascertain from the erstwhile counsel as to the scheme of the defence strategy which the predeceased advocate had in mind or as to why he had not put further questions on certain aspects. In such circumstances, if the new counsel thought to have the material witnesses further examined the Court could adopt latitude and a liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible. Here, the new defence counsel filed the petition for recalling the prosecution witnesses even before the accused was called upon to enter on his defence. (Paras 6 and 8)

Therefore the conviction and sentence is set aside and the case is remitted to the trial court for disposal afresh after summoning the said witnesses for further cross-examination. The evidence on record will remain as part of evidence in the case. After the cross-examination of the said witnesses, Court may grant liberty to the prosecution to adduce further evidence. The accused should then be called upon to enter on his defence. *Hoffman Andreas* v. *Inspector of Customs*, (2000) 10 SCC 430: 2001 SCC (Cri) 1488.

Bench Strength 2. Coram: *K.T. Thomas* and *A.P. Misra*, JJ. [Date of decision: 16-9-1999]

[3175] — Ss. 311, 233, 243 and 315 — Closing of defence evidence — Recalling of some prosecution witnesses for examination by defence — *Trial Judge, after the prosecution evidence was closed, questioning the accused under S. 313 CrPC and closing the defence evidence on accused having failed to produce any defence evidence or witness after being provided with several opportunities by the court in this regard — Petition of accused challenging the order of trial court not permitting the examination of prosecution witnesses, dismissed by High Court — Agreeing with the High Court's non-interference in instant case, however held, affording one more opportunity to the appellant* *to examine defence witnesses would be in the interest of justice — Appellant to be examined on defence side if he files a separate application under S. 315 CrPC — Constitution of India, Art. 142. Selvi J. Jayalalitha* v. *State*, (2000) 9 SCC 754: 2001 SCC (Cri) 1480.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 5-5-2000]

[3176] — Ss. 311, 386 and 391 — Consideration of evidence on record by court to determine attraction of — Extent of — *Held, necessary only to the extent for deciding the appeals which concerned the justifiability of the rejection of applications under Ss. 311 and 391 by the court below — It was not necessary to record any finding in the appeals as to whether the respondents-accused were to be convicted or acquitted*

It was submitted by the applicant accused that though the scope of consideration of the evidence was restricted to the rejection of the application under Sections 311 and 391 CrPC by the Supreme Court in *Zahira case*, (2004) 4 SCC 158, certain observations had been made which would prejudice the accused persons. They did not get an opportunity to show that the evidence on record was otherwise.

Dismissing the submission,

Held:

When the primary consideration was the justifiability of rejecting the applications in terms of Sections 311 and 391 CrPC, the question of considering the evidence on record did not arise. The Supreme Court considered the appeal taking note of those aspects. It was not necessary to record any finding in the appeals as to whether the respondents-accused in the appeals were to be convicted or acquitted. The appeals were allowed for the reasons that the investigation was vitiated. Tainted evidence was tendered and distorted trial was held and they would suffice to set aside the judgments. Therefore, the question of considering the evidence on record, except to the extent necessary for deciding the appeals did not arise. The observations made were in the context of the conduct of the Public Prosecutor, the prosecuting agency and the failure of the courts below to take note of relevant aspects. (Para 18)

When the matter is taken up for trial afresh as directed it is obvious that the worth of the evidence has to be considered by the court concerned on its own merits and in accordance with law to find out the real truth. That being so, the plea raised regarding the need for consideration of the evidence on record is really of no consequence and has no merit. (Para 19). *Zahira Habibullah Sheikh* v. *State of Gujarat*, (2004) 5 SCC 353: 2004 SCC (Cri) 1613: AIR 2004 SC 3467.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 7-5-2004]

[3177] — Ss. 311, 391 and 386 — Retrial — Evidence to be considered — *Held, trial Judge has to decide case on basis of evidence already on record (recorded at the initial trial) and the additional evidence which would be recorded on retrial*

Moreover, even if a retrial is directed in exercise of revisional powers by the High Court, the evidence already recorded at the initial trial cannot be erased or wiped out from the record of the case. The trial Judge has to decide the case on the basis of the evidence already on record and the additional evidence which would be recorded on retrial. (Para 27). *Satyajit Banerjee* v. *State of W.B.*, (2005) 1 SCC 115: 2005 SCC (Cri) 276: 2005 Cri LJ 648: (2004) 3 KLT 1098.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **D.M. Dharmadhikari**, JJ. [Date of decision: 23-11-2004]

K. Chinnaswamy Reddy v. State of A.P., (1963) 3 SCR 412: (1963) 1 Cri LJ 8; Bansi Lal v. Laxman Singh, (1986) 3 SCC 444: 1986 SCC (Cri) 342, relied on

Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999, clarified

[3178] — Ss. 311, 391 and 386 — Retrial, (re)calling of witnesses and taking of additional evidence — When to be ordered — *Best Bakery case*, (2004) 4 SCC 158, clarified — *Held, law laid down in the extraordinary circumstances obtaining in the said case cannot be applied to all cases against the established principles of criminal jurisprudence — Direction for retrial should not be made in all or every case where acquittal of accused is for want of adequate or reliable evidence — It is only when the extraordinary situation of the first trial being found to be a farce and a "mock trial" obtains, can directions, as made in the said case, be justified*

The revisional jurisdiction at the instance of the complainant has to be exercised by the High Court only in very exceptional cases, where the High Court finds defect of procedure or manifest error of law resulting in flagrant miscarriage of justice. (Para 22)

The law laid down in *Best Bakery case*, (2004) 4 SCC 158 in the extraordinary circumstances obtaining therein, cannot be applied to all cases against the established principles of criminal jurisprudence. Direction for retrial should not be made in all or every case where acquittal of accused is for want of adequate or reliable evidence. In *Best Bak-*

ery case the first trial was found to be a farce and was described as "mock trial". Therefore, the direction for retrial was in fact, for a real trial. Such an extraordinary situation alone can justify the directions as made by the Supreme Court in *Best Bakery case*. (Para 26). *Satyajit Banerjee* v. *State of W.B.*, (2005) 1 SCC 115: 2005 SCC (Cri) 276: 2005 Cri LJ 648: (2004) 3 KLT 1098.

Bench Strength 2. Coram: *Y.K. Sabharwal* and **D.M. Dharmadhikari**, JJ. [Date of decision: 23-11-2004]

[3179] — Ss. 311 and 174 — Denial of cross-examination — Effect — *Court witnesses required to state about certain documents, not permitted to be cross-examined — Since in the present case the Court itself had permitted the accused to lead rebuttal evidence, denial of cross-examination, held, did not vitiate the trial — Evidence Act, 1872, S. 137* (Para 28). *Shakila Abdul Gafar Khan* v. *Vasant Raghunath Dhoble*, (2003) 7 SCC 749: 2003 SCC (Cri) 1918: AIR 2003 SC 4567.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-9-2003]

[3180] — Ss. 311 and 225 — Prosecuting agency not acting in requisite manner — Special necessity for exercise of powers under S. 311 r/w S. 165 Evidence Act, 1872 and courts not playing into hands of such prosecuting agency in case of, stressed

The power under Section 311 CrPC is exercised and the evidence is examined neither to help the prosecution nor the defence. However, if the prosecutor is remiss in some ways, the court can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishful or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts should not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness. (Paras 43, 46 and 55). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595, relied on

[3181] — Ss. 311 and 391 — Only such witnesses to be called by the High Court who are necessary for a just decision of the case — *Rejection of oral request by accused for examination of two witnesses not bad where those witnesses had in their statements to the police supported the prosecution case and having turned hostile were unhelpful to the case — CrPC, 1898, Ss. 540 and 428. Abdul Latif* v. *State of U.P.*, (1978) 1 SCC 466: 1978 SCC (Cri) 123: AIR 1978 SC 472: 1978 Cri LJ 639: 1978 ALJ 362: 1978 MLJ (Cri) 472: (1978) 2 SCR 611.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 24-1-1978]

[3182] — Ss. 311 and 391 — Rule of best evidence — Cardinality of following of — *Role of court in ensuring that such evidence is brought on record — Evidence Act, 1872, Ss. 165, 3, 5, 60, 64 and 91. Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694: (2006) 2 Guj LR 1493.

Bench Strength 2. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

Zahira Habibullah Sheikh (1) v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999; Jamatraj Kewalji Govani v. State of Maharashtra, (1967) 3 SCR 415: AIR 1968 SC 178: 1968 Cri LJ 231, relied on

[3183] — Ss. 311 and 482 — Inherent powers of High Court — High Court's power to review or recall its earlier order — Permissibility — *Statement of complainant before trial court at variance with her statement recorded during investigation — Appellant filing application in terms of S. 311 for recording her statement afresh — Trial court by order dated 13-1-2006 rejected the said application — Respondent's application for setting aside said order allowed by High Court by order dated 20-2-2006 — High Court refusing to recall the said order — Appellants not heard before order dated 20-2-2006 was passed — Neither any notice was issued to them nor were they impleaded as parties — Held, though High Court has no power to recall or review its order, but in the instant factual scenario order dated 20-2-2006 set aside — Petition filed by respondent directed to be heard on merits after ensuring that the appellants were properly impleaded — Generally — Nature and Scope — Inherent powers of High Court* (Paras 10, 11, 4, 5 and 6). *Iddar* v. *Aabida*, (2007) 11 SCC 211: (2008) 1 SCC (Cri) 22: AIR 2007 SC 3029: (2007) 57 AIC 47 (SC): 2007 Cri LJ 4313.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 25-7-2007]

[3184] — Ss. 311 and 482 — Summoning of material witness — Tenability of application — *Application for recalling the rape victim for cross-examination at the stage of argument after recording of statement of accused under S. 313 and evidence of defence witnesses, on ground that parties have settled the dispute outside the court and also the informant could not identify who committed the offence due to darkness — Trial court dismissing the application — High Court also dismissed application in exercise of its jurisdiction under S. 482 on ground that S. 376 IPC being not compoundable in terms of S. 320 CrPC and the victim having been examined and cross-examined, prayer to recall the victim was not acceptable — Held, considering ambit of S. 311, no interference called for* (Para 10). *Rama Paswan* v. *State of Jharkhand*, (2007) 11 SCC 191: 2007 Cri LJ 2750: (2007) 53 AIC 4 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 13-4-2007]

Jamatraj Kewalji Govani v. State of Maharashtra, AIR 1968 SC 178: 1968 Cri LJ 231, relied on

[3185] — S. 311 — Conclusion of prosecution case — Trial court's power to examine more witnesses from the list furnished by prosecution — *Held, the trial court has such power* (Para 46). *Amarinder Singh* v. *Parkash Singh Badal*, (2009) 6 SCC 260.

Bench Strength 3. Coram: *K.G. Balakrishnan, C.J.* and **P. Sathasivam** and *J.M. Panchal*, JJ. [Date of decision: 14-5-2009]

[3186] — S. 313 — Accused not questioned with respect to offence for which convicted — Unsustainability of conviction — *Charge under S. 302 r/w S. 34 IPC, but conviction under Ss. 306 and 498-A IPC — Sustainability — Victim dying of burn injuries — At the stage of framing charge, trial court noting that several statements were given by deceased giving different versions, and as such it was required to be appreciated whether it was a case of murder or abetment of suicide — Trial court accordingly framing charge under S. 302 r/w S. 34, but convicting the appellant under S. 306 and S. 498-A — High Court by impugned judgment upholding the same — Following* Shamnsaheb M. Multtani, *(2001) 2 SCC 577, held, normally in such circumstances the matter would be remanded back so that accused could put forth his defence regarding the offence for which he was convicted — However, in the instant case no useful purpose would be served by remanding the matter since it was 20 years old and appellant had served part of the custodial sentence — Besides, no question was put to him in his examination under S. 313 CrPC relating to dowry demand or abetment of suicide — Hence, impugned judgment unsustainable — Ranbir Penal Code, 1989 Smvt., Ss. 306 & 498-A or S. 302 r/w S. 34* (Paras 6 to 8 and 10 to 16). *Bimla Devi* v. *State of J&K*, (2009) 6 SCC 629.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

Sangaraboina Sreenu v. State of A.P., (1997) 5 SCC 348: 1997 SCC (Cri) 690; Lokendra Singh v. State of M.P., 1999 SCC (Cri) 371; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, considered and followed

[3187] — S. 311 — Court witness — Police officer — *Found to be independent, disinterested and important witness — His testimony corroborated by another independent witness and found to be trustworthy and reliable — Held, his testimony cannot be underestimated merely because he is a police officer. State of Assam* v. *Muhim Barkataki*, (1986) 4 SCC 439: 1986 SCC (Cri) 503: AIR 1987 SC 98.

Bench Strength 2. Coram: *A.P. Sen* and **B.C. Ray**, JJ. [Date of decision: 20-10-1986]

[3188] — S. 311 — Non-production of jail records by authorities despite demand by accused — Effect — *Held, court cannot presume that the records had been destroyed in absence any evidence in that regard — Authorities should have at least produced the destruction register — Instead of blaming the defence for not examining the Jail Superintendent and closing the matter on the basis of such presumption court should have invoked jurisdiction under S. 311 CrPC in the interest of justice — Evidence Act, 1872, S. 114*

In this case it is not in dispute that the co-accused *M* has retracted from his confession. The value of the retracted confession was required to be considered on the accusation of the accused (*M*) that the confession was not voluntary. Although sufficient time (2 days) was given to the accused (*M*) to confirm his willingness to confess and finalise the contents of the confession. The reasons for which the confession had been retracted and the subsequent events wherein the appellants intended to prove a certain state of affairs, namely, although he was supposed to have been produced directly from the jail to the Magistrate concerned but in fact he was taken out of jail 2 1/2 hours before the time fixed therefor, could be a pointer to the fact as to whether the confession was a voluntary one. The lawyer appearing for the accused (*M*) had made a submission that an application had been filed praying for calling of some records from the Presidency Jail. No order had been passed thereupon. It is expected in a situation of this nature that the court will issue a suo motu direction to the authority to produce the records. There was absolutely no reason as to why the records would not be produced by the Presidency Jail Authorities for a period of two months. If the said records had not been produced, it was obligatory on the part of the court to issue a suo motu notice. The court was dealing with a serious matter. More than one life hinged on that valuable material. If a public authority does not produce a document despite being called upon to do so, an adverse inference is to be drawn. Converse is not the law. (Paras 120, 122, 118 and 121)

It may be true that an application for adducing evidence had been filed by the appellants in terms of Section 311 CrPC, but the said evidence, if adduced would have tilted the balance one way or the other so as to enable the court to come to the conclusion as to whether the purported judicial confession made by the accused (*M*) satisfies the tests laid down by the Supreme Court in a large number of decisions. There was no reason for the court to draw an adverse inference that the records had been destroyed. No such inference could be drawn in law either in terms of Section 114 of the Evidence Act or any other law. The period during which such documents are preserved under the provisions of the jail manual have not been referred to. No evidence had been brought on record to show that the documents had in fact been destroyed. The least the jail authorities could do was to produce the destruction register. (Para 123)

In the aforementioned backdrop, the court should give the benefit of doubt to the co-accused instead of the prosecution. The trial Judge should not have closed the case. He should have invoked his jurisdiction under Section 311 in the interest of justice and instead of blaming the defence for non-examination of the Superintendent of Presidency Jail, the court itself should have called upon authorities to produce the document. (Para 124). *Aloke Nath Dutta* v. *State of W.B.*, (2007) 12 SCC 230: (2008) 2 SCC (Cri) 264.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 12-12-2006]

[3189] — S. 311 — Recalling witness to confront him with an inconsistent statement given by him in another proceeding subsequently — Propriety — *Held, once the witness was examined-in-chief and cross-examined fully, such witness should not have been recalled and re-examined to deny the evidence he had already given before the court, even though that witness had given an inconsistent statement before any other court or forum subsequently — A witness could be confronted only with a previous statement made by him — Evidence Act, 1872, Ss. 138 and 145*

The conviction of the appellants under Section 302 r/w Section 149 and Section 148 IPC was based on the evidence of PWs 1 to 3. Some of the accused allegedly involved in the incident were minors and their case was tried by the Juvenile Court. PW 2 was also examined as a witness in the case before the Juvenile Court. In the Juvenile Court he gave evidence to the effect that he was not aware of the persons who had attacked him and on hearing the voice of the assailants he assumed that they were some Banjaras. Therefore on an application by the accused, PW 2 was recalled by the Sessions Judge and again examined and cross-examined.

Held :

The procedure adopted by the Sessions Judge was not strictly in accordance with law. Once the witness was examined-in-chief and cross-examined fully, such witness should not have been recalled and re-examined to deny the evidence he had already given before the court, even though that witness had given an inconsistent statement before any other court or forum subsequently. A witness could be confronted only with a previous statement made by him. At the time of examination of PW 2 on 6-2-1991 there was no such previous statement and the defence counsel did not confront him with any statement alleged to have been made previously. This witness must have given some other version before the Juvenile Court for extraneous reasons and he should not have been given a further opportunity at a later stage to completely efface the evidence already given by him under oath. (Para 6). *Mishrilal* v. *State of M.P.*, (2005) 10 SCC 701: 2005 SCC (Cri) 1712.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 11-5-2005]

[3190] — S. 311 — Accused must be afforded the opportunity to rebut the evidence taken under. *Rameshwar Dayal* v. *State of U.P.*, (1978) 2 SCC 518: 1978 SCC (Cri) 311: AIR 1978 SC 1558: 1978 ALJ 1011: (1978) 15 ACC 276.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 15-2-1978]

[3191] — S. 311 — Applicability — *PW 1 who was examined in court on 5-7-1994 purported to have filed an application on 1-5-1995 stating that five accused persons named therein were innocent — Said application rejected by trial court — Revision application filed thereagainst also rejected by High Court — Held, it was not a case where stricto sensu the provisions of S. 311 could have been invoked — Very fact that such an application was got filed by PW 1 nine months after his deposition is itself pointer to the fact that he had been won over — It is* *absurd to contend that he, after a period of four years and that too after his examination-in-chief and cross-examination was complete, would file an application on his own will and volition — Hence, such an application rightly dismissed* (Para 38). *Umar Mohammad* v. *State of Rajasthan*, (2007) 14 SCC 711: 2008 Cri LJ 816.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-12-2007]

[3192] — S. 311 — Applicability and scope — *Murder trial — Prosecution evidence ordered to be closed by Sessions Judge before examination of all the witnesses — After transfer of the case to another Sessions Judge, that order was recalled and APP was directed to produce the witnesses — High Court allowing revision petition filed by accused taking the view that a criminal court cannot recall its earlier order — State filing application under S. 311 before the Sessions Judge for examining the witnesses — Application rejected in view of High Court's order allowing the revision petition — Held, application under S. 311 wrongly rejected*

It was contended that there was no question of referring to Section 311 CrPC in view of the earlier order passed by the High Court setting aside the order passed by the succeeding Sessions Judge recalling the order by which the prosecution evidence was declared to have been closed.

Held :

This submission is without any substance. Section 311 empowers the court to summon material witnesses though not summoned as witnesses and to examine or recall and re-examine if their evidence appears to it to be essential to the just decision of the case. Section 311 reveals that it is of a very wide amplitude and if there is any negligence, laches or mistakes by not examining material witnesses, the court's function to render just decision by examining such witnesses at any stage is not, in any way, impaired. (Paras 10 and 11). *Shailendra Kumar* v. *State of Bihar*, (2002) 1 SCC 655: 2002 SCC (Cri) 230: AIR 2002 SC 270: 2002 Cri LJ 568: (2002) 1 CHN (Supp) 104.

Bench Strength **3**. Coram: **M.B. Shah**, *B.N. Agrawal* and *Arijit Pasayat*, JJ. [Date of decision: 28-11-2001]

Rajendra Prasad v. Narcotic Cell, (1999) 6 SCC 110: 1999 SCC (Cri) 1062, relied on

[3193] — S. 311 — Duty of court to obtain testimony on important questions of the case — CrPC, 1898 — Ss. 540 and 428. *Raghunandan* v. *State of U.P.*, (1974) 4 SCC 186: 1974 SCC (Cri) 355: AIR 1974 SC 463: (1974) 3 SCR 92: 1974 Cri LJ 453.

Bench Strength **2**. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 10-1-1974]

[3194] — S. 311 — Fact not challenged or shaken in cross-examination — Effect — Evidence of investigating officer about safe custody of the contraband article not challenged or shaken in cross-examination — Held, S. 55, Evidence Act, 1872 complied with — *Evidence Act, 1872, Ss. 3, 59 and 137 — Fact not challenged or shaken in cross-examination — Effect — Whether fact proved — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 55 — Constitution of India — Art. 136* (Para 15). *Saikou Jabbi* v. *State of Maharashtra*, (2004) 2 SCC 186: 2004 SCC (Cri) 481: (2003) 158 ELT 801.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 3-12-2003]

[3195] — S. 311 — Failure to cross-examine — Effect — Search and seizure — Procedure — *Intelligence Officer (PW 1) attached to Narcotics Bureau, on receipt of information while in airport that accused who was arriving by a flight, was likely to smuggle heroin in his baggage, reduced the same to writing and placed it before his immediate superior Assistant Director, which document, placed in evidence, signed by Assistant Director — Whereupon, on arrival of the plane, suitcase of the accused put on screening machine and thereafter searched — No cross-examination of Intelligence Officer conducted in this regard to point out any falsity therein — Held, S. 42(2), NDPS Act complied with — Evidence Act, 1872, Ss. 3, 59 and 137 — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 42(2)* (Para 14). *Saikou Jabbi* v. *State of Maharashtra*, (2004) 2 SCC 186: 2004 SCC (Cri) 481: (2003) 158 ELT 801.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 3-12-2003]

[3196] — S. 311 — Filing of application under — *While immunity from prosecution was granted to an accused by Narcotics Control Bureau under S. 64 of NDPS Act, application under S. 311 filed by prosecution before Sessions Judge for leave to examine that accused as a witness in the pending case — Rejection of the application by Sessions Judge under S. 311, which resulted in withdrawal of the immunity granted under S. 64, NDPS Act, held, was not justified as Sessions Judge cannot sit in appeal over decision of Narcotics Control Bureau under S. 64 — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 64*

The order under Section 64 NDPS Act was fully operative when the applications under Section 311 CrPC to examine Respondent 1 were filed by the prosecution before the Sessions Judge. The refusal of the applications under Section 311 by the Sessions Judge in fact would result in the withdrawal of the immunity granted to Respondent 1 under Section 64 since the immunity had been granted to Respondent 1 subject to the condition that evidence would be tendered by him in the pending cases. The Sessions Judge could not sit in appeal over the decision of NCB, more so when no one had challenged the order under Section 64 before him. (Para 36). *Jasbir Singh* v. *Vipin Kumar Jaggi*, (2001) 8 SCC 289: 2001 SCC (Cri) 1525: AIR 2001 SC 2734: (2001) 132 ELT 529: (2001) 3 KLT 346.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **Ruma Pal**, JJ. [Date of decision: 16-8-2001]

[3197] — S. 311-A — Applicability — Ingredients of Cl. (3) — Specimen signatures/handwriting or thumb impressions of accused — Obtaining of from, while in police custody (without permission of court) — Permissibility — *Held, does not infringe Art. 20(3) — Moreover, on facts of case S. 27, POTA had not been applicable to the investigation — Constitution of India — Art. 20(3) — Prevention of Terrorism Act, 2002, S. 27*

On the relevant date, when the specimen signatures of Afzal were obtained, the investigation was not done under the POTA provisions and *dehors* the provisions of POTA, hence there was no legal bar against obtaining the handwriting samples of the accused, as provided for in Section 27 of POTA. There is considerable force in the submission that Article 20(3) of the Constitution was not infringed by taking the specimen handwriting or signature or thumb impressions of a person in custody. (Para 222). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

State of Bombay v. Kathi Kalu Oghad, (1962) 3 SCR 10: (1961) 2 Cri LJ 856; State of U.P. v. Boota Singh, (1979) 1 SCC 31: 1979 SCC (Cri) 115, followed

[3198] — S. 312 — Problems faced by witnesses stated and suggestions made for improving their position in terms of unwarranted adjournments, amenities and diet money — *Practice and Procedure — Adjournment — Malady of — Remedies suggested against (Per Wadhwa, J.)*

A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence. Here are the witnesses who are a harassed lot. A witness in a criminal trial may come from a far-off place to find the case adjourned. He has to come to the court many times and at what cost to his own self and his family is not difficult to fathom. It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only is a witness threatened, he is abducted, he is maimed, he is done away with, or even bribed. There is no protection for him. Proper diet money must be paid immediately to the witness (not only when he is examined but for every adjourned hearing) and even sent to him and he should not be left to be harassed by the subordinate staff. (Para 36). *Swaran Singh* v. *State of Punjab*, (2000) 5 SCC 668: 2001 SCC (Cri) 190: AIR 2000 SC 2017: 2000 Cri LJ 2780.

Bench Strength **2**. Coram: **D.P. Wadhwa**[2] and **Ruma Pal**[1], JJ. [Date of decision: 26-4-2000]

— **S. 313** *See also* S. 342, Criminal Procedure Code, 1898, pp. 1147 et seq. in Vol. 2

— S. 313 *See* Ss. 162, 163 and 313

See also Ss. 164 and 313

See also Ss. 202(2) proviso, 200, 203, 204, 208, 209, 313, 208, 226 to 228, 460, 461 and 465

See also Ss. 205 and 313

See also Ss. 211 to 213, 215 and 313

See also Ss. 222(2) & 464 and 313

See also Ss. 231, 311 and 313

See also Ss. 233 and 313

See also Ss. 242, 309 and 313

See also Ss. 315(1) proviso (b) and 313

See also Ss. 397 & 401, 386 and 313

See also Ss. 406 and 313

[3199] — S. 313 — Scope and object, restated — Admissibility of statement made under, in evidence — Extent and factors — *Held, scope of S. 313 is wide and it is not a mere formality — Answers given thereunder by accused are relevant for finding truth and examining veracity of prosecution case but are not strictly evidence and can be used within permissible limits envisaged by CrPC — Courts may rely on portion of statement of accused and find him guilty on consideration of other evidence against him led by prosecution, however, such statements should not be considered in isolation but in conjunction with evidence adduced by prosecution — Accused cannot be convicted merely on basis of S. 313 statement as it is not substantive evidence — Object of S. 313 is to put all incriminating evidence to accused so as to provide him opportunity to explain the same and also to permit* *him to put forward his own version — Option lies with accused to maintain silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons for his alleged involvement in commission of crime — However, if statements made are false, court is entitled to draw adverse inferences and pass consequential orders — On facts held, accused failed to offer any explanation as regards alleged circumstances and bare denial or lack of knowledge cannot tilt verdict in their favour — Rather, their answers supported prosecution version or reflected element of falsehood — Hence, court entitled to draw adverse inference against them — Evidence Act, 1872, S. 114 Ill. (g)* (Paras 19 to 25 and 29). *Sanatan Naskar* v. *State of W.B.*, (2010) 8 SCC 249.

Bench Strength **2**. Coram: *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision : 8-7-2010]

Vijendrajit Ayodhya Prasad Goel v. State of Bombay, AIR 1953 SC 247: 1953 Cri LJ 1097, relied on

[3200] — S. 313 — Object of — *Held, is to afford an opportunity to the accused to explain the circumstances appearing in the evidence against him* (Para 6). *Avtar Singh* v. *State of Punjab*, (2002) 7 SCC 419: 2002 SCC (Cri) 1769: AIR 2002 SC 3343.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **P. Venkatarama Reddi**, JJ. [Date of decision: 18-9-2002]

[3201] — S. 313 — Object of — Duty of court to afford the accused an opportunity of explaining the incriminating circumstances appearing against him — *Omission to question the accused on any incriminating circumstance appearing against him would not ipso facto vitiate the trial — Accused must show that such non-examination has actually and materially prejudiced him and has resulted in failure of justice — Omission to put question on point of motive — Objection regarding, raised for the first time before the Supreme Court — No prejudice shown to have been caused to the accused — Accused not totally unaware of substance of accusation against them — Held, in facts and circumstances, it cannot be said that any prejudice was caused to the accused*

It was contended that in view of the fact that no question relating to motive had been put to the appellants under Section 313 of the Code, no motive for the commission of the crime can be attributed to the appellants nor the same can be reckoned as circumstance against the appellants.

Held :

It is no doubt true that the underlying object behind Section 313 CrPC is to enable the accused to explain any circumstance appearing against him in the evidence and this object is based on the maxim *audi alteram partem* which is one of the principles of natural justice. It has always been regarded unfair to rely upon any incriminating circumstance without affording the accused an opportunity of explaining the said incriminating circumstance. The provisions in Section 313, therefore, make it obligatory on the court to question the accused on the evidence and circumstance appearing against him so as to apprise him of the exact case which he is required to meet. But it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance but he must also show that such non-examination has actually and materially prejudiced him and has resulted in failure of justice. In other words in the event of any inadvertent omission on the part of the court to question the accused on any incriminating circumstance appearing against him the same cannot ipso facto vitiate the trial unless it is shown that some prejudice was caused to him. In the present case no such objection was advanced either before the trial court or the High Court. Secondly, no material was placed before the court to show as to what and in what manner the prejudice, if any, was caused to the accused persons or any of them. Apart from that it cannot be said that the accused was totally unaware of the substance of the accusation and charge against him or that he was not examined on the question of motive at all. In the facts and circumstances of the case it cannot be said that any prejudice was caused to the appellant. (Paras 26 and 27). *Suresh Chandra Bahri* v. *State of Bihar*, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60: AIR 1994 SC 2420: 1994 Cri LJ 3271.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 13-7-1994]

[3202] — S. 313 — Examination of accused under — Object and extent of compliance necessary — *Every circumstance appearing against accused must be put to him specifically and separately — Failure to do so would vitiate the trial if accused is shown to be prejudiced thereby or it resulted in miscarriage of justice — Circumstances put to accused in examination under S. 313 were different from those relied on by trial court for finding accused guilty for offence under S. 302 IPC — Held, trial vitiated, and acquittal directed — Penal Code, 1860 — Ss. 302 & 304 Pt. II*

The accused-appellant was charged under Section 302 IPC for commission of murder of a person. It was alleged that the deceased had succumbed to the head injuries caused by the accused to him with a piece of wood. The prosecution case was based on circumstantial evidence. The accused was examined under Section 313 CrPC. The accused in his examination was asked to state his version in respect of the evidence relating to the circumstances regarding — severe injuries caused by him to the deceased by assaulting him on the head from behind with a piece of timber in the morning as a result of which the deceased died in the evening in hospital; production of a piece of timber by him which was seized by police officer during investigation; and allegation of committing murder of the deceased levelled against him. The accused was also asked to adduce evidence in defence if he had any and summon witnesses. The accused denied his involvement in the offence. The trial court found the following seven circumstances to be clinching in nature which proved and established the guilt of the accused: (*i*) that the accused person had a quarrel with the deceased regarding sale of land and house; (*ii*) that the accused had threatened the deceased with assault; (*iii*) that just prior to the incident the accused was seen standing outside the house of the deceased with a lathi in hand; (*iv*) that the accused was seen chasing the deceased with a lathi in hand; (*v*) that soon thereafter the deceased was found lying on the road with injuries on head; (*vi*) that soon after the crime the accused absconded; and (*vii*) that the accused led the police and produced the weapon of assault. The trial court, therefore, convicted the accused under Section 302 IPC. In appeal, the High Court found that the circumstances relied upon by the prosecution were not specifically brought to the notice of the accused; and that the evidence against the accused consisted of circumstantial evidence only and the circumstances should have been brought to his notice and his explanation called for. It was noted that the trial court faltered in its duty in the examination. But the High Court felt that no material prejudice was caused to the accused and the accused was found to be absconding for a long time and a rancorous relationship between the deceased and the accused was established. However, the High Court found that the proper conviction would be under Section 304 Part II IPC.

Allowing the appeal,

Held :

The object of Section 313 CrPC is to establish a direct dialogue between the court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Section 313 casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Non-indication of inculpatory material in its relevant facts by the trial court to the accused adds to the vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise. In certain cases when there is perfunctory examination under Section 313, the matter is remanded to the trial court, with a direction to retry from the stage at which the prosecution was closed. (Paras 21, 22 and 24)

In the present case, no witness has stated that on the date of occurrence the accused had caused severe injury to the deceased by assaulting him on the head from behind. The circumstances which were relied upon by the trial court to find the accused guilty were not specifically brought to the notice of the accused. Therefore, in essence, his examination under Section 313 CrPC was rendered an empty formality. On that count alone, the impugned judgment of the High Court cannot be sustained and is set aside. The conviction recorded stands set aside. (Para 26). *Asraf Ali* v. *State of Assam*, (2008) 16 SCC 328: (2008) 68 AIC 111 (SC): 2008 Cri LJ 4338.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 17-7-2008]

Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87; Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487, relied on

[3203] — S. 313 — Applicability — Incriminating circumstance not put to accused under S. 313 — Same not challenged in cross-examination either — Effect — *Statement of PW about his having last seen accused and deceased together not specifically put to accused when he was examined under S. 313 — But the statement of the PW had not been challenged in his cross-examination and he cannot be said to have introduced this fact for the first time at trial — In the examination under S. 313 trend of the accused was to make only bald denial of all the incriminating circumstances against him — Held, by omission to put the statement of the PW and to mention the name of the PW to accused, no* *prejudice was caused to him — Hence submission that no reliance can be placed on the evidence of the PW cannot be accepted* (Para 25). *State of Rajasthan* v. *Kashi Ram*, (2006) 12 SCC 254: (2007) 1 SCC (Cri) 688: AIR 2007 SC 144.

Bench Strength 2. Coram: **B.P. Singh** and *Tarun Chatterjee*, JJ. [Date of decision: 7-11-2006]

[3204] — S. 313 — Circumstances in respect of which accused not examined under, cannot be used against him — *CrPC, 1898, S. 342*

Per Fazal Ali, J.

It is vital that any circumstance adverse to the accused must be put to him under S. 313 CrPC, 1973; otherwise it must be completely excluded from consideration because the appellant did not have any chance to explain them.

As many as 10 out of the 17 circumstances held against the accused were not put to him under S. 313 CrPC, 1973 and must therefore be excluded from consideration.

Per Varadarajan, J.

Since the circumstances not put to the appellant in his examination under S. 313 CrPC have to be completely excluded from consideration and since no question has been put to the appellant in this regard in the course of his examination under S. 313 CrPC, even if there is any evidence about any ill-treatment of the deceased by the appellant or his parents it has to be completely excluded from consideration. *Sharad Birdhichand Sarda* v. *State of Maharashtra*, (1984) 4 SCC 116: 1984 SCC (Cri) 487: AIR 1984 SC 1622: 1984 Cri LJ 1738.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**[1], **A. Varadarajan**[2] and **Sabyasachi Mukharji**[3], JJ. [Date of decision: 19-7-1984]

Hate Singh Bhagat Singh v. State of M.P., AIR 1953 SC 468: 1953 Cri LJ 1933; Shamu Balu Chaugule v. State of Maharashtra, (1976) 1 SCC 438: 1976 SCC (Cri) 56 and Harijan Megha Jesha v. State of Gujarat, 1979 SCC (Cri) 652, relied on

[3205] — S. 313 — Circumstances in respect of which accused not examined under, cannot be used against him — *Accused not asked about his having entered into conspiracy with anybody — Nor was he asked that the rates at which poles were carried by him were unreasonable or high — Held, these circumstances being crux of the prosecution case non-providing of opportunity to the accused to explain the same rendered his conviction unsustainable. Ghulam Din Buch* v. *State of J&K*, (1996) 9 SCC 239: AIR 1996 SC 1568.

Bench Strength 2. Coram: *G.N. Ray* and **B.L. Hansaria**, JJ. [Date of decision: 3-4-1996]

Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, followed

[3206] — S. 313 — Circumstances not put to the accused in his examination under — Must be excluded from consideration — *Considering the ghastly nature of the crime matter liable to be remitted to the trial court to further and properly examine the accused and then proceed with the trial — However, in view of long lapse of time (more than 15 years) and appellant having already served more than 4 years of imprisonment resort to such a course not justified — Hence conviction and sentence recorded against the appellants set aside* (Para 5). *Rautu Bodra* v. *State of Bihar*, 1999 SCC (Cri) 1319.

Bench Strength 2. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 4-4-1996]

Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, followed

[3207] — S. 313 — Circumstances not put to the accused in his statement recorded under, cannot be used against him. *Bhalinder Singh* v. *State of Punjab*, (1994) 1 SCC 726: 1994 SCC (Cri) 462: (1994) 1 An LT (Cri) 2.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 16-12-1993]

[3208] — S. 313 — Circumstantial evidence — Failure of accused to offer satisfactory explanation for possession of the stolen property — Effect — *Held, though not an incriminating circumstance by itself, would yet enable an inference being raised against him because the fact being in the exclusive knowledge of the accused it is for him to offer an explanation — Evidence Act, 1872, Ss. 114 Ill. (a), 106 and 3 — Penal Code, 1860, Ss. 411 and 404* (Para 15). *Ganesh Lal* v. *State of Rajasthan*, (2002) 1 SCC 731: 2002 SCC (Cri) 247: 2002 Cri LJ 967.

Bench Strength 2. Coram: **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 31-10-2001]

Earabhadrappa v. State of Karnataka, (1983) 2 SCC 330: 1983 SCC (Cri) 447; Gulab Chand v. State of M.P., (1995) 3 SCC 574: 1995 SCC (Cri) 552, relied on

[3209] — S. 313 — Dowry death — Death must occur otherwise than under normal circumstances — This essential ingredient must be fully established on evidence — *In this context framing of charge and the circumstances that are put to accused under S. 313 CrPC assume importance — Death due to asphyxia — Poisoning not even mentioned in examination under S. 313 CrPC — Merely because deceased was young and death was not accidental, it cannot be surmised that death occurred otherwise than under normal circumstances — Penal Code, 1860, S. 304-B. Akula Ravinder* v. *State of A.P.*, 1991 Supp (2) SCC 99: 1991 SCC (Cri) 990: AIR 1991 SC 1142.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision: 11-1-1991]

[3210] — S. 313 — Effect of non-compliance with — *Held, circumstances which according to the prosecution lead to proof of the guilt against the accused must be put to him in his examination under S. 313 — In the instant case, this having not been done, appellant acquitted* (Para 23). *Vikramjit Singh* v. *State of Punjab*, (2006) 12 SCC 306: (2007) 1 SCC (Cri) 732: 2007 Cri LJ 1000: (2007) 49 AIC 89 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

Tara Singh v. State, 1951 SCR 729: AIR 1951 SC 441: 1951 Cri LJ 1491, relied on

***Distinguished in** Harendra Nath Chakraborty v. State of W.B., (2009) 2 SCC 758*

[3211] — S. 313 — Entire gist of the confessional statement made by the accused put to him and that it was supported by the deposition of the SP — *Held, on such facts the plea of prejudice having been caused to the accused was factually incorrect* (Paras 11 and 12). *Wariyam Singh* v. *State of U.P.*, (1995) 6 SCC 458: 1995 SCC (Cri) 1124: AIR 1996 SC 305.

Bench Strength **2**. Coram: *G.N. Ray* and *G.T. Nanavati*, JJ. [Date of decision: 19-9-1995]

[3212] — S. 313 — Examination of accused — Circumstance which was not put to accused under S. 313 CrPC, relied on in appeal while reversing the acquittal — Effect — *Held, it caused prejudice to the accused — Penal Code, 1860, Ss. 302 and 201* (Paras 28 and 29). *Narendra Singh* v. *State of M.P.*, (2004) 10 SCC 699: 2004 SCC (Cri) 1893: AIR 2004 SC 3249.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **S.B. Sinha**, JJ. [Date of decision: 12-4-2004]

[3213] — S. 313 — Examination of accused — Circumstances not appearing in evidence cannot be put to the accused — *Letters written by the accused to the court from jail during pre-trial period — Letters not adduced as evidence through any procedure known to law — Court not justified in putting those letters to the accused during his examination*

Section 313 of the Code is intended to afford opportunity to an accused "to explain any circumstance appearing in the evidence against him". It is trite that an accused cannot be confronted during such questioning with any circumstance which is not in evidence. Section 313 of the Code is not intended to be used as an interrogation. No trial court can pick out any paper or document from outside the evidence and abruptly slap it on the accused and corner him for giving an answer favourable or unfavourable. *Kalpnath Rai* v. *State*, (1997) 8 SCC 732: AIR 1998 SC 201.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 6-11-1997]

[3214] — S. 313 — Examination of accused — Opportunity to accused to explain, held, is part of fair trial — *Questions pertaining to various items of evidence against accused produced by prosecution should be put to accused and he should be given an opportunity to explain the same — Practice of putting to the accused a single question covering the entire evidence against him and giving him opportunity to explain the same deprecated — It results in imperfect appreciation of evidence — However, accused having not raised any contention before High Court regarding prejudice caused to him because of defective manner of his examination under S. 313, Supreme Court would not accept such contention especially when accused failed to show any prejudice*

In this case only three questions were put to the accused-appellant while examining the accused under Section 313 CrPC. The first question was whether he heard the statement of the witnesses and the second question was that the evidence given by the witnesses showed that he committed the murder of the deceased and whether he had to say anything in defence. It was submitted that the Sessions Court committed serious error in not properly examining the accused under Section 313 CrPC.

Held :

The questioning of the accused under Section 313 CrPC was done in the most unsatisfactory manner. Under Section 313 CrPC the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. The practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, is deprecated as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence. (Para 5)

However, in the present case, the appellant had not raised any contention in the High Court that he was seriously prejudiced by the way in which the Section 313 questioning was done. If this defect in procedure under Section 313 CrPC had been pointed out, the High Court could have very well remitted the case to the Sessions Court for a proper examination. At this stage, this contention of the appellant need not be accepted especially when the accused was not able to show that he was in any way prejudiced by such irregular procedure. (Para 6). *Naval Kishore Singh* v. *State of Bihar*, (2004) 7 SCC 502: 2004 SCC (Cri) 1967.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 4-8-2004]

Rama Shankar Singh v. State of W.B., AIR 1962 SC 1239: (1962) 2 Cri LJ 296; Bhalinder Singh v. State of Punjab, (1994) 1 SCC 726: 1994 SCC (Cri) 462; State of Maharashtra v. Sukhdev Singh, (1992) 3 SCC 700: 1992 SCC (Cri) 705; Lallu Manjhi v. State of Jharkhand, (2003) 2 SCC 401: 2003 SCC (Cri) 544, relied on

[3215] — S. 313 — Examination of accused — Purpose of — Reliance on S. 313 statement — Extent — Proper mode of conducting examination under S. 313 — Admissibility of confession or admission made under S. 313 — *Held, S. 313 is to provide opportunity to accused to explain circumstances appearing against him and for court to have an opportunity to examine accused and to elicit an explanation from him, which may be free from fear of being trapped by an embarrassing admission or statement — Such statement can be used by court to the extent that it is in line with case of prosecution but same cannot be the sole basis for convicting an accused — Court while recording statement has to invite attention of accused to circumstances and substantial evidence in relation to offence, for which he has been charged and invite his explanation i.e. it provides an opportunity to accused to state before court as to what is the truth and what is his defence, in accordance with law — It is for accused to avail of that opportunity and if he fails to do so then it is for court to examine case of prosecution on its evidence with reference to statement made by accused under S. 313 — Furthermore, admission or confession of accused under S. 313 recorded in course of trial can be acted upon and court can rely on these confessions to convict him — In present case, statement of accused before court, to some extent, fell in line with case of prosecution and to that extent, case of prosecution can be substantiated and treated as correct by court* (Paras 28 to 32). *Dharnidhar* v. *State of U.P.*, (2010) 7 SCC 759.

Bench Strength 2. Coram : *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision : 8-7-2010]

Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 SC 468: 1953 Cri LJ 1933; Narain Singh v. State of Punjab, (1964) 1 Cri LJ 730: (1963) 3 SCR 678; State of Maharashtra v. Sukhdev Singh, (1992) 3 SCC 700: 1992 SCC (Cri) 705, relied on

[3216] — S. 313 — Examination of accused — Proper mode for — *Does not require framing of common questions and asking the same to all the accused persons*

In this case one questionnaire common to all was prepared. 90% of the questions in the said questionnaire were to be put to *S*. But strangely the same questions had been put to all the respondents. Except one question viz. "What you want to say in your defence?", not only similar questions had been put, similar answers had been recorded. Even questions required to be put to each of the accused persons separately have been made part of the same questionnaire. Such common questions framed and asked to all the accused persons did not subserve the requirements of Section 313 CrPC. (Para 21). *State of M.P.* v. *Mukesh*, (2006) 13 SCC 197: (2007) 2 SCC (Cri) 680: (2006) 48 AIC 766 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

[3217] — S. 313 — Examination of accused — Trial court's failure to examine the accused to enable him personally to explain any circumstances appearing against him — *Effect can be fatal to the prosecution case*

Incidentally, the manner in which the trial court has recorded the statements of the accused persons under Section 313 CrPC is far from satisfactory. The entire prosecution case running into very many details has been summed up into just 5 questions asked of each of the accused persons. It is obligatory on the part of the trial court to examine the accused for the purpose of enabling the accused personally to explain any circumstances appearing in evidence against him. If such opportunity is not afforded, the incriminating pieces of evidence available in the prosecution evidence cannot be relied on for the purpose of recording the conviction of the accused persons.(Para 14). *Lallu Manjhi* v. *State of Jharkhand*, (2003) 2 SCC 401: 2003 SCC (Cri) 544: AIR 2003 SC 854: 2003 Cri LJ 914.

Bench Strength 2. Coram: **R.C. Lahoti** and *Brijesh Kumar*, JJ. [Date of decision: 7-1-2003]

[3218] — S. 313 — Examination of accused — Version given by him for the first time during examination — Whether acceptable — *Respondent, for the first time taking stand under S. 313 that bribe money was forced into his hands — Such* *stand, held, not acceptable in the face of other evidence against him* (Para 8). *State of A.P.* v. *P. Satyanarayana Murthy*, (2008) 9 SCC 674: (2008) 3 SCC (Cri) 855.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 3-10-2008]

[3219] — S. 313 — Examination of accused under — *Trial court need not consult or hear counsels of parties — However, prosecution can invite attention of court if any incriminating circumstance left out and not put to accused — Accused can be further examined with reference to additional circumstance appearing against him on account of re-examination of any prosecution witness — Order for re-examination of accused after expunging entire examination already on record, held, improper. Mir Mohd. Omar* v. *State of W.B.*, (1989) 4 SCC 436: 1989 SCC (Cri) 750: AIR 1989 SC 1785: 1989 Cri LJ 2070: (1989) 2 Crimes 698.

Bench Strength **2**. Coram: **K. Jagannatha Shetty** and *A.M. Ahmadi*, JJ. [Date of decision: 8-8-1989]

[3220] — S. 313 — Examination of accused — Necessity of putting all incriminating circumstances to accused — *On facts held, since oral dying declaration by deceased **P** to PWs 2 and 3 was not put to accused in his examination under S. 313, an important circumstance was lost — Thus, said oral dying declaration cannot be taken into consideration — Trial courts cautioned to be extremely careful in putting all incriminating circumstances to accused — Trial Judge cannot be a mere spectator but should control criminal trial by actively participating therein* (Paras 35 and 43). *Sunder Singh* v. *State of Uttaranchal*, (2010) 10 SCC 611.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *A.K. Patnaik*, JJ. [Date of decision: 16-9-2010]

[3221] — S. 313 — Examination of accused under is not a mere formality — Utility of answers given by the accused put to him

Examination of the accused under Section 313 of the Code is not a mere formality. Answers given by the accused to the questions put to him during such examination have a practical utility for criminal courts. Apart from affording an opportunity to the delinquent to explain incriminating circumstances against him, they would help the court in appreciating the entire evidence adduced in the court during trial. *Rattan Singh* v. *State of H.P.*, (1997) 4 SCC 161: 1997 SCC (Cri) 525: AIR 1997 SC 768: 1997 Cri LJ 833.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 11-12-1996]

[3222] — S. 313 — Examination under — Importance and purpose of — *Held, not an empty formality — Purpose is to bring to the notice of accused materials brought on record by prosecution to substantiate its accusations — An opportunity is granted to accused to explain incriminating circumstances against him — On facts, accusations put to accused in examination under S. 313, but no plea taken by him that the offending vehicle did not belong to him or that he was not driving it — Held, mere fact that IO did not enquire as to whether the accused had a driving licence or not was too insignificant to corrode the credibility of ocular testimony* (Para 8). *Damodar* v. *State of Rajasthan*, (2004) 12 SCC 336: AIR 2003 SC 4414: 2003 Cri LJ 5014.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-9-2003]

[3223] — S. 313 — Explanation of accused in statement under — When inconsistent with the conduct and appears to be palpably false, it cannot be accepted (Para 7). *Surendra Chauhan* v. *State of M.P.*, (2000) 4 SCC 110: 2000 SCC (Cri) 772: AIR 2000 SC 1436: 2000 Cri LJ 1789.

Bench Strength **2**. Coram: **D.P. Wadhwa** and *Ruma Pal*, JJ. [Date of decision: 27-3-2000]

Ramaswami Ayyangar v. State of T.N., (1976) 3 SCC 779: 1976 SCC (Cri) 518; Rajesh Govind Jagesha v. State of Maharashtra, (1999) 8 SCC 428: 1999 SCC (Cri) 1452; Dinabandhu Sahu v. Jadumoni Mangaraj, AIR 1954 SC 411: (1955) 1 SCR 140, relied on

[3224] — S. 313 — Adverse inferences — *Accused **M**: (i) taking false pleas and giving either evasive or incorrect answers in reply to some questions put to him under S. 313 CrPC; (ii) failing to explain whereabouts of his licensed .22" bore P. Berretta pistol which could not be traced despite extensive efforts; (iii) conduct of **M** in not taking any steps despite opportunity in reporting alleged taking away of Tata Safari on 30-4-1999 and his licensed pistol on 1-5-1999; (iv) PW 2 who was maker of FIR and complainant accompanied by lawyer of accused **M**: PW 2 not fully supporting prosecution case though admitting having made statement to police and signing same; thus, adverse inference for influencing witness; (v) as per disclosure made by **M**, pistol was given to **RS** who left the country on 4-5-1999, while **M** surrendered on 6-5-1999 after **RS** had left country — Held, adverse inference needs to be drawn for such incriminating circumstances — Evidence Act, 1872, S. 114 Ill. (g)* (Paras 150 and 273 to 279). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

Sucha Singh v. State of Punjab, (2001) 4 SCC 375: 2001 SCC (Cri) 717, relied on

[3225] — S. 313 — Appellant under S. 313 CrPC merely denying incriminating circumstances proved in his examination — Effect — *Hence held, was an additional link in chain of circumstances to sustain charges under Ss. 302, 376 and 201 IPC against him — Penal Code, 1860 — Ss. 302, 376 and 201* (Paras 58 and 59). *Aftab Ahmad Anasari* v. *State of Uttaranchal*, (2010) 2 SCC 583.

Bench Strength 2. Coram: **J.M. Panchal** and *T.S. Thakur*, JJ. [Date of decision: 12-1-2010]

Vasa Chandrasekhar Rao v. Ponna Satyanarayana, (2000) 6 SCC 286: 2000 SCC (Cri) 1104; Geetha v. State of Karnataka, (2000) 10 SCC 72: 2000 SCC (Cri) 1208, followed

[3226] — S. 313 — New explanation of receipt of illegal gratification, held, not permissible — Conviction confirmed — *Appellant, an employee of Commercial Taxes Department, convicted for accepting illegal gratification to help out complainant/proprietor of hotel in reducing amount of tax claimed from him by Commercial Taxes Department — Contended that the amount was received towards part-payment of tax imposed — No such contention regarding acceptance of amount made before lower courts nor in statement under S. 313 CrPC — Held, accused is given an opportunity to explain the circumstances appearing in evidence against him after prosecution witnesses are examined — Submission for first time making out a different case has no substance and is not permissible — High Court justified in confirming conviction of appellant — Prevention of Corruption Act, 1988, Ss. 7 and 13(1)(d) r/w S. 13(2). Balasubramanian* v. *State*, (2010) 9 SCC 20: (2010) 3 SCC (Cri) 1125.

Bench Strength 2. Coram: *Dr. M.K. Sharma* and **Anil R. Dave**, JJ. [Date of decision: 6-9-2010]

[3227] — S. 313 — Underwear of appellant stained with blood and semen worn by him for four days after incident and then seized — Plausibility — *Held, would not make any dent in prosecution case on ground that a person would not wear such underwear for 3-4 days — Stains were not visible and even IO had stated said fact — If bloodstains are found on visible part of clothes worn, normally such person would not move around with those clothes on, but it is difficult to notice bloodstained underwear worn by any person — Further, sense of cleanliness of a rustic villager cannot be ignored — Moreover, appellant had not denied said fact in course of his examination under S. 313 CrPC — High Court erred in ignoring this incriminating circumstance* (Paras 45 to 47). *Aftab Ahmad Anasari* v. *State of Uttaranchal*, (2010) 2 SCC 583.

Bench Strength 2. Coram: **J.M. Panchal** and *T.S. Thakur*, JJ. [Date of decision: 12-1-2010]

State of U.P. v. M.K. Anthony, (1985) 1 SCC 505: 1985 SCC (Cri) 105, followed

[3228] — S. 313 — Evidence regarding age — Need of satisfactory/adequate/prima facie material, stressed — *Evidence regarding age in confession under S. 313 CrPC and school leaving certificate (without the primary evidence of birth certificate), held, are not satisfactory and adequate to arouse judicial conscience regarding juvenility that too when the school leaving certificate was procured after conviction — Juvenile Justice (Care and Protection of Children) Act, 2000, S. 7-A* (Paras 42 and 41). *Pawan* v. *State of Uttaranchal*, (2009) 15 SCC 259: (2009) 2 ECrN 789 (SC): (2009) 3 All LJ 637: 2009 Cri LJ 2257.

Bench Strength 3. Coram: *S.B. Sinha*, *A.K. Ganguly* and **R.M. Lodha**, JJ. [Date of decision: 26-2-2009]

[3229] — S. 313 — Facts within the special knowledge of accused — Non-explanation of, by accused — If facts within the special knowledge of the accused are not satisfactorily explained, held, it is a factor against the accused — *Said factor, though by itself not conclusive of his guilt, held, is relevant while considering the totality of the circumstances — Evidence Act, 1872, Ss. 106 & 101 and 114 Ill. (h). State of Punjab* v. *Karnail Singh*, (2003) 11 SCC 271: 2004 SCC (Cri) 135: AIR 2003 SC 3609.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 14-8-2003]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033: (1974) 1 SCR 489; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991, relied on

[3230] — S. 313 — Failure of accused, in a case based on circumstantial evidence which included last seen together evidence, to explain under S. 313 CrPC that in what circumstances victims suffered death — *Involvement of accused in crime — Inference of — When could not be drawn — Evidence of last seen together could not be taken into account due to long time gap between the accused persons seen in the company of the deceased and the detection of the crime — Even other circumstances not favouring prosecution case — On such facts, held, the said non-explanation under S. 313 CrPC could not be taken to be a circumstance pointing towards irresistible conclusion that the accused were involved in commission of crime* (Paras 38 and 37). *State of Goa* v. *Sanjay Thakran*, (2007) 3 SCC 755: (2007) 2 SCC (Cri) 162: (2007) 2 Guj LH 122: (2007) 54 AIC 240 (SC).

Bench Strength 2. Coram: *B.N. Agrawal* and **P.P. Naolekar**, JJ. [Date of decision: 2-3-2007]

Birbal v. State of M.P., (2000) 10 SCC 212: 2000 SCC (Cri) 1227; Raju v. State of Haryana, (2001) 9 SCC 50: 2002 SCC (Cri) 408; Babu v. Babu, (2003) 7 SCC 37: 2003 SCC (Cri) 1569; Amit v. State of Maharashtra, (2003) 8 SCC 93: 2003 SCC (Cri) 1959, distinguished on facts

[3231] — S. 313 — Failure of accused to explain any inculpating circumstance — *Where the accused failed to explain the circumstances established by the prosecution against him, held, it would form an additional link in the chain of circumstances — Penal Code, 1860 — S. 302*

The appellant has given three different versions on three different occasions. The statement of the appellant made under Section 313 CrPC being palpably false and there being cogent evidence adduced by the prosecution to show that the appellant had given two other versions as to the incident of 12-2-1988, the Court will have to proceed on the basis that the appellant has not explained the inculpating circumstances established by the prosecution against him which would form an additional link in the chain of circumstances. (Para 6). *Mani Kumar Thapa* v. *State of Sikkim*, (2002) 7 SCC 157: 2002 SCC (Cri) 1637: AIR 2002 SC 2920.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *Bisheshwar Prasad Singh*, JJ. [Date of decision: 19-8-2002]

State of Maharashtra v. Suresh, (2000) 1 SCC 471: 2000 SCC (Cri) 263, followed

[3232] — S. 313 — Failure to afford opportunity to explain incriminating circumstances appearing in prosecution evidence against the accused persons resulting in serious prejudice to them — *Held, their acquittal for the offence under S. 210, IPC, in peculiar facts and circumstances of the case, does not call for any interference by the Supreme Court — Constitution of India — Article 136* (Para 13). *State of M.P.* v. *Shyamsunder Trivedi*, (1995) 4 SCC 262: 1995 SCC (Cri) 715.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *M.K. Mukherjee*, JJ. [Date of decision: 9-5-1995]

[3233] — S. 313 — Failure of court to examine accused on certain aspects — Consequences, if any, where no prejudice is caused to accused — Held, evidence cannot be excluded in such a situation

The facts of each case have to be examined but the broad principle is that all incriminating material circumstances must be put to an accused while recording his statement under Section 313 of the Code, but if any material circumstance has been left out that would not ipso facto result in the exclusion of that evidence from consideration unless it could further be shown by the accused that prejudice and miscarriage of justice had been sustained by him. In the present case, not only were the questions pertaining to the helmet and the ligature marks on the neck put to the doctor and even in a way to the appellant but the defence counsel had raised comprehensive arguments on these core issues not only before the trial court and the High Court but before the Supreme Court as well. The defence was, therefore, alive to the circumstances against the appellant. No prejudice or miscarriage of justice has, thus, been occasioned. (Para 92). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

Asraf Ali v. State of Assam, (2008) 16 SCC 328: (2010) 4 SCC (Cri) 278; Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487; Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60; Kashmira Singh v. State of M.P., AIR 1952 SC 159: 1952 Cri LJ 839; Ashish Batham v. State of M.P., (2002) 7 SCC 317: 2002 SCC (Cri) 1718, relied on

Ishwar Singh v. State of U.P., (1976) 4 SCC 355: 1976 SCC (Cri) 629, distinguished

S. Harnam Singh v. State (Delhi Admn.), (1976) 2 SCC 819: 1976 SCC (Cri) 324; Bejoy Chand Patra v. State of W.B., AIR 1952 SC 105: 1952 Cri LJ 644; Rama Shankar Singh v. State of W.B., AIR 1962 SC 1239: (1962) 2 Cri LJ 296, cited

[3234] — S. 313 — Failure to draw accused's attention to inculpatory material to enable him to explain it — *Held, by itself does not vitiate the proceedings — Prejudice, if any, caused to the accused must be established by him — It is also open to the appellate court to call upon the counsel for the accused to show the explanation which accused had to offer — On facts, held, in a food adulteration case, no prejudice had occasioned to the accused on omission to put the contents of the certificate of Director, Central Food Laboratory while recording his statement under S. 313 — Prevention of Food Adulteration Act, 1954, Ss. 13 and 20*

Where an omission, to bring the attention of the accused to an inculpatory material has occurred, that does not ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission. Further, in the event of an inculpatory material not having been put to the accused, the appellate court can always make good that lapse by calling upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against the accused but not put to him. (Para 13)

In the present case both the Sessions Judge and the High Court were wrong in concluding that the omission to put the contents of the certificate of the Director, Central Food Laboratory, could only result in the accused being acquitted. The accused had to show that some prejudice was caused to him by the report not being put to him. Even otherwise, it was the duty of the Sessions Judge and/or the High Court, if they found that some vital circumstance had not been put to the accused, to put those questions to the counsel for the accused and get the answers of the accused. If the accused could not give any plausible or reasonable explanation it would have to be assumed that there was no explanation. Both the Sessions Judge and the High Court have overlooked this position of law and failed to perform their duties and thereby wrongly acquitted the accused. (Para 14)

Further, in all these cases, the copy of the certificate of the Director, Central Food Laboratory had been supplied to the accused. They were thus aware of the contents of the certificate. Under the Prevention of Food Adulteration Act the prosecution is based upon the contents of either the report of the Public Analyst or the certificate of the Director of Central Food Laboratory. During their examination, under Section 313 CrPC, questions pertaining to the certificate were put to the accused. The explanation of the accused, in respect of the certificate, had been called for. In such cases it is enough if the attention of the accused is brought to the report or the certificate, as the case may be. It is not necessary that the contents of the report be also put to the accused. The questions put to the accused in these cases clearly indicated that what was being put to the accused were the contents of the certificate. The accused clearly understood that what was being put to them was the contents of the certificate. The accused gave their answers to the contents of the certificate. Clearly no prejudice had been caused to them. Before the Supreme Court also it could not be shown that any prejudice had been caused to them. (Paras 15 and 18). *State (Delhi Admn.)* v. *Dharampal*, (2001) 10 SCC 372: AIR 2001 SC 2924.

Bench Strength 2. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 19-10-2001]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, relied on

[3235] — S. 313 — Failure to draw accused's attention to inculpatory material, to enable him to explain it, in examination of accused under S. 313 — Murder of wife — Incriminating circumstances against accused husband were that he was last seen in the company of deceased, he giving a false statement about cause of death and torn piece of a shirt and buttons found at the scene of offence matched with the shirt seized from house of accused — *As in this case death of the deceased came to light sometime early in the morning, a report was thereafter lodged and investigation commenced, held, the circumstance that accused was last seen in the company of deceased at 4 p.m. on the earlier day reduces its significance — Statement made by accused's father to Sarpanch that his son had informed him that deceased had died after consuming pesticide (when medical evidence conclusively established that deceased was battered and her neck was pressed with great force), not admissible being hit by rule against hearsay evidence and therefore, cannot be relied upon by prosecution to prove that accused had given a fake explanation as regards the cause of death — Lastly, no evidence was led by the prosecution to connect the torn shirt pocket with the shirt recovered, nor any evidence could be adduced to establish that the piece of cloth found at the scene of occurrence was really a part of the shirt recovered, nor the incriminating circumstance about recovery of the pocket of the shirt worn by accused at the time of committing the alleged offence was found at the scene of occurrence, was put to the accused in his examination under S. 313 CrPC — Held, the incriminating circumstances cannot be relied upon to convict the accused under S. 302 — Evidence Act, 1872, S. 60 — Circumstantial Evidence, S. 302* (Paras 8 to 12). *State of A.P.* v. *Patnam Anandam*, (2005) 9 SCC 237: 2005 SCC (Cri) 1225: AIR 2005 SC 764: 2005 Cri LJ 894.

Bench Strength 2. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 14-12-2004]

[3236] — S. 313 — False statement by accused — Effect — Held, cannot take place of proof though it may be an additional circumstance against the accused

The falsity of the defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea may be considered as an additional circumstance if other circumstances proved and established point out the guilt of the accused. *Tanviben Pankajkumar Divetia* v. *State of Gujarat*, (1997) 7 SCC 156: 1997 SCC (Cri) 1004: AIR 1997 SC 2193: 1997 Cri LJ 2535: (1997) 1 Guj LH 851: (1997) 2 Guj LR 1346.

Bench Strength 2. Coram: **G.N. Ray** and *G.T. Nanavati*, JJ. [Date of decision: 6-5-1997]

Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCC 35: 1981 SCC (Cri) 315, followed

[3237] — S. 313 — Important incriminating circumstance not put to accused during his examination under — Effect — *Held, it disentitled the prosecution from placing reliance on the said piece of evidence — Accused need not establish the prejudice caused to him by such default on the part of prosecution as the same was quite apparent* (Para 9). *Kuldip Singh* v. *State of Delhi*, (2003) 12 SCC 528: AIR 2004 SC 771: (2004) 109 DLT 190.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-12-2003]

Kuldip Singh v. State, (2003) 103 DLT 69, reversed

[3238] — S. 313 — Improper examination of accused under S. 313 — Allegation regarding, has to be considered from the angle whether any prejudice was caused to the accused thereby — If there is any error on this account that can also be corrected by the Reference Court by again examining the accused (Per Wadhwa, J.) (Para 540). *State* v. *Nalini*, (1999) 5 SCC 253: 1999 SCC (Cri) 691: AIR 1999 SC 2640: 1999 Cri LJ 3124.

Bench Strength 3. Coram: **K.T. Thomas**[1], **D.P. Wadhwa**[2] and **S.S.M. Quadri**[3], JJ. [Date of decision: 11-5-1999]

[3239] — S. 313 — Incriminating circumstances against the accused stated by the approver in his testimony must be put to the accused in course of the accused's examination under S. 313

The incriminating circumstances in the evidence of the approver appearing against the appellant should have been put to the appellant in her examination under S. 313 CrPC. Appellant was not afforded an opportunity to submit an explanation to it. That part of the evidence must for that reason, be excluded from consideration. Appellant, in the circumstances, would be entitled to benefit of doubt. *Balwant Kaur* v. *UT, Chandigarh*, (1988) 1 SCC 1: 1988 SCC (Cri) 1: AIR 1988 SC 139: 1988 Cri LJ 398.

Bench Strength 2. Coram: *A.P. Sen* and **M.N. Venkatachaliah**, JJ. [Date of decision: 3-11-1987]

[3240] — S. 313 — Non-compliance with — Effect — Need for prejudice to accused — *Failure to draw accused's attention to inculpatory material — Attention of accused not drawn to contents of forensic report — Held, the same does not vitiate the judgment of conviction and sentence as accused was not prejudiced thereby* (Para 28). *Yuvaraj Ambar Mohite* v. *State of Maharashtra*, (2006) 12 SCC 512: (2007) 2 SCC (Cri) 554: (2006) 48 AIC 673 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

State (Delhi Admn.) v. Dharampal, (2001) 10 SCC 372: 2003 SCC (Cri) 1012; State of Punjab v. Swaran Singh, (2005) 6 SCC 101: 2005 SCC (Cri) 1359, relied on

[3241] — S. 313 — Non-compliance with procedure regarding recording of statement of accused under S. 313 alleged — *Unless material prejudice is shown to have been caused, challenge to conviction based on procedural non-compliance of S. 313 made for the first time in appeal before Supreme Court cannot be entertained — Prosecution strongly relying upon ocular evidence of eyewitnesses and relevant questions with reference to the evidence of the witnesses of such nature that, if found acceptable, conviction could be sustained unless prejudice shown to have been caused to the accused — No such prejudice demonstrated before Supreme Court — Held, trial cannot be said to have been vitiated on ground of non-compliance with S. 313. Shobhit Chamar* v. *State of Bihar*, (1998) 3 SCC 455: 1998 SCC (Cri) 790: AIR 1998 SC 1693.

Bench Strength 2. Coram: *G.T. Nanavati* and **S.P. Kurdukar**, JJ. [Date of decision: 4-3-1998]

Tara Singh v. State, AIR 1951 SC 441: 1951 SCR 729; Ajmer Singh v. State of Punjab, AIR 1953 SC 76: 1953 SCR 418; State of Maharashtra v. Sukhdev Singh, (1992) 3 SCC 700: 1992 SCC (Cri) 705; Bhalinder Singh v. State of Punjab, (1994) 1 SCC 726: 1994 SCC (Cri) 462, distinguished

[3242] — S. 313 — Non-examination of accused — Effect — Question of prejudice to the accused, held, is relevant in case of defective examination and not when there is no examination at all — *Appellate court may either examine the accused itself or direct retrial of case confined to the stage of recording of statement of the accused — Direction for retrial of entire case by framing de novo charges improper*

Section 313 CrPC prescribes a procedural safeguard for an accused facing the trial to be granted an opportunity to explain the facts and circumstances appearing against him in the prosecution's evidence. That opportunity is a valuable one and cannot be ignored. It is not a case of defective examination under Section 313 CrPC where the question of prejudice may be examined but a case of no examination at all under Section 313 CrPC and as such the question whether or not the appellants have been prejudiced on account of that omission is really of no relevance. It was open to the High Court to have either examined the accused, whose statements under Section 313 CrPC had not been recorded, itself under Section 313 CrPC and then proceeded with the hearing of the appeal or directed retrial of the case confined to the stage of recording of the statements of the appellants under Section 313 CrPC but it was not justified to order the retrial of the entire case by framing de novo charges and examining afresh prosecution evidence. The direction of the High Court to that extent cannot be sustained. (Para 5)

Order of the High Court is liable to be set aside to the extent it directs retrial of the case from the stage of framing of the charges and confine the retrial of the case to the stage of the recording of the statements of the appellants, whose statements have not been recorded under Section 313 CrPC. After recording their statements and the defence evidence, if any, the trial court shall pass fresh orders in accordance with law on the basis of the prosecution evidence already on the record and the defence evidence, if any, which the appellants may lead after their examination under Section 313 CrPC. (Para 6). *Janak Yadav* v. *State of Bihar*, (1999) 9 SCC 125: 1999 SCC (Cri) 558.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *S.B. Majmudar*, JJ. [Date of decision: 23-10-1996]

[3243] — S. 313 — Presence of accused in court while examination under — Necessity of — *Held, general rule is that the accused must answer the questions by being personally present in court — Only in exceptional circumstances the said rule can be departed from/ dispensed with — Accused (Chief Minister of State), though present in city, dispensed with personal appearance in court on the ground of her physical condition — Questionnaire sent to her and answered — Held, that was a ploy adopted to circumvent the due process of law — Grant of said exemption in absence of any exceptional exigency or circumstances, held, not proper —* Basavaraj *case, (2000) 8 SCC 740, explained and distinguished — Conduct of Public Prosecutor in not opposing such a frivolous application, deprecated* (Para 32). *K. Anbazhagan* v. *Supdt. of Police*, (2004) 3 SCC 767: 2004 SCC (Cri) 882: AIR 2004 SC 524: 2004 Cri LJ 583.

Bench Strength **2**. Coram: *S.N. Variava* and **H.K. Sema**, JJ. [Date of decision: 18-11-2003]

Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, explained and distinguished

[3244] — S. 313 — Presence of the accused at the time of incident — Misinterpretation of admission by accused — *High Court wrongly interpreting the English translation of the accused's statement to come to a conclusion that the accused had admitted that he was present at the time the incident took place — Accused's statement excluded from being a circumstance against him. Siddaiah* v. *State of Karnataka*, (2003) 10 SCC 224.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 8-8-2002]

[3245] — S. 313 — Probative value of statements obtained under — Held, statements under S. 313 cannot form the sole basis of conviction; but the effect thereof may be considered in the light of other evidence brought on record (Para 34). *Bishnu Prasad Sinha* v. *State of Assam*, (2007) 11 SCC 467: AIR 2007 SC 848: (2007) 53 AIC 166 (SC): 2007 Cri LJ 1145.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 16-1-2007]

Mohan Singh v. Prem Singh, (2002) 10 SCC 236: 2003 SCC (Cri) 1514; State of U.P. v. Lakhmi, (1998) 4 SCC 336: 1998 SCC (Cri) 929; Rattan Singh v. State of H.P., (1997) 4 SCC 161: 1997 SCC (Cri) 525, relied on

[3246] — S. 313 — Purpose of — Effect of not explaining fact within exclusive knowledge of accused — *Held, the said section affords the accused an opportunity of offering an explanation of incriminating circumstances appearing in prosecution evidence against him — Though it is not necessary for the accused to speak and explain, yet when the case rests on circumstantial evidence the failure of the accused to offer any satisfactory explanation for his possession of the stolen property though not an incriminating circumstance by itself would yet enable an inference being raised against him because the fact being in the exclusive knowledge of the accused it was for him to have offered an explanation which he failed to do — Evidence Act, 1872, S. 106* (Para 15). *Ganesh Lal* v. *State of Rajasthan*, (2002) 1 SCC 731: 2002 SCC (Cri) 247: 2002 Cri LJ 967.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 31-10-2001]

Earabhadrappa v. State of Karnataka, (1983) 2 SCC 330: 1983 SCC (Cri) 447; Gulab Chand v. State of M.P., (1995) 3 SCC 574: 1995 SCC (Cri) 552, relied on

[3247] — S. 313 — Purpose of asking questions during examination under

The purpose of asking questions during examination under Section 313 CrPC is to afford the accused personally an opportunity of explaining any incriminating circumstance so appearing in evidence against him. The accused may or may not avail the opportunity for offering his explanation. The accused did not avail the opportunity and stood short by simply stating that the statement of the cinema-owner that he was on leave on the fateful day was not correct. The accused has not stated during his statement under Section 313 CrPC and nowhere suggested during cross-examination of prosecution witnesses that at the time of the incident he was at a place wherefrom he could not have reached the place of the offence on the date and at the time of its commission. (Para 20). *Subhash Chand* v. *State of Rajasthan*, (2002) 1 SCC 702: 2002 SCC (Cri) 256.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 16-10-2001]

[3248] — S. 313 — Purpose of asking questions during examination of accused under — Effect of omission, if any — Trial when vitiated — *Held, as part of fair trial, S. 313 requires giving opportunity to accused to give his explanation regarding circumstance appearing against him — Purpose behind it is to enable accused to explain those circumstances — It is not necessary to put entire prosecution evidence to accused and elicit answers* *but only those circumstances which are adverse to accused and his explanation would help the court in evaluating evidence properly — Circumstances are to be put to accused and not the conclusion — It is not an idle formality and questioning must be fair and couched in a form intelligible to accused — But an omission will not necessarily vitiate trial — Trial would be vitiated only when on facts it is found that an omission had occasioned a failure of justice — In present case there was no omission re S. 313 as contended by accused* (Paras 21 to 24). *Dharampal Singh* v. *State of Punjab*, (2010) 9 SCC 608.

Bench Strength 2. Coram: *H.S. Bedi* and **C.K. Prasad**, JJ. [Date of decision: 9-9-2010]

State of Punjab v. Hari Singh, (2009) 4 SCC 200: (2009) 2 SCC (Cri) 243, distinguished

[3249] — S. 313 — Questioning of accused under — Nature of questions to be asked — *Held, generally, composite questions should not be asked bundling so many facts together — Questions must be such that any reasonable person in the position of the accused may be in a position to give a rational explanation to the questions as had been asked*

The questioning of the accused is done to enable him to explain any circumstances which have come out in the evidence against him. It may be noticed that the entire evidence is recorded in his presence and he is given full opportunity to cross-examine each and every witness examined on the prosecution side. He is given copies of all documents which are sought to be relied on by the prosecution. Apart from all these, as part of fair trial the accused is given opportunity to give his explanation regarding the evidence adduced by the prosecution. However, it is not necessary that the entire prosecution evidence need be put to him and answers elicited from the accused. If there were circumstances in the evidence which are adverse to the accused and his explanation would help the court in evaluating the evidence properly, the court should bring the same to the notice of the accused to enable him to give any explanation or answers for such adverse circumstance in the evidence. There shall not be failure of justice on account of an unfair trial. (Para 10). *State of Punjab* v. *Swaran Singh*, (2005) 6 SCC 101: 2005 SCC (Cri) 1359: AIR 2005 SC 3114: 2005 Cri LJ 3445.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 25-7-2005]

[3250] — S. 313 — Questioning of accused under — Purpose of, held, is to give an opportunity to accused to explain the circumstances adverse to him in the evidence adduced by prosecution — *However, it is not necessary that entire prosecution evidence need be put to accused and answers elicited from him — If explanation to adverse circumstances would help the court in evaluating the evidence properly, the court should bring the same to the notice of the accused to enable him to give the explanation — There should not be failure of justice on account of an unfair trial — Recovery of opium — Conviction under NDPS Act — Evidence of PWs 1 and 4 not specifically put to accused while being examined under S. 313 — Hence, High Court acquitting accused on ground that evidence of said PWs could not be used against him — Accused not in any way prejudiced by failure to put said evidence to him — Evidence of said PWs recorded in presence of accused — Despite having opportunity, accused failed to cross-examine PWs 1 and 4 in respect of the facts deposed by them — Case against accused clearly established — On such facts, held, acquittal by High Court on the aforesaid ground not sustainable — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 18*

In the instant case, the accused was not in any way prejudiced by not giving him an opportunity to answer specifically regarding the evidence of PW 1 and PW 4. If at all, the evidence of PW 1 and PW 4 was recorded in his presence, he had the opportunity to cross-examine the witnesses but he did not specifically cross-examine these two witnesses in respect of the facts deposed by them. The learned Single Judge seriously erred in holding that the evidence of PW 1 and PW 4 could not have been used against the accused. The acquittal of the accused was improper as the evidence in this case clearly established that the accused was in possession of 5 kg of opium and thereby committed the offence under Section 18 of the NDPS Act. (Para 15). *State of Punjab* v. *Swaran Singh*, (2005) 6 SCC 101: 2005 SCC (Cri) 1359: AIR 2005 SC 3114: 2005 Cri LJ 3445.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 25-7-2005]

(1997) 1 CCC 488 (P&H), reversed

State (Delhi Admn.) v. Dharampal, (2001) 10 SCC 372: 2003 SCC (Cri) 1012; Jai Dev v. State of Punjab, (1963) 3 SCR 489: AIR 1963 SC 612: (1963) 1 Cri LJ 495; Bakhshish Singh Dhaliwal v. State of Punjab, (1967) 1 SCR 211: AIR 1967 SC 752: 1967 Cri LJ 656; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033, relied on

[3251] — S. 313 — Questions put to accused under — Relevance of — Imperative duty of court in relation to — Omission by court regarding — Need for accused to prove prejudice on account thereof — *Held, S. 313 makes it obligatory for court to question accused on evidence and* *circumstances against him so as to offer accused opportunity to explain the same — But, it would not be enough for accused to show that he has not been questioned or examined on a particular circumstance — Instead, he must show that such non-examination has actually and materially prejudiced him and has resulted in failure of justice* (Paras 21 to 30)

An accused can be questioned under Section 313 CrPC only for the purpose of enabling him personally to explain any circumstance appearing in the evidence against him. No matter how weak or scanty the prosecution evidence is in regard to certain incriminating material, it is the duty of the court to examine the accused and seek his explanation on incriminating material which has surfaced against him. (Para 21)

Section 313 CrPC is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material appearing against him. Circumstances which were not put to the accused in his examination under Section 313 CrPC cannot be used against him and have to be excluded from consideration. (Paras 22 and 23)

If any appellate court or revisional court comes across the fact that the trial court had not put any question to an accused, even if it is of a vital nature, such an omission alone should not result in the setting aside of the conviction and sentence as an inevitable consequence. An inadequate examination cannot be presumed to have caused prejudice. Every error or omission in compliance with the provisions of Section 313 CrPC, does not necessarily vitiate trial. Such errors fall within the category of curable irregularities and the question as to whether the trial is vitiated, in each case depends upon the degree of error and upon whether prejudice has been or is likely to have been caused to the accused. Efforts should be made to undo or correct the lapse. (Para 24)

Thus, the provisions of Section 313 CrPC make it obligatory for the court to question the accused on the evidence and circumstances against him so as to offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance. Instead, he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of justice. In other words, in the event of an inadvertent omission on the part of the court to question the accused on any incriminating circumstance, cannot ipso facto vitiate the trial, unless it is shown that some material prejudice was caused to the accused by the omission of the court. (Paras 25 to 30). *Paramjeet Singh* v. *State of Uttarakhand*, (2010) 10 SCC 439.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-9-2010]

Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487; State of Maharashtra v. Sukhdev Singh, (1992) 3 SCC 700: 1992 SCC (Cri) 705; S. Harnam Singh v. State (Delhi Admn.), (1976) 2 SCC 819: 1976 SCC (Cri) 324; Wasim Khan v. State of U.P., AIR 1956 SC 400: 1956 Cri LJ 790; Bhoor Singh v. State of Punjab, (1974) 4 SCC 754: 1974 SCC (Cri) 664; Labhchand Dhanpat Singh Jain v. State of Maharashtra, (1975) 3 SCC 385: 1975 SCC (Cri) 11; State of Punjab v. Naib Din, (2001) 8 SCC 578: 2002 SCC (Cri) 33; Parsuram Pandey v. State of Bihar, (2004) 13 SCC 189: 2005 SCC (Cri) 113; Asraf Ali v. State of Assam, (2008) 16 SCC 328: (2010) 4 SCC (Cri) 278; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ganesh Gogoi v. State of Assam, (2009) 7 SCC 404: (2009) 3 SCC (Cri) 421; Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87; Sk. Maqsood v. State of Maharashtra, (2009) 6 SCC 583: (2009) 3 SCC (Cri) 82; Ranvir Yadav v. State of Bihar, (2009) 6 SCC 595: (2009) 3 SCC (Cri) 92; Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60, relied on

[3252] — S. 313 — Reliance on inculpatory part of statement when exculpatory part falsified — *Statement of accused police official that the deceased party started firing at police party which necessitated the opening of fire by the police party itself — Evidence on record falsifying first part of the statement of the accused police official — Second part of his statement can be utilised as an admission — However, other accused police officials not bound by such admission — Evidence Act, 1872, Ss. 17 and 24. Brijlala Pd. Sinha* v. *State of Bihar,* (1998) 5 SCC 699: 1998 SCC (Cri) 1382: AIR 1998 SC 2443: 1998 Cri LJ 3611.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **G.B. Pattanaik**, JJ. [Date of decision: 13-7-1998]

[3253] — S. 313 — Reliance on inculpatory portion of statement of accused. *Keshoram Bora* v. *State of Assam*, (1978) 2 SCC 407: 1978 SCC (Cri) 219: AIR 1978 SC 1096: 1978 Cri LJ 1089: (1978) 26 BLJR 8.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 1-2-1978]

See 'Criminal Procedure Code, 1898', S. 342

[3254] — S. 313 — Purpose of, restated — Appellant contending that conviction and sentence stood vitiated by reason of non-compliance with provisions of S. 313 — Sustainability — *Held, as all material evidence brought on record by prosecution was brought to appellant's notice, it was not shown as to how he was prejudiced — He could have given his side of story proving his defence on the basis of material brought on record — Contention, thus, unsustainable*

The entire prosecution case was based on documentary evidence as also the material objects which had been seized. The seizure witnesses, namely, PWs 1 and 2 might have been declared hostile, but the seizure memos had duly been proved. The seized documents had also been proved. The appellant maintaining the said documents, when discrepancies occurring therein were pointed out to him, it was for him to explain the same. (Para 17)

The appellant did not adduce any evidence in defence. It has not been denied or disputed that the seized kerosene oil had been put in the custody of the son of the appellant. The son was examined as a prosecution witness as PW 5. The appellant also accepted the said fact. Thus, the amount of kerosene which had been seized and kept in the custody of his son has not been denied or disputed. (Para 18)

Contention of the appellant that the trial court should have specifically put the prosecution case to the appellant under Section 313 CrPC that the stock register did not contain any entry of 502 litres does not appear to be correct. The prosecution case based on the basic primary material which the prosecution had brought on record, namely, raid in the shop, the stock of kerosene oil found, the seizure of the display board, stock register, cash memo, etc., had been put to him. Apart from making a bald denial that measurement had not been taken or that no measurement chart had been prepared he had not explained the discrepancies in the stock or non-display thereof. (Para 19)

As all the material evidence brought on record by the prosecution had been brought to the appellant's notice, it has not been shown as to how he was prejudiced, particularly when his son was examined as a witneSs. He could have given his side of the story which, according to him, could have proved his defence, on the basis of the material brought on record. Submission of the appellant that the judgment of conviction and sentence stands vitiated by reason of non-compliance with the provisions of Section 313 CrPC, thus, cannot be accepted. (Paras 19 and 20). *Harendra Nath Chakraborty* v. *State of W.B.*, (2009) 2 SCC 758.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 19-12-2008]

State of Punjab v. Swaran Singh, (2005) 6 SCC 101: 2005 SCC (Cri) 1359, relied on

Vikramjit Singh v. State of Punjab, (2006) 12 SCC 306: (2007) 1 SCC (Cri) 732, distinguished

[3255] — S. 313 — Examination of accused — Mandatory nature of — Purpose/Necessity of — Effect of non-compliance with S. 313 even in trial involving a most gruesome and horrifying mass murder — *Held, requirement under S. 313 is not an empty formality — In the instant case neither any incriminating material, nor any accusation specifically put to accused in his examination under S. 313 — While noting with concern and regret lapse on part of trial court in not indicating incriminating material to accused, held, in such circumstances impugned judgment convicting accused liable to be set aside* (Paras 8 to 11)

On the day of occurrence at about 8 a.m. informant along with several other persons reached diar side of River Ganges in a boat. Some persons alighted from the boat and had proceeded to some distance when some criminals alighted from a small boat and asked them to stop. When their command was not heeded to, they started firing and one such shot hit PW 1. The criminals thereafter caught hold of D-1, D-2 and D-3, and brought them near the boat of informant. Near the boat D-1 was shot dead by A-1; D-2 by A-2; and D-3 by A-3. The dead bodies were then loaded on informant's boat. Some of the criminals boarded informant's boat, while others boarded the small boat and sailed inside the river. The dead bodies were beheaded, their stomachs slit open, and cut parts thrown into the river. One D-4 was also shot dead by A-2 as a lesson on ground that he had filed certain criminal cases against the assailants.

The cause of occurrence as stated in fardbeyan was that A-2 had taken possession of several lands of the village, and the villagers wanted their lands to be measured and demarcated. So being angered, the accused committed the ghastly incident.

The defence of accused was that police were inimical to main accused, A-2 whose father was killed by ASP and a case in this connection was filed. A-3 and A-1 were employees of A-2 and hence were falsely implicated. The police were pressurising the accused to withdraw case of murder filed against police officials.

The trial court held that the prosecution version lacked credibility and, therefore, directed acquittal. On appeal the High Court held that there was improper analysis of the evidence and accordingly held that the acquittal was not proper. Therefore A-2 i.e. present appellant and A-3 were sentenced to undergo imprisonment for life for the offence punishable under Section 302 of the Penal Code, 1860.

The present appeal relates to A-2. Though various points were urged in respect of the appeal, the primary stand was that incriminating materials were not put to A-2 in examination under Section 313 of the Code of Criminal Procedure, 1973. Allowing the appeal on the said ground, the Supreme Court held as above. *Ranvir Yadav* v. *State of Bihar*, (2009) 6 SCC 595.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

Ajay Singh v. State of Maharashtra, (2007) 12 SCC 341; Tara Singh v. State, AIR 1951 SC 441; Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 SC 468, applied

[3256] — S. 313 — Examination of accused — Non-putting of appropriate question — Effect of — *The appellant convicted under S. 302 IPC — However, in the examination under S. 313 no question was put to the accused which established that he was the author of the crime — Held, the conviction cannot be maintained, and is set aside* (Para 9). *Sk. Maqsood* v. *State of Maharashtra*, (2009) 6 SCC 583.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 4-5-2009]

Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 SC 468, Tara Singh v. State, AIR 1951 SC 441; Ajay Singh v. State of Maharashtra, (2007) 12 SCC 341, followed

[3257] — S. 313 — Factors vitiating trial — Putting unfair/irrelevant questions under S. 313 CrPC to accused, held, is a factor vitiating the trial — *Provisions of S. 313 CrPC, further held, are not meant to nail the accused to his disadvantage but are meant for his benefit — Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 3(2)(i)*

It was totally unfair on the part of the Court to put a question to the appellant-accused under Section 313 CrPC that witnesses were deposing that he was a member of ULFA. It does not appear that any witness has deposed that the appellant is a member of ULFA. Therefore, it is a very unfair question. (Paras 19 and 17)

The provisions of Section 313 are for the benefit of the accused and are there to give the accused an opportunity to explain the "circumstances appearing in the evidence against him". Those provisions are not meant to nail the accused to his disadvantage but are meant for his benefit. These provisions are based on the statutory principles of natural justice and the maxim "audi alteram partem" has been enshrined in them. Therefore, the examination under Section 313 has to be of utmost fairness. But that has not been done here. This is also a factor vitiating the trial. (Para 20). *Ganesh Gogoi* v. *State of Assam*, (2009) 7 SCC 404: (2009) 3 SCC (Cri) 421: (2009) 80 AIC 267 (SC).

Bench Strength 2. Coram: *Dalveer Bhandari* and **A.K. Ganguly**, JJ. [Date of decision: 7-7-2009]

Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, relied on

[3258] — S. 313 — Non-compliance with — Effect — *Held, questioning of accused under S. 313 is not an empty formality — Essence of accusation has to be brought to notice of accused while examining under S. 313 — Trial court convicting respondents under NDPS Act, 1985 for conscious possession of 16 bags of poppy husk — Conscious possession of contraband material though evident, but no question relating to possession put to accused — Effect — Held, the omission vitally affects prosecution case — High Court rightly set aside conviction — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 15* (Paras 16 and 18). *State of Punjab* v. *Hari Singh*, (2009) 4 SCC 200.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 16-2-2009]

Keya Mukherjee v. Magma Leasing Ltd., (2008) 8 SCC 447; Avtar Singh v. State of Punjab, (2002) 7 SCC 419: 2002 SCC (Cri) 1769, followed

Hari Singh v. State of Punjab, (2006) 1 Rec Cri R 738 (P&H), affirmed

[3259] — S. 313 — Personal examination of accused under — Object and necessity of — Failure to examine the accused properly under — Effect of, on trial and conviction — *In the present case, alleged confessional statement of accused were the inculpatory materials against them — Those incriminating materials not brought to notice of accused while examining them under S. 313 — Held, acquittal as recorded by High Court suffers from no infirmity to warrant interference — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 8, 21 and 41(2) — Customs Act, 1962, S. 110*

On 1-7-1995 at about 4.15 a.m. Army patrolling party, on the other side of the village near DCB end point, noticed suspicious movement of some infiltrators who on being challenged abandoned some suspicious materials and escaped under the cover of darkneSs. On receipt of this information, the Customs staff camping at the other side of the village rushed to the spot. Both the Army authorities and the Customs staff, found some suspicious materials on spot in two salwars and a plastic bag left abandoned in the field near DCB end point. They called two panchas from the area and the three packages found lying abandoned in the field were opened in their presence from which 56 packets of light brown powder, each weighing one kilogram were recovered and seized by the Customs staff under Section 110 of the Customs Act, 1962. Apart from that, one pair of chappals and two pairs of shoes, total three footwear were also recovered from the spot. Recovered material appeared to be some narcotic drug in packets and in yellow brownish paper kept in polythene bags wrapped in cotton cloth bearing stamp marking in Urdu. It was subjected to drug test by the Customs staff with U.N. Drug test kit and it was confirmed that the material was contraband morphine-heroin or its derivative. Recovery-cum-seizure memo of the heroin was prepared and panchnama was drawn on the spot. The samples were taken out of the seized material and sent for chemical analysis to FSL, which in its report revealed that diactyl morphine-heroin was found present in the samples taken out of the recovered light brown powder.

The identity of infiltrators was established through the secret information report recorded prior to the seizure. It was disclosed that the names of two suspects were *H* and *Y*. Recovery of three packages and three pairs of footwear were made from the spot indicated that a third person was also accompanying the two infiltrators. *Y* was summoned by the Superintendent, Customs under Section 108 of the Customs Act. He appeared before him and made confessional statement involving himself in smuggling of heroin and was thereupon arrested. In his voluntary statement of confession, he disclosed the names of two accomplices, namely, *H* and *P* and narrated the sequence of events of fetching fifty-six kilogram of heroin at Indo-Pak Border and its carriage up to the village and on its detection by the Army patrol, it led to his escape from the scene after abandoning the material and three pairs of footwear. He also confessed that he was being paid by *H* and *P* for carriage of contraband articles. Similarly, accused *H* also came to be intercepted by the Customs staff, and he made voluntary statement to the same effect. He confessed that he was being paid for carriage of the material. *P* did not appear before the Customs Authorities. Complaint was presented before the Sessions Judge (Special Judge) by the Inspector of Customs. The third accused was proceeded against separately.

The trial court after appreciating the evidence led by the parties came to the conclusion that the accused have committed the offences punishable under Sections 8 and 21 of the NDPS Act and recorded conviction and imposed sentence. In appeal two stands were taken. First related to non-compliance with Section 41(2) of the Act and the other related to not putting the alleged incriminating materials to the accused while the statement was recorded under Section 342 of the old Code of Criminal Procedure or Section 313 of the new Code of Criminal Procedure. The High Court found substance in the second plea and directed acquittal.

Dismissing the appeal,

Held :

It is to be noted that the High Court did not accept the stand relating to non-compliance with Section 41(2) of the NDPS Act. It only interfered on the ground that the relevant incriminating materials were not put to the accused when they were being examined. It is to be noted that in the instant case there was no reference to any of the incriminating materials. If the foundation of the prosecution case was the alleged confession before the Customs Authorities, that material was not brought to the notice of the accused persons. Above being the position, there is no infirmity in the impugned judgment to warrant interference. (Paras 13, 16 and 17). *Inspector of Customs* v. *Yashpal*, (2009) 4 SCC 769.

Bench Strength 3. Coram: **Dr. Arijit Pasayat,** *D.K. Jain* and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-3-2009]

Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87; Keya Mukherjee v. Magma Leasing Ltd., (2008) 8 SCC 447: (2008) 3 SCC (Cri) 537, relied on

[3260] — S. 313 — Right of accused under — General denials by accused and non-explanation of suspicious circumstances — *Rape and murder of a minor girl of 10 years — If a rarest of rare case — Mitigating circumstances — General denials by accused and non-explanation of suspicious circumstances — Effect on severity of sentence (per Ganguly, J.)*

Per Ganguly, J.

The High Court cannot accept one part of the statement to the total non-consideration of the other part in which the appellant has retracted his confession. In a case where death penalty has been imposed, the High Court is expected to consider the evidence with greater care and circumspection. In para 13 of the High Court's judgment, the High Court merely referred to the general denials by the appellant in the course of his examination under Section 313 CrPC and held that the non-explanation of the suspicious circumstances under which the deceased had died will be treated as an additional link against the appellant. (Paras 56 and 55). *Rameshbhai Chandubhai Rathod* v. *State of Gujarat*, (2009) 5 SCC 740.

Bench Strength 2. Coram: **Dr. Arijit Pasayat**[1] and **A.K. Ganguly**[2], JJ. [Date of decision: 27-4-2009]

Megh Singh v. State of Punjab, (2003) 8 SCC 666: 2004 SCC (Cri) 58, relied on

[3261] — S. 313 — Right of accused under, to explain circumstances against him — Application — *Evidence Act, 1872, Ss. 3 and 5 — Facts in issue and relevant facts not considered — Effect — Natural justice (per Ganguly, J.)*

Per Ganguly, J.

The written statement which the accused gave and the court made it as an exhibit must be treated as part of his statement under Section 313 CrPC. It is true that when an extra-judicial confession is retracted by the accused, there is no inflexible rule that the court must accept the retraction. But if the court wants to reject the retraction, the court must give cogent reasons before such rejection. It does not appear that the High Court has given any reason for not accepting the retraction of the confession by the accused. The High Court dealt with the so-called extra-judicial confessions by the appellant and held that the second extra-judicial confession by the appellant before the police is hit by Section 25 of the Evidence Act. But about the retraction of his first extra-judicial confession in the written statement of the appellant, which is part of his Section 313 statement, there is no discussion in the judgment of the High Court. (Paras 52 to 54). *Rameshbhai Chandubhai Rathod* v. *State of Gujarat*, (2009) 5 SCC 740.

Bench Strength 2. Coram: **Dr. Arijit Pasayat**[1] and **A.K. Ganguly**[2], JJ. [Date of decision: 27-4-2009]

Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87; Mohd. Azad v. State of W.B., (2008) 15 SCC 449, relied on

King Emperor v. Biseswar Dey, (1921-22) 26 CWN 1010, approved

[3262] — S. 313 — Statement made by accused under — *Court cannot reject a part of the statement and use the other part as admission of the accused — Court should consider the whole statement as admission. Dwarka Prasad* v. *State of U.P.*, 1993 Supp (3) SCC 141: 1993 SCC (Cri) 882: (1993) 1 Crimes 975.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and **N.P. Singh**, JJ. [Date of decision: 23-2-1993]

[3263] — S. 313 — Object and scope — Use of statement made thereunder — *Examination of accused by court must be only after completion of prosecution evidence — Accused may prefer not to answer the question put by court or to explain his conduct — But if he makes a false statement, court may draw adverse inference — Statement of accused under S. 313 cannot be regarded as substantive evidence but it can be used to corroborate prosecution case*

The object of recording the statement of the accused under Section 313 CrPC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The dual purpose is sought to be achieved when the courts comply with the mandatory requirement of recording the statement of an accused under this provision. Firstly, every material piece of evidence which the prosecution proposes to use against the accused should be put to him in clear terms and secondly, the accused should have a fair chance to give his explanation in relation to that evidence as well as his own versions with regard to alleged involvement in the crime. This dual purpose has to be achieved in the interest of the proper administration of criminal justice and in accordance with the provisions of CrPC. (Paras 30 and 29)

The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. (Para 31)

The statement of the accused can be used to test the veracity of the exculpatory part of the admission, if any, made by the accused. It can be taken into consideration in any, enquiry or trial but still it is not strictly an evidence in the case. It can be used by the Court insofar as it corroborates the case of the prosecution. Section 313(4) CrPC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in as evidence for or against the accused in any other enquiry or trial for any other offence for which, such answers may tend to show he has committed. In other words, the use of a statement under Section 313 CrPC as an evidence is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution. However, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. Conviction of the accused cannot be based merely on the statement made under Section 313 CrPC as it cannot be regarded as a substantive piece of evidence. (Paras 32, 29 and 33)

From various answers given by the accused to the Court in his statement recorded under Section 313 CrPC, it appears that the death of the deceased by burning is not disputed. The limited question was whether the deceased committed suicide simpliciter for the reasons given by the accused or in the alternative, the prosecution story, that it was a dowry death relatable to the harassment and cruelty inflicted upon her by the accused and his family members, is correct. (Para 34). *Ashok Kumar* v. *State of Haryana*, (2010) 12 SCC 350: AIR 2010 SC 2839: 2010 Cri LJ 4402: (2010) 93 AIC 129 .

Bench Strength **2**. Coram: *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision: 8-7-2010]

Vijendrajit Ayodhya Prasad Goel v. State of Bombay, AIR 1953 SC 247: 1953 Cri LJ 1097, relied on

[3264] — S. 313 — Statement made by accused under — Nature of — *Held, not a substantive piece of evidence or a substitute for the evidence of the prosecution — It could certainly be taken aid of to lend credence to the evidence led by the prosecution — But only a part of such statement cannot be made the sole basis of conviction — Statement under S. 313 can either be relied in whole or in part — Where the prosecution evidence disbelieved and the exculpatory part of the statement of the accused under S. 313 not rejected outright as false, held, the inculpatory part of the statement of the accused under S. 313 could not be the sole basis of his conviction*

The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction. The law on the subject is almost settled that statement under Section 313 CrPC of the accused can either be relied on in whole or in part. It may also be possible to rely on the inculpatory part of the statement of the accused if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. The statement of the accused under Section 313 CrPC is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. If the exculpatory part of the statement of the accused is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 CrPC cannot be made the sole basis of his conviction. In the present case, the exculpatory part of the statement of the accused A-1 under Section 313 CrPC in which he stated that he was attacked by the deceased and his associate, whereupon the villagers rushed for his help and inflicted injuries on the deceased, cannot be outright rejected as false. The inculpatory part of his statement under Section 313 CrPC, therefore, to the extent of admission of his presence in the compound of *A* when the deceased was attacked, cannot form the sole basis of his conviction. (Paras 27, 30 and 31)

The alternative submission of the complainant that on the basis of the statement of the accused A-1 under Section 313 CrPC, he is liable to be convicted for exceeding his right of private defence under Section 304 IPC, cannot be accepted for the reasons mentioned above. (Para 32). *Mohan Singh* v. *Prem Singh*, (2002) 10 SCC 236: 2003 SCC (Cri) 1514: AIR 2002 SC 3582: 2003 Cri LJ 11: (2003) 1 CHN 1.

Bench Strength **2**. Coram: *U.C. Banerjee* and **D.M. Dharmadhikari**, JJ. [Date of decision: 1-10-2002]

Nishi Kant Jha v. State of Bihar, (1969) 1 SCC 347, followed

[3265] — S. 313 — Essential features — Statement made under — Use to which may be put — Particular relevance in cases based on circumstantial evidence — Guiding factors for proper application of S. 313 — Consequences which flow from S. 313

In cases of circumstantial evidence, particularly, besides the entire case of the prosecution, even the statement of the accused made under Section 313 CrPC can be of substantial help. (Para 11)

The object of recording the statement of the accused under Section 313 CrPC is to put all incriminating evidence against the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also to permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and besides ensuring the compliance therewith the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or in the alternative to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put to the accused every important incriminating piece of evidence and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the court is to what extent and consequences such statement can be used during the enquiry and the trial. (Para 13)

The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) explicitly provide that the answers given by the accused may be taken into consideration in such enquiry or trial and put as evidence against the accused in any other enquiry or trial for any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. (Para 14)

The accused has admitted that the deceased was his wife and was living with him in the cabin. On the basis of the record, the High Court has also noticed the fact that the deceased had separated from her earlier husband and was living with the accused who was also staying away from his family. The villagers had objected to the accused living with the deceased in that manner. In these circumstances, the onus to explain the cause of death of the deceased was upon the husband. He did offer an explanation that she had committed suicide by burning herself but this explanation has been disbelieved. Another very material factor is that as per his own statement when he noticed that the deceased was still alive and her burnt body was lying just outside the cabin in the chilli plantation, he had taken the help of *BH*. He neither referred to the name of this person in his statement under Section 313 CrPC nor he examined this person as a witness. In the normal course, thus, it will have to be presumed that if this witness was produced and examined in court, he might have spoken the truth which was not suitable or favourable to the accused. For reasons best known and which remained unexplained, this witness was not examined though in his statement under Section 313 CrPC in answer to the last question he had stated that he was innocent and would give in writing whatever he wanted to say. Despite this, no defence was led by the appellant. (Para 24). *Manu Sao* v. *State of Bihar*, (2010) 12 SCC 310: (2010) 3 UPLJ 113 .

Bench Strength **2**. Coram: *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision: 22-7-2010]

Vijendrajit Ayodhya Prasad Goel v. State of Bombay, AIR 1953 SC 247: 1953 Cri LJ 1097; Ajay Singh v. State of Maharashtra, (2007) 12 SCC 341: (2008) 1 SCC (Cri) 371; Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 SC 468: 1953 Cri LJ 1933, relied on

[3266] — S. 313 — Statement of accused recorded under — Use of — Inculpatory admissions — *Held, cannot altogether be ignored merely because they were advanced as a defence strategy — Court to give weight to the answers given by the accused — However, they cannot be made sole basis for arriving at a finding of guilt of the accused*

It cannot be said that statement of an accused recorded under Section 313 of the Code does not deserve any value or utility if it contains inculpatory admissions. The need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial, nor is it a mere formality. It has a salutary purpose. It enables the court to be apprised of what the indicted person has to say about the circumstances pitted against him by the prosecution. Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases the accused would offer some explanations to incriminative circumstances. In very rare instances the accused may even admit or own incriminating circumstances adduced against him, perhaps for the purpose of adopting legally recognised defences. In all such cases the court gets the advantage of knowing his version about those aspects and it helps the court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstance appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy.

Sub-section (4) of Section 313 contains necessary support to the legal position that answers given by the accused during such examination are intended to be considered by the court. The words "may be taken into consideration in such enquiry or trial" in sub-section (4) would amount to a legislative guideline for the court to give due weight to such answers, though it does not mean that such answers could be made the sole basis of any finding.

Answers given by the accused during examination under Section 313 can well be taken into consideration in deciding whether the prosecution evidence can be relied on, and whether the accused is liable to be convicted of the offences charged against him.

Answers of the accused, when they contain admission of circumstances against him are not by themselves, delinked from the evidence, be used for arriving at a finding that the accused had committed the offence. *State of U.P.* v. *Lakhmi*, (1998) 4 SCC 336: 1998 SCC (Cri) 929: AIR 1998 SC 1007: 1998 All LJ 680: 1998 Cri LJ 1411.

Bench Strength **3**. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas** and *M. Srinivasan*, JJ. [Date of decision: 12-2-1998]

Sampat Singh v. State of Rajasthan, (1969) 1 SCC 367; Jethamal Pithaji v. Asstt. Collector of Customs, (1974) 3 SCC 393: 1973 SCC (Cri) 958; Rattan Singh v. State of H. P., (1997) 4 SCC 161: 1997 SCC (Cri) 525, relied on

[3267] — S. 313 — Confession or admission made by accused under, held, can be relied on to convict him (Para 32). *Dharnidhar* v. *State of U.P.*, (2010) 7 SCC 759.

Bench Strength **2**. Coram: *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision : 8-7-2010]

Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 SC 468: 1953 Cri LJ 1933; Narain Singh v. State of Punjab, (1964) 1 Cri LJ 730: (1963) 3 SCR 678; State of Maharashtra v. Sukhdev Singh, (1992) 3 SCC 700: 1992 SCC (Cri) 705, relied on

[3268] — S. 313 — Statement of accused under — Reliance on inculpatory part of admission — *Statement of accused that he was caught by village people who were chasing the dacoits and was taken to the village on suspicion — Inculpatory part of his admission that he was caught by the village people and that he made a confession before the Mukhia cannot be rejected merely because exculpatory part of his admission that he was arrested on suspicion is found to be false — General denial of his participation in dacoity could not set at naught admission of independent facts — Evidence Act, 1872, S. 24 — Penal Code, 1860, S. 396. State of Bihar* v. *Anirudh Thakur*, (1998) 9 SCC 616: AIR 1998 SC 921.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.S.M. Quadri*, JJ. [Date of decision: 6-2-1998]

[3269] — S. 313 — Statement of accused recorded under — Evidentiary value — *Held, answers given by accused to questions put under S. 313 are not per se evidence because they are not on oath, and prosecution does not get opportunity to cross-examine accused — Nevertheless, they are subject to consideration by court to limited extent of drawing an adverse inference against accused for any false answers voluntarily offered by him and to provide an additional/missing link in chain of circumstances to prove guilt of accused — In instant case, accused M had taken false pleas in reply to some of the questions put to him — Hence, adverse inference drawn against him* (Paras 269 and 274). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

Pershadi v. State of U.P., AIR 1957 SC 211: 1957 Cri LJ 328; State of M.P. v. Ratan Lal, AIR 1994 SC 458: 1994 Cri LJ 131; Anthony D'Souza v. State of Karnataka, (2003) 1 SCC 259: 2003 SCC (Cri) 292, relied on

[3270] — S. 313 — Statement recorded under — Held, cannot be used for convicting the co-accused. *Nareshkumar Harmanbhai Brahmbhatt* v. *State of Gujarat*, (1996) 2 GCD 248 (SC): (1995) 2 Guj LH 441.

Bench Strength **2**. Coram: **R.M. Sahai** and *N.P. Singh*, JJ. [Date of decision: 19-1-1995]

[3271] — S. 313 — Statement under — Nature of — *Held, is not evidence — It is only the stand of the accused or version by way of explanation, when incriminating materials appearing against him are brought to his notice* (Para 11). *Devender Kumar Singla* v. *Baldev Krishan Singla*, (2005) 9 SCC 15: 2005 SCC (Cri) 1185: AIR 2004 SC 3084: 2004 Cri LJ 1778.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-2-2004]

[3272] — S. 313 — Statement under, held, cannot be used to make up absence of any suggestion during cross-examination (Para 12). *Devender Kumar Singla* v. *Baldev Krishan Singla*, (2005) 9 SCC 15: 2005 SCC (Cri) 1185: AIR 2004 SC 3084: 2004 Cri LJ 1778.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-2-2004]

[3273] — Ss. 313 and 315 — Submission that statement of accused recorded under S. 313 be treated as evidence and as such stand of appellant as regards his gun being taken away by police considered — *Held, accused had right to appear as witness on his own behalf as envisaged under S. 315 — By declining to do so he failed to offer any evidence to show loss/removal of his gun — Thus, it cannot be urged merely to suit his convenience that his statement under S. 313 be treated as evidence and facts therein as true unless contradicted by prosecution* (Paras 268 and 269). *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram : **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision : 19-4-2010]

Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 SC 468: 1953 Cri LJ 1933, referred to

[3274] — S. 313 — Statement under, when liable to be rejected — Contradictory stands of accused — *Respondent on one hand claiming animosity between him and family of victim (of rape) and on the other hand raising defence of consent on part of victim in having sex with him — Held, the two stands being contradictory, are both liable to be rejected — Criminal Trial — Appreciation of evidence — Contradictions, inconsistencies, exaggerations or embellishments — Contradictory stands taken by accused — Liable to be rejected* (Para 14). *State of M.P.* v. *Balu*, (2005) 1 SCC 108: 2005 SCC (Cri) 270: AIR 2005 SC 222: 2005 Cri LJ 335: (2005) 25 AIC 369 (SC).

Bench Strength **2**. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 5-11-2004]

[3275] — S. 313 — Testimony given on oath cannot be rejected merely on the ground that it was contradicted by the statement of the accused made under S. 313. *Mohan Lal* v. *Ajit Singh*, (1978) 3 SCC 279: 1978 SCC (Cri) 378: AIR 1978 SC 1183: 1978 Cri LJ 1107.

Bench Strength **2**. Coram: **P.N. Shinghal** and *D.A. Desai*, JJ. [Date of decision: 2-5-1978]

[3276] — S. 313 — Trial court must examine the accused so as to give opportunity to him to personally explain any incriminating circumstances appearing in evidence against him — *Statement alleged to have been recorded in a casual and cursory manner, not in accordance with law — But no such contention was raised before trial court or High Court — Before Supreme Court, no prejudice shown to have caused due to the irregular, imperfect recording of statement under S. 313 — Held, accused not entitled to benefit for the defective recording of the statement*

It was submitted that the statement under Section 313 CrPC of the accused persons had been recorded in a most cursory, casual and perfunctory manner by the Sessions Court. It was urged that this is a normal practice followed in the court in the State and that manner in which the trial court recorded the statement under Section 313 CrPC of the accused persons, being not in accordance with law the accused-appellants would be entitled for the benefit as they had not been provided with sufficient opportunity to explain the circumstances appearing in evidence against them.

Held :

Having perused the statement under Section 313 CrPC and the question formulated by the trial court in the present case it can be said that it is far from satisfactory. The Supreme Court time and again has laid down that it is obligatory on the part of the trial court to examine the accused for the purpose of enabling the accused personally to explain any circumstance appearing in evidence against him. If such opportunity is not afforded, the incriminating piece of evidence available in the prosecution evidence against the accused cannot be relied upon for the purpose of recording the conviction of the accused person. It is imperative on the court to record the statement under Section 313 CrPC of the accused persons so as to give opportunity to the accused persons to explain any incriminating circumstance proved by the prosecution. The duty cast on the court cannot be taken lightly. However, no argument had been advanced by the counsel for the appellants in the trial court or before the High Court on the basis of improper recording of the statement under Section 313 CrPC. The counsel for the accused-appellants could not point out any prejudice being caused to the accused-appellants on account of the irregular, imperfect statement recorded under Section 313 CrPC. That being the case, the accused are not entitled for any benefit for the lacuna in recording the statement of the accused under Section 313 CrPC. (Para 17). *Parsuram Pandey* v. *State of Bihar*, 2005 SCC (Cri) 113: AIR 2004 SC 5068.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **P.P. Naolekar**, JJ. [Date of decision: 14-10-2004]

[3277] — S. 313 — Trial court must examine the accused so as to give opportunity to him to personally explain any incriminating circumstances appearing in evidence against him — *Statement alleged to have been recorded in a casual and cursory manner, not in accordance with law — But no such contention was raised before trial court or High Court — Before Supreme Court, no prejudice shown to have caused due to the irregular, imperfect recording of statement under S. 313 — Held, accused not entitled to benefit for the defective recording of the statement*

It was submitted that the statement under Section 313 CrPC of the accused persons had been recorded in a most cursory, casual and perfunctory manner by the Sessions Court. It was urged that this is a normal practice followed in the court in the State and that manner in which the trial court recorded the statement under Section 313 CrPC of the accused persons, being not in accordance with law the accused-appellants would be entitled for the benefit as they had not been provided with sufficient opportunity to explain the circumstances appearing in evidence against them.

Held :

Having perused the statement under Section 313 CrPC and the question formulated by the trial court in the present case it can be said that it is far from satisfactory. The Supreme Court time and again has laid down that it is obligatory on the part of the trial court to examine the accused for the purpose of enabling the accused personally to explain any circumstance appearing in evidence against him. If such opportunity is not afforded, the incriminating piece of evidence available in the prosecution evidence against the accused cannot be relied upon for the purpose of recording the conviction of the accused person. It is imperative on the court to record the statement under Section 313 CrPC of the accused persons so as to give opportunity to the accused persons to explain any incriminating circumstance proved by the prosecution. The duty cast on the court cannot be taken lightly. However, no argument had been advanced by the counsel for the appellants in the trial court or before the High Court on the basis of improper recording of the statement under Section 313 CrPC. The counsel for the accused-appellants could not point out any prejudice being caused to the accused-appellants on account of the irregular, imperfect statement recorded under Section 313 CrPC. That being the case, the accused are not entitled for any benefit for the lacuna in recording the statement of the accused under Section 313 CrPC. (Para 17). *Parsuram Pandey* v. *State of Bihar*, (2004) 13 SCC 189: 2005 SCC (Cri) 113: AIR 2004 SC 5068: 2004 Cri LJ 4978.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **P.P. Naolekar**, JJ. [Date of decision: 14-10-2004]

[3278] — S. 313 — Use of, to contradict new allegations by the accused — *Accused convicted under S. 20 of Narcotic Drugs and Psychotropic Substances Act for possession of charas — Accused alleging before Supreme Court that nothing had happened at the place of alleged search and seizure and that everything was done at the police station — Where the accused had not so stated in his statement under S. 313 such allegation made at this stage, held, not sustainable — More so when according to the IO's evidence the accused, while alighting from a bus, was found carrying a bag and, on suspicion, was searched, and there was no reason to disbelieve the evidence of the IO — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 20* (Para 7). *Ashok Kumar* v. *State of Haryana*, (2000) 2 SCC 592: 2000 SCC (Cri) 506: AIR 2000 SC 3474: 2000 Cri LJ 3186.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.N. Phukan*, JJ. [Date of decision: 2-12-1999]

[3279] — S. 313 — Court can rely on a portion of the statement of the accused and find him guilty in consideration with the other evidence led against him by the prosecution — *Reconstruction of the incident with other evidence — CrPC, 1898, S. 342*

Where the commencement or genesis of the occurrence is not available because there was no witness to the occurrence available, the only direct version of the commencement of the occurrence would be found in the statement of the accused, if he chooses to give out his version of the occurrence. His statement has to be considered in the light of the evidence adduced by the prosecution and weighing his statement with the probabilities of the case either in his favour or against him.

Here though the dying declaration refers to assailants and those present, it throws no light on how the occurrence commenced or what was the genesis of the trouble. Taking the statement of the accused along with the remaining evidence a case of sudden fight on sudden quarrel is established. The conviction under S. 304, Part II was improper and should be under S. 304, Part I, Indian Penal Code. *State of H.P.* v. *Wazir Chand*, (1978) 1 SCC 130: 1978 SCC (Cri) 58: AIR 1978 SC 315: 1978 Cri LJ 347.

Bench Strength **3**. Coram: *P.K. Goswami*, *N.L. Untwalia* and **D.A. Desai**, JJ. [Date of decision: 16-11-1977]

[3280] — S. 313 — Prejudice likely to occur by failure to frame a charge or if one omnibus question put to the accused without intimating him of the offence of which he was likely to be convicted — *Penal Code, 1860, S. 411 — CrPC, 1898, S. 342. Karnal Singh Uttam Singh* v. *State of Maharashtra*, (1976) 1 SCC 882: 1976 SCC (Cri) 204: AIR 1976 SC 1097: 1976 Cri LJ 842.

Bench Strength 2. Coram: **M.H. Beg** and *P.K. Goswami*, JJ. [Date of decision: 19-11-1975]

[3281] — S. 313 — Effect of omission to frame, or absence of, or error in charge — Charges framed against four accused including appellant for offences punishable under Ss. 147, 148, 324, 302 r/w S. 149 IPC, while appellant alone convicted under S. 302 simpliciter — *Held, accused can be convicted for an offence for which no charge was framed, unless it had occasioned failure of justice — In instant case, role of appellant in assaulting deceased with knife was clearly proved by PWs — In his examination under S. 313 CrPC a specific question was put to appellant and he was made aware of basic ingredients of the offence and main facts sought to be established against him were explained to him — Thus, he can be convicted under S. 302 IPC simpliciter for having committed the murder — CrPC, 1973 — S. 464* (Paras 11, 27 and 28). *Balraje* v. *State of Maharashtra*, (2010) 6 SCC 673.

Bench Strength 2. Coram : **P. Sathasivam** and *H.L. Dattu*, JJ. [Date of decision : 10-5-2010]

Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661, relied on

[3282] — S. 313 — Admission of guilt before court by accused after close of prosecution evidence and his examination under S. 313 — *Conviction, held on facts, was affected by the admission and hence, cannot be sustained — Prevention of Food Adulteration Act, 1954, S. 16 — Evidence Act, 1872, S. 18*

When there is an admission of guilt made by the accused as a result of plea bargaining or otherwise, the evaluation of the evidence by the Court is likely to become a little superficial and perfunctory and the Court may be disposed to refer to the evidence not critically with a view to assessing its credibility but mechanically as a matter of formality in support of the admission of guilt. In the present case, the Magistrate was affected by the admission of guilt made by the appellant and in the circumstances, it would not be right to sustain the conviction of the appellant. *Ganeshmal Jashraj* v. *Govt. of Gujarat*, (1980) 1 SCC 363: 1980 SCC (Cri) 239: AIR 1980 SC 264: 1980 MLJ (Cri) 474: (1980) 21 GLR 429: (1980) 1 SCR 1114.

Bench Strength 2. Coram: **P.N. Bhagwati** and *V.D. Tulzapurkar*, JJ. [Date of decision: 30-10-1979]

[3283] — S. 313 — Illegal gratification — Demand and acceptance of bribe by public servant — Trap — Conviction — *Appellant-accused found guilty of offences punishable under Ss. 7 and 13(1)(d) r/w S. 13(2) of the Prevention of Corruption Act, 1988 and convicted and sentenced thereunder — On facts, accused, a public servant, allegedly demanded and accepted illegal gratification from the complainant PW 1 — Before the trial court accused denying the charge levelled against him in a statement made under S. 313 CrPC — Trial court finding the evidence of PWs 1 and 2 credible and cogent, held the accused guilty by mainly placing reliance on their evidence — Before High Court the trial court's judgment was primarily attacked on the ground that PWs 1 and 2 were interested witnesses and their evidence should not have been accepted — High Court not finding any substance in the submissions, confirmed the conviction and sentence — Held, there is no substance that evidence of PW 1 is the evidence of an interested witness — There is no basis for PW 1 to falsely implicate the accused — Evidence on record clearly shows why the illegal gratification was demanded and accepted by the appellant — Evidence of PW 1, thus, does not suffer from any infirmity to warrant interference — Moreover, evidence of PW 2 is also clear, credible and cogent — Conviction upheld — Prevention of Corruption Act, 1988, Ss. 7 and 13(1)(d) r/w S. 13(2)* (Paras 2, 4, 5, 8 and 9). *B. Noha* v. *State of Kerala*, (2006) 12 SCC 277: (2007) 1 SCC (Cri) 711.

Bench Strength 2. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 6-11-2006]

[3284] — S. 313 — Proof beyond reasonable doubt — Explanation when due from accused — *Held, generally it is for the prosecution to prove its case beyond doubt but in circumstances such as in the present case, some explanation is also due from an accused in order to absolve himself from suspicion of the crime — Evidence Act, 1872, S. 106*

It is true that it is generally for the prosecution to prove its case beyond doubt but in circumstances such as the present one, some explanation is also due from an accused in order to absolve himself from suspicion of the crime. In his statement under Section 313 CrPC his positive stand was that he alone had been in the house with *M* when she had been killed and indeed as per Ext. P-JJ, *M*'s body had been found only one karam (5 feet) away from the place where the appellant lay injured. It must be emphasised that but for this self-serving statement made by the appellant, there is nothing on record to support his positive stance. Even otherwise, had the shot been fired by some intruder, the direction would have been more or less horizontal and parallel to the ground and not from down upwards with the pellets hitting the jaw, skirting the cheek and hitting the roof at Point E. (Para 21). *Ujjagar Singh* v. *State of Punjab*, (2007) 13 SCC 90: 2008 Cri LJ 808.

Bench Strength 2. Coram: *S.B. Sinha* and **H.S. Bedi**, JJ. [Date of decision: 13-12-2007]

Modi: Medical Jurisprudence and Toxicology, 23rd Edn., p. 765; Dr. B.R. Sharma: Forensic Science in Criminal Investigation and Trials, 4th Edn., p. 1160, relied on

[3285] — S. 313 — Guilt established — Gunning down brother, his family members and also mother — *Circumstances proved were: motive (property dispute), recovery of bloodstained shoes, shirts and pants, presence of injury over right surface of shoulder which could have been caused due to repeated firing from the gun for which no explanation given either in statement under S. 313 CrPC or in written statement and accused seen leaving the place of occurrence after the incident and also confessional statement of accused's son which corroborated the proved circumstances — On facts held, conviction of accused for the offence under S. 302 IPC and S. 25(1)(b)(a) of Arms Act has to be confirmed — Arms Act, 1959, S. 25(1)(b)(a) — Penal Code, 1860 — S. 302 — Evidence Act, 1872, Ss. 8 and 114 Ill. (h). Prakash Dhawal Khairnar (Patil)* v. *State of Maharashtra*, (2002) 2 SCC 35: 2002 SCC (Cri) 281: AIR 2002 SC 340: 2002 Cri LJ 928.

Bench Strength 2. Coram: **M.B. Shah** and *R.P. Sethi*, JJ. [Date of decision: 12-12-2001]

[3286] — S. 313 — Pledging of ornaments of deceased soon after the murder — *Evidence on record showing that appellant did not pledge the articles on his own but brought them at the instance of his father who was a goldsmith — Held, reversal of acquittal by High Court not justified — Statement of co-accused under S. 342, Criminal Procedure Code, 1898 taken into consideration — CrPC, 1898, S. 342 — Penal Code, 1860 — Ss. 302 and 416*

When the receipt evidencing the pledging itself does not implicate the appellant, it would not be safe to base the conviction either for murder or under S. 411 of IPC. *Rajendra Prasad* v. *State of U.P.*, 1989 Supp (2) SCC 145: 1990 SCC (Cri) 32.

Bench Strength 2. Coram: *K. Jagannatha Shetty* and *K.N. Saikia*, JJ. [Date of decision: 3-1-1989]

[3287] — S. 313 — Circumstantial evidence, held, can be relied on to convict the accused if all the circumstances proved negate the innocence of the accused and bring home the charge beyond doubt — *On facts, held, the circumstances of the case led to the conclusion that the charge of murder was proved beyond doubt against the accused*

The accused was a jobless person and was in the habit of taking liquor. He used to often demand money from his wife and used to assault her. One day a quarrel continued between the accused and his wife from 7 p.m. to 9 p.m. which ended on the interference by a neighbour (PW 1 herein). Suddenly in the night PW 4, who was staying in the house of PW 1, heard the cries of the accused's elder daughter. When he came out he found the accused's hut on fire. PW 1 and PW 4 rescued the accused's elder daughter but by then the accused's wife and their younger daughter were already dead. PW 4 took the elder daughter to hospital and PW 1 narrated the incident to her father PW 2 who, in turn, informed the police. Asked by PW 5 about the fire, the accused told him that the deceased refused to serve meals to him and was also not giving money and as he had doubts about her chastity, so on the previous night he strangulated the deceased and killed her. He added that he poured kerosene on the dead body of the deceased and set fire to the body. In the course of the incident, the accused himself was seen coming out of the house through the roof as deposed to by PWs 1 and 3 and the accused also admitted it in his statement under Section 313 CrPC. No attempt was made by the accused to save any one of the deceased persons. He rather stood as a silent spectator. The elder daughter was examined by a doctor who found extensive burn injuries on her person. She however died in the hospital. On the basis of the information received from PW 2 the police registered a case and after investigation submitted the charge-sheet. On committal, the Sessions Court convicted the accused under Sections 302 and 436 of the Penal Code on the basis of the circumstances established by the prosecution and sentenced him to death and to rigorous imprisonment for five years respectively under the said sections. The accused did not prefer any appeal but in confirmation proceedings under Section 366 CrPC, the High Court without examining the circumstances said to have been established by the prosecution evidence and without examining the conclusion of the trial Judge, held the accused to be entitled to benefit of doubt and acquitted him.

Allowing the State's appeal,

Held :

The law is fairly well settled that in a case of circumstantial evidence, the cumulative effect of all the circumstances proved must be such as to negative the innocence of the accused and to bring home the charge beyond reasonable doubt. The opinion of the doctor indicates that the wife of the accused died of asphyxia due to strangulation and not on account of burn injuries and several findings indicated in the post-mortem report undoubtedly support the conclusion about the death on account of asphyxia. If the accused and his wife were seen together in the house at 9 p.m. and the accused came out in the morning through the roof, leaving the wife and two children and the death of the wife was found to be not on account of burn injuries but on account of strangulation and on being asked, the accused offered an explanation about the accidental fire which was found to be untrue, then, there cannot be any hesitation to come to the conclusion that it was the accused who was the perpetrator of the crime. (Para 6)

In a case of circumstantial evidence when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This proposition fully applies to the circumstances of the present case. (Para 6). *State of T.N.* v. *Rajendran*, (1999) 8 SCC 679: AIR 1999 SC 3535.

Bench Strength 3. Coram: **G.B. Pattanaik**, *M. Srinivasan* and *N. Santosh Hegde*, JJ. [Date of decision: 22-9-1999]

[3288] — S. 313 — Circumstances establishing guilt of the accused — *S seen in the company of the deceased in his house when the deceased was alone and thereafter seen leaving the place of occurrence with a knife in his hand immediately after the occurrence — Evidence establishing that S with bloodstained clothes on his person reached the house of the witness and requested her to bring a set of clothes from the house of the co-accused — Recovery of bloodstained clothes from the house of the co-accused — Reports of chemical examiner and serologist indicating presence of human blood on those clothes for which no explanation offered by S — Recovery of a knife stained with human blood pursuant to the disclosure statement made by him — Held, in the circumstances of the case, chain of circumstances is complete and the charge of murder against the accused S is proved beyond reasonable doubt — Evidence Act, 1872, S. 27* . *Sanjiv Kumar* v. *State of H.P.*, (1999) 2 SCC 288: 1999 SCC (Cri) 127: AIR 1999 SC 782: 1999 Cri LJ 1138.

Bench Strength 2. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 22-1-1999]

[3289] — S. 313 — Circumstance regarding abscondence, not put to accused in examination under S. 313 CrPC — *Held, circumstance cannot be used against the accused* (Para 18). *Kanhai Mishra* v. *State of Bihar*, (2001) 3 SCC 451: 2001 SCC (Cri) 537: AIR 2001 SC 1113: 2001 Cri LJ 1259.

Bench Strength 3. Coram: *K.T. Thomas*, *R.P. Sethi* and **B.N. Agrawal**, JJ. [Date of decision: 27-2-2001]

Kehar Singh v. State (Delhi Admn.), (1988) 3 SCC 609: 1988 SCC (Cri) 711, relied on

[3290] — S. 313 — Missing person last seen with accused — *If the prosecution on the basis of reliable evidence establishes that the missing person was last seen in the company of the accused and was never seen thereafter, held, it is obligatory on the accused to explain the circumstances in which the missing person and the accused parted company — Evidence Act, 1872, S. 3 — Penal Code, 1860 — S. 302* (Para 19). *Sahadevan* v. *State*, (2003) 1 SCC 534: AIR 2003 SC 215.

Bench Strength 2. Coram: **N. Santosh Hegde** and *K.G. Balakrishnan*, JJ. [Date of decision: 1-11-2002]

Joseph v. State of Kerala, (2000) 5 SCC 197: 2000 SCC (Cri) 926, relied on

[3291] — S. 313 — Defence case is required to be proved only by preponderance of probability

Where an accused sets up a defence or offers an explanation, it is well settled that he is not required to prove his defence beyond a reasonable doubt but only by preponderance of probabilities. *M. Abbas* v. *State of Kerala*, (2001) 10 SCC 103.

Bench Strength 3. Coram: *Dr. A.S. Anand*, C.J. and *R.C. Lahoti* and *Doraiswamy Raju*, JJ. [Date of decision: 23-1-2001]

[3292] — S. 313 — False implication/accusation — Alleged in a rape case on the ground of enmity — *Neither nature of enmity nor gravity of the same stated — Fact of false implication, held, not established — Penal Code, 1860 — Ss. 375 and 376* (Para 7). *State of Chhattisgarh* v. *Derha*, (2004) 9 SCC 699: 2004 Cri LJ 2109.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-4-2004]

[3293] — **S. 313 — Presumption of conscious possession — Whether rebutted** — *Accused travelling in private car with a known co-accused, in his S. 313 CrPC statement trying to rebut presumption by stating that he was simply a passenger unconnected with contraband seized i.e. he had just taken a "lift" — He not examining said co-accused person under S. 315 CrPC nor producing any other evidence in support of his plea — Noticing fact of vehicle concerned being a private car (as distinguished from a public transport vehicle) and there being no admissible evidence, plea rejected — Therefore, presumption of conscious possession not rebutted and conviction of appellants under S. 20 NDPS Act, held, justified — Narcotic Drugs and Psychotropic Substances Act, 1985', Ss. 35, 54 and 20* (Paras 24 and 23). *Dehal Singh* v. *State of H.P.*, (2010) 9 SCC 85: (2010) 3 SCC (Cri) 1139: AIR 2010 SC 3594.

Bench Strength **2**. Coram: *H.S. Bedi* and **C.K. Prasad**, JJ. [Date of decision: 31-8-2010]

Madan Lal v. State of H.P., (2003) 7 SCC 465: 2003 SCC (Cri) 1664, followed

[3294] — **S. 313 — Possession — Whether appellant was in exclusive possession of the factory from where the psychotropic substances were seized — Burden to prove, on whom lay** — *On facts, the affirmative finding in respect of the question of possession recorded by trial court and affirmed by High Court, upheld — Further held that where the statements of the accused under S. 313 CrPC showed complicity the burden to prove the contrary lay on the appellant — Evidence Act, 1872, S. 106 — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 22 and 20(b)*

Rejecting the appellant's contention that absence of evidence to prove that he was in exclusive possession of the factory from where the offending articles were seized, vitiated his conviction under Sections 22 and 20(*b*)(*ii*),

Held :

One of the members of the raiding party, PW 1 has stated in his evidence that when he raided the factory, it was locked and that the appellant was not found at his residence nor could his whereabouts be known from his son and brother. The appellant had absconded and was found from Pune after about 2 months. In his statement under Section 313 CrPC, he had not stated that he had not closed the factory or that he was not present at that time or that the key of the factory had remained with someone else. The factory belonged to the appellant. He was the sole proprietor. In view of these facts and circumstances, it was necessary for the appellant to explain how the offending articles came to be found from his factory. He did not offer any plausible explanation. Therefore, the finding recorded by the trial court and confirmed by the High Court that the offending articles were found from the possession of the appellant are justified. *Jagdish Budhroji Purohit* v. *State of Maharashtra*, (1998) 7 SCC 270: 1998 SCC (Cri) 1578: AIR 1998 SC 3328.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 1-9-1998]

[3295] — **S. 313 — Search and seizure — Requirements under S. 42 of taking down in writing the information received and sending a copy thereof to the immediate official superior — Non-compliance with — Effect — Action taken on unrecorded information, held, would become suspect and one causing prejudice to the accused but would not ipso facto vitiate the trial** — *In the instant case, the information received by the Police Inspector but not recorded by him, was to the effect that* I *was trying to transport charas to a particular place in the specified vehicle — Investigation revealed that* I *and* M *had loaded the contraband in the vehicle — The Police Inspector intercepted and searched the vehicle and recovered from it gunny bags containing charas — Driver of the vehicle while admitting that two persons had loaded the bags into his vehicle and directed him to transport the same to the specified destination, pleading his unawareness of the contents of the bags — Prosecution not adducing any evidence to show the existence of any criminal conspiracy between the driver and the main culprits viz.* I *and* M *to transport the contraband — Nothing even to suggest that the driver and main culprits were close, or even known, to each other — Moreover, the police failed to nab the main culprits* (I *and* M) *— In such circumstances, held, the accused driver had successfully rebutted the presumption under S. 35 — Hence, his conviction under S. 20(b)(ii) of the NDPS Act as well as under S. 66(1)(b) of Bombay Prohibition Act, set aside Bombay Prohibition Act, 1949 (25 of 1949), S. 66(1)(b) — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 42(1) & (2), 35 and 20(b)(ii)*

The Inspector of Police received an information from a Constable that one *I* was trying to transport charas up to a specified place in an autorickshaw bearing a particular number. Without taking down in writing the said information, the Inspector, accompanied by a police force, proceeded to the road concerned and succeeded in intercepting the said autorickshaw. On checking they found four gunny bags placed inside it. When the gunny bags were opened at the police station ten packets of charas (cannabis hemp) were found concealed therein. Investigation showed that the consignment was loaded in the rickshaw by two persons, viz., *I* and *M*. The police could not arrest or find out *I* and *M* and laid a charge-sheet under Section 20(*b*)(*ii*) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 66(1)(*b*) of the Bombay Prohibition Act against the driver of the autorickshaw only. The said driver is the appellant herein. In his statement under Section 313 CrPC in the trial court, the appellant admitted the recovery from his autorickshaw but pleaded his unawareness of the contents of the gunny bags, which according to him had been loaded by two persons with a direction to him to transport the same to the specified destination. Though acquitted by the trial court, the appellant was convicted by the High Court mainly on the ground that he had failed to rebut the presumption under Section 35 of the Act. Before the Supreme Court, the appellant contended, inter alia, that non-compliance by the Police Inspector with the requirements of taking down in writing the information received and sending a copy thereof to his immediate superior as contemplated by Section 42 of the Act vitiated the search as a whole. On the other hand, the State contended that: (*i*) the said omissions would not vitiate the trial, and, (*ii*) the appellant having admitted the recovery of charas from his vehicle, the said omissions were inconsequential. The State further relied on the presumption under Section 35 of the Act. The Supreme Court although not fully agreeing with the appellant's contention as to consequences of non-compliance with Section 42, clarified the legal position. Then allowing the appeal, it

Held :

In view of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985, if the officer has reason to believe from personal knowledge or prior information received from any person that any narcotic drug or psychotropic substance (in respect of which an offence has been committed) is kept or concealed in any building, conveyance or enclosed place, it is imperative that the officer should take it down in writing and he should forthwith send a copy thereof to his immediate official superior. The action of the officer, who claims to have exercised it on the strength of such unrecorded information, would become suspect, though the trial may not vitiate on that score alone. Nonetheless the resultant position would be one of causing prejudice to the accused. (Para 18

In the instant case, the non-recording of information has in fact deprived the appellant as well as the Court of the material to ascertain what was the precise information which the Police Inspector got before proceeding to stop the vehicle. Value of such an information, which was the earliest in point of time, for ascertaining the extent of the involvement of the appellant in the offence, was of a high degree. It is not enough that the Police Inspector was able to recollect from memory, when he was examined in court after the lapse of a long time, as to what information he got before he proceeded to the scene. (Para 19)

No doubt, when the appellant admitted that the narcotic drug was recovered from the gunny bags stacked in the autorickshaw, the burden of proof is on him to prove that he had no knowledge about the fact that those gunny bags contained such a substance. The standard of such proof is delineated in Section 42(2) as "beyond a reasonable doubt". If the court, on an appraisal of the entire evidence does not entertain doubt of a reasonable degree that he had real knowledge of the nature of the substance concealed in the gunny bags then the appellant is not entitled to acquittal. However, if the court entertains strong doubt regarding the accused's awareness about the nature of the substance in the gunny bags, it would be a miscarriage of criminal justice to convict him of the offence keeping such strong doubt undispelled. Even so, it is for the accused to dispel any doubt in that regard. (Para 21)

The burden of proof cast on the accused under Section 35 can be discharged through different modes. One is that he can rely on the materials available in the prosecution evidence. Next is, in addition to that, he can elicit answers from prosecution witnesses through cross-examination to dispel any such doubt. He may also adduce other evidence when he is called upon to enter on his defence. In other words, if circumstances appearing in the prosecution case or in the prosecution evidence are such as to give reasonable assurance to the court that the appellant could not have had the knowledge or the required intention, the burden cast on him under Section 35 of the Act would stand discharged even if he has not adduced any other evidence of his own when he is called upon to enter on his defence. (Para 22)

In the instant case non-recording of the vital information collected by the police at the first instance can be counted as a circumstance in favour of the appellant. Next is that even the information which the Police Inspector recollected from memory is capable of helping the accused because it indicates that the real culprits would have utilised the services of an autorickshaw driver to transport the gunny bags and it is not necessary that the autorickshaw driver should have been told in advance that the gunny bags contained such offensive substance. The possibility is just the other way round that the said culprits would not have disclosed that information to the autorickshaw driver unless it is shown that he had entered into a criminal conspiracy with the other main culprits to transport the contraband. The prosecution did not adduce any evidence to show any such connivance between the appellant and the real culprits. There is nothing even to suggest that those culprits and the appellant were close to each other, or even known to each other earlier. Yet another circumstance discernible from the evidence in this case is that the police had actually arrayed two other persons as the real culprits and made all endeavour to arrest them, but they absconded and escaped from the reach of the police. (Para 23)

From the said circumstances, it has to be held that the accused had discharged the burden of proof in such a manner as to rebut the presumption envisaged in Section 35 of the Act. He is, therefore, not liable to be convicted for the offences pitted against him. (Para 24). *Abdul Rashid Ibrahim Mansuri* v. *State of Gujarat*, (2000) 2 SCC 513: 2000 SCC (Cri) 496: AIR 2000 SC 821: 2000 Cri LJ 1384.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **K.T. Thomas** and *S. Rajendra Babu*, JJ. [Date of decision: 1-2-2000]

State of Punjab v. Baldev Singh, (1999) 6 SCC 172: 1999 SCC (Cri) 1080, followed

State of Punjab v. Balbir Singh, (1994) 3 SCC 299: 1994 SCC (Cri) 634, impliedly, held, not good law

[3296] — S. 313 — Question as to non-compliance with S. 50 NDPS Act — Accused not stating under S. 313 CrPC that he was unaware of his rights under S. 50 NDPS Act or that he was misled on that account in any manner — Effect — *Narcotic Drugs and Psychotropic Substances Act, 1985, S. 50*

In the instant case, it was held that the requirements of Section 50 of the NDPS Act were sufficiently complied with. In addition to that, considering the statement made by the accused under Section 313 CrPC,

Held :

It may also be noticed that while giving statement under Section 313 CrPC the accused did not say that he was unaware of his rights or that he was misled on that account in any manner. On the contrary, in general and vague manner it was only said that he did not know or he had no idea of the allegations. Though that by itself is not sufficient to convict the accused in view of the procedural safeguards required to be observed by compliance with the requirements of Section 50, yet that is of some relevance in appreciating the grievance, now sought to be ventilated. (Para 15). *Prabha Shankar Dubey* v. *State of M.P.*, (2004) 2 SCC 56: 2004 SCC (Cri) 420: AIR 2004 SC 486.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 2-12-2003]

[3297] — S. 313 — Self-defence pleaded but accused in his statement under S. 313 CrPC not admitting to have inflicted the fatal blow — *Held, is no ground to reject the plea of self-defence if the evidence of the eyewitnesses reveal facts and circumstances supporting the plea — Penal Code, 1860, Ss. 96, 97 and 100 to 103*

The trial court considered the plea of self-defence but rejected it on the ground that the appellant did not state in his statement under Section 313 CrPC that he had hit *R* in self-defence. Obviously, an accused cannot be expected to admit that he had inflicted the blow that killed the deceased. Where the plea of the accused, when read with the evidence of the eyewitnesses, brings out a set of facts and circumstances showing that the accused acted in exercise of the right of private defence, the fact that the accused in his Section 313 CrPC statement only referred to the acts of the deceased and his son hitting him and did not admit that he hit back the deceased, is not a ground to reject the plea of private defence. The approach of the trial court to the plea of private defence was erroneous. The High Court did not go into this aspect at all. (Para 24). *Krishnan* v. *State of T.N.*, (2006) 11 SCC 304: AIR 2006 SC 3037: 2006 Cri LJ 3907.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 14-8-2006]

[3298] — S. 313 — Causing serious knife injuries on vital parts of bodies of two unarmed persons resulting in their instantaneous death — *No plea of exercise of right of private defence taken by the accused persons in their statements under S. 313 CrPC — Nature of injuries negating any just plea for right to private defence — On facts, High Court rightly held that the accused persons had no right to private defence — Accordingly existence of customary right of way need not be considered in the facts of the case — Penal Code, 1860, Ss. 97 and 96. Kuriakose* v. *State of Kerala*, 1994 Supp (1) SCC 602: 1994 SCC (Cri) 614: (1994) 1 Crimes 935: (1994) 31 ACC 297.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 1-2-1994]

[3299] — S. 313 — Plea of acting in exercise of right of private defence — *Held, cannot be accepted merely because such a statement was made by accused under S. 313 CrPC — Only minor and superficial injuries sustained by accused — Material on record established that accused had fired gunshot which resulted in death of the deceased — Held, on facts, there was no basis for accepting the plea — Penal Code, 1860, S. 100* (Para 12). *Anil Kumar* v. *State of U.P.*, 2005 SCC (Cri) 178: 2004 All LJ 3779.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-9-2004]

[3300] — S. 313 — Plea of acting in exercise of right of private defence — *Held, cannot be accepted merely because such a statement was made by accused under S. 313 CrPC — Only minor and superficial injuries sustained by accused — Material on record established that accused had fired gunshot which resulted in death of the deceased — Held, on facts, there was no basis for accepting the plea* (Para 12). *Anil Kumar* v. *State of U.P.*, (2004) 13 SCC 257: 2005 SCC (Cri) 178: AIR 2004 SC 4662: 2004 Cri LJ 4881.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-9-2004]

[3301] — S. 313 — Right to private defence of body — Existence of, as a possibility for doubting the prosecution story — Factual considerations — Marks of lathi-blows on the gun of the accused — *Accused giving statement under S. 313 CrPC that deceased's party were the aggressor and that the shot was fired when the aggressors were trying to snatch the gun from the accused — Existence of right of private defence, on facts, held, cannot be ruled out — Penal Code, 1860, Ss. 100 & 97 and S. 302*

An aggression between the deceased's group and the accused took place just outside the accused's house. During snatching of the accused's gun in the ensuing scuffle and aggression, an accidental shot from the accused's bullet vertically pierced the deceased's neck. PW 2 (a member of the deceased's group) was also injured by a pellet piercing him horizontally. After the bullet shot, the accused went inside his house and locked himself. The accused gave Section 313 CrPC statement and the deceased group led evidence as prosecution witnesses in support of their respective allegations/blame on each other of initiating the aggression. Trial court doubting the prosecution story as well as their witnesses, acquitted the accused. However, the High Court by the impugned order, reversed the acquittal and convicted the accused under Sections 302, 323 and 307 IPC.

Allowing the appeal,

Held :

The accused is presumed innocent until proven guilty. The trial court's acquittal bolsters the presumption that he is innocent. On proper analysis of the ratio and findings of this case, it is revealed that the findings of the trial court are based on the fundamental principles of the criminal jurisprudence. Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal of the trial court. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. (Paras 43 and 69)

The possibility that the deceased and the complainant's side were aggressors and had gone there and caused pharsa and lathi-blows on the accused cannot be ruled out because of the marks on the gun, Ext. 3. That the said gun was fired in snatching all of a sudden, injuring the deceased also cannot be ruled out from the circumstances of the case. The trial court did not discard the defence version of right of private defence as pleaded by the accused. (Para 36). *Ghurey Lal* v. *State of U.P.*, (2008) 10 SCC 450.

Bench Strength 2. Coram: *R.V. Raveendran* and **Dalveer Bhandari**, JJ. [Date of decision: 30-7-2008]

[3302] — S. 313 — Dowry death — Rebuttable presumption that death caused by husband or his relative — *Held, presumption under S. 113-B, Evidence Act begins to operate if prosecution is able to prove the circumstances set out in S. 304-B IPC — If defence of accused is only total denial, presumption remains unrebutted — Where accused-Respondent 1 was charged under S. 302 IPC and in the alternative under S. 304-B and evidence on record established (i) that marriage had been agreed to by accused on condition of payment of dowry (Rs 10,000 and 3 gold sovereigns); (ii) that marriage took place (on 17-5-1987) after part-payment (Rs 8000); (iii) that only a few days prior to her death, deceased wife had pleaded with her father and brother, during a visit to them, that she was being tortured by her husband and mother-in-law because of non-payment of balance and that she did not want to return to matrimonial home without it; (iv) that her father escorted her back there anyway, and (v) that she was found dead in a dry well, as a result of head injuries within 48 hours (on 14-11-1987), held on facts, High Court erred in allowing appeal of accused-Respondent 1, setting aside his conviction under S. 302 and not considering the charge under S. 304-B at all —*

Respondent 1 convicted by Supreme Court under S. 304-B and sentenced to 10 years' RI — Evidence Act, 1872, S. 113-B — Penal Code, 1860, S. 304-B

Accused 1 (Respondent 1 herein), *M*, was charged under Section 302 IPC and in the alternative under Section 304-B for the murder of *K*, his wife. *M* married *K* on 17-5-1987 in unusual circumstances. *K* was originally supposed to marry somebody else, but that person never came to the venue fixed for the solemnization of the marriage. Relatives and well-wishers who had gathered there discussed the matter and decided that *K* must be married. At that point *M* put himself forward as a potential bridegroom for *K*, but only on the condition that he be given Rs 10,000 and three sovereigns of gold as dowry. As PW 6, father of *K* was unable to arrange for the money and gold straight away, the relatives and elders present decided to contribute money of their own. In this way they collected Rs 8000, which was given to *M* and it was agreed that the balance amount as well as the gold would be given after PW 6 harvested his crops. The marriage was then solemnized. To establish this part of the sequence of events, the prosecution relied on the testimony of PW 1, brother of *K*, PW 6, father of *K*, PW 7, an independent witness who testified as to his participation in the collection of the money, and PW 12, also an independent witness, who testified as to the demand for dowry and the payment to *M*.

On 14-11-1987 *K* was found dead in a dry well. In the post-mortem examination carried out the next day, *K* was found to have died of shock and haemorrhage resulting from head injuries, which the examining doctor concluded were ante-mortem. He also felt that the head injuries were sufficient to cause death in the ordinary course of nature; that the death was homicidal.

On the issue of whether *M* had subjected *K* to cruelty and harassment in connection with the demand for dowry just before her death, the testimony of PW 1 and that of PW 6 were significant. PW 1 had testified that *K*, his sister had come to their parental home and asked him and their father to pay the balance amount due to *M*; *K* had also told them that *M*, her husband and her mother-in-law had been torturing her because of the non-payment. PW 1 promised to pay in January, after the harvest. *K* on the other hand pleaded that she should not be sent back to the matrimonial home without the money and gold. In spite of her pleas *K* was escorted back on 12-11-1987 by PW 6, who stayed overnight at *M*'s place and returned home on 13-11-1987. There was no evidence on record indicating that any compromise had been reached about the balance payment between 13-11-1987 and 14-11-1987, the date on which *K* was killed.

The trial court found *M* solely responsible for the death of *K* and convicted him under Sections 302 and 201 IPC, sentencing him to life imprisonment and two years' RI. The trial court also convicted *M* under Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961. *M*'s appeal, however, was allowed by the High Court and his convictions were set aside.

The Supreme Court, upholding the acquittal of *M*, Respondent 1, under Section 302 IPC, but finding him guilty under Section 304-B IPC

Held :

In order to establish the offence under Section 304-B IPC the prosecution is obliged to prove that the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances and such death occurs within 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband. Such harassment and cruelty must be in connection with any demand for dowry. If the prosecution is able to prove these circumstances then the presumption under Section 113-B of the Evidence Act will operate. It is a rebuttable presumption and the onus to rebut shifts on the accused. The defence of the accused was a total denial. Therefore, the presumption as to dowry death envisaged under Section 113-B of the Evidence Act remains unrebutted. (Paras 22 to 24)

In the present case it is clear that PW 6 took his daughter, the deceased to the house of the accused on 12-11-1987 and halted overnight there and returned to his house the next day i.e. 13-11-1987 and the deceased was murdered on 14-11-1987, stated to be early in the morning. There was no evidence on record which would throw some light that in the intervening period of 13-11-1987 and 14-11-1987 there was some settlement or resolution with regard to the balance amount of dowry being paid to the accused. From the testimony of PW 1 and PW 6, it clearly appears that soon before her death she was subjected to cruelty or harassment in connection with the demand for dowry by her husband. In the absence of the evidence on record showing any settlement or resolution for payment of balance of dowry amount and gold in the intervening period of 13-11-1987 and 14-11-1987, the cruelty and harassment in connection with any demand for dowry as on 12-11-1987 would continue till her death on 14-11-1987. This would constitute cruelty and harassment in connection with demand for dowry soon before her death. (Para 24)

The marriage of the deceased with the accused was solemnized on 17-5-1987 and she died within 7 years of marriage. Having regard to the entire facts and circumstances and evidence on record, it must be concluded that the offence under Section 304-B IPC is found to be well established against A-1. (Para 24)

Respondent-Accused 1 is accordingly convicted under Section 304-B IPC and sentenced to rigorous imprisonment for ten years. The impugned order of the High Court is set aside and the appeals filed by the State are allowed to the extent indicated. (Para 25). *State of Karnataka* v. *M.V. Manjunathegowda*, (2003) 2 SCC 188: 2003 SCC (Cri) 467: AIR 2003 SC 809: 2003 Cri LJ 900.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision: 7-1-2003]

***Followed in** Rameshwar Dass v. State of Punjab, (2007) 14 SCC 696*

[3303] — S. 313 — Dowry death — Suicide — *Death by falling in well, whether on facts was a dowry death — Evidence of wife's parents showing that since the date of marriage appellant was insisting upon dowry — On betrothal day itself land transferred in his favour and at the time of marriage some ornaments given to the deceased wife by her parents — Since 3rd day of marriage, appellant making further demand for dowry and ultimately given a certain sum — Evidence further showing that even till two years after marriage the appellant continued to make demands for dowry and subjected his wife to cruelty both mental and physical on that score — Appellant putting forth a further demand for a certain sum and a certain number of sovereigns as the balance of dowry and asking the cousin of his wife to persuade the deceased's parents to hand over the same — But before the wife's cousin could communicate to the appellant the outcome of his efforts, the appellant's wife meeting her death by falling in a well — Incident taking place within 31/2 years of marriage [much less than the time-limit postulated by S. 304-B(1) IPC] — Moreover, two independent witnesses stating that the appellant's mother-in-law had told them that the appellant was quarrelling with the deceased for more dowry — Obviously, because his continuous and persistent demands for dowry were not met, the appellant in his statement under S. 313 CrPC going to the extent of stating that the deceased was not his wife — In such circumstances, the High Court rightly held that the deceased was subjected to cruelty for dowry soon before her death for which she committed suicide — Hence, conviction under S. 304-B, upheld — Penal Code, 1860, Ss. 304-B(1) and 498-A. Rajayyan* v. *State of Kerala*, (1998) 4 SCC 85: 1998 SCC (Cri) 811: AIR 1998 SC 1211: 1998 Cri LJ 1633.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 3-3-1998]

[3304] — S. 313 — Rape and murder — Circumstantial evidence — *First circumstance that accused-appellant came to the house of deceased on the day of occurrence and gave a proposal to the deceased for going to orchard for plucking flowers, established — But the second circumstance that appellant and deceased left the house together, which was very material, could not be established — Prosecution also failed to prove the other circumstances — Hence appellant entitled to acquittal — Penal Code, 1860, Ss. 376 & 320* (Paras 17 to 19). *Kanhai Mishra* v. *State of Bihar*, (2001) 3 SCC 451: 2001 SCC (Cri) 537: AIR 2001 SC 1113: 2001 Cri LJ 1259.

Bench Strength **3**. Coram: *K.T. Thomas, R.P. Sethi* and **B.N. Agrawal**, JJ. [Date of decision: 27-2-2001]

[3305] — S. 313 — Criminal breach of trust — Burden of proof — *Initial burden on prosecution to prove entrustment of the property to accused — Actual manner of misappropriation of the property by accused need not be proved by it — Once the initial burden is discharged by prosecution, onus would lie on accused to prove how the property entrusted to him was dealt with by him — Amount deposited by PW with respondent Postmaster for purchase of NSCs but the same having not been purchased, complaint made by PW with postal authorities — Respondent having come to know about initiation of inquiry by postal authorities, deposited the full amount with interest in two instalments in post office — Held, trial court rightly convicted respondent under S. 409 IPC — High Court in revision, misdirected itself in taking the view that prosecution failed to prove misappropriation of the amount by respondent — Contention that no question was put to respondent while examining him under S. 313 CrPC as to whether the amount was given to him for his personal use or it was converted by him for his personal use, held, misconceived since while examining under S. 313 CrPC trial court was only required to ask such question which had been brought on record against the accused — Penal Code, 1860, Ss. 405 and 409*

The respondent, a Postmaster, was holding an office of public trust. The complainant who was a teacher entrusted a certain amount to the respondent for the purpose of purchasing national savings certificates. As soon as the amount was received by the respondent on behalf of the postal authorities, it became public money. It was required to be utilised for the purpose for which the same was handed over to the respondent. The respondent being a public officer had the requisite knowledge that the amount carried interest as he had deposited the amount in two instalments along with a sum by way of interest. The respondent thought himself liable to pay the said amount with interest, so as to reimburse to the complainant the amount to which he was entitled by way of interest for depositing the said amount. The High Court erred in taking the view that the second ingredient of Section 405 IPC i.e. misappropriation of the amount by the respondent-accused had not been proved. The High Court, in exercise of its revisional jurisdiction, completely misdirected itself in opining that it was obligatory on the part of PWs to state in their complaint that the accused committed criminal misappropriation with the intention to utilise the amount for his personal use. The very fact that the respondent retained with him the entrusted amount is not disputed. If he did not utilise the amount for the purpose for which the same had been deposited, an offence must be held to have been committed. It was not necessary for the prosecution to bring on record material to show as to how the respondent had utilised the amount. In view of the admitted fact, it was for the respondent himself to prove the defence raised by him that the entire amount had not been paid to him by the complainant. (Paras 8 to 10)

The actual manner of misappropriation, it is well settled, is not required to be proved by the prosecution. Once entrustment is proved, it was for the accused to prove as to how the property entrusted to him was dealt with in view of Section 405 IPC. If the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefor. (Para 11)

It is not possible to accept the further contention that no question was put to the respondent while he was being examined under Section 313 of the Code of Criminal Procedure, with a view to give him an opportunity to explain whether the amount was given to him for his personal use or he converted the money for his personal use. While examining the accused under Section 313 CrPC, the trial court is merely required to ask such question which has been brought on record as against the respondent. The respondent in fact had admitted the entire prosecution case for all intent and purport. The entire evidence which was adduced on behalf of the prosecution was made known to the accused. In his statement under Section 313 CrPC, he accepted that he had received a sum of Rs 8000 from the complainant and he had deposited the said amount together with interest, in two instalments. He has merely reiterated his defence, that the complainant had not paid to him the entire sum of Rs 8000, which has not been accepted by the trial court. Therefore, the High Court committed a manifest error in arriving at a finding that there has been infraction of the mandatory provisions of Section 313 CrPC. (Paras 13 and 14)

For the aforesaid reasons, the impugned judgment cannot be sustained and it is set aside accordingly. (Para 15). *State of H.P.* v. *Karanvir*, (2006) 5 SCC 381: (2006) 2 SCC (Cri) 460: AIR 2006 SC 2211: 2006 Cri LJ 2917.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

N. Bhargavan Pillai v. State of Kerala, (2004) 13 SCC 217: 2005 SCC (Cri) 142, relied on

[3306] — S. 313 — Appellants along with co-accused attacking the complainant party with knives, farsas, gandasas and lathis — *Eyewitnesses' account and statement of the medical witnesses and the investigating officer connecting the appellants with the crime — Co-accused B in his statement under S. 313 CrPC stating that the accused party attacked the complainant party in self-defence — Evidence led by prosecution establishing that the plea of self-defence was an afterthought and had no basis — On facts, held, appreciation of evidence by the courts below did not suffer from any infirmity — Hence, conviction of appellants upheld — Penal Code, 1860 — Ss. 302/34. Darshan* v. *State of Haryana*, (2002) 9 SCC 755: AIR 2002 SC 2344.

Bench Strength **3**. Coram: *Dr. A.S. Anand*, C.J. and *R.C. Lahoti* and *Ashok Bhan*, JJ. [Date of decision: 19-9-2001]

[3307] — S. 313 — Injuries sustained by accused in the same incident in which deceased died — Prosecution not invariably bound to explain the injuries on the accused — *Prosecution case, if otherwise trustworthy and acceptable, held, would not be affected by its failure to explain the injuries on the accused — Penal Code, 1860 — Ss. 302 and 96 & 100*

The question as to the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. The burden of proving the guilt of the accused is undoubtedly on the prosecution. The accused is not bound to say anything in defence. The prosecution has to prove the guilt of the accused beyond all reasonable doubts. If the witnesses examined on behalf of the prosecution are believed by the court in proof of the guilt of the accused beyond any reasonable doubt, the question of the obligation of the prosecution to explain the injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and in what circumstances injuries have been inflicted on the person of the accused.

When the court has believed the prosecution witnesses as convincing and trustworthy, the court overruled the contention of the accused that as the prosecution had failed to explain the injuries sustained by the accused in the same occurrence, the prosecution case should be disbelieved and the accused should be acquitted. Thus, it is not the law or invariable rule that whenever the accused sustains an injury in the same occurrence, the prosecution has to explain the injuries failure of which will mean that the prosecution has suppressed the truth and also the origin and genesis of the occurrence.

In the present case all the eyewitnesses stated that the appellant had fired at the deceased as a result of which the deceased had died. They denied the suggestion put to them that the deceased had been firing on the appellant. It was not the case of the appellant that he had fired at the deceased in self-defence. Though two empties were found by the side of the dead body of the deceased, and three live cartridges were also recovered from the pocket of the deceased at the time of inquest, but the presence of the empties does not necessarily mean that the deceased had fired. As the deceased was going along with his sisters at the time of occurrence, it is not at all amenable to reason that the deceased had started from his house along with his two sisters with a view to fighting with the accused. In the circumstances, the appellant had been rightly convicted and sentenced. Though the appellant had made a statement under S. 313 CrPC denying that he had any firearms or that he had fired at the deceased, but in the circumstances of the case the material on record including the statement of the appellant under S. 313 CrPC do not probabilise any case of self-defence or that the deceased had inflicted on him the injury by firing at him from his rifle. Accordingly, the prosecution was not obliged to account for the injury and the failure of the prosecution to give a reasonable explanation of the injury would not go against or throw any doubt on the prosecution case. *Hare Krishna Singh* v. *State of Bihar*, (1988) 2 SCC 95: 1988 SCC (Cri) 279: AIR 1988 SC 863: (1988) 2 Crimes 927.

Bench Strength 2. Coram: **M.M. Dutt** and *K. Jagannatha Shetty*, JJ. [Date of decision: 24-2-1988]

Bhaba Nanda Sharma v. State of Assam, (1977) 4 SCC 396: 1977 SCC (Cri) 602; Ramlagan Singh v. State of Bihar, (1973) 3 SCC 881: 1973 SCC (Cri) 563; Onkarnath Singh v. State of U.P., (1975) 3 SCC 276: 1974 SCC (Cri) 884; Bankey Lal v. State of U.P., (1971) 3 SCC 184: 1971 SCC (Cri) 253 and Bhagwan Tana Patil v. State of Maharashtra, (1974) 3 SCC 536: 1974 SCC (Cri) 11, relied on

Lakshmi Singh v. State of Bihar, (1976) 4 SCC 394: 1976 SCC (Cri) 671; Mohar Rai v. State of Bihar, (1968) 3 SCR 525: AIR 1968 SC 1281; Jagdish v. State of Rajasthan, (1979) 2 SCC 178: 1979 SCC (Cri) 436; Munshi Ram v. Delhi Admn., (1968) 2 SCR 455: AIR 1968 SC 702 and State of Gujarat v. Bai Fatima, (1975) 2 SCC 7: 1975 SCC (Cri) 384, distinguished on facts

[3308] — S. 313 — Explanation of accused for accepting money — Given belatedly in statement under S. 313 CrPC and not immediately to IO — Effect — *Courts are generally slow in accepting such explanation — Mere explanation such as that the money was accepted by accused towards payment of govt. dues not sufficient — Accused must prove, either by direct evidence or on the basis of inferences legally drawn from evidence on record, his position contrary to the statutory presumption under S. 4, PC Act, 1947 of acceptance of gratification by him as a motive or reward — Presumption under S. 4, PC Act, 1947 would stand rebutted if the explanation proved by accused is reasonable and probable — Prevention of Corruption Act, 1947, Ss. 4 and 5(2) & 5(1)(d) — Prevention of Corruption Act, 1988, Ss. 20 and 13(2) r/w S. 13(1)(d)*

But for any special facts, courts are wary of accepting belated explanations given for the first time in the statement under Section 313 and not at the first available opportunity. (Para 10). *State of Maharashtra* v. *Rashid B. Mulani*, (2006) 1 SCC 407: (2006) 1 SCC (Cri) 408: AIR 2006 SC 825: 2006 Cri LJ 794: (2006) 39 AIC 65 (SC).

Bench Strength 2. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

A. Abdul Kaffar v. State of Kerala, (2004) 9 SCC 333: 2004 SCC (Cri) 981; T. Shankar Prasad v. State of A.P., (2004) 3 SCC 753: 2004 SCC (Cri) 870, relied on

Punjabrao v. State of Maharashtra, (2002) 10 SCC 371: 2004 SCC (Cri) 1130, distinguished

[3309] — S. 313 — Motive — On facts held, motive to commit murder clearly established by enmity between the parties evidenced by the reply of the accused under S. 313 and past criminal cases between them — *A clear and strong motive to wreak vengeance proved — Evidence Act,* *1872, S. 8*. *Sone Lal* v. *State of U.P.*, (1978) 4 SCC 302: 1978 SCC (Cri) 587: AIR 1978 SC 1142: 1978 Cri LJ 1122: 1978 ALJ 530.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 6-4-1978]

[3310] — S. 313 — Application made by the co-accused before magistrate alleging that police had already arrested the accused and was also trying to falsely implicate him — *Held, the application is relevant under S. 11(2), Evidence Act and could be considered as a part of the co-accused's statement made under S. 342, CrPC, 1898 — Hence, the recitals in the application can be considered in conjunction with other circumstances of the case — Evidence Act, 1872, S. 11(2)*. *Satbir* v. *State of Haryana*, (1981) 4 SCC 508: 1981 SCC (Cri) 860: AIR 1981 SC 2074: 1981 Cri LJ 1702.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 8-1-1981]

[3311] — S. 313 — Confession of co-accused — Statement made by A-3 under S. 313 CrPC that he helped the appellant A-1 in throwing the dead body in the pond — *Use of, against A-1 — Held, the said statement being in the nature of a confession involving a co-accused, it was not safe to place reliance on the same in the absence of any corroboration — Evidence Act, 1872, S. 30* (Para 8). *Kojja Sreenu* v. *State of A.P.*, (2003) 12 SCC 783: AIR 2004 SC 1101.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 18-12-2003]

[3312] — S. 313 — Presumption under S. 114 Ill.(a), Evidence Act, 1872 when can be drawn — *Theft of ornaments worn by deceased — Soon after the incident accused persons coming in possession of the ornaments — An earring recovered from a jeweller to whom the same had been sold by one of the accused on the very next day of the incident and other ornaments recovered from the places where the same were concealed at the instance of the accused persons within a reasonable time after the incident — No explanation given by accused about their possession and concealment of those articles — Instead accused making false denial of their knowledge about the incriminating circumstances regarding the recoveries — Held, presumption of commission of theft of the ornaments by the accused by removing the same from the person of the deceased and not merely of receiving the stolen ornaments, can be drawn under Ill. (a)*

The presumption under Section 114 Illustration (*a*) could be safely drawn and the circumstance of recovery of the incriminating articles within a reasonable time after the incident at the places shown by the accused unerringly points to the involvement of the accused. The appellants who were in a position to explain as to how they could lay their hands on the stolen articles or how they had the knowledge of concealment of the stolen property, did nothing to explain; on the other hand, they denied knowledge of recoveries which in the light of the evidence adduced by the prosecution must be considered to be false. By omitting to explain, it must be inferred that either they intended to suppress the truth or invited the risk of presumption being drawn. Thus, the presumption as to the commission of offence envisaged by Illustration (*a*) of Section 114 is the minimum that could be drawn. (Para Va[16])

The fact that within a short time after the murder of the deceased, the appellants came into possession of the ornaments removed from the person of the deceased and the first accused offered one of the stolen articles for sale on that very day and the further fact that the other articles were found secreted to the knowledge of the appellants coupled with non-accountal of the possession of the articles and the failure to give even a plausible explanation vis-à-vis the incriminating circumstances would go to show that they were not merely the receivers of stolen articles from another source but they themselves removed them from the person of the deceased. Thus, the presumption to be drawn under Illustration (*a*) to Section 114 should not be confined to their involvement in the offence of receiving the stolen property under Section 411 but on the facts of the case, it can safely go beyond that. (Para Vb[17]). *Limbaji* v. *State of Maharashtra*, (2001) 10 SCC 340: AIR 2002 SC 491.

Bench Strength 2. Coram: *R.C. Lahoti* and **P. Venkatarama Reddi**, JJ. [Date of decision: 14-12-2001]

Sanwat Khan v. State of Rajasthan, AIR 1956 SC 54: 1956 Cri LJ 150; Shivappa v. State of Mysore, (1970) 1 SCC 487: 1970 SCC (Cri) 215, relied on

[3313] — S. 313 — Statement of accused under S. 108, Customs Act, 1962 in English — If on facts made involuntarily as he knew only French language — *In view of the absence of such allegation in his statement under S. 313 CrPC and in view of other evidence, answered in the negative — Customs Act, 1962, Ss. 108 and 135 — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 21, 23, 28 and 8(c)*

In his examination under Section 313 CrPC, the appellant had stated that the statement was obtained by force and that he was beaten by the officers of the Narcotic Control Bureau. He had not stated at that time that he did not know English. Apart from the evidence of the said officers there is evidence of an employee of Jewel Hotel where the appellant had stayed, who has proved some of the entries made in English by the appellant himself in the register maintained by the hotel. The panchnama also contains the words "received copy" written by the appellant. The said statement of the appellant was recorded in 1990. He retracted it in 1994. Till then he had not complained against any officer as regards the alleged beating or use of force nor had he stated that he did not know English. Therefore, this contention cannot be accepted. (Para 6). *Kalema Tumba* v. *State of Maharashtra*, (1999) 8 SCC 257: 1999 SCC (Cri) 1422: AIR 2000 SC 402.

Bench Strength 2. Coram: **G.T. Nanavati** and *S.N. Phukan*, JJ. [Date of decision: 16-9-1999]

[3314] — S. 313 — Absence of evidence to establish presence of the accused at the scene of occurrence — Courts below erred in splitting up and taking into consideration statement of the accused for fixing her presence at the scene of occurrence — *However, if there is other clear evidence then her presence can be inferred by taking assurance from her statement. Kagen Bera* v. *State of W.B.*, AIR 1994 SC 1511.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 2-9-1992]

[3315] — S. 313 — Absence of specific plea of self-defence when examined under S. 313 — *Held, not enough to denude the accused of the right if the same can be made out otherwise. Periasami* v. *State of T.N.*, (1996) 6 SCC 457: 1997 SCC (Cri) 121.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 25-9-1996]

[3316] — S. 313 — Accused declining to examine any defence witness in reply to a specific question asked in original examination under S. 313 CrPC — But in fresh examination under S. 313 CrPC before High Court accused seeking to examine three more witnesses — *High Court without placing any reliance on such prayer of accused, dealing with the issue on the basis of evidence available on record — Held, High Court was justified in doing so — Contention before Supreme Court that in the justice delivery system and for proper administration of justice a further opportunity ought to be given to the accused persons to lead defence evidence before the court and the matter ought to be adjourned on that score awaiting the evidence as may be available on record not accepted — Acceptance of the testimony of the eyewitness by trial court and High Court finding it to be trustworthy was justified and no interference of Supreme Court called for — Constitution of India — Arts. 136, 141 and 142* (Paras 6 to 10). *Baba* v. *State of Maharashtra*, (2002) 9 SCC 567.

Bench Strength 2. Coram: *U.C. Banerjee* and *B.N. Agrawal*, JJ. [Date of decision: 14-3-2002]

[3317] — S. 313 — Admission of guilt before court by accused after close of prosecution evidence and his examination under S. 313 — *Conviction, held on facts, was affected by admission and hence, cannot be sustained. Ganeshmal Jashraj* v. *Govt. of Gujarat*, (1980) 1 SCC 363: 1980 SCC (Cri) 239: AIR 1980 SC 264: 1980 MLJ (Cri) 474: (1980) 21 GLR 429: (1980) 1 SCR 1114.

Bench Strength 2. Coram: **P.N. Bhagwati** and *V.D. Tulzapurkar*, JJ. [Date of decision: 30-10-1979]

[3318] — S. 313 — Opportunity to be afforded to accused to explain circumstances against him and not the inferences flowing from such circumstances — *Accused is not to be cross-examined — Also his answers to be considered by the Court. State of H.P.* v. *Wazir Chand*, (1978) 1 SCC 130: 1978 SCC (Cri) 58: AIR 1978 SC 315: 1978 Cri LJ 347.

Bench Strength 3. Coram: *P.K. Goswami, N.L. Untwalia* and **D.A. Desai**, JJ. [Date of decision: 16-11-1977]

[3319] — S. 313 — Plea of self-defence not taken under — Effect — Burden of proving that the alleged offence falls within the exception of exercise of right of private defence — *Even if plea of private defence not specifically taken by accused persons in their statements under S. 313 CrPC and accused who was injured in the same incident did not enter in the witness box, such plea can be raised during the course of submissions by relying on probabilities and circumstances of the case and it can be considered if made out from the evidence on record — Penal Code, 1860, Ss. 96 to 106 — Evidence Act, 1872, S. 105*

Though Section 105 of the Evidence Act enacts a rule regarding burden of proof but it does not follow therefrom that the plea of private defence should be specifically taken and if not taken shall not be available to be considered though made out from the evidence available in the case. A plea of self-defence can be taken by introducing such plea in the cross-examination of prosecution witnesses or in the statement of the accused persons recorded under Section 313 CrPC or by adducing defence evidence. And, even if the plea is not introduced in any one of these three modes still it can be raised during the course of submissions by relying on the probabilities and circumstances obtaining in the case. It is basic criminal jurisprudence that an accused cannot be compelled to be examined as a witness and no adverse inference can be drawn against the defence merely because an accused person has chosen to abstain from the witness box. In this case the High Court was also not right in criticising and discarding availability of plea of self-defence to the accused persons on the ground that the plea was not specifically taken by the accused in their statements under Section 313 CrPC and because the accused did not enter the witness box. (Para 24) . *Kashiram* v. *State of M.P.*, (2002) 1 SCC 71: 2002 SCC (Cri) 68: AIR 2001 SC 2902.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti**, *Ashok Bhan*, JJ. [Date of decision: 17-10-2001]

Vijayee Singh v. State of U.P., (1990) 3 SCC 190: 1990 SCC (Cri) 378, relied on

[3320] — S. 313 — Silence and failure of accused-appellants to explain the circumstances in which they were travelling at odd hours (1.30 a.m.) in a truck carrying 16 bags of poppy husk — *Held, was a strong circumstance that could be put against them — However, it was unfortunate that no question was asked of appellants under S. 313 CrPC about the possession of poppy husk placed in the truck*

The silence and failure of the appellants to explain the circumstances in which they were travelling in the vehicle at odd hours, is one strong circumstance that can be put against them. A case of drawing presumption under Section 114 of the Evidence Act could perhaps be made out then to prove the possession of the accused, but the fact remains that in the course of examination under Section 313 CrPC, not even a question was asked that they were the persons in possession of poppy husk placed in the vehicle. In this state of things, it is not proper to raise a presumption under Section 114 of the Evidence Act nor is it safe to conclude that the prosecution established beyond reasonable doubt that the appellants were in possession of poppy husk which was being carried by the vehicle. (Para 6). *Avtar Singh* v. *State of Punjab*, (2002) 7 SCC 419: 2002 SCC (Cri) 1769: AIR 2002 SC 3343.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **P. Venkatarama Reddi**, JJ. [Date of decision: 18-9-2002]

[3321] — S. 313 — When death caused while deceased in the custody of the accused, accused is obliged to give a plausible explanation for the cause of the death in his statement under S. 313. *Ganeshlal* v. *State of Maharashtra*, (1992) 3 SCC 106: 1992 Cri LJ 1545.

Bench Strength **2**. Coram: *N.M. Kasliwal* and **K. Ramaswamy**, JJ. [Date of decision: 10-4-1992]

[3322] — Ss. 313, 228, 374 and 386 — Framing of proper charges and appropriate examination of accused under S. 313 — Necessity — *Eleven accused, variously armed with lethal weapons alleged to have assaulted the deceased resulting in his death and causing injuries to others — Motive for crime said to be the land dispute — Trial court finding all accused guilty under Ss. 302/149 IPC — Appeals filed thereagainst dismissed by High Court — Submission by appellant that neither their examination under S. 313 was properly done, nor the details of accusations were brought to their notice and even the charges were not properly framed — Common charges had been framed against all accused as far as Ss. 149 and 302/34 were concerned — Finding by High Court that charges were explained to accused while recording their statements under S. 313 found erroneous — Supreme Court on perusal of relevant documents noting that no appropriate question was posed during examination under S. 313 CrPC and appropriate charges were also not framed — Moreover, High Court had dismissed the appeal by an unreasoned order — Discussing the case law highlighting the importance of a reasoned order, and necessity of proper examination of accused under S. 313, held, conviction as recorded by trial court and upheld by High Court unsustainable — Penal Code, 1860 — Ss. 302/34 and Ss. 302/149* (Paras 2 to 4, 7, 10 to 15, 19 and 20). *Latu Mahto* v. *State of Bihar*, (2008) 8 SCC 395: (2008) 3 SCC (Cri) 500.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 16-5-2008]

Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Bhag Singh, (2004) 1 SCC 547: 2004 SCC (Cri) 341; Bibhuti Bhusan Das Gupta v. State of W.B., AIR 1969 SC 381, relied on

[3323] — Ss. 313 and 205 — Personal examination of accused under S. 313 — General direction by High Court to all criminal courts, particularly in cases involving offences under S. 138, NI Act, as also in all other cases involving offences which are technical in nature and do not involve any moral turpitude, to dispense with personal examination of accused under S. 313 and in place to accept and consider written statement filed by accused, as a matter of course — Propriety — Held, aforesaid direction is not in accord with language of S. 313 and also dictum laid down in *Basavaraj case, (2000) 8 SCC 740 — On plain language of S. 313, it is evident that in a summons case, when personal appearance of accused has been dispensed with under S. 205, a discretion is vested in Magistrate to dispense with rigour of personal examination of accused under S. 313 as well — Dispensation with personal examination* *of accused in terms of said provision is within trial court's discretion, to be exercised keeping in view certain parameters enumerated in Basavaraj R. Patil case and not as a matter of course — Hence, impugned order containing aforesaid general direction to lower courts, set aside — Negotiable Instruments Act, 1881, Ss. 138 and 143 to 145* (Paras 15 to 19 and 22). *TGN Kumar* v. *State of Kerala*, (2011) 2 SCC 772.

Bench Strength 3. Coram: **D.K. Jain**, *A.K. Ganguly* and *H.L. Dattu*, JJ. [Date of decision: 14-1-2011]

Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, followed

[3324] — Ss. 313, 229, 228 and 226 — Accused pleading guilty — Conviction can be founded upon confession/admission of guilt made by accused at any stage including the stage of making statement under S. 313 — *However, while acting upon the plea of guilt of accused, court must approach with caution and circumspection to ensure that the plea is clear and unqualified and the admission of facts constitutes the offence — Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 12(4)*

Since no oath is administered to the accused, the statements made by the accused under S. 313 will not be evidence stricto sensu. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers. But sub-s. (4) says that the answers given by the accused in response to his examination under S. 313 can be taken into consideration in such inquiry or trial. Sub-section (4) is a verbatim reproduction of sub-s. (3) of the corresponding S. 342 of the old Code of Criminal Procedure. In the context of the old sub-s. (3) the Supreme Court in *Hate Singh Bhagat Singh case* held that an answer given by an accused under S. 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness and in *Narain Singh case* it held that if the accused confesses to the commission of the offence with which he is charged the Court may, relying upon that confession, proceed to convict him. These decisions apply with equal force in the case of the new sub-s. (4) also.

Under S. 12(4) of the TADA Act a Designated Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session. The procedure for the trial of Session cases is outlined in Chapter XVIII of the Code. Section 229 of the Code provides that if the accused pleads guilty the Judge has to record the plea and thereafter decide whether or not to convict the accused. The plea of guilt tantamounts to an admission of all the facts constituting the offence. It is, therefore, essential that before accepting and acting on the plea the Judge must feel satisfied that the accused admits facts or ingredients constituting the offence. The plea of the accused must, therefore, be clear, unambiguous and unqualified and the Court must be satisfied that he has understood the nature of the allegations made against him and admits them. The Court must act with caution and circumspection before accepting and acting on the plea of guilt. Once these requirements are satisfied the law permits the Judge trying the case to record a conviction based on the plea of guilt. If, however, the accused does not plead guilty or the Judge does not act on his plea he must fix a date for the examination of the witnesses i.e. the trial of the case. There is nothing in this Chapter which prevents the accused from pleading guilty at any subsequent stage of the trial. But before the trial Judge accepts and acts on that plea he must administer the same caution unto himself. This plea of guilt may also be put forward by the accused in his statement recorded under S. 313 of the Code.

In the present case both the accused 1 and 5 have unmistakably, unequivocally and without any reservation whatsoever admitted the fact that they were responsible for the murder of Gen. Vaidya. Apart from the confession of accused 1, Accused 5 has himself admitted that he was driving the motor cycle with Accused 1 on the pillion seat and to facilitate the crime he had brought the motor cycle in line with the car so that Accused 1 may have an opportunity of firing at his victim from close quarters. There is, therefore, no doubt whatsoever that both Accused 1 and 5 were acting in concert, they had a common intention to kill Gen. Vaidya and in furtherance of that intention Accused 1 fired the fatal shots. Therefore, the trial Judge was justified in holding that Accused 1 was guilty under S. 302 and Accused 5 was guilty under S. 302/34 IPC. *State of Maharashtra* v. *Sukhdev Singh*, (1992) 3 SCC 700: 1992 SCC (Cri) 705: AIR 1992 SC 2100.

Bench Strength 2. Coram: **A.M. Ahmadi** and *K. Ramaswamy*, JJ. [Date of decision: 15-7-1992]

[3325] — Ss. 313, 242 and 243 — Trial judge must exercise control over the evidence being tendered in his court and the questions put to the accused (Per Varadarajan, J.). *Sharad Birdhichand Sarda* v. *State of Maharashtra*, (1984) 4 SCC 116: 1984 SCC (Cri) 487: AIR 1984 SC 1622: 1984 Cri LJ 1738.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**[1], **A. Varadarajan**[2] and **Sabyasachi Mukharji**[3], JJ. [Date of decision: 19-7-1984]

[3326] — Ss. 313 and 315 — Relative evidentiary value of statements under, compared — *As S. 313 statement is recorded without administering oath and without witness being cross-examined same, held, cannot be treated as evidence under S. 3, Evidence Act — But if an accused is examined under S. 315, said statement, held, relevant — Evidence Act, 1872, S. 3*

The plea of the appellant that he had taken lift in the car is not fit to be accepted only on the basis of the statements of the appellants under Section 313 CrPC. Section 313 CrPC is taken into consideration to appreciate the truthfulness or otherwise of the case of the prosecution and it is not an evidence. Statement of an accused under Section 313 is recorded without administering oath and, therefore, the said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act. The appellants have not chosen to examine any other witness to support this plea and in case none was available they were free to examine themselves in terms of Section 315 which provides that a person accused of an offence is a competent witness of the defence and may give evidence on oath in disproof of the charges. (Para 23)

There is reason not to treat the statement under Section 313 CrPC as evidence as the accused cannot be cross-examined, with reference to those statements. However, when an accused appears as a witness under Section 315 CrPC in defence to disprove the charge, his version can be tested by his cross-examination. (Para 23)

Further, the person who claims that he was not in conscious possession has to establish it. Presumption of conscious possession is further available under Section 54 of the Act, which provides that the accused may be presumed to have committed the offence unless he accounts for satisfactorily the possession of contraband. To bring the offence within the mischief of Section 20 of the Act possession has to be conscious possession. Section 35 of the Act recognises that once possession is established the court can presume that the accused had a culpable mental state, meaning thereby conscious possession. (Para 24)

Both the appellants have been found travelling in the car from which charas was recovered and, therefore, they were in possession thereof. They were knowing each other. They were not travelling in a public transport vehicle. Distinction has to be made between the accused travelling by public transport vehicle and private vehicle. (Para 24). *Dehal Singh* v. *State of H.P.*, (2010) 9 SCC 85: (2010) 3 SCC (Cri) 1139: AIR 2010 SC 3594.

Bench Strength **2**. Coram: *H.S. Bedi* and **C.K. Prasad**, JJ. [Date of decision: 31-8-2010]

Madan Lal v. State of H.P., (2003) 7 SCC 465: 2003 SCC (Cri) 1664, relied on

[3327] — Ss. 313, 374, 386 and 401 — Omission to put question to accused of a vital nature — *Where objection not raised at the appellate stage, the revisional court should normally not bother about it* (Paras 12 and 16). *State of Punjab* v. *Naib Din*, (2001) 8 SCC 578: 2002 SCC (Cri) 33: AIR 2001 SC 3955.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 28-9-2001]

[3328] — Ss. 313 and 235 — Age of the accused — School leaving certificate produced by the prosecution at the stage of hearing on sentence — *Such school leaving certificate can be acted upon even if the accused not questioned separately with reference to the date of birth given in the said certificate — in the circumstances, accused cannot be directed to be medically examined at the stage of review petition when the authenticity of the school leaving certificate had never been in doubt. Amrutlal Someshwar Joshi* v. *State of Maharashtra (II)*, (1994) 6 SCC 200: 1994 SCC (Cri) 1604: AIR 1994 SC 2582.

Bench Strength **2**. Coram: *M.M. Punchhi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 1-9-1994]

Harnam v. State of U.P., (1976) 1 SCC 163: 1975 SCC (Cri) 794; Raisul v. State of U.P., (1976) 4 SCC 301: 1976 SCC (Cri) 613, distinguished

[3329] — Ss. 313 and 296 — Omission to put question to accused under S. 313 concerning evidence of formal nature given by affidavit — Effect of, on proceedings — *Held, if the remaining evidence is sufficient to bring home the guilt of the accused, the said lapse could be sidelined justifiably — More so, such an omission does not ipso facto vitiate the proceedings unless any prejudice caused to the accused is established by him -If accused succeeds in showing prejudice caused to him, the appellate court can call for the explanation from his counsel — In the present case, the High Court erred in not affording an opportunity to the prosecution to make up the lapse, resulting in miscarriage of justice* (Paras 12, 16, 6). *State of Punjab* v. *Naib Din*, (2001) 8 SCC 578: 2002 SCC (Cri) 33: AIR 2001 SC 3955.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 28-9-2001]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, relied on

[3330] — S. 313(1)(b) — Examination of accused by Court — Held, per majority, though court has to question the accused "personally", but in exigent conditions court can allow the counsel for the accused to answer the questions on his behalf — *For this accused required to file before the* *court an application and an affidavit sworn by himself — Procedure in this regard laid down — If such an application is made in the instant case trial court can pass appropriate orders — Per Sethi, J. (dissenting), when Parliament has consciously incorporated this mandatory provision for examination of accused personally, interpreting it so as to admit an exception of allowing counsel in accused's place to answer the questions would amount to judicial legislation which is not permissible — However, objection regarding non-compliance with the mandate of S. 313 can be raised only by the accused and not by the complainant or the prosecution — Trial court dispensing with personal appearance of accused who were in USA — Their counsel allowed to answer on their behalf*

The first appellant is the husband of the second respondent who obtained an order from a Judicial Magistrate for maintenance allowance from her husband under Section 125 CrPC. The second respondent thereafter lodged a complaint with the police alleging inter alia that her husband and his sister, the second appellant, and their parents had ill treated her for not bringing more dowry. The appellants were tried for the offence punishable under Section 498-A of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act. After the prosecution examined the witnesses and closed the evidence and when the next stage for examination of the accused under Section 313 CrPC reached, the trial court observed that the counsel for the accused had filed an application for dispensing with the questioning the first appellant who was in USA and the second appellant who was then studying in Gadag and that the counsel endorsed their statement that they had nothing to say by way of their statement. On that basis the trial court gave an opportunity to the counsel to make statement for the appellants and dispensed with their physical presence. The trial Magistrate thereafter proceeded to hear the arguments and finally passed a judgment acquitting all the accused of the offences charged. The second respondent then filed a revision before the High Court challenging the said order of the acquittal. A Single Judge of the High Court found that as per the decision of the Supreme Court in *Usha K. Pillai*, the trial court had no other alternative and had no discretion to dispense with the examination of the accused personally under Section 313 of the Code. Hence the Single Judge set aside the order of acquittal passed by the trial court and remitted the case to the trial court with a direction to dispose of it afresh after examining the accused under Section 313 of the Code. In the present appeal one of the contentions raised by the appellants was that no criminal court can be rendered absolutely powerless to deal with a situation like the present one, i.e. if the accused is in such a faraway country and if he has to incur a whopping expenditure and undertake a tedious long-distance journey solely for the purpose of answering the court questions, he himself pleaded that his counsel may be allowed to answer such questions on his behalf. The next contention was that if the court did not put questions under Section 313 of the Code there was no reason for the complainant to be aggrieved thereof because the prejudice can be caused only to the accused due to non-compliance with the said provision. Disposing of the appeal,

Held :

Per majority

Section 313 CrPC is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion. The provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim *audi alteram partem*. The word "may" in clause (*a*) of sub-section (1) in Section 313 of the Code indicates, without any doubt, that even if the court does not put any question under that clause the accused cannot raise any grievance of it. But if the court fails to put the needed question under clause (*b*) of the sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him. (Paras 19 and 20)

But the situation to be considered now is whether, with the revolutionary change in technology of communication and transmission and the marked improvement in facilities for legal aid in the country, is it necessary that in all cases the accused must answer by personally remaining present in court. This is the requirement and would be the general rule. However, if remaining present involves undue hardship and large expense, could the court not alleviate the difficulties. If the court holds the view that the situation in which he made such a plea is genuine, should the court say that he has no escape but he must undergo all the tribulations and hardships and answer such questions personally presenting himself in court. If there are other accused in the same case, and the court has already completed their questioning, should they too wait for long without their case reaching finality, or without registering further progress of their trial until their co-accused is able to attend the court personally and answer the court questions? Why should a criminal court be rendered helpless in such a situation? (Para 21)

The one category of offences which is specifically exempted from the rigour of Section 313(1)(*b*) of the Code is "summons cases". Every case in which the offence triable is punishable with imprisonment for a term not exceeding two years is a "summons case". Thus, all other offences generally belong to a different category altogether among which are included offences punishable with varying sentences from imprisonment for three years up to imprisonment for life and even right up to death penalty. Hence there are several offences in that category which are far less serious in gravity compared with grave and very grave offences. Even in cases involving less serious offences, can not the court extend a helping hand to an accused who is placed in a predicament deserving such a help? (Para 22)

Section 243(1) of the Code enables the accused, who is involved in the trial of warrant case instituted on police report, to put in any written statement. When any such statement is filed the court is obliged to make it part of the record of the case. Even if such case is not instituted on police report the accused has the same right (vide Section 247). Even the accused involved in offences exclusively triable by the Court of Session can also exercise such a right to put in written statements [Section 233(2) of the Code]. It is common knowledge that most of such written statements, if not all, are prepared by the counsel of the accused. If such written statements can be treated as statements directly emanating from the accused, hook, line and sinker, why not the answers given by him in the manner set out hereinafter, in special contingencies, be afforded the same worth. (Para 23)

A pragmatic and humanistic approach is warranted in regard to special exigencies. The word "shall" in clause (*b*) to Section 313(1) of the Code is to be interpreted as obligatory on the court and it should be complied with when it is for the benefit of the accused. But if it works to his great prejudice and disadvantage the court should, in appropriate cases, e.g., if the accused satisfies the court that he is unable to reach the venue of the court, except by bearing huge expenditure or that he is unable to travel the long journey due to physical incapacity or some such other hardship, relieve him of such hardship and at the same time adopt a measure to comply with the requirements in Section 313 of the Code in a substantial manner. (Para 24)

If the accused (who is already exempted from personally appearing in the court) makes an application to the court praying that he may be allowed to answer the questions without making his physical presence in court on account of justifying exigency, the court can pass appropriate orders thereon, provided such application is accompanied by an affidavit sworn to by the accused himself containing the following matters:

(*a*) A narration of facts to satisfy the court of his real difficulties to be physically present in court for giving such answers.

(*b*) An assurance that no prejudice would be caused to him, in any manner, by dispensing with his personal presence during such questioning.

(*c*) An undertaking that he would not raise any grievance on that score at any stage of the case.

If the court is satisfied of the genuineness of the statements made by the accused in the said application and affidavit it is open to the court to supply the questionnaire to his advocate (containing the questions which the court might put to him under Section 313 of the Code) and fix the time within which the same has to be returned duly answered by the accused together with a properly- authenticated affidavit that those answers were given by the accused himself. He should affix his signature on all the sheets of the answered questionnaire. However, if he does not wish to give any answer to any of the questions he is free to indicate that fact at the appropriate place in the questionnaire (as a matter of precaution the court may keep photocopy or carbon copy of the questionnaire before it is supplied to the accused for an answer). If the accused fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the court, he shall forfeit his right to seek personal exemption from court during such questioning. If the above course is adopted in exceptional exigency it would not violate the legislative intent envisaged in Section 313 of the Code. (Paras 26 and 27)

In the present case the trial court can pass appropriate orders if an application is made by the accused relating to the examination under Section 313 of the Code, in the light of the legal principles stated above. (Para 28)

Per Sethi, J. (dissenting)

Section 313 CrPC is based upon the maxim of audi alteram partem which has been acknowledged as the cardinal principle of natural justice. It is a principle of English law that the whole burden of proving the evidence is on the prosecution which means the accused can stand by and do nothing as he is protected from all judicial questioning at the trial. Section 313 makes a departure from the English law. Examination under the section is not intended to be an idle formality. It has to be carried out in the interests of justice and fair play to the accused. Section 313 is for the benefit of the accused and for enabling him to obtain the full benefit under the section it is imperative that he must be examined by the court after the witnesses of the prosecution have been examined and before he is called upon to enter upon his defence. In our country it often happens that an accused is tried in a language which he understands but indifferently well, and for that reason as well as for other equally grave reasons the intention of the statute is that at a certain stage in the proceedings, the court itself shall put aside all counsel, all pleaders, all witnesses, all representatives, and shall call upon each individual accused with the authority of the court's own voice to take advantage of the opportunity which then arises to state in his own way anything which he may desire to state. The statement recorded under the section can be taken into consideration in determining the innocence or the guilt of the accused. The accused is obliged to explain each and every circumstances appearing in the evidence against him. (Paras 31 and 32)

The object of the section would be defeated if, instead of the accused, his lawyer replies the question with his invented ingenuity. The imaginative suggestions of the counsel cannot be a substitute for the taking of the statement from the accused. The section enables a Judge to ascertain from time to time, from the accused as to what explanation he may desire to offer regarding any fact stated by a witness against him. It has to be noticed that the non-compliance of the provisions of section is not a mere irregularity. Omission to put questions to the accused on specific points vitiates the trial. Omission to put specific points appearing against the accused apparently occasions prejudice to him which cannot be rectified under Section 465 CrPC. It is true that all omissions on some points to be put to the accused under Section 313 would not vitiate the trial but the failure to put vital points and circumstances is sure to occasion a miscarriage of justice and thus vitiates the trial to that extent. (Para 33)

The scheme of the Code shows that after the evidence of the prosecution is closed, the local inspection, if any, is held and the court witnesses in terms of Section 311 are examined, the court would, then and then alone, direct the examination of the accused under Section 313, upon being satisfied that he was required to personally explain the circumstance appearing in the evidence against him. Such a recourse to examine the accused at this stage cannot in any way be termed to be causing him inconvenience or occasioning any harassment. Otherwise, in the absence of such examination, and without leading defence evidence, the accused in all probability is likely to be convicted and sentenced for the commission of the offence with which he has been charged and tried by the Magistrate or the court. In that event permitting the examination of the accused personally, is actually for his benefit. There are cases where the accused during the course of his examination under this section, may place on record any clinching evidence which may not even require him to produce any defence evidence. The accused when personally appearing can also be in a bargaining position by persuading the court to take a lenient view despite proof of material circumstances against him. Such a statement by which the accused may admit, any of the allegations or circumstances appearing against him, cannot be made by his pleader. Any such statement made by his counsel cannot bind the accused. The conviction or sentence passed against the accused, without offering him an opportunity of explaining the circumstances would not only violate the maxim of audi alteram partem but also be contrary to the concept of the "due process of law" recognised and accepted by all civilised nations. (Para 39)

The incorporation of the provision necessitating the examination of the accused personally, undoubtedly is the reflection of a conscious decision, which the legislature took in its wisdom. The courts only interpret the law and do not legislate it. Where the legislature's intention is clear, there is no scope of reading between the lines or putting an interpretation contrary to the intention of the legislature. Adding to or providing for ancillary measures can be resorted to by the courts only in grey areas and not in the covered fields. If on its true construction a statute leads to anomalous results, the courts have no option but to give effect to it and leave it to the legislature to amend or alter the law. Any other view, even based on howsoever high, cherished or pious desire cannot be the substitute of specific legislative indictment. (Paras 40 and 41)

Section 313 of the Criminal Procedure Code does not envisage the examination of the counsel, in place of the accused and the law laid down by the Supreme Court by three-Judge Bench in 1969 and later on followed in 1973, does not require any reconsideration, particularly by a Bench of the same strength and of a coordinate jurisdiction. (Para 45)

The mandate of Section 313 is imperative with no exception. However, the violation of its compliance can be objected to only by the accused for whose benefit the section has been enacted. The complainant or the prosecution cannot be permitted to allow the illegality being committed and perpetuated and after the inquiry or trial results in acquittal of the accused, to complain on the basis of the alleged violation. There is no allegation nor could there be any that the personal non-examination of the accused persons had, in any way, adversely affected the prosecution. Section 465 of the Code could not be relied upon by the prosecution for the purposes of assailing the judgment of acquittal after the completion of the trial. Despite laying down the correct position of law the High Court appears to be not justified in setting aside the order of acquittal at the instance of the informant of the crime. In the absence of any complaint by the accused for their non-examination under Section 313 of the Code, there was no justification to remand the case only for the purposes of examining the accused concerned personally and to pass fresh orders on merits in accordance with law. (Para 46). *Basavaraj R. Patil* v. *State of Karnataka*, (2000) 8 SCC 740: 2001 SCC (Cri) 87: AIR 2000 SC 3214.

Bench Strength **3**. Coram: **K.T. Thomas**, *R.P. Sethi* and *S.N. Variava*, JJ. [Date of decision: 11-10-2000]

Jai Dev v. State of Punjab, AIR 1963 SC 612: (1963) 1 Cri LJ 495; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Jai Dev v. State of Punjab, AIR 1963 SC 612: (1963) 1 Cri LJ 495, relied on

Usha K. Pillai v. Raj K. Srinivas, (1993) 3 SCC 208: 1993 SCC (Cri) 824, overruled

Bibhuti Bhusan Das Gupta v. State of W.B., AIR 1969 SC 381: 1969 Cri LJ 654: (1969) 2 SCR 104, dissented from

***Followed in** Latu Mahto v. State of Bihar, (2008) 8 SCC 395 and Keya Mukherjee v. Magma Leasing Ltd., (2008) 8 SCC 447*

[3331] — S. 313(1)(b) — Examination of accused under — Mandatory — Purpose and stage of examination — *If any incriminating material against accused appears on the conclusion of the prosecution evidence, court would be duty-bound to solicit accused's explanation therefor irrespective of how weak or scanty the prosecution evidence was in that respect*

Section 313 embodies the fundamental principle of fairness based on the maxim *audi alteram partem*. The purpose of the examination of the accused under S. 313 is to give the accused an opportunity to explain the incriminating material which has surfaced on record. The stage of examination of the accused under clause (*b*) of sub-section (1) of S. 313 is reached only after the witnesses for the prosecution have been examined and before the accused is called on to enter upon his defence. The trial Judge is not expected before he examines the accused under S. 313 of the Code, to sift the evidence and pronounce on whether or not he would accept the evidence regarding any incriminating material to determine whether or not to examine the accused on that material. To do so would be to pre-judge the evidence without hearing the prosecution under S. 314 of the Code. The words "shall question him" clearly bring out the mandatory character of the clause and cast an imperative duty on the court and confer a corresponding right on the accused to an opportunity to offer his explanation for such incriminating material appearing against him. Therefore, no matter how weak or scanty the prosecution evidence is in regard to a certain incriminating material, it is the duty of the court to examine the accused and seek his explanation thereon. It is only after that stage is over that the oral arguments have to be heard before the judgment is rendered. It is only where the court finds that no incriminating material has surfaced that the accused may not be examined under S. 313 of the Code. If there is material against the accused he must be examined. In the instant case it is not correct to say that no incriminating material had surfaced against the accused. Therefore, the trial court was justified in examining the accused under S. 313. *State of Maharashtra* v. *Sukhdev Singh*, (1992) 3 SCC 700: 1992 SCC (Cri) 705: AIR 1992 SC 2100.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *K. Ramaswamy*, JJ. [Date of decision: 15-7-1992]

[3332] — S. 313(1)(b) — Examination of accused under — Object of — Questioning the accused "generally" — Meaning — *Nature of question which should be put to accused should be such that the accused knows what he is to explain, even if illiterate and ignorant, knows what he is to explain — Provision must be followed faithfully and fairly*

The object of examination under Section 313 CrPC is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus. (Para 13)

The word "generally" in sub-section (1)(*b*) of Section 313 CrPC does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way so as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 CrPC was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give. (Para 14)

The provisions of Section 313 CrPC must be observed faithfully and fairly. (Para 15)

In this case the appellant-accused was tried on a charge of having committed murder of his wife by pouring kerosene on her person and setting her ablaze. As regards the prosecution case that kerosene was found on the accused's dress, no question in this regard was put to the accused while he was examined under Section 313 of the Code. This was fatal to the prosecution case. (Paras 3 and 11). *Ajay Singh* v. *State of Maharashtra*, (2007) 12 SCC 341: (2008) 1 SCC (Cri) 371: AIR 2007 SC 2188.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 6-6-2007]

Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 SC 468, relied on

[**Ed.**: See also *Ajmer Singh* v. *State of Punjab*, AIR 1953 SC 76; *Tara Singh* v. *State*, AIR 1951 SC 441.]

[3333] — S. 313(1)(b) — Object and nature of — Object is to benefit the accused — Provision is based on the natural justice principle of audi alteram partem . *Basavaraj R. Patil* v. *State of Karnataka*, (2000) 8 SCC 740: 2001 SCC (Cri) 87: AIR 2000 SC 3214.

Bench Strength 3. Coram: **K.T. Thomas**, *R.P. Sethi* and *S.N. Variava*, JJ. [Date of decision: 11-10-2000]

[3334] — S. 313(1)(b) proviso — Dispensing with examination of accused by examining accused's pleader, held, cannot be allowed in cases relating to dishonour of cheque — *After completion of prosecution evidence in proceeding under S. 138 of Negotiable Instruments Act, accused-appellant's application under S. 205 for dispensing with her personal attendance and for being represented by her pleader allowed by Magistrate with the condition that she shall appear before the court as and when called — But appellant's application under S. 313(1)(b) proviso for dispensing with her examination by examining her pleader who was to represent her under S. 205 rejected — Magistrate and Addl. Sessions Judge in revision — High Court dismissed appellant's application under S. 401 r/w S. 482 — Held, High Court's impugned order does not suffer from any infirmity to warrant Supreme Court's interference in view of principles set out in* Basavaraj R. Patil case, *(2000) 8 SCC 740 — Although in* Chandu Lal Chandraker case, *a two-Judge Bench of Supreme Court had taken a view supporting that of appellant, but in that case no reference was made to* Bibhuti Bhusan Das Gupta case *in which Supreme Court had held that pleader cannot represent the accused for the purpose of S. 342 CrPC, 1898 which is presently S. 313 — Negotiable Instruments Act, 1881, S.138. Keya Mukherjee* v. *Magma Leasing Ltd.*, (2008) 8 SCC 447: (2008) 3 SCC (Cri) 537: AIR 2008 SC 1807: (2008) 2 KLT 327: 2008 Cri LJ 2597: (2008) 2 Cal LJ 67 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 8-4-2008]

Chandu Lal Chandraker v. Puran Mal, 1988 Supp SCC 570: 1988 SCC (Cri) 907, held per incuriam

Bibhuti Bhusan Das Gupta v. State of W.B., AIR 1969 SC 381, relied on

Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, followed

[3335] — Ss. 313(1)(b) proviso and 2(w) & (x), 205(1) and 317 — Examination of accused, after examination of prosecution witnesses in a warrant case — Held, mandatory even if court had dispensed with accused's personal attendance under S. 205(1) or 317 — *Rule of natural justice incorporated in — Case arising from complaint against respondent-accused for offence under S. 363 IPC, being a warrant case, Magistrate erred in dismissing the application of appellant-complainant for personal appearance and examination under S. 313(1)(b) of accused who was residing in USA*

In view of the word 'may' used in clause (*a*) and the word 'shall' used in clause (*b*) of sub-s. (1) of S. 313 CrPC it is clear from the plain language that the Court is empowered by clause (*a*) to question the accused at any stage of the inquiry or trial while clause (*b*) obligates the Court to question the accused before he enters his defence on any circumstance appearing in the prosecution evidence against him. The section incorporates a rule of audi alteram partem and is actually intended for the benefit of the accused person. The mandate of S. 313(1)(*b*) demands that the accused person, if not a company or other juridical person, must be personally examined to explain the incriminating circumstances appearing against him in the prosecution evidence and the examination of his lawyer would not be sufficient compliance with the mandate of said provision. The newly added proviso is in the nature of an exception to clause (*b*) of sub-section (1) of S. 313 of the Code. It came to be added to sub-section (1) with a view to enabling the

Court to dispense with the examination of the accused under clause (*b*) in a summons case if the Court has already dispensed with his personal attendance at an earlier point of time. Even in cases where the personal presence of the accused has been dispensed with under S. 205(1) or S. 317 of the Code the Magistrate can dispense with the mandatory requirement of clause (*b*) only in a summons case i.e. a case other than a warrant case. This is clear on a plain reading of the definitions of a summons case in S. 2(*w*) and a warrant case in S. 2(*x*) of the Code. Since an offence under S. 363 IPC is punishable with imprisonment for a term exceeding two years it is a warrant-case and not a summons case. Therefore, even in cases where the Court has dispensed with the personal attendance of the accused under S. 205(1) or S. 317 of the Code, the Court cannot dispense with the examination of the accused under clause (*b*) of S. 313 of the Code because such examination is mandatory. The submission that such a view will cause inconvenience and harassment to the accused cannot be accepted.

In the result the order impugned in the present appeal/writ petition of the Magistrate cannot be allowed to stand, more so in the instant case for the reason that the accused may raise the plea of violation of the due process clause if the order is sought to be executed in the foreign court. The order of the Magistrate is therefore, set aside and he is directed to pass appropriate orders in the light of this judgment in regard to the examination of the accused under S. 313(1)(*b*) of the Code. *Usha K. Pillai* v. *Raj K. Srinivas*, (1993) 3 SCC 208: 1993 SCC (Cri) 824: AIR 1993 SC 2090: (1993) 2 Crimes 336: 1993 Cri LJ 2669.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *S. Mohan*, JJ. [Date of decision: 30-4-1993]

Overruled *in Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740*

[3336] — Ss. 313(3), 315(1) proviso (b) and 161(2) — Rule against adverse inference from silence of accused at trial — Held, the rule flows from combined reading of CrPC provisions and Art. 20(3) — *Constitution of India — Art. 20(3) — Evidence Act, 1872, S. 114 Ill. (g)*

Indian law incorporates the rule against adverse inferences from silence which is operative at trial stage. This position is embodied in a conjunctive reading of Article 20(3) of the Constitution and Sections 161(2), 313(3) and proviso (*b*) of Section 315(1) CrPC. Even though an accused is a competent witness in his/her own trial, he/she cannot be compelled to answer questions that could expose him/her to incrimination and the trial Judge cannot draw adverse inferences from refusal to do so. This position is cemented by prohibiting any of the parties from commenting on the failure of the accused to give evidence. (Para 141). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength **3**. Coram : **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision : 5-5-2010]

Woolmington v. Director of Public Prosecutions, 1935 AC 462: 1935 All ER Rep 1 (HL), relied on

180th Report of the Law Commission of India (May 2002), quoted

[3337] — S. 313(4) — Accused admitting possession of primary gold but disclaiming its acquisition or ownership — *The answer being separable, the first part of the statement can be used against him — CrPC, 1898, S. 342(3). CCE* v. *V.P. Sayed Mohd.*, (1983) 1 SCC 370: 1983 SCC (Cri) 191: AIR 1983 SC 168: 1983 Cri LJ 225: (1983) 53 Comp Cas 377.

Bench Strength **2**. Coram: **E.S. Venkataramiah** and *R.B. Misra*, JJ. [Date of decision: 12-1-1983]

— S. 314(3) *See* Ss. 309 and 314(3)

— S. 315 *See also* Ss. 342-A and 340, Criminal Procedure Code, 1898, pp. 1162 et seq. and pp. 1145 et seq. in Vol. 2

— S. 315 *See also* Ss. 311, 233, 243 and 315

[3338] — S. 315 — Accused appearing as defence witness — *He cannot be denied the opportunity to produce the documents on which he relies merely because he did not produce them before his evidence was recorded — Matter remitted to the trial court to permit the appellant to produce the documents on which he relies. Gajendra Singh* v. *State of Rajasthan*, (1998) 8 SCC 612: 1998 SCC (Cri) 1608.

Bench Strength **2**. Coram: *A.M. Ahmadi, C.J.* and *Sujata V. Manohar*, J. [Date of decision: 9-2-1996]

[3339] — Ss. 315(1) proviso (b) and 313 — Burden of proof on accused — Mode of discharging — *Held, an accused need not examine himself — He may discharge his burden on the basis of the materials already brought on record — Hence, view taken by the courts below that for proving the defence the accused is required to step into the witness box and unless he does so he would not be discharging his burden, held, not sustainable — Constitution of India — Art. 19(1)(a) — Evidence Act, 1872, Ss. 101, 103 and 3 — Constitution of India — Art. 20(3)*

An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. The courts below committed a serious error in proceeding on the basis that for proving the defence the accused is required to step into the witness box and unless he does so he would not be discharging his burden. Such an approach on the part of the courts is not correct. (Paras 32 and 31). *Krishna Janardhan Bhat* v. *Dattatraya G. Hegde*, (2008) 4 SCC 54: (2008) 2 SCC (Cri) 166: AIR 2008 SC 1325: (2008) 141 Comp Cas 665: (2008) 1 KLT 425: (2008) 4 Mah LJ 354.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 11-1-2008]

[3340] — S. 315(1)(b) — Defence — Even if accused has not entered the witness box, no adverse inference can be drawn against the defence

It is basic criminal jurisprudence that an accused cannot be compelled to be examined as a witness and no adverse inference can be drawn against the defence merely because an accused person has chosen to abstain from the witness box. In this case the High Court was also not right in criticising and discarding availability of plea of self-defence to the accused persons on the ground that the plea was not specifically taken by the accused in their statements under Section 313 CrPC and because the accused did not enter the witness box. (Para 24) . *Kashiram* v. *State of M.P.*, (2002) 1 SCC 71: 2002 SCC (Cri) 68: AIR 2001 SC 2902.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 17-10-2001]

Vijayee Singh v. State of U.P., (1990) 3 SCC 190: 1990 SCC (Cri) 378, relied on

— S. 317 *See also* S. 540-A, Criminal Procedure Code, 1898, p. 1300 in Vol. 2

— S. 317 *See* Ss. 205 and 317

See also Ss. 273 and 317

See also Ss. 313(1)(b) proviso and 2(w) & (x), 205(1) and 317

[3341] — S. 317 — Exemption from appearance of accused — *Where Managers, Partners and Directors of a distillery company, accused of discharging polluted effluents into a river (Gomti in Lucknow), were alleged to be responsible for the actions of the company, held, if any of these persons applied for dispensing with personal appearance, trial court could exempt him, subject to conditions deemed fit by such court — Conditions may include: absent accused to be represented by counsel in court; he not to dispute his identity as a particular an accused; he to be present when his presence imperative — Environment (Protection) Act, 1986, S. 16* (Para 15). *U.P. Pollution Control Board* v. *Mohan Meakins Ltd.*, (2000) 3 SCC 745: AIR 2000 SC 1456: 2000 Cri LJ 1799: 2000 All LJ 872.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 27-3-2000]

[3342] — Ss. 317 and 205 — Relief — Exemption from personal attendance — *Simultaneous criminal cases against the same accused in different courts in different States — Relief of exemption from personal attendance in such cases, held, cannot be granted by Supreme Court — However, liberty granted to apply to the court concerned for such relief — Constitution of India — Arts. 32 and 21*

The direction for exemption from personal appearance cannot be had from the Supreme Court since it is within the powers of the Magistrate and in his judicial discretion to dispense with the personal appearance of an accused and as such it would be open to the party to apply to the trial/Sessions Court concerned for such exemption and in the event of there being such an application, the same should be disposed of in accordance with the law. (Para 61). *Narinderjit Singh Sahni* v. *Union of India*, (2002) 2 SCC 210: AIR 2001 SC 3810.

Bench Strength **3**. Coram: *G.B. Pattanaik*, **U.C. Banerjee** and *S.N. Variava*, JJ. [Date of decision: 12-10-2001]

[3343] — Ss. 317 and 273, 251 & 205 — Dispensing with personal attendance of an accused before criminal court in the interest of justice — *In summons case, such as one involving offence under S. 138 of Negotiable Instruments Act, if it appears to the court that personal attendance may result in enormous hardship and cost to an accused, the court may dispense with his personal attendance either throughout or at any particular stage of the proceedings, after taking an undertaking from him that he would not dispute his identity as the particular accused in the case and that a counsel on his behalf would be present in court and he would have no objection in taking evidence in his absence — Main concern of the court is administration of criminal justice and for that purpose the court proceedings should register progress — However, discretion to dispense with the personal attendance should be exercised in rare cases due to distance or any physical disability or other good reason, in the interests of justice — Also, where counsel does not appear or cooperate, resort can be had to Ss. 205(2) and 317(1) — Negotiable Instruments Act, 1881, S. 138*

It is clear from Section 273 CrPC that the normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused such evidence can be taken but then his counsel must be present in the court, provided the accused has been granted exemption from attending the court. The concern of the criminal court should primarily be the administration of criminal justice. For that purpose the proceedings of the court in the case should register progress. Presence of the accused in the court is not for marking his attendance just for the sake of seeing him in the court. It is to enable the court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the court in that particular case. (Para 14)

Sections 251 and 205(1) make it clear that in appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel. The Magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, one precaution which the court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in court and that he has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses. (Para 17)

As regards the question as to what might happen if the counsel engaged by the accused (whose personal appearance is dispensed with) does not appear or that the counsel does not cooperate in proceeding with the case, the legislature has taken care of such eventualities. Section 205(2) says that the Magistrate can in his discretion direct the personal attendance of the accused at any stage of the proceedings. The last limb of Section 317(1) confers a discretion on the Magistrate to direct the personal attendance of the accused at any subsequent stage of the proceedings. He can even resort to other steps for enforcing such attendance. Thus it is within the powers of a Magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the Magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations on him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the Magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the Magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course. When an accused makes an application to a Magistrate through his duly authorised counsel praying for affording the benefit of his personal presence being dispensed with the Magistrate can consider all aspects and pass appropriate orders thereon before proceeding further. (Para 19)

These are days when prosecutions for the offence under Section 138 of the Negotiable Instruments Act are galloping up in criminal courts. Due to the increase of inter-State transactions through facilities of the banks, it is not uncommon that when prosecutions are instituted in one State the accused might belong to a different State, sometimes a far distant State. Not very rarely, such accused would be ladies also. For prosecution under Section 138 of the NI Act the trial should be that of a summons case. When a Magistrate feels that insistence of personal attendance of the accused in a summons case, in a particular situation, would inflict enormous hardship and cost to a particular accused, it is open to the Magistrate to consider how he can relieve such an accused of the great hardships, without causing prejudice to the prosecution proceedings. (Para 15). *Bhaskar Industries Ltd.* v. *Bhiwani Denim & Apparels Ltd.*, (2001) 7 SCC 401: 2001 SCC (Cri) 1254: AIR 2001 SC 3625.

Bench Strength **2**. Coram: **K.T. Thomas** and *K.G. Balakrishnan*, JJ. [Date of decision: 27-8-2001]

See also Kelkar: Criminal Procedure, 4th Edn., 2001, pp. 325-26

[3344] — S. 317(1) — Exemption from personal appearance — *Where complaint under S. 498-A IPC had been filed before CJM lacking territorial jurisdiction and Supreme Court had directed that it ought to be transferred, held, that it was not necessary for the Supreme Court to decide the application of appellant-accused for exemption from personal appearance in court to which case transferred* (Para 2). *Bhudeb Chandra Karmakar* v. *State of W.B.*, (2001) 9 SCC 226: 2001 SCC (Cri) 1571.

Bench Strength **2**. Coram: *G.N. Ray* and *B.L. Hansaria*, JJ. [Date of decision: 30-7-1996]

— **S. 319** *See* Ss. 157, 160, 167, 170, 190 and 319

See also Ss. 161 & 162(1) proviso and 319

See also Ss. 167, 202(1), 204, 273 Expln. and 319

See also Ss. 173(8) & (2) and 319

See also Ss. 190, 204, 173(2), 154, 162 and 319

See also Ss. 190 and 319

See also Ss. 193, 209 and 319

See also Ss. 209, 319, 2(g), 227 and 228

See also Ss. 262 (Ch. XXI), 251, 254(1)(Ch. XX), 319 and 2(g)

See also Ss. 300 and 319

See also Ss. 300, 319, 202 and 203

See also Ss. 303, 300, 202 and 319

See also Ss. 401 and 319

See also Ss. 437 and 319

[3345] — S. 319 — Nature and scope

Section 319 empowers the court to proceed against persons not being the accused appearing to be guilty of offence. Sub-sections (1) and (2) of this section provide for a situation when a court hearing a case against certain accused person finds from the evidence that some person or persons, other than the accused before it is or are also connected in this very offence or any connected offence; and it empowers the court to proceed against such person or persons for the offence which he or they appears or appear to have committed and issue process for the purpose. It provides that the cognizance against newly added accused is deemed to have been taken in the same manner in which cognizance was first taken of the offence against the earlier accused. It naturally deals with a matter arising from the course of the proceeding already initiated. The scope of the section is wide enough to include cases instituted on private complaint. *Sohan Lal* v. *State of Rajasthan*, (1990) 4 SCC 580: 1990 SCC (Cri) 650: AIR 1990 SC 2158: (1990) 3 Crimes 120.

Bench Strength 2. Coram: **K.N. Saikia** and *K. Ramaswamy*, JJ. [Date of decision: 21-8-1990]

[3346] — S. 319 — Addition of additional accused under — When warranted — *Held, only when there is a reasonable prospect of case against such accused ending in their conviction — A fishing inquiry is not contemplated — It is not enough that it might be necessary to implead such accused to find out the real truth, even though there is no solid foundation of a case against them — Hence appellant-accused struck off from record. Palanisamy Gounder* v. *State*, (2005) 12 SCC 327.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 11-2-2005]

Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609; Krishnappa v. State of Karnataka, (2004) 7 SCC 792: 2004 SCC (Cri) 2093, followed

[3347] — S. 319 — Addition of other persons as accused — "Evidence" — Meaning in the context — *Cross-examination of the witness not necessary prior to addition of any other person as accused on the basis of evidence of such witness — Opportunity to cross-examine the witness would be available to such person at the time of trial — Evidence Act, 1872, S. 3*

The father of the prosecutrix lodged an FIR alleging commission of offence under Sections 363, 366 and 376 IPC by the appellants and one *P.* According to the complainant his daughter was taken by the said three persons due to previous enmity with the object of committing rape. The girl and *P* were found in Noida. After investigation the police found that the appellants were not involved in the case and therefore, charges were framed only against *P.* PWs 1, 2, 3 and the prosecutrix were examined and when cross-examination had begun, the Public Prosecutor moved an application under Section 319 CrPC for arraigning the appellants as additional accused. The trial court added the appellants also as accused and summoned them to stand trial. Revision preferred by the appellants was dismissed by the High Court. The question involved in this case was — whether the statement of a prosecution witness without the said witness having been cross-examined, constituted "evidence" within the meaning of Section 319 CrPC, 1973.

Dismissing the appeal,

Held :

The contention that the term "evidence" as used in Section 319 CrPC would mean evidence which is tested by cross-examination cannot be accepted. The question of testing the evidence by cross-examination would arise only after addition of the accused. There is no question of cross-examining the witness prior to adding such person as accused. The section does not contemplate an additional stage of first summoning the person and giving him an opportunity of cross-examining the witness who has deposed against him and thereafter deciding whether such person is to be added as accused or not. Once the Sessions Court records a statement of the witness it would be part of the evidence. There being no cross-examination, it would be a prima facie material which would enable the Sessions Court to decide whether powers under Section 319 should be exercised or not. The word "evidence" occurring in sub-section (1) is used in a comprehensive and broad sense which would also include the material collected by the investigating officer and the material or evidence which comes before the court and from which the court can prima facie conclude that the person not arraigned before it is involved in the commission of the crime. (Paras 13 and 10)

No doubt power under Section 319 is to be sparingly used. But that would not mean that when a prosecutrix names three persons who were involved in a serious crime, they are not to be added as accused by exercise of such power. (Para 14). *Rakesh* v. *State of Haryana*, (2001) 6 SCC 248: 2001 SCC (Cri) 1090: AIR 2001 SC 2521.

Bench Strength 2. Coram: **M.B. Shah** and *S.N. Variava*, JJ. [Date of decision: 25-7-2001]

Balvinder Singh v. State of Haryana, (1996) 3 RCR 231 (P&H); Joginder Singh v. State of Punjab, (1999) 1 RCR 562 (P&H); Dharam Pal v. Hardial Singh, (1999) 2 RCR 165 (P&H); Rakesh Batra v. State of Haryana, (2000) 4 RCR 10 (P&H), overruled

State v. Kishori, (1999) 1 RCR 200 (Del); Chanan v. State of Punjab, (1999) 1 RCR 371 (P&H); Ram Gopal v. State of U.P., (1999) 2 RCR 534 (All), approved

State of H.P. v. Surinder Mohan, (2000) 2 SCC 396: 2000 SCC (Cri) 400; Joginder Singh v. State of Punjab, (1979) 1 SCC 345: 1979 SCC (Cri) 295; Ranjit Singh v. State of Punjab, (1998) 7 SCC 149: 1998 SCC (Cri) 1554, relied on

[3348] — S. 319 — Addition of other persons as accused on basis of "evidence" before trial court — Exercise of power as to, under S. 319 — Test and guidelines therefor — Word "evidence" occurring in S. 319 — Meaning and scope of — *Acting under S. 319 on basis of statement of a witness made before trial court — Prerequisite for — Whether application under S. 319 is not maintainable unless the cross-examination of such witness is complete — Whether power under S. 319 can be exercised only if the court is satisfied that the accused summoned* ***in all likelihood*** *would be convicted — Considering that decision made by a two-Judge Bench in* Mohd. Shafi case, *(2007) 14 SCC 544 in relation to said issues was in conflict with relevant statutory provisions and previous decisions of Supreme Court particularly the decision made by a two-Judge Bench in* Rakesh case, *(2001) 6 SCC 248, matter referred to a three-Judge Bench for consideration afresh*

Referring the matter to a three-Judge Bench,

Held :

Section 319 CrPC empowers a court to proceed against any person if it appears from the evidence that such person has also committed an offence for which he can be tried together with the other accused. (Para 26)

When an examination-in-chief of a witness is over, there being no cross-examination, it would be merely prima facie material. But it would enable the trial court to decide whether powers under Section 319 CrPC should be exercised or not. Once the trial court records a statement of a witness, it becomes a part of evidence. It is true that finally at the time of trial, the accused must be given an opportunity to cross-examine the witness to test truthfulness of such statement. But that stage would come only after the person is added as an accused. (Paras 49 and 48)

It is thus difficult to accept the contention that the term "evidence" used in Section 319(1) CrPC would mean evidence which is tested by cross-examination. The question of testing the evidence by cross-examination would arise only after addition of the accused. There is no question of cross-examining the witness prior to adding such person as accused. The section does not contemplate an additional stage of first summoning the person and giving him an opportunity of cross- examining the witness who has deposed against him and thereafter deciding whether such person should or should not be added as accused. The word "evidence" occurring in Section 319(1) CrPC is used in comprehensive and broad sense which would also include the material collected by the investigating officer and the evidence which comes before the court and from which the court is satisfied that person not arraigned before it is involved in the commission of the crime. (Para 51)

At the stage of issuing summons or process, a court has to see whether there is prima facie case against the person sought to be summoned or against whom process is sought to be issued. At that stage, there is no question of giving an opportunity of hearing to such person. The entire scheme of the CrPC is that an accused does not come into picture at all till process is issued. (Para 54)

Further, when a person who is not shown as an accused is sought to be added on the basis of evidence in exercise of power under Section 319 CrPC, he is not before the court. Other accused against whom the trial has commenced are very much before the court and generally they are represented by an advocate/advocates. In the evidence of a witness, when role of other person i.e. other than the accused is described by prosecution witnesses, *normally*, the accused who are already on record are not affected. Grant or rejection of application under Section 319 would generally not alter their position. Therefore, holding that unless the cross-examination of a witness by the accused who were already on record is over and complete, no power under Section 319 CrPC can be exercised, does not appear to be sound. (Para 56)

That apart, if the above view is taken, any question of prejudice to the added accused does not arise at all. The CrPC has taken care by sufficiently protecting and safeguarding the interest of such added accused. As per Section 319(4) CrPC, after exercise of power by the court under Section 319(1) CrPC, the added accused would be placed in the same position as other accused and will get all rights an accused can get under the CrPC. The proceedings against the added accused shall be commenced *afresh* and witnesses will be *reheard*. Their evidence, prior to addition of the accused cannot be used against the accused who was not there earlier. (Para 57)

Even in *Rakesh case*, (2001) 6 SCC 248 it was ruled that an application under Section 319 CrPC is maintainable even without completion of cross-examination of a witness. If the court is satisfied on the basis of examination-in-chief of a witness that a person not shown to be an accused appears to have committed an offence, it can exercise the power under Section 319 CrPC. However, in *Mohd. Shafi case*, (2007) 14 SCC 544 it was held that no such order can be passed by a court under Section 319 unless the cross-examination of the witness is complete. In *Mohd. Shafi case* it was also held that the jurisdiction under Section 319 CrPC can be exercised only if the court is satisfied that the accused summoned *in all likelihood* would be convicted. The said observations do not appear to be in consonance with statutory provisions or previous decisions of the Supreme Court. The test formulated in *Mohd. Shafi case* substantially curtails discretionary power of the court under Section 319(1) CrPC. (Paras 52, 70, 71 and 74)

The decisions in *Rakesh case* and *Mohd. Shafi case* were made by a two-Judge Bench. Whereas *Rakesh case* was decided in 2000, *Mohd. Shafi case* was decided in 2007. In *Mohd. Shafi case*, however, the attention of the Court was not invited to *Rakesh case*. In the light of the said conflicting decisions of coordinate Benches, the matter is referred to a three-Judge Bench for consideration of following questions:

(*i*) When the power under Section 319(1) CrPC of addition of the accused can be exercised by a court? Whether application under Section 319 is not maintainable unless the cross-examination of the witness is complete?

(*ii*) What is the test and what are the guidelines of exercising power under Section 319(1) CrPC? Whether such power can be exercised only if the court is satisfied that the accused summoned *in all likelihood* would be convicted? (Paras 52 and 75). *Hardeep Singh* v. *State of Punjab*, (2009) 16 SCC 785.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 7-11-2008]

Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544: (2009) 1 SCC (Cri) 889, doubted

[**Ed.**: The two-Judge Bench of the Supreme Court in this case has held that the word "evidence" occurring in Section 319(1) CrPC is used in a comprehensive and broad sense which would also include the material collected by the investigating officer and the evidence which comes before the court and from which the court is satisfied that person not arraigned before it is involved in the commission of the crime. However, a three-Judge Bench of the Supreme Court in *Ranjit Singh* v. *State of Punjab*, (1998) 7 SCC 149 had held that "evidence" envisaged in Section 319 CrPC is the evidence tendered during trial of the case if the offence is triable by a Court of Session and not the material placed before the commital court.

The decision in *Ranjit Singh* has however been doubted by a three-Judge Bench in *Dharam Pal* v. *State of Haryana*, (2004) 13 SCC 9. In *Dharam Pal* the Supreme Court referred the question of power of Sessions Court to take cognizance of offences against persons not charge-sheeted, whose complicity in the crime comes to light from material available on record at stage of committal of case to it, to a larger Bench.

Now in the present case the Court has referred similar questions, though their scope is much broader, to a larger Bench. However, it seems that neither *Ranjit Singh*, nor *Dharam Pal*, both three-Judge Bench decisions, were brought to the attention of the Court in the present case. It may be in the public interest if the questions referred to larger Benches by *Dharam Pal* and the present Bench were to be heard by the same Bench.]

[3349] — S. 319 — Evidence that may be considered for summoning other persons under — Court if must wait till cross-examination is over — This question having been referred to a larger Bench — Options before the current Bench — *Observed, that the same would not mean that the current Bench should wait for the decision of the larger Bench — As cross-examination had taken place in present case, and this Bench is not required to decide the said question, it is assumed that in all cases the court may not wait till cross-examination is over for the purpose of exercising its jurisdiction under S. 319. Harbhajan Singh* v. *State of Punjab*, (2009) 13 SCC 608: (2009) 82 AIC 29 (SC): 2009 Cri LJ 4429.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 29-7-2009]

Rakesh v. State of Haryana, (2001) 6 SCC 248: 2001 SCC (Cri) 1090, relied on

Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544: (2009) 1 SCC (Cri) 889, doubted

[3350] — S. 319 — Extraordinary nature of power under, stressed — Exercise of power under — Stage at which and person(s) against whom invocable — Person named in FIR but not charge-sheeted — *Held, application under S. 319 is maintainable not only during pendency of inquiry/investigation but also in course of trial — Court is not denuded of its power under S. 319 only because person named as accused in FIR not charge-sheeted as a result whereof no cognizance taken against him — What is necessary for invoking S. 319 is that person concerned is not being tried as an accused before court, at that stage — A finding to that effect must be premised on the evidence that has been brought on record — A prima facie view would not be enough — Court must satisfy itself about existence of an extraordinary situation enabling it to exercise the extraordinary jurisdiction under S. 319 — Power under S. 319 must be exercised very sparingly and not as a matter of course* (Paras 11 to 15 and 18). *Ram Singh* v. *Ram Niwas*, (2009) 14 SCC 25: (2009) 78 AIC 32 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

Kailash v. State of Rajasthan, (2008) 14 SCC 51: (2009) 1 SCC (Cri) 1006; MCD v. Ram Kishan Rohatgi, (1983) 1 SCC 1: 1983 SCC (Cri) 115, followed

[3351] — S. 319 — Nature and scope of power under — Courts to whom available — Exercise of discretionary power under — Procedure discussed — *Held, power under S. 319 CrPC should be exercised cautiously and not as a matter of routine*

The discretion under Section 319 CrPC should be exercised cautiously and not as a matter of routine. (Para 28)

Section 319 CrPC applies to all the courts including the Sessions Court. It empowers the court to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with other accused. If such person is not attending the court, he can be arrested or summoned. If he is attending the court, although not under arrest or upon a summons, he can be detained by such court for the purpose of inquiry into, or trial of the offence which he appears to have committed. Section 319(4) lays down that where the court proceeds against any person under Section 319(1), the proceedings in respect of such person shall be commenced afresh and witnesses reheard. (Para 16). *Suman* v. *State of Rajasthan*, (2010) 1 SCC 250.

Bench Strength **2**. Coram: *R.V. Raveendran* and **G.S. Singhvi**, JJ. [Date of decision: 13-11-2009]

Anil Singh v. State of Bihar, (2006) 13 SCC 421: (2008) 1 SCC (Cri) 708; Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544: (2009) 1 SCC (Cri) 889; Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609, relied on

41st Report of the Law Commission, relied on

[3352] — S. 319 — Nature, scope and applicability — Trial of persons not already arraigned as accused — Evidence on basis of which may be ordered — Relevant test for — Prima facie case if enough — Implication by first informant or any witness, if enough — *Held, power under S. 319 is an extraordinary power which is required to be exercised sparingly and if compelling reasons exist for taking cognizance against persons against whom action has not been taken — Before an additional accused can be summoned for standing trial, nature of evidence should be such which would make out grounds for exercise of this extraordinary power — Materials brought before court must also be such which would satisfy court that it is one of those cases where its jurisdiction should be exercised — A higher standard for purpose of forming opinion to summon a person as additional accused is required to satisfy the ingredients thereof — An order under S. 319, should not be passed only because first informant or one of the witnesses seeks to implicate other person(s) — Sufficient and cogent reasons are required to be assigned by court so as to satisfy ingredients of S. 319 — Mere ipse dixit would not serve the purpose — Such evidence must be convincing, at least for purpose of exercise of the extraordinary jurisdiction — For the aforementioned purpose, courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned — Mere existence of a prima facie case may not serve the purpose — Impugned judgment set aside and matter remitted* (Paras 18, 19 and 21 to 23). *Sarabjit Singh* v. *State of Punjab*, (2009) 16 SCC 46.

Bench Strength **2**. Coram: **S.B. Sinha** and *P. Sathasivam*, JJ. [Date of decision: 12-5-2009]

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Lok Ram v. Nihal Singh, (2006) 10 SCC 192: (2006) 3 SCC (Cri) 532; Lal Suraj v. State of Jharkhand, (2009) 2 SCC 696: (2009) 1 SCC (Cri) 844; Y. Saraba Reddy v. Puthur Rami Reddy, (2007) 4 SCC 773: (2007) 2 SCC (Cri) 412, followed

Gurdip Singh v. State of Punjab, Criminal Revision No. 2073 of 2006 decided on 12-10-2006 (P&H), reversed

Bholu Ram v. State of Punjab, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710, distinguished

[3353] — S. 319 — Object and nature of power under — Stated

The primary object underlying Section 319 CrPC is that the whole case against all the accused should be tried and disposed of not only expeditiously but also simultaneously. Justice and convenience both require that cognizance against the newly added accused should be taken in the same case and in the same manner as against the original accused. The power under Section 319 CrPC must be conceded as incidental and ancillary to the main power to take cognizance as part of normal process in the administration of criminal justice. (Para 28). *Hardeep Singh* v. *State of Punjab*, (2009) 16 SCC 785.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 7-11-2008]

[3354] — S. 319 — Power to summon a person as accused — Relevant considerations — *Held, court to see as to whether there are sufficient grounds to proceed against the accused — In the present case, evidence of witnesses showing complicity of Respondent 1 with the crime — Hence held, High Court was not justified in setting aside trial court's order summoning the said respondent* (Para 3). *Golla Devavaram* v. *Karanam Balarama Krishna Murthy*, (2007) 15 SCC 665.

Bench Strength 2. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 15-12-2005]

[3355] — S. 319 — Power to summon other persons appearing to be guilty — Material to be considered — Test to be applied — Relevance of defences raised by the persons summoned — *Deceased committing suicide by consuming "sulphos" tablets after accused S had delivered nude photographs to her house and her paternal uncle's house and thereafter telephoned her that her father and uncle must have received his gifts — Alleged that prior to said incident, S always used to follow her despite her protests and when she refused his marriage proposal, S and appellants threatened and blackmailed her — However, charge-sheet filed only against S — When witnesses deposed before trial court that it was not only S but appellants also who had threatened to "defame" the deceased, and on perusing dying declaration wherein deceased had categorically named them as active participants in abetting her to commit suicide, trial court summoned them as additional accused in connection with FIR under Ss. 306/509/420/120-B/456 IPC — Sustainability — Held, only because no charge-sheet had been submitted against certain persons, same by itself, would not be a sufficient ground to decline to exercise jurisdiction to add other persons as accused on considering evidence adduced before court by prosecution — Dying declaration together with deposition of witnesses prima facie shows participation of appellants in alleged offence — It cannot be concluded that said evidence, even if given face value and taken to be correct in its entirety had not disclosed commission of an offence or on basis thereof judgment of conviction could not be recorded at all — Defences raised by appellants may or may not be accepted, but at present stage evidence adduced discloses some offence — Hence, summoning of appellants, upheld — Penal Code, 1860, S. 306* (Paras 9, 10, 15 to 18). *Harbhajan Singh* v. *State of Punjab*, (2009) 13 SCC 608: (2009) 82 AIC 29 (SC): 2009 Cri LJ 4429.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 29-7-2009]

Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544: (2009) 1 SCC (Cri) 889, distinguished

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115, considered and relied on

Joginder Singh v. State of Punjab, (1979) 1 SCC 345: 1979 SCC (Cri) 295; Lok Ram v. Nihal Singh, (2006) 10 SCC 192: (2006) 3 SCC (Cri) 532; Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203; Kailash v. State of Rajasthan, (2008) 14 SCC 51: (2009) 1 SCC (Cri) 1006; Sarabjit Singh v. State of Punjab, (2009) 16 SCC 46, relied on

[3356] — S. 319 — Trial of persons not already arraigned as accused — Existence of prima facie case — If sufficient for summoning such persons — Meaning of word "appears" in S. 319 — *FIR alleging that nine persons attacked and assaulted wife, mother and father of Respondent 1 as a result whereof, the father expired — Charge-sheet filed only against four persons and final form was submitted in favour of appellants — Large number of witnesses examined and cross-examined on behalf of accused persons before trial court — Thereafter, application filed for summoning appellants as accused — Application allowed by High Court — Sustainability — Held, High Court seriously erred in proceeding on premise that mere existence of a prima facie case would be sufficient to exercise jurisdiction under S. 319 — Word "appears" in S. 319 makes it necessary for court to arrive at a satisfaction that the evidence adduced on behalf of prosecution, if unrebutted, would lead to conviction of persons sought to be added as accused — Discretionary jurisdiction under S. 319 can be exercised only after the legal evidence comes on record and from that evidence it appears that the person concerned has committed an offence — High Court furthermore seriously erred insofar as it failed to take into consideration that when order was passed, trial court was in a position to consider evidence brought on record including cross-examination of prosecution witnesses — High Court did not arrive at any finding that a case was made out for exercise of the extraordinary jurisdiction under S. 319, which is required to be exercised very sparingly* (Para 20). *Ram Singh* v. *Ram Niwas*, (2009) 14 SCC 25: (2009) 78 AIC 32 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

[3357] — S. 319 — Applicability — Requirement of prima facie evidence for commission of offence under S. 498-A IPC — Whether satisfied — *Complainant wife alleging that mother-in-law and appellant-accused (sister-in-law) castigating her for insufficient dowry and subjecting her to physical and mental harassment and that appellant-accused instigating complainant's husband to inflict physical torture, that only after about one week after marriage, mother-in-law and appellant telling her that in the marriage, items like scooter, fridge, air conditioner, etc. were not given and marriage party was not served well and that on instigations of mother-in-law and appellant, the husband gave beating with belan and appellant forcibly removed her rings — Complainant's allegations in FIR clearly corroborated in her S. 161 CrPC statement recorded by police and statement of witnesses — Effect — Held, there is prima facie evidence against appellant to proceed under S. 319 — Therefore, trial of appellant-accused should proceed — Penal Code, 1860, S. 498-A*

Respondent 2 wife lodged a complaint under Section 498-A against her in-laws. However, the police after investigation filed a negative final report in respect of the appellant (accused sister-in-law). The Magistrate took cognizance against the accused sister-in-law under Section 319 CrPC.

Dismissing the appeal of the accused sister-in-law,

Held :

A reading of the plain language of Section 319(1) CrPC makes it clear that a person not already an accused in a case can be proceeded against if in the course of any inquiry into or trial of an offence it appears from the evidence that such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of Section 319(1) CrPC from which it can be inferred that a person who is named in the FIR or complaint but against whom charge-sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence the court finds that such person has committed any offence for which he could be tried together with the other accused. (Paras 17, 14 and 15)

The process issued against the appellant under Section 319 CrPC cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge-sheet against her. A person who is named in the FIR or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against under Section 319 CrPC if from the evidence collected/produced in the course of any inquiry into or trial of an offence, the court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused. (Paras 27 and 21)

The Magistrate had objectively considered the entire matter and judiciously exercised discretion under Section 319 CrPC for taking cognizance against the appellant. The issue of summons against the appellant was not an abuse of the process of the court. While deciding the application filed under Section 319 CrPC, the Magistrate noticed the allegations made by Respondent 2 in the complaint that her mother-in-law and sister-in-law had castigated her for insufficient dowry and subjected her to physical and mental harassment and that the sister-in-law had instigated the complainant's husband to inflict physical torture upon her, which were supported by the statements recorded by the police under Section 161 CrPC and by the Magistrate under Section 164 CrPC. In her complaint Respondent 2 alleged that after one week of the marriage, her mother-in-law and sister-in-law (the appellant) told her that in the marriage, items like scooter, fridge, air conditioner, etc. were not given and the marriage party was not served well and that on the instigations of the mother-in-law and the appellant sister-in-law, the husband gave beating with the belan and the appellant forcibly removed the rings. (Paras 35, 34 and 32)

The complainant clearly spelt out the role played by the appellant and made a specific mention about this in the letters written to her parents and the Magistrate opined that a prima facie case was made out for issuing process against the appellant. The father and mother of Respondent 2 and four other persons, whose statements were recorded under Section 161 CrPC, clearly spelt out the role played by the appellant in harassing Respondent 2 and instigating the complainant's husband to inflict torture upon her. Despite this, the police did not file charge-sheet against the appellant thinking that she had no occasion to make demand for dowry or harass Respondent 2 because the appellant was living with her husband. Therefore, the trial of the appellant should proceed and should be decided expeditiously. (Paras 35, 33 and 37)

The High Court broadly referred to the factual matrix of the case and held that the orders passed by the Magistrate and Sessions Judge did not suffer from any illegality or perversity warranting interference under Section 482 CrPC. The approach adopted by the High Court is in consonance with the settled law. Although at one stage, the Sessions Judge allowed the revision filed by the appellant and declared that in view of the bar of limitation contained in Section 468 CrPC, the Magistrate could not have taken cognizance against the appellant, the said order was set aside by the High Court and the matter was remitted for fresh disposal of the revision petition. In the post remand order passed by him, the Sessions Judge independently examined the entire record and held that prima facie case was made out for initiating proceedings against the appellant herein under Section 498-A IPC. (Paras 36 and 35). *Suman* v. *State of Rajasthan*, (2010) 1 SCC 250.

Bench Strength **2**. Coram: *R.V. Raveendran* and **G.S. Singhvi**, JJ. [Date of decision: 13-11-2009]

Joginder Singh v. State of Punjab, (1979) 1 SCC 345: 1979 SCC (Cri) 295; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Lok Ram v. Nihal Singh, (2006) 10 SCC 192: (2006) 3 SCC (Cri) 532; Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609; Anil Singh v. State of Bihar, (2006) 13 SCC 421: (2008) 1 SCC (Cri) 708; Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544: (2009) 1 SCC (Cri) 889; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; CBI v. Ravi Shankar Srivastava, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Mahesh Chaudhary v. State of Rajasthan, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332, relied on

[3358] — Ss. 319 and 482 — Nature, scope and applicability of S. 319 — Quashment of process issued under S. 319 — When proper — *Magistrate finding prima facie evidence and issuing process under S. 319 against appellant-accused named in FIR but police in its charge-sheet dropping charges against said accused — High Court not finding any illegality or perversity in issuance of process under S. 319 — Legality — Held, the process issued under S. 319 is legal and could not be quashed under S. 482 on ground that police did not file charge-sheet — Penal Code, 1860, S. 498-A — CrPC, 1898, S. 351*

Respondent 2 wife lodged a complaint under Section 498-A against her in-laws. However, the police after investigation filed a negative final report in respect of the appellant (accused sister-in-law). The Magistrate took cognizance against the accused sister-in-law under Section 319 CrPC.

Dismissing the appeal of the accused sister-in-law,

Held :

A reading of the plain language of Section 319(1) CrPC makes it clear that a person not already an accused in a case can be proceeded against if in the course of any inquiry into or trial of an offence it appears from the evidence that such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of Section 319(1) CrPC from which it can be inferred that a person who is named in the FIR or complaint but against whom charge-sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence the court finds that such person has committed any offence for which he could be tried together with the other accused. (Paras 17, 14 and 15)

The process issued against the appellant under Section 319 CrPC cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge-sheet against her. A person who is named in the FIR or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against under Section 319 CrPC if from the evidence collected/produced in the course of any inquiry into or trial of an offence, the court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused. (Paras 27 and 21)

The Magistrate had objectively considered the entire matter and judiciously exercised discretion under Section 319 CrPC for taking cognizance against the appellant. The issue of summons against the appellant was not an abuse of the process of the court. While deciding the application filed under Section 319 CrPC, the Magistrate noticed the allegations made by Respondent 2 in the complaint that her mother- in-law and sister-in-law had castigated her for insufficient dowry and subjected her to physical and mental harassment and that the sister-in-law had instigated the complainant's husband to inflict physical torture upon her, which were supported by the statements recorded by the police under Section 161 CrPC and by the Magistrate under Section 164 CrPC. In her complaint Respondent 2 alleged that after one week of the marriage, her mother-in-law and sister-in-law (the appellant) told her that in the marriage, items like scooter, fridge, air conditioner, etc. were not given and the marriage party was not served well and that on the instigations of the mother-in-law and the appellant sister-in-law, the husband gave beating with the belan and the appellant forcibly removed the rings. (Paras 35, 34 and 32)

The complainant clearly spelt out the role played by the appellant and made a specific mention about this in the letters written to her parents and the Magistrate opined that a prima facie case was made out for issuing process against the appellant. The father and mother of Respondent 2 and four other persons, whose statements were recorded under Section 161 CrPC, clearly spelt out the role played by the appellant in harassing Respondent 2 and instigating the complainant's husband to inflict torture upon her. Despite this, the police did not file charge-sheet against the appellant thinking that she had no occasion to make demand for dowry or harass Respondent 2 because the appellant was living with her husband. Therefore, the trial of the appellant should proceed and should be decided expeditiously. (Paras 35, 33 and 37)

The High Court broadly referred to the factual matrix of the case and held that the orders passed by the Magistrate and Sessions Judge did not suffer from any illegality or perversity warranting interference under Section 482 CrPC. The approach adopted by the High Court is in consonance with the settled law. Although at one stage, the Sessions Judge allowed the revision filed by the appellant and declared that in view of the bar of limitation contained in Section 468 CrPC, the Magistrate could not have taken cognizance against the appellant, the said order was set aside by the High Court and the matter was remitted for fresh disposal of the revision petition. In the post remand order passed by him, the Sessions Judge independently examined the entire record and held that prima facie case was made out for initiating proceedings against the appellant herein under Section 498-A IPC. (Paras 36 and 35). *Suman* v. *State of Rajasthan*, (2010) 1 SCC 250.

Bench Strength 2. Coram: *R.V. Raveendran* and **G.S. Singhvi**, JJ. [Date of decision: 13-11-2009]

Joginder Singh v. State of Punjab, (1979) 1 SCC 345: 1979 SCC (Cri) 295; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Lok Ram v. Nihal Singh, (2006) 10 SCC 192: (2006) 3 SCC (Cri) 532; Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609; Anil Singh v. State of Bihar, (2006) 13 SCC 421: (2008) 1 SCC (Cri) 708; Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544: (2009) 1 SCC (Cri) 889; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; CBI v. Ravi Shankar Srivastava, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Mahesh Chaudhary v. State of Rajasthan, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332, relied on

[3359] — **S. 319 — Applicability — Addition of other person as accused — When warranted** — *Held, such addition is warranted when it appears during trial/recording of evidence that such person has committed an offence which can be tried together with the accused — Magistrate then has power to summon such person as accused in the case*

On 21-8-1986 an FIR was lodged against the appellant for commission of offences punishable under Sections 409, 420, 467, 468 and 471 IPC. The allegation in the FIR was that the appellant, a school clerk had forged signature of Respondent 2 (the Head Master-cum-Drawing and Disbursing Officer) and embezzled substantial amount of more than rupees one lakh between 1979 and 1986. As stated in the FIR, the said fact came to light when audit was carried out and report was submitted. Hence, the complaint.

According to the appellant, during the course of investigation, signatures of Respondent 2 were also taken and were sent for examination but the report of the said examination was never filed by the prosecution in the proceedings. It was only in the course of recording of prosecution evidence that certain witnesses deposed against Respondent 2 alleging that it was Respondent 2 who had withdrawn the amount and signatures purported to have been forged by the appellant really tallied with the specimen signatures of Respondent 2.

In view of the said fact, the appellant on 5-2-1994 and on 6-1-1996, filed applications under Section 319 CrPC in the Court of the Judicial Magistrate praying therein to add Respondent 2 as an accused and summon him being Head Master-cum-Drawing and Disbursing Officer who had prepared false and forged bills, misappropriated the amount and committed fraud on the Government. The Magistrate allowed the applications of the appellant and issued summons under Section 204 to Respondent 2 by joining him as accused. Though the order was passed on 22-1-1996, it was not challenged by Respondent 2. When the State challenged the order by filing a revision petition in the Court of the Additional Sessions Judge, it was dismissed vide an order dated 6-5-1996. After a gap of more than eight months from the order passed by the Magistrate summoning Respondent 2, he filed an application on 25-9-1996 to review/recall summoning order dated 22-1-1996. He also contended in a separate petition that he could not be prosecuted in absence of sanction as required by Section 197 CrPC. The Magistrate by an order dated 12-3-1997 dismissed the application of Respondent 2 holding it to be not maintainable in view of dismissal of revision of the State by the Additional Sessions Judge. Being aggrieved by the order passed by the Judicial Magistrate, Respondent 2 filed two revision petitions before the Additional Sessions Judge who allowed the revisions of Respondent 2 on 5-3-1998 and set aside the order dated 22-1-1996. The appellant challenged both the orders before the High Court but failed.

Allowing the appeal,

Held :

Section 319 CrPC empowers a court to proceed against any person not shown to be an accused if it appears from the *evidence* that such person has also committed an offence for which he can be tried together with the accused. Sometimes a Magistrate while hearing a case against one or more accused finds from the *evidence* that some person other than the accused before him is also involved in that very offence. It is only proper that a Magistrate should have power to summon by joining such person as an accused in the case. (Paras 20 and 21)

The primary object underlying Section 319 is that the whole case against all the accused should be tried and disposed of not only expeditiously but also simultaneously. Justice and convenience both require that cognizance against the newly added accused should be taken in the same case and in the same manner as against the original accused. The power must be regarded and conceded as incidental and ancillary to the main power to take cognizance as part of normal process in the administration of criminal justice. (Para 21). *Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

[3360] — S. 319 — Applicability — Addition of other person as accused — *Appellant (school clerk) was accused of embezzling school funds by putting forged signatures of Respondent 2 (Head Master-cum-Drawing and Disbursing Officer) under Ss. 409, 420, 467, 468 and 471 IPC — Report of the signature expert though received by the prosecution was not produced before the court — When from the evidence of PWs 2, 14 and 11 it came to light that Respondent 2 might be involved in the crime, the Magistrate issued summons against Respondent 2 on an application made by the appellant — Cognizance by Magistrate, held, was not illegal or arbitrary — Penal Code, 1860, Ss. 409, 420, 467, 468 and 471*

Now, an application under Section 319 CrPC can only be made to a court and the court may exercise the power under the said section if it appears from *evidence* that any person other than the accused had also committed an offence for which he can be tried together with the accused. It was the case of the appellant that it was during the course of prosecution evidence that he came to know that signatures of Respondent 2 were sent for examination, some report was received by the prosecution which was not produced in court and on the basis of such evidence, the case was made out against Respondent 2. In these circumstances, there is no infirmity in the prayer granting applications under Section 319 CrPC. Therefore, even on merits, the order passed by the Magistrate issuing summons to Respondent 2 could not be said to be unlawful or even improper. The Magistrate issued summons taking into account evidence led by the prosecution, particularly, by PWs 2, 14 and 11. (Paras 62, 49 and 56). *Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

[3361] — S. 319 — Applicability — Addition of other persons as accused — Consideration of — Stage at which application to be filed — Effect of delay in progress of trial — Satisfaction of investigating/supervising officer — Weight to be given to — *In a case of murder appellant complainant PW 1 lodging complaint with the police on which investigation taken up — On an application by the respondents, the matter was investigated by Dy SP and on the basis of his report the names of the respondents deleted from the array of accused — Charge-sheet filed on 7-11-1997 in which their names were not included — Case committed to Sessions Court on 10-11-1997 — There was delay in progress of trial — PW 1 examined on 7-7-2004 — Immediately thereafter, application under S. 319 filed for arraying respondents as accused, which was dismissed — Trial court rejecting the application primarily on the ground that the plea of alibi raised by the respondents was found to be correct in the investigation by the Dy SP — Assailing the same, both the State and appellant filed revisions before High Court which were dismissed holding, inter alia, that there was delay in making the application and that the silence for such a long period shows that the plea of alibi was true — Before Supreme Court appellant contending that the alleged occurrence took place on 26-7-1997; though the charge-sheet was filed on 7-11-1997 the charges were framed on 25-8-2003; PW 1 was examined on 7-7-2004 and immediately after his evidence, application under S. 319 was filed — Hence, there was no delay in making the application since till the charges were framed application under S. 319 could not have been filed — Considering the facts and circumstances, held, High Court failed to notice this fact — Order-sheet shows that delay could not be attributed to the complainant — There was basic fallacy in the approach of High Court — It called for the records from the IO for its satisfaction whether the enquiry conducted was to be preferred to the evidence of PW 1 — If the satisfaction of the investigating officer or supervising* *officer is to be treated as determinative, then, held, the very purpose of S. 319 would be frustrated — Whatever be the worth of evidence of PW 1 for the purposes of S. 319, was required to be analysed — The conclusion that the IO's satisfaction would be given primacy is unsustainable — Also, High Court not justified in holding that there was belated approach — Hence, High Court's order set aside with directions to the trial court for proceeding against respondents under S. 319* (Paras 2 to 5, 7 and 10). *Y. Saraba Reddy* v. *Puthur Rami Reddy*, (2007) 4 SCC 773: (2007) 2 SCC (Cri) 412: (2007) 54 AIC 27 (SC).

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P.K. Balasubramanyan* and *D.K. Jain*, JJ. [Date of decision: 7-5-2007]

Lok Ram v. Nihal Singh, (2006) 10 SCC 192: (2006) 3 SCC (Cri) 532, followed

***Distinguished** in Lal Suraj v. State of Jharkhand, (2009) 2 SCC 696*

[3362] — S. 319 — Application — Procedural safeguards — Compliance with

Dismissing the appeal,

Held :

It is not explained as to how the order of the High Court is prejudicial to the appellant. The High Court has directed all procedural safeguards to be followed. The High Court observed that the order of taking cognizance deserved to be set aside. The Magistrate was directed to consider the relevant materials as well as the earlier charge-sheet. It was directed that while taking note of the matter for fresh consideration a notice was required to be sent to the de facto complainant and giving the de facto complainant an opportunity of hearing which was to be done before the order was passed. The High Court also referred to applicability of Section 319 CrPC in appropriate cases. There is no infirmity in the High Court's order. (Paras 12 and 7 to 9). *Chittaranjan Mirdha* v. *Dulal Ghosh*, (2009) 6 SCC 661.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision: 8-5-2009]

Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404, relied on

Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117; India Carat (P) Ltd. v. State of Karnataka, (1989) 2 SCC 132: 1989 SCC (Cri) 306, cited

[3363] — S. 319 — Nature, scope and applicability — Power to summon persons as additional accused — When invocable — Matters to be considered — *Held, power under S. 319 should only be invoked where it is imperative to meet ends of justice — Evidence adduced against such persons must be substantive evidence in order to summon them for trial, warranting their prosecution thereafter with good chance of conviction — In present case, there was no direct evidence of complicity of appellants in the incident — Hence, orders summoning them, set aside — Penal Code, 1860 — S. 302*

The common thread in most matters where the use of discretion is in issue is that in the exercise of such discretion each case has to be considered on its own set of facts and circumstances. In matters relating to invocation of powers under Section 319 CrPC, the court is not merely required to take note of the fact that the name of a person who has not been named as an accused in the FIR has surfaced during the trial, but the court is also required to consider whether such evidence would be sufficient to convict the person being summoned. Since issuance of summons under Section 319 CrPC entails a de novo trial and a large number of witnesses may have been examined and their re-examination could prejudice the prosecution and delay the trial, the trial court has to exercise such discretion with great care and perspicacity. (Para 25)

The power under Section 319 CrPC is to be invoked, not as a matter of course, but in circumstances where the invocation of such power is imperative to meet the ends of justice. The fulcrum on which the invocation of Section 319 CrPC rests is whether the summoning of persons other than the named accused would make such a difference to the prosecution as would enable it not only to prove its case but to also secure the conviction of the persons summoned. It is only logical that there must be substantive evidence against a person in order to summon him for trial, although he is not named in the charge-sheet or he has been discharged from the case, which would warrant his prosecution thereafter with a good chance of his conviction. (Paras 26, 27 and 29)

In the instant case, on the quality of the evidence adduced by the prosecution as far as the appellants are concerned, it is difficult to hold with any amount of certainty that the same would in all probability secure a conviction against the appellants. The evidence which seeks to connect the appellants with the commission of the offence is hearsay in nature. Since in the present case, except for a statement in the FIR that the complainant strongly believed that the murder of her father was preplanned and there were many conspirators involved, there is no direct evidence of the complicity of the appellants in the incident, it would not be proper to subject the appellants to trial by invoking the provisions of Section 319 CrPC. (Paras 28 and 30)

Therefore, the order passed by the trial court issuing summons to the appellants under Section 319 CrPC and the impugned order of the High Court directing the appellants to surrender before the trial court and to apply for bail, are set aside. (Para 31). *Brindaban Das* v. *State of W.B.*, (2009) 3 SCC 329.

Bench Strength 2. Coram: **Altamas Kabir** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-1-2009]

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115, followed

Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609; Krishnappa v. State of Karnataka, (2004) 7 SCC 792: 2004 SCC (Cri) 2093; Kavuluri Vivekananda Reddy v. State of A.P., (2005) 12 SCC 432: (2006) 2 SCC (Cri) 324, relied on

Bholu Ram v. State of Punjab, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710, considered

[3364] — S. 319 — Nature, scope and applicability — Trial of persons not already arraigned as accused — Evidence on basis of which may be ordered — Evidence of person not eyewitness and another a hearsay witness — *Held, power under S. 319 is required to be exercised very sparingly — Before order summoning such persons is passed, trial court must form an opinion on the basis of evidence brought before it, that a case has been made out that such person could be tried together with the other accused — On facts, in a murder trial, indisputably, no charge-sheet was filed against the appellants, hence, no cognizance was taken against them — However, trial court, relying upon the evidence of PWs 6 and 7, allowed the application for summoning appellants, exercising power under S. 319 — Revision filed by appellants thereagainst dismissed by High Court — Sustainability — Held, both trial court and High Court relied on the deposition of PWs 6 and 7 — However, PW 6 was not an eyewitness to the occurrence and PW 7 was only a hearsay witness — Therefore, no evidence worth the name was brought on record to arrive at a satisfaction that there was a reasonable prospect of conviction of the appellants — Under S. 319, the court has to exercise its power on the basis of fresh evidence brought before it — Hence, on the basis of aforementioned evidence, there was no possibility of recording judgment of conviction against appellants — Thus, impugned orders set aside*

There cannot be any doubt or dispute that although a person named in the FIR or another who was found to be involved in the commission of the offence may be summoned at a subsequent stage by the trial court, legality of an order summoning such an accused, however, would depend on the nature of evidence brought on record by the prosecution witnesses and other relevant factors. At that stage what is material is the evidence of prosecution witnesses and other materials which have been brought on record. (Para 9)

Section 319 CrPC is a special provision. It seeks to meet an extraordinary situation. It although confers a power of wide amplitude but is required to be exercised very sparingly. Before an order summoning an accused is passed, the trial court must form an opinion on the basis of the evidence brought before it that a case has been made out that such person could be tried together with the other accused. There is no dispute with the legal proposition that even if a person had not been charge-sheeted, he may come within the purview of the description of such a person as contained in Section 319. (Para 11)

PW 6 is not an eyewitness to the occurrence and PW 7 is only a hearsay witneSs. No evidence worth the name, therefore, had been brought on record to arrive at a satisfaction that there was a reasonable prospect of conviction of the appellants. (Paras 13 to 15)

The approach of the trial court was wholly incorrect. The principle of strong suspicion may be a criterion at the stage of framing of charge as all the materials brought during investigation were required to be taken into consideration, but, for the purpose of summoning a person, who did not figure as accused, a different legal principle is required to be applied. A court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where, however, the court exercises its jurisdiction under Section 319 CrPC, the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction. (Para 16)

Applying the legal principles to the fact of this case, the trial court as also the High Court committed a serious error in passing the impugned judgment. On the basis of the aforementioned evidence, there was no possibility of recording a judgment of conviction against the appellants at all. Thus, impugned orders are set aside. (Paras 21 and 22). *Lal Suraj* v. *State of Jharkhand*, (2009) 2 SCC 696.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 18-12-2008]

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Guriya v. State of Bihar, (2007) 8 SCC 224: (2007) 3 SCC (Cri) 521; Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544; Kailash v. State of Rajasthan, (2008) 14 SCC 51, relied on

Yuvaraj Ambar Mohite v. State of Maharashtra, (2006) 12 SCC 512: (2007) 2 SCC (Cri) 554, considered

Y. Saraba Reddy v. Puthur Rami Reddy, (2007) 4 SCC 773: (2007) 2 SCC (Cri) 412, distinguished

[3365] — S. 319 — Scope of — Relevant factors to be considered for exercising jurisdiction under, restated — *Trial court dismissed the application under S. 319 after evaluating the statement of witnesses made to police as well as their statement made before the trial court which were improved versions — Even if additional accused was present, trial court concluded against his participation and found no justification to array him as an accused — High Court set aside the order of trial court — Held, order of High Court is erroneous — High Court was required to consider the evidence on record independently that whether there was any material in the evidence not only to connect the appellant but whether it was sufficient to justify the words "it appears that such person has committed the crime" — Words "it appears" in S. 319 are not to be read lightly — Reliance placed by High Court on* Shashikant Singh case, *(2002) 5 SCC 738 was misplaced*

A written report came to be made at Police Station wherein *RK* complained that he was attacked by *RP, K, PK, KK, C* and *M*. Offences were registered under Sections 147, 148, 341, 452, 24/149, 323, 324/149 and 308/149 IPC. However, in the charge-sheet the present appellant *K* was not arrayed as an accused. During the course of trial when the prosecution witnesses were examined, the complainant moved an application under Section 319 CrPC to array *K* as an accused. The Sessions Judge took stock of the evidence which was led during the trial and came to the conclusion that even if *K* was presumed to be present at the place of occurrence, it was not proved that he took part in the assault and there was no justification for taking any cognizance against him.

When the revision petition against the said order was pending before the High Court, the trial concluded and some of the accused persons were acquitted while three of them came to be convicted for offences under Section 323 IPC. By its impugned order, the High Court allowed the revision and directed the trial court to rehear the application filed under Section 319 CrPC.

Allowing the appeal,

Held :

The key words in this section are "it appears from the evidence" ... "any person" ... "has committed any offence". It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 CrPC would be used by the court. This is apart from the fact that such person against whom such discretion is used, should be a person who could be tried together with the accused against whom the trial is already going on. The Supreme Court has, time and again, declared that the discretion under Section 319 CrPC has to be exercised very sparingly and with caution and only when the court concerned is satisfied that some offence has been committed by such person. This power has to be essentially exercised only on the basis of the evidence. It could, therefore, be used only after the legal evidence comes on record and from that evidence it appears that the person concerned has committed an offence. The words "it appears" are not to be read lightly. In that the court would have to be circumspect while exercising this power and would have to apply the caution which the language of the section demands. (Paras 9, 10 and 11)

The trial court found that all these witnesses were giving improved versions during their evidence in the court. Thus, it was clear that the trial court had come to a conclusion that there was no possibility of convicting *K*, the present appellant on the basis of the evidence led before it. The High Court merely relied on *Shashikant Singh case*, (2002) 5 SCC 738 where the question was entirely different. There the question was as to whether if the trial itself was over, could the Revisional Court direct the said person against whom the trial court had refused to exercise discretion under Section 319 CrPC to be tried afresh. In the present case also the conclusion of the trial was irrelevant insofar as the trial of the appellant is concerned. That by itself was no reason to try him with the aid of Section 319 CrPC. The High Court should have applied itself independently to the question as to whether there was any material in the evidence not only to connect the appellant but whether it was sufficient to justify the words "it appears that such person has committed the crime". No such effort is seen in the judgment of the High Court. On the other hand, the High Court has commented on the language of the judgment by the trial court while acquitting the other accused. That is an irrelevant consideration. (Paras 12 and 13). *Kailash* v. *State of Rajasthan*, (2008) 14 SCC 51.

Bench Strength **2**. Coram: *S.B. Sinha* and **V.S. Sirpurkar**, JJ. [Date of decision: 3-3-2008]

Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544; MCD v. Ram Krishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Krishnappa v. State of Karnataka, (2004) 7 SCC 792: 2004 SCC (Cri) 2093; Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609, followed

Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203, distinguished

[3366] — S. 319 — Applicability — Addition of other persons as accused — Though named in the FIR, yet not charge-sheeted — *FIR naming several persons as assailants of the deceased — Investigating officer excluding the names of some of such persons — Evidence of prosecution witnesses corroborating the alleged role of the excluded persons in the incident — In such circumstances, trial court's order summoning the excluded persons to stand trial under Ss. 147, 148, 149 and 302 IPC, held, did not suffer from any illegality or irregularity — High Court erred in holding that the court's power under S. 319 could not be invoked when a person named as an accused in FIR was not charge-sheeted — Penal Code, 1860, Ss. 147, 148, 149 and 302* (Paras 7, 5 and 4). *Rukhsana Khatoon* v. *Sakhawat Hussain*, (2002) 10 SCC 661: 2004 SCC (Cri) 1153: AIR 2002 SC 2342: 2002 Cri LJ 2969.

Bench Strength **2**. Coram: *M.B. Shah* and *R.P. Sethi*, JJ. [Date of decision: 18-9-2001]

Kishun Singh v. State of Bihar, (1993) 2 SCC 16: 1993 SCC (Cri) 470; Girish Yadav v. State of M.P., (1996) 8 SCC 186: 1996 SCC (Cri) 552, relied on

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115, considered

[3367] — S. 319 — Applicability — Ceases to apply once a person is found to be accused in the case — *S. 319 to be read in consonance with S. 398*

There is need for caution in resorting to S. 319. Once a person is found to have been the accused in the case he goes out of the reach of S. 319. Whether he can be dealt with under any other provisions of the Code is a different question. In the case of the accused who has been discharged under the relevant provisions of the Code, the nature of finality to such order and the resultant protection of the persons discharged subject to revision under S. 398 of the Code may not be lost sight of. This should be so because the complainant's desire for vengeance has to be tempered with. Section 319 has to be read in consonance with S. 398. *Sohan Lal* v. *State of Rajasthan*, (1990) 4 SCC 580: 1990 SCC (Cri) 650: AIR 1990 SC 2158: (1990) 3 Crimes 120.

Bench Strength **2**. Coram: **K.N. Saikia** and *K. Ramaswamy*, JJ. [Date of decision: 21-8-1990]

[3368] — S. 319 — Applicability — Expression "any other person not being the accused" — Persons included under — *An application under S. 319 for addition of other person as accused, reiterated, can be moved by the accused also*

It is settled law that power under Section 319 CrPC can be exercised either on an application made to the court or by the court suo motu. It is in the discretion of the court to take an action under the said section and the court is expected to exercise the discretion judicially and judiciously having regard to the facts and circumstances of each case. In the instant case, an FIR was lodged against the appellant in August 1986. But it was during the course of trial that it came to light that signatures of Respondent 2 were also taken and were sent for examination and a report was received showing that the signatures on the basis of which amount was withdrawn tallied with the signatures of Respondent 2. The said report, however, was not filed by the prosecution. It was in these circumstances that the appellant made applications in 1994 and in 1996 under Section 319 CrPC requesting the Magistrate to join Respondent 2 as accused and to summon him. (Paras 22 and 23)

The Magistrate had power and jurisdiction to entertain applications filed by the appellant-accused under Section 319 CrPC and to issue summons to Respondent 2 by adding him as an accused. The said order could not be said to be illegal, unlawful or otherwise objectionable. Section 319 CrPC nowhere states that such an application can only be filed by a person other than the accused. (Paras 35, 25 and 27 to 29). *Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203; Joginder Singh v. State of Punjab, (1979) 1 SCC 345: 1979 SCC (Cri) 295; Rakesh v. State of Haryana, (2001) 6 SCC 248: 2001 SCC (Cri) 1090; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Lok Ram v. Nihal Singh, (2006) 10 SCC 192: (2006) 3 SCC (Cri) 532, relied on

[3369] — S. 319 — Application — Manner of initiation/invocation of powers under and commencement of proceedings — *Held, power under S. 319 CrPC can be exercised either on an application made to the court or by the court suo motu. Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

[3370] — S. 319 — Applicability — Expression "any person not being the accused" — Scope — Power under S. 319(1) — Nature of — Said power when to be exercised — *Person accused in another case, though in respect of the same occurrence but with different version, held, can be summoned under S. 319 — Petitioners not accused in complaint case summoned under S. 319 by the trial court in that case — But petitioners were accused in police case in respect of the same occur-*

rence — Version of both the said cases different — Power under S. 319(1), held, discretionary in nature and is required to be used sparingly — On facts, said power, held, rightly exercised — Order of High Court upholding trial court's order and directing the said cases before the trial court to be decided at the same time, held, justified — No violation of Art. 20(2) of the Constitution

Power under Section 319 of the Code can be resorted to only when a person is not an accused before court and in the course of any inquiry into, or trial of, an offence, it appears from the evidence that such person has committed any offence for which he can be tried together with the accused. The court has discretion to proceed against such person for the offence which he appears to have committed. The inquiry into or trial is of "an offence" and not the offender. (Para 7)

Section 319 does not exclude from its purview a person who is not an accused before court in a case in which order for his summoning is passed despite the fact of such a person being an accused in another case though in respect of the same occurrence but with a different version. The words "any person not being the accused" in Section 319 would cover any person who is not already before the court in the case in which order under Section 319 is passed. It is the duty of the court to bring before it any person who appears to have committed an offence and to convict and pass an appropriate order of sentence on proof of such person having committed the offence. (Para 8)

The power of summoning under Section 319(1) is required to be sparingly used, it being a discretionary power but on facts of the present case, it cannot be held that the discretionary power has not been properly and legally used. The power is to be exercised to achieve criminal justice. Though the occurrence is the same but there are two versions — one in the police case and the other in the case in which the petitioners have been directed to be summoned. In case the petitioners are not before the Court as accused in the case in hand, the Court would not be in a position to convict and appropriately sentence them even if the version of the occurrence as given by Respondent 2 is accepted and held proved beyond reasonable doubt against the petitioners. (Para 15)

The High Court, while noticing that the police case and the complaint case are before the trial court, has observed that both cases must necessarily be decided at the same time. (Para 6)

The principles laid down in *Harjinder Singh case*, (1985) 1 SCC 422, are squarely applicable to the present case as well. The High Court in principle and in substance has adopted a similar course in the impugned order. The course adopted would not result in causing any prejudice to the accused-petitioners. It is the duty of the court to sift the grain from the chaff and punish the guilty while, at the same time, ensuring that there is no violation of Article 20(2) of the Constitution. The impugned order squarely satisfies all these requirements. (Para 14). *Jarnail Singh* v. *State of Haryana*, (2003) 9 SCC 328: 2003 SCC (Cri) 1814: AIR 2003 SC 4081: 2003 Cri LJ 2307.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *H.K. Sema*, JJ. [Date of decision: 9-4-2003]

S.S. Khanna (Dr.) v. Chief Secy., Patna, (1983) 3 SCC 42: 1983 SCC (Cri) 562, distinguished and limited to its facts

Harjinder Singh v. State of Punjab, (1985) 1 SCC 422: 1985 SCC (Cri) 93, applied

[3371] — S. 319 — Can be invoked by court having original jurisdiction as well as by court to which case committed for trial — *Provision of S. 319 compared with S. 351 of the old Code*

Section 319 corresponds to S. 351 of the repealed Code of Criminal Procedure, 1898. That section must be read in juxtaposition with S. 319 of the Code. The Law Commission suggested that S. 351 should be recast with a view to (*i*) empowering the court to summon a person not present in court to stand trial along with the named accused and (*ii*) enabling the court to take cognizance against the newly added accused by making it explicit that there will be no difference in the mode of taking cognizance against the added accused. Pursuant to the said recommendations made by the Law Commission S. 351 of the old Code was replaced by S. 319 in the present Code. Section 351 of the old Code empowered detention of any person attending a criminal court, although not under arrest or upon a summon, for the purpose of inquiry into or trial of any offence of which such court could take cognizance, if it appeared from the evidence so recorded that he may have committed an offence along with others. Sub-section (2) of S. 319 came to be inserted in response to the Law Commission's recommendation in paragraph 24.80 of its Report to enlarge the court's power to arrest or summon any person who appears to be involved in the commission of the crime along with others but who is not present in court. Next, it is significant to note that the words 'of which such court can take cognizance' have been omitted by the legislature. Instead the newly added sub-section (4)(*b*) expressly states that the case against the added accused may proceed as if such person had been an accused person when the court took cognizance of the offence. This takes care of the Law Commission's recommendation found in paragraph 24.81 extracted earlier. It is, therefore, manifest that S. 319 of the Code is an improved version of S. 351 of the old Code; the changes having been introduced therein on the suggestion of the Law Commission to make it comprehensive so that even persons not attending the court can be arrested or summoned as the circumstances of the case may require and by deleting the words 'of which such court can take cognizance' and by adding clause (*b*) it is clarified that the impleadment of a new person as an accused in the pending proceedings will not make any difference insofar as taking of cognizance is concerned. In other words it is made clear that cognizance against the added person would be deemed to have been taken as originally against the other co-accused. It is thus clear that the difficulty in regard to taking of cognizance which would have been experienced by the court has been done away with. The section comes into operation at the post-cognizance stage when it appears to the court from the evidence recorded at the trial that any person other than those named as offenders appears to have committed any offence in relation to the incident for which the co-accused are on trial. Section 319 can be invoked both by the Court having original jurisdiction as well as the Court to which the case has been committed or transferred for trial. *Kishun Singh* v. *State of Bihar*, (1993) 2 SCC 16: 1993 SCC (Cri) 470: 1993 Cri LJ 1700: (1993) 1 Crimes 494: (1993) 1 BLJR 309.

Bench Strength 2. Coram: **A.M. Ahmadi** and *N.P. Singh*, JJ. [Date of decision: 11-1-1993]

[3372] — S. 319 — Conviction of appellants who were summoned under S. 319 and arrayed as accused — Direction by High Court to try the appellants afresh — Propriety — *Appellants arrayed after the entire evidence recorded, arguments heard and the judgment reserved — Further, after the appellants were summoned, the prosecution did not examine again all prosecution witnesses — Police papers also not supplied to them — In view of the facts, High Court concluding that serious prejudice had been caused to appellants — Hence, it setting aside the conviction and sentence and directing retrial of appellants — Incident in question occurred about 14 years back — Four other accused already convicted and their conviction attained finality — Considering the facts and circumstances, held, the direction by High Court regarding retrial of appellants was not sustainable — However, the part of High Court's judgment setting aside conviction of appellants, upheld* (Paras 6 and 5). *Prasanna Das* v. *State of Orissa*, (2004) 13 SCC 30.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 6-8-2004]

Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609; Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203, applied

[3373] — S. 319 — Court's power under, to proceed against others not arrayed as accused — Object of

Per Balasubramanyan, J.

The power under Section 319 CrPC is conferred on the court to ensure that justice is done to the society by bringing to book all those guilty of an offence. One of the aims and purposes of the criminal justice system is to maintain social order. It is necessary in that context to ensure that no one who appears to be guilty escapes a proper trial in relation to that guilt. There is also a duty to render justice to the victim of the offence. It is in recognition of this that CrPC has specifically conferred a power on the court to proceed against others not arrayed as accused in the circumstances set out by Section 319 CrPC. It is a salutary power enabling the discharge of a court's obligation to the society to bring to book all those guilty of a crime. (Para 20). *Rajendra Singh* v. *State of U.P.*, (2007) 7 SCC 378: (2007) 3 SCC (Cri) 375: AIR 2007 SC 2786: (2007) 5 All LJ 485: (2007) 3 KLT 892: (2007) 57 AIC 69 (SC).

Bench Strength 2. Coram: **G.P. Mathur**[1] and **P.K. Balasubramanyan**[2], JJ. [Date of decision: 6-8-2007]

[3374] — S. 319 — 'Evidence' envisaged in — *Meaning of — Material placed before the committal court cannot be treated as evidence during enquiry or trial — 'Evidence' under S. 319 is the evidence adduced during trial of the case if the offence is triable by a Court of Session*

It is settled that "evidence" envisaged in Section 319 of the Code is the evidence tendered during trial of the case if the offence is triable by a Court of Session. The material placed before the committal court cannot be treated as evidence collected during enquiry or trial. *Ranjit Singh* v. *State of Punjab*, (1998) 7 SCC 149: 1998 SCC (Cri) 1554: AIR 1998 SC 3148.

Bench Strength 3. Coram: *M.M. Punchhi*, *C.J.* and **K.T. Thomas** and *S.S.M. Quadri*, JJ. [Date of decision: 22-9-1998]

Raj Kishore Prasad v. State of Bihar, (1996) 4 SCC 495: 1996 SCC (Cri) 772, relied on

[3375] — S. 319 — Expression "appears" occurring in — Connotation of — *Held [Per*

Balasubramanyan, J. (supplementing)], the said expression indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under S. 319 CrPC or not

Per Balasubramanyan, J. (supplementing)

For exercising jurisdiction under Section 319 CrPC, it need only appear to the court from the evidence that someone else has committed an offence. The court need not be satisfied that he has committed an offence. Even then, the court has a discretion not to proceed, since the expression used is "may" and not "shall". The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression "appears" indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 CrPC or not. Thus, exercise of power under Section 319 CrPC is left to the court trying the offence based on the evidence that comes before it. The court must be satisfied of the condition precedent for the exercise of power under Section 319. It cannot be assumed that a court trained in law would not exercise the power within the confines of the provision and decide whether it may proceed against such person or not. (Paras 16 and 21). *Rajendra Singh* v. *State of U.P.*, (2007) 7 SCC 378: (2007) 3 SCC (Cri) 375: AIR 2007 SC 2786: (2007) 5 All LJ 485: (2007) 3 KLT 892: (2007) 57 AIC 69 (SC).

Bench Strength **2**. Coram: **G.P. Mathur**[1] and **P.K. Balasubramanyan**[2], JJ. [Date of decision: 6-8-2007]

[3376] — S. 319 — Maintainability — Limitation — *Held, there is no prescribed time-limit within which such application can be made*

Section 319 CrPC does not prescribe any time-limit within which such application should be filed in the court. It was also urged that no applications by the appellant could have been entertained by the trial court after about 8 to 10 years from the date of filing of FIR. (Paras 25 and 62). *Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

[3377] — S. 319 — Power of court to proceed against other persons appearing to be guilty of offence — *Police not filing charge-sheet against the four appellants — Evidence of eyewitnesses recorded by the court showing that there was enough involvement of those appellants in the commission of the offence — Held, the appellants could not be said to have been wrongly proceeded against as accused. Girish Yadav* v. *State of M.P.*, (1996) 8 SCC 186: 1996 SCC (Cri) 552: AIR 1996 SC 3098.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 29-3-1996]

[3378] — S. 319 — Power of trial court to issue summons against person appearing to be guilty — Scope — *Held, may be invoked even where name of person summoned is in FIR yet no charge-sheet has been filed against him and no protest petition filed — High Court erred in quashing summons issued against respondent by trial court*

Section 319 CrPC is intended to meet the situation where in course of trial, if materials come up against some other persons, who have not been arrayed as accused, and are not being tried, the court can summon them as accused. On the very face of it, the order of the High Court in interfering with the order issued by the trial Judge under Section 319 CrPC is erroneous. (Para 2). *Geeta Ram* v. *Vedi Ram*, (2002) 10 SCC 499.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *N. Santosh Hegde*, JJ. [Date of decision: 23-11-2001]

[3379] — S. 319 — Power to issue process against person not sent up for trial after investigation, but named in FIR — Nature and scope — *Held, is limited and should be exercised cautiously and not mechanically — Court while issuing the process should arrive at a reasonable satisfaction that the prosecution would be able to prove the charges against whom the process is sought to be issued — Only because some evidence has been brought on record, the same by itself may not be a ground to issue process — Court, though not bound by the opinion of the investigating officer and forming only a prima facie opinion without enquiring into merits is required to maintain a balance and apply the tests on the touchstone of the materials brought on record*

In the FIR the appellants were specifically named. However, upon investigation, the SP having come to the conclusion that they had been falsely implicated, a final form was filed in their favour. The said final form as against the appellants was accepted by the Magistrate but since a charge-sheet was filed against the other accused, cognizance was taken against them. The prosecution thereafter filed an application for summoning the appellants purported to be in terms of Section 319 CrPC, which was dismissed by the Second Addl. Sessions Judge inter alia holding that the appellants had been found to be innocent as there was doubt as regards their identity. However, the High Court in an application filed under Section 482 CrPC quashed the said order of the Additional Sessions Judge and directed the trial court to proceed in the matter in accordance with law. Hence, the instant appeal.

Held :

The trial court proceeded on a wrong premise in holding that as no charge-sheet was filed as against the appellants by the police the same was not sufficient to refuse to issue summons. The question, which was necessary to be posed in view of the propositions of law as laid down was as to whether any case has been made out for exercise of extraordinary jurisdiction by the court keeping in view the fact as to whether the prosecution would be able to bring home the charge. If the court comes to the conclusion having regard to the materials on record that the prosecution ultimately may not be able to bring home the charge as against the persons against whom processes were to be issued, it would decline to do so. (Para 20)

The High Court by the impugned judgment did not direct that the processes be issued. It merely directed the learned trial Judge to proceed in the matter in accordance with law. The same evidently did not mean that the High Court has already arrived at a conclusion that the processes must be issued. The High Court merely laid down a law as the learned trial Judge went wrong in formulating the correct question of law. The High Court, however, did not have any occasion to consider the merit of the matter. Hence, matter remitted to trial court for fresh consideration. (Para 22). *Anil Singh* v. *State of Bihar*, (2006) 13 SCC 421.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Kishun Singh v. State of Bihar, (1993) 2 SCC 16: 1993 SCC (Cri) 470; Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609; Krishnappa v. State of Karnataka, (2004) 7 SCC 792: 2004 SCC (Cri) 2093; Kavuluri Vivekananda Reddy v. State of A.P., (2005) 12 SCC 432: (2006) 2 SCC (Cri) 324; Palanisamy Gounder v. State, (2005) 12 SCC 327: (2006) 1 SCC (Cri) 568; Rukhsana Khatoon v. Sakhawat Hussain, (2002) 10 SCC 661: 2004 SCC (Cri) 1153; Girish Yadav v. State of M.P., (1996) 8 SCC 186: 1996 SCC (Cri) 552, relied on

[3380] — S. 319 — Power to proceed against other persons appearing to be guilty of an offence — Scope of — Condition for exercise of said power — Discretion of court in relation to that exercise — *Held [Per Mathur, J. (for himself and Balasubramanyan, J.)], court can summon a person to face trial even though he may not have been charge-sheeted by the investigating agency or may have been discharged at an earlier stage — Per Balasubramanyan, J. (supplementing), in order to exercise jurisdiction under S. 319 CrPC, it must only "**appear**" to the court from the evidence that someone else has committed an offence — Court need not be "**satisfied**" about the commission of offence by that person — Decision to proceed or not to proceed against a person in terms of S. 319 CrPC is left to discretion of trial court — Said decision must be taken after applying mind to the evidence before the court — Power and discretion of court under S. 319 CrPC cannot be fettered either by calling it extraordinary or by stating that it will be exercised only in exceptional circumstances — It is intended to be used when the occasion envisaged by S. 319 arises*

Per Mathur, J. (for himself and Balasubramanyan, J.)

If the evidence tendered in the course of any enquiry or trial shows that any person not being the accused has committed any offence for which he could be tried together with the accused, he can be summoned to face trial even though he may not have been charge-sheeted by the investigating agency or may have been discharged at an earlier stage. (Para 6)

Per Balasubramanyan, J. (supplementing)

For exercising jurisdiction under Section 319 CrPC, it need only appear to the court from the evidence that someone else has committed an offence. The court need not be satisfied that he has committed an offence. Even then, the court has a discretion not to proceed, since the expression used is "may" and not "shall". The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression "appears" indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 CrPC or not. Thus, exercise of power under Section 319 CrPC is left to the court trying the offence based on the evidence that comes before it. The court must be satisfied of the condition precedent for the exercise of power under Section 319. It cannot be assumed that a court trained in law would not exercise the power within the confines of the provision and decide whether it may proceed against such person or not. (Paras 16 and 21)

There is no reason to describe the power under Section 319 CrPC as an extraordinary power or to confine the exercise of it only if compelling reasons exist for taking cognizance against any other person against whom action has not been taken. The observations made in *Ram Kishan Rohtagi*, (1983) 1 SCC 1 in this regard cannot be understood out of context. The said decision proceeded on its own peculiar facts. (Paras 16 and 17)

Section 319 CrPC only gives power to the court to ensure that all those apparently involved in the commission of an offence are tried together and none is left out. There is no reason to curtail this power of the court to do justice to the victim and to the society. There is no rationale in fettering that power and the discretion, either by calling it extraordinary or by stating that it will be exercised only in exceptional circumstances. It is intended to be used when the occasion envisaged by the section arises. (Paras 16 and 21). *Rajendra Singh* v. *State of U.P.*, (2007) 7 SCC 378: (2007) 3 SCC (Cri) 375: AIR 2007 SC 2786: (2007) 5 All LJ 485: (2007) 3 KLT 892: (2007) 57 AIC 69 (SC).

Bench Strength **2**. Coram: **G.P. Mathur**[1] and **P.K. Balasubramanyan**[2], JJ. [Date of decision: 6-8-2007]

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Joginder Singh v. State of Punjab, (1979) 1 SCC 345: 1979 SCC (Cri) 295: (1979) 2 SCR 306; Kishun Singh v. State of Bihar, (1993) 2 SCC 16: 1993 SCC (Cri) 470, relied on

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115, explained and limited

[3381] — S. 319 — Power to summon a person as additional accused — Nature and scope of — Extraordinary and discretionary — Should be used sparingly — *Court should not turn against another person whenever it comes across evidence connecting that other person also with the offence — In present case, only general statements made qua appellants by witnesses as to part played by appellants in instigating main accused — Appellants summoned 8 years after incident — Held, courts below committed serious illegality in proceeding to add appellants as accused under S. 319* (Para 6). *Kavuluri Vivekananda Reddy* v. *State of A.P.*, (2005) 12 SCC 432.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *Tarun Chatterjee*, JJ. [Date of decision: 25-1-2005]

Krishnappa v. State of Karnataka, (2004) 7 SCC 792: 2004 SCC (Cri) 2093, relied on

[3382] — S. 319 — Power under — When can be exercised

The power under Section 319(1) can be exercised only in those cases where involvement of persons other than those arraigned in the charge-sheet comes to light in the course of evidence recorded during the enquiry or trial. As that stage had not yet reached in the present case, the appellants could not have been summoned invoking Section 319 of the Code. (Para 8). *Nisar* v. *State of U.P.*, (1995) 2 SCC 23: 1995 SCC (Cri) 306: 1995 Cri LJ 2118: (1995) 32 ACC 148.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 9-11-1994]

[3383] — S. 319 — Powers of court under — Addition of other persons as accused — *Although power under S. 319 should be sparingly exercised but where PW names certain persons as being involved in a serious crime, their addition as accused in exercise of power would not be unwarranted*

No doubt power under Section 319 is to be sparingly used. But that would not mean that when a prosecutrix names three persons who were involved in a serious crime, they are not to be added as accused by exercise of such power. (Para 14). *Rakesh* v. *State of Haryana*, (2001) 6 SCC 248: 2001 SCC (Cri) 1090: AIR 2001 SC 2521.

Bench Strength **2**. Coram: **M.B. Shah** and *S.N. Variava*, JJ. [Date of decision: 25-7-2001]

[3384] — S. 319 — Powers of the court under, held, are circumscribed by limitations (Para 22). *K.M. Mathew* v. *K.A. Abraham*, (2002) 6 SCC 670: 2002 SCC (Cri) 1480: AIR 2002 SC 2989: (2002) 3 KLT 282.

Bench Strength **2**. Coram: *U.C. Banerjee* and **K.G. Balakrishnan**, JJ. [Date of decision: 23-8-2002]

[3385] — S. 319 — Scope of operation of — *Limited only to post-cognizance stage when complicity of persons, other than those named as offenders, comes to light from the evidence recorded in the course of inquiry or trial — Hence not exhaustive of the power to arraign more persons*

The sweep of S. 319 is limited, in that, it is an enabling provision which covers the post-cognizance stage where in the course of an inquiry or trial the involvement or complicity of a person or persons not named by the investigating agency has surfaced which necessitates the exercise of the discretionary power conferred by the said provision. This may happen not merely in cases where despite the name of a person figuring in the course of investigation the investigating agency does not send him up for trial but even in cases where the complicity of such a person comes to light for the first time in the course of evidence recorded at the inquiry or trial. Thus S. 319 is not exhaustive of all post-cognizance situations and cannot be interpreted to be repository of all power for summoning such person or persons to stand trial along with others arraigned before the Court. *Kishun Singh* v. *State of Bihar*, (1993) 2 SCC 16: 1993 SCC (Cri) 470: 1993 Cri LJ 1700: (1993) 1 Crimes 494: (1993) 1 BLJR 309.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *N.P. Singh*, JJ. [Date of decision: 11-1-1993]

[3386] — Ss. 319, 154, 156, 173, 190, 204 and 209 — Power of court to summon additional accused dehors S. 319

There are two alternative modes in which the Criminal Law can be set in motion; by the filing of information with the police under S. 154 of the Code or upon receipt of a complaint or information by a Magistrate. The former would lead to investigation by the police and may culminate in a police report under S. 173 of the Code on the basis whereof cognizance may be taken by the Magistrate under S. 190(1)(*b*) of the Code. In the latter case, the Magistrate may either order investigation by the police under S. 156(3) of the Code or himself hold an inquiry under S. 202 before taking cognizance of the offence under S. 190(1)(*a*) or (*c*), as the case may be, read with S. 204 of the Code. Once the Magistrate takes cognizance of the offence he may proceed to try the offender (except where the case is transferred under S. 191) or commit him for trial under S. 209 of the Code if the offence is triable exclusively by a Court of Session. Once cognizance of an offence is taken it becomes the Court's duty 'to find out who the offenders really are' and if the Court finds 'that apart from the persons sent up by the police some other persons are involved, it is its duty to proceed against those persons' by summoning them because 'the summoning of the additional accused is part of the proceeding initiated by its taking cognizance of an offence'. Even after the present Code came into force, the legal position has not undergone a change. *Kishun Singh* v. *State of Bihar*, (1993) 2 SCC 16: 1993 SCC (Cri) 470: 1993 Cri LJ 1700: (1993) 1 Crimes 494: (1993) 1 BLJR 309.

Bench Strength 2. Coram: **A.M. Ahmadi** and *N.P. Singh*, JJ. [Date of decision: 11-1-1993]

[3387] — S. 319 — Trial court's order for impleading the appellant as co-accused for trial along with other accused, based on deposition of eyewitness about participation of the appellant in the crime — *Held, justified. Mahant Amar Nath* v. *State of Haryana*, (1983) 1 SCC 391: 1983 SCC (Cri) 211: AIR 1983 SC 288: 1983 Cri LJ 433.

Bench Strength 2. Coram: *V.D. Tulzapurkar* and *V. Balakrishna Eradi*, JJ. [Date of decision: 14-1-1983]

MCD v. Ram Krishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115, distinguished

[3388] — S. 319 — Trial of persons not already arraigned as accused — Absence of fresh material connecting such persons to the incident — Effect — *Appellant not arrayed as accused — After closure of prosecution evidence statements of accused persons recorded under S. 313 — Application under S. 311 allowed and two more witnesses (PWs 3 and 4) examined but their evidence did not connect to the alleged incident — Other witnesses (PWs 1 to 3) who were examined earlier merely stated about the alleged presence of appellants but no definite role was ascribed to them — Subsequently, application filed under S. 319 stating that new evidence had surfaced which required trial of the appellants — No explanation given why application had not been filed earlier — Held, application under S. 319 wrongly allowed by High Court*

There was no new material after examination of the accused persons under Section 313 CrPC, which threw any light on the incident. The evidence of PWs 4 and 5 is not the basis of the application under Section 319 CrPC as they have not spoken anything about the appellants. If really the complainant had any grievance about the appellants being not made accused, that could have, at the most, be done immediately after the recording of evidence of PWs 1, 2 and 3. That has apparently not been done. Additionally, after the charge-sheet was filed, a protest petition was filed by the complainant which was dismissed. No explanation whatsoever has been offered as to why the application in terms of Section 319 CrPC was not filed earlier. The Revisional Court did not deal with these aspects and came to an abrupt conclusion that all the PWs have stated that the appellants have committed overt acts and their names also find place in the protest petition. Undisputedly, no overt act has been attributed to the appellants by PWs 1, 2 and 3. Nothing has been stated about the appellants by PWs 4 and 5. There was mention of their names in the FIR. A protest petition was filed. Same was also rejected. These could not have formed the basis of accepting the prayer in terms of Section 319 CrPC. The High Court's order is bereft of any foundation. It merely states that there are materials against the petitioners before it. It also did not deal with various aspects highlighted above. (Paras 11 and 12). *Guriya* v. *State of Bihar*, (2007) 8 SCC 224: (2007) 3 SCC (Cri) 521.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 28-9-2007]

Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609; Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203; Krishnappa v. State of Karnataka, (2004) 7 SCC 792: 2004 SCC (Cri) 2093, relied on

[3389] — S. 319 — When applies

Section 139 would come into operation in the course of any enquiry into or trial of an offence. In the present case, neither the Magistrate was holding enquiry as contemplated under Section 2(*g*) CrPC nor had the trial started. He was exercising his jurisdiction under Section 190 by taking cognizance of an offence and issuing process. There is no bar under Section 190 CrPC that once the process is issued against some accused, on the next date, the Magistrate cannot issue process to some other person against whom there is some material on record, but his name is not included as accused in the charge-sheet. (Paras 6 and 7). *SWIL Ltd.* v. *State of Delhi*, (2001) 6 SCC 670: 2001 SCC (Cri) 1205: AIR 2001 SC 2747.

Bench Strength 2. Coram: **M.B. Shah** and *S.N. Phukan*, JJ. [Date of decision: 14-8-2001]

[3390] — S. 319 — Proceedings against other persons joined as accused — Nature and scope — De novo proceedings against person arrayed under S. 319 — *Where court proceeds under S. 319(1) against any person not initially being an accused, it must commence de novo proceedings qua such person from stage of S. 244, and after witnesses are reheard, allow such accused person to cross-examine them before framing of charge — Newly joined accused person has a right of cross-examination of witnesses before framing of charge against him — Relevance of words "proceedings" and "commenced afresh" used in S. 319(4)(a) and effect of S. 319(4)(b), explained*

A complaint was filed by the appellant against Respondents 2 to 4 for offences under Section 406 read with Section 114 IPC in the Court of the Metropolitan Magistrate. The trial court took cognizance of the offences in 1998 and issued process against the said respondents. It then proceeded to examine the witnesses before framing the charge. Cross-examination of the witnesses was completed in May 2007, whereafter charges were framed against the said respondents under Sections 403, 409 read with Section 34 IPC in November 2007. The appellant filed an application under Section 319 CrPC requesting to array Respondent 5 as co-accused in the said proceedings. The application was allowed and summons was issued to Respondent 5. An application was preferred by Respondent 5 before the trial court to commence the proceedings qua Respondent 5 from the stage of inquiry i.e. from the stage of Section 244 CrPC and to allow cross-examination of the prosecution witnesses at the stage of evidence before charge. The application was allowed. However, the trial court split the trial of Respondent 5 and Respondents 2 to 4. An application was filed by Respondents 2 to 4 with the prayer for quashing of the trial court's order for de novo proceedings against Respondent 5 from the stage of inquiry and for a direction to straightaway frame charge against Respondent 5 for the same offence with which Respondents 2 to 4 were charged. The High Court rejected the application holding that the court must commence de novo proceedings against Respondent 5 and that mere delay which might be caused to the complaint would be of no consequence. In appeal before the Supreme Court it was contended on behalf of the appellant that the High Court has erred in confirming the order of the trial court permitting the de novo proceedings against Respondent 5 in the sense that it allowed the further cross-examination of the witnesses who were already examined before framing the charge. It was urged that there would be no question of such a permission of the cross-examination of the witnesses who were examined before framing of the charge since firstly, the charge against the other accused persons has already been framed and secondly, there is no such right of cross-examination under Sections 244, 245 and 246 CrPC. It was further submitted that the term "evidence" as mentioned in Section 244 CrPC does not necessarily include the cross-examination of the witnesses who were examined at that stage and that Section 319(4) CrPC does not require a de novo inquiry as had been ordered by the trial court and affirmed by the High Court.

Dismissing the appeal,

Held :

Section 319(4) CrPC has to be interpreted to mean that the proceedings have to go back and have to be commenced afresh and the witnesses have also to be reheard. Once the provision is so interpreted, then the accused's right of cross-examination would be innate. Section 319(4)(*a*) is the basic provision and the use of the words "proceedings" and the term "commence afresh" has its own significance. If the legislature had intended that the newly joined accused should not get the right of cross-examining the witnesses examined before framing of the charge, it might have used the word "trial". The deliberate use of the word "proceedings" would then include not only the trial but also the inquiry which commences with Section 244 CrPC and ends with the framing of the charge under Section 246 CrPC. The terminology "commence afresh" has also its own force. It indicates that the whole inquiry which commences from Section 244 CrPC must begin afresh. The interpretation given to the words "proceedings" is buttressed by the language of Section 319(4)(*b*) CrPC. The plain language takes back the whole proceedings to the stage of taking cognizance. If the contention of the appellant is accepted, then Section 319(4)(*b*) would be rendered otiose. The language of Section 319 CrPC itself pushes the proceedings back to the stage of inquiry, once the order under Section 319(1) CrPC is passed by the court and a new accused is joined therein. (Paras 12 to 14, 21 and 28)

The right to cross-examine witnesses under Section 244 CrPC who are examined before framing of the charge is a very precious right because it is only by cross-examination that the accused can show to the court that there is no need of a trial against him. Before framing of the charge under Section 246, the Magistrate has to form an opinion about there being ground for presuming that the accused had committed the offence triable under the chapter. (Paras 17 and 18)

If it is accepted that the newly joined accused has no right of cross-examination, it would mean that on being joined under Section 319(1) CrPC, the only step that would be required would be framing of charge against him. In that, there would be a complete denial to such accused of an important right of cross-examination of the witnesses before the framing of the charge. It would only then mean that such accused would remain a mute spectator till the framing of the charge and the accused would have no opportunity to show to the Magistrate that the allegations are groundless and that there is no scope for framing a charge against him. Before summoning the accused under Section 319(1) CrPC there is no requirement of allowing such accused person to cross-examine the witnesses. That stage comes only after an accused is summoned under Section 319(1). Therefore, it would be a case where the newly added accused who has not had the advantage of hearing the evidence would be put to prejudice because firstly, he has not heard the evidence and secondly, he cannot even cross-examine those witnesses in the warrant trial based on a private complaint. (Paras 13 and 16)

There is one more angle and that is the angle of mischief. If the interpretation given by the appellant is to be accepted then a complainant, wherein it is a case of multiple accused, may mischievously join only few of them and after getting the charge framed, make an application under Section 319 CrPC to join some other accused persons who would then have no right of cross-examination of the witnesses and who would be required to be the mute spectators to the charge being framed against which they could have successfully resisted by cross-examining the witnesses. (Para 15)

Therefore, the situation is clear that under Section 244 CrPC the accused has a right to cross-examine the witnesses and in the matter of Section 319 CrPC when a new accused is summoned, he would have similar right to cross-examine the witness examined during the inquiry afresh. Again, the witnesses would have to be reheard and then there would be such a right. Merely presenting such witnesses for cross-examination would be of no consequence. (Para 20). *Harinarayan G. Bajaj* v. *State of Maharashtra*, (2010) 11 SCC 520: (2010) 1 ECrN 920: (2010) 94 AIC 196 .

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-1-2010]

Ajoy Kumar Ghose v. State of Jharkhand, (2009) 14 SCC 115: (2010) 1 SCC (Cri) 1301; Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203, relied on

Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203, explained and distinguished

Rakesh v. State of Haryana, (2001) 6 SCC 248: 2001 SCC (Cri) 1090; Ram Gopal v. State of U.P., 1999 Cri LJ 1865 (All); Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609; R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716: 1986 SCC (Cri) 256, distinguished

[3391] — S. 319 — When should court proceed against other persons — Essential conditions for exercise of power under S. 319 — Evidence should indicate reasonable prospect of conviction of such other person(s) — Mere suspicion of his/their involvement in the offence not enough *— Power of court discretionary in nature — It should be exercised judicially having regard to various factors including the stage at which the trial has proceeded already, the quantum of evidence collected and time spent by court in collecting evidence — Where none of the 49 witnesses examined by the Magistrate making any allegation against the appellants and only the three remaining witnesses making reference about the role played by the appellants in the offence but such reference was insufficient to make out the offence against the appellants, held, there was no justification for proceeding against the appellants by recommencing the entire trial afresh — Penal Code, 1860 — Ss. 120-B, 420, 467, 468, 471*

The appellants were Chief Managers of two branches of a Bank. A complaint was lodged with the police by the Deputy Manager of the Bank with the allegations that a huge amount, more than half a crore of rupees, had been defrauded by certain persons and the Bank was put to a great loss to the above extent. An FIR was registered on its basis for certain offences and after completion of the investigation the police laid two charge-sheets before the Metropolitan Magistrate arraigning 4 persons as the accused for offences under Sections 120-B, 420, 467, 468 and 471 IPC. CBI which conducted the investigation stated that the materials collected by them are insufficient to show the involvement of the appellants in the perpetration of the said crime. However CBI recommended to the Bank for initiating departmental actions against those officers. The trial which commenced as against the 4 accused persons progressed substantially. Until 49 witnesses were examined by the prosecution the trial Magistrate had no reason to feel the necessity to implead the appellants as according to the trial Magistrate "the first 49 witnesses did not utter a single word against any of them". But when evidence of the remaining 3 witnesses was recorded it appeared to the Magistrate that the appellants were also party to the conspiracy, cheating and forgery of valuable security. So he ordered the appellants also to be arrayed as accused. This order was challenged but the High Court dismissed the same. Allowing the appeal and directing the Magistrate to proceed with the trial with the existing accused arraigned before it,

Held :

The basic requirement of Section 319 CrPC is that the court must have reasonable satisfaction from the evidence already collected during trial or in the inquiry regarding two aspects: First, that some other person, who is not arraigned as an accused in that case has committed an offence. Second, that for such offence that other person could as well be tried along with the already arraigned accused. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. (Para 11)

But even then, what is conferred on the court is only a discretion as could be discerned from the words "the court may proceed against such person". The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that other person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons. (Para 12)

The court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub-section (4) of Section 319, namely, that proceedings in respect of newly- added persons shall be commenced afresh and the witnesses re- examined. The whole proceedings must be recommenced from the beginning of the trial, summon the witnesses once again and examine them and cross- examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite large in number the court must seriously consider whether the objects sought to be achieved by such exercise are worth wasting the whole labour already undertaken. Unless the court is hopeful that there is a reasonable prospect of the case as against the newly-brought accused ending in being convicted of the offence concerned, the court should refrain from adopting such a course of action. (Para 14)

In the present case the prosecution has already examined quite a large number of witnesses and they were cross-examined by the defence. The Metropolitan Magistrate felt the need to start afresh only because the next three witnesses disclosed something against the appellants. No doubt the statement made by the three witnesses regarding the role played by the appellants may create some suspicion against the appellants. But suspicion is not sufficient to hold that there is a reasonable prospect of convicting the appellants of the offence of criminal conspiracy. If the order of the Magistrate is to sustain, the proceedings in respect of the newly-added persons are to be recommenced afresh, which means that the entire massive evidence thus far collected and the time which the Court has thus far spent for recording the evidence of such a large number of witnesses, besides the costs involved for all concerned to reach up to the present stage, would all become, for all practical purposes, a waste — a colossal waste. It is not so very necessary at this belated stage to bring such two more additions to the array of the accused at the cost of such a de novo trial. A situation has not reached as to waste the whole massive evidence already collected by the trial court thus far, against the 4 accused arraigned in the case. Hence the order of the trial court in exercise of Section 319 CrPC has to be interfered with for enabling the trial to proceed to its normal culmination. (Paras 15, 16, 1 and 17). *Michael Machado* v. *CBI*, (2000) 3 SCC 262: 2000 SCC (Cri) 609: AIR 2000 SC 1127: 2000 Cri LJ 1706.

Bench Strength **2**. Coram: **K.T. Thomas** and *A.P. Misra*, JJ. [Date of decision: 17-2-2000]

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115, relied on

Applied in Krishnappa v. State of Karnataka, (2004) 7 SCC 792

[3392] — S. 319 — Order passed under, summoning a person to face trial — Effect on, if trial of co-accused is concluded — *Held, the said conclusion of trial cannot have the effect of nullifying or making the said order infructuous* (Para 11). *Rajendra Singh* v. *State of U.P.*, (2007) 7 SCC 378: (2007) 3 SCC (Cri) 375: AIR 2007 SC 2786: (2007) 5 All LJ 485: (2007) 3 KLT 892: (2007) 57 AIC 69 (SC).

Bench Strength **2**. Coram: **G.P. Mathur**[1] and **P.K. Balasubramanyan**[2], JJ. [Date of decision: 6-8-2007]

Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203, followed

[3393] — Ss. 319, 193 and 209 — Power of Sessions Court to add an accused — *Held, Sessions Court is competent to issue process against a person who is not charge-sheeted under S. 193 after having begun the trial and having recorded some evidence of the prosecution* (Paras 4 and 5). *Tek Narayan Prasad Yadav* v. *State of Bihar*, 1999 SCC (Cri) 356.

Bench Strength 3. Coram: *M.M. Punchhi, C.J.* and *K.T. Thomas* and *S.S.M. Quadri*, JJ. [Date of decision: 4-8-1998]

Kishun Singh v. State of Bihar, (1993) 2 SCC 16: 1993 SCC (Cri) 470; Nisar v. State of U.P., (1995) 2 SCC 23: 1995 SCC (Cri) 306; Raj Kishore Prasad v. State of Bihar, (1996) 4 SCC 495: 1996 SCC (Cri) 772, explained

[3394] — Ss. 319, 193 and 209 — Sessions Court has power to add any person for trial without there being a committal order against such person — *Under the new Code, the "case" and not the "accused" are committed — Expression "any person not being the accused" in S. 319 does not exclude person dropped under S. 169 — CrPC, 1898 — Ss. 351(1), 190(1)(c), 193 and 207-A compared*

The summoning of additional persons by the Sessions Court under S. 319 of those who appear to be involved in the crime from the evidence led during the trial and directing them to stand their trial along with those who have been committed, must be regarded as incidental to the cognizance under S. 193 and part of the normal process that follows it. Section 319(4)(*b*) enacts a deeming provision in that behalf dispensing with the formal committal order against the newly added accused.

The phrase "any person not being the accused" in S. 319 does not exclude from its operation an accused who has been released by the police under S. 169. *Joginder Singh* v. *State of Punjab*, (1979) 1 SCC 345: 1979 SCC (Cri) 295: AIR 1979 SC 339: 1979 Cri LJ 333: 1979 MLJ (Cri) 470: (1979) 16 ACC 43.

Bench Strength 3. Coram: *V.R. Krishna Iyer*, **V.D. Tulzapurkar** and *R.S. Pathak*, JJ. [Date of decision: 16-11-1978]

[3395] — Ss. 319, 386 and 482 — Power to proceed against any person other than the accused — Scope — *It is discretionary power of trial court which should be exercised judicially, having regard to the facts and circumstances of the case, on the basis of evidence adduced before it and not on the basis of material available in charge-sheet or case diary — Power can be exercised suo motu — Person named in FIR as having participated in the crime but not charge-sheeted, can also be added to face the trial — In complaint filed by deceased's father (respondent), it was alleged that deceased's husband, her brother-in-law and father-in-law (appellant) had poured kerosene on deceased and set her on fire — During investigation, appellant took the stand that at the time of the incident he was serving at a school — Appellant having not been charge-sheeted, complainant moved application under S. 319 during course of trial for proceeding against appellant — Application rejected by trial court on the basis that complainant was an interested witness and sufficient ground did not exist to proceed against appellant — Trial court convicted others under S. 304-B — Held, rejection of application under S. 319 was not based on relevant ground — Hence High Court was justified in directing trial court to proceed against appellant by summoning him*

The trial court has undoubted jurisdiction under Section 319 CrPC to add any person not being the accused before it to face the trial along with the other accused persons, if the court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. Power under Section 319 of the Code can be exercised by the court suo motu or on an application by someone including the accused already before it. If it is satisfied that any person other than the accused has committed an offence he is to be tried together with the accused. Such person, even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial. (Paras 10 and 11)

The word "evidence" in Section 319 CrPC contemplates the evidence of witnesses given in court. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence. Of course, an accused who has been discharged stands on a different footing. (Paras 11 and 10)

Under sub-section (4)(1)(*b*) of Section 319 CrPC, it is specifically made clear that it will be presumed that newly added person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of sub-section (4)(1)(*b*) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned. (Para 11)

The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. (Para 11)

In the present case, the trial court rejected the application only on the ground that the complainant was an interested witness and, therefore, sufficient ground did not exist to take action against the accused persons. Though the power is extraordinary and is used only if compelling reasons exist, the factor which weighed with the trial court does not appear to be relevant and, therefore, the High Court has rightly interfered in the matter. (Para 12). *Lok Ram* v. *Nihal Singh*, (2006) 10 SCC 192: (2006) 3 SCC (Cri) 532: AIR 2006 SC 1892: 2006 Cri LJ 2366.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-4-2006]

Sohan Lal v. State of Rajasthan, (1990) 4 SCC 580: 1990 SCC (Cri) 650; Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609; Krishnappa v. State of Karnataka, (2004) 7 SCC 792: 2004 SCC (Cri) 2093; Joginder Singh v. State of Punjab, (1979) 1 SCC 345: 1979 SCC (Cri) 295; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115, relied on

[3396] — Ss. 319, 482 and 161 — Power to proceed against persons appearing to be guilty of offence — Acting at the instance of a witness — Propriety — Maintainability of application under S. 482 — *Held, before a court exercises its discretionary jurisdiction in terms of S. 319, it must arrive at the satisfaction that there exists a possibility that the accused so summoned in all likelihood would be convicted — Such satisfaction can be arrived at inter alia upon completion of the cross-examination of the said witness or if the court concerned may also like to consider other evidence — Respondent 1 was merely a witness and had no say in the matter — High Court could not have entertained his application at that stage — Sessions Judge's order rejecting his application in terms of S. 319 was not even an interim order affecting the rights of the parties — Even revision application thereagainst could not have been maintained at that stage — Trial Judge was required to arrive at his satisfaction Trial Judge correctly opined that the matter should receive his due consideration only after the cross-examination of the witnesses is over — No exception thereto could be taken, far less at the instance of a witness and when the State was not aggrieved by the same* (Paras 2, 10 to 12). *Mohd. Shafi* v. *Mohd. Rafiq*, (2007) 14 SCC 544: AIR 2007 SC 1899: (2007) 53 AIC 56 (SC): (2007) 4 All LJ 317: 2007 Cri LJ 3198.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 9-4-2007]

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Yuvaraj Ambar Mohite v. State of Maharashtra, (2006) 12 SCC 512: (2007) 2 SCC (Cri) 554, relied on

[3397] — Ss. 319 and 190, 193, 209 — Cognizance of offences against persons not charge-sheeted, whose complicity in the crime comes to light from material available on record — *Power of Magistrate/Sessions Court to take such cognizance at stage of committal of case to Sessions Court — Held, following* Ranjit Singh case, *(1998) 7 SCC 149, Magistrate could not have issued process against those persons named in FIR as accused but not charge-sheeted — Such persons can be arrayed as "accused persons" in exercise of powers only under S. 319 when some evidence or materials are brought on record in course of trial, or when a reference is made either by Magistrate while passing an order of commitment or by Sessions Judge to High Court and High Court, on examining the materials comes to conclusion that sufficient materials exist against them even though they may not have been charge-sheeted by police — On facts, offence triable by Sessions Court — Appellants named in FIR but not charge-sheeted — Process issued against, by the Magistrate prior to stage of S. 319 — Revision against, allowed by Sessions Court on ground that the said order was without jurisdiction — In appeal, High Court interfering with order passed in revision — Held, neither of the contingencies for arraying appellants as accused persons had arisen in the present case — Hence, impugned order of High Court and Magistrate not sustainable — Order passed in revision upheld — Penal Code, 1860 — Ss. 302/34, 324 and 448 — Arms Act, 1959 — S. 27* (Paras 9 to 11). *Kishori Singh* v. *State of Bihar*, (2004) 13 SCC 11: AIR 2000 SC 3725: 2000 Cri LJ 123.

Bench Strength 2. Coram: *G.B. Pattanaik* and *R.P. Sethi*, JJ. [Date of decision: 27-1-2000]

Raj Kishore Prasad v. State of Bihar, (1996) 4 SCC 495: 1996 SCC (Cri) 772; Ranjit Singh v. State of Punjab, (1998) 7 SCC 149: 1998 SCC (Cri) 1554, followed

[3398] — Ss. 319 and 190, 193 & 209 — Trial of newly added accused on conclusion of main trial — *Where during pendency of trial of an accused another person is summoned by trial court under S. 319 and if by the time the person summoned could be brought before the court the trial is concluded,* *held, the person summoned can be tried for the offence for which he was summoned — Requirement under sub-section (1) of S. 319 that the person summoned "could be tried together with the accused" is directory whereas requirement under sub-section (4) of S. 319 regarding de novo trial of such person is mandatory*

A case under Sections 302/34 IPC and under Section 27 of the Arms Act for murder of one *S* was registered against five persons including Respondent 1 and one *C*. On completion of investigation, police submitted charge-sheet against *C* showing the other accused except the respondent, as absconders and showing investigation against the respondent as pending. The Court of Session framed charge under Sections 302/34 IPC and under Section 27 of the Arms Act against *C*. As from the evidence of the prosecution it appeared to the court that Respondent 1 and two others had also committed the offence of murder of *S*, warrants of arrest against those persons were directed to be issued so that they may be tried together with *C*. This order was challenged by the respondent by filing revision petition before the High Court. During pendency of the revision petition, the Sessions Judge concluded the trial against *C* and convicted him under Section 302 IPC and Section 27 of the Arms Act. In the revision it was contended on behalf of the respondent that since the trial in respect of *C* had already been concluded and no sessions trial was pending before the trial court, Section 319 would not be applicable as the said provision is applicable only when the trial against another accused is pending and in the absence of pendency of such a trial, the court is not competent to proceed against Respondent 1. The High Court accepted the contention and quashed the order of the Sessions Court.

The said order of the Sessions Court, when passed, was not without jurisdiction since at that stage, the trial against *C* was pending and Respondent 1, summoned under Section 319 CrPC could be tried together with him. However, as the trial against *C* concluded before the respondent could be brought before the Sessions Court, the question was could the respondent, after being summoned under Section 319, be tried in absence of trial pending against *C*. In other words the question for determination by the Supreme Court in appeal was whether the order of the Sessions Court passed under Section 319 directing issuance of warrant of arrest against the respondent would become ineffective and inoperative as a result of conclusion of trial against *C* before the respondent could be proceeded with for the offence for which warrants were issued against him.

Allowing the appeal,

Held :

The intention of Section 319 is that where in the course of any enquiry into, or trial of, an offence, it appears to the court from the evidence that any person not being the accused has committed any offence, the court may proceed against him for the offence which he appears to have committed. At that stage, the court would consider that such a person could be tried together with the accused who is already before the court facing the trial. The safeguard provided in respect of such person is that, the proceedings right from the beginning have mandatorily to be commenced afresh and the witnesses reheard. In short, there has to be a de novo trial against him. The provision of de novo trial is mandatory. It vitally affects the rights of a person so brought before the court. It would not be sufficient to only tender the witnesses for the cross-examination of such a person. They have to be examined afresh. Fresh examination-in-chief and not only their presentation for the purpose of the cross-examination of the newly added accused is the mandate of Section 319(4). The words "could be tried together with the accused" in Section 319(1), appear to be only directory. "Could be" cannot under these circumstances be held to be "must be". The provision cannot be interpreted to mean that since the trial in respect of a person who was before the court has concluded with the result that the newly added person cannot be tried together with the accused who was before the court when order under Section 319(1) was passed, the order would become ineffective and inoperative, nullifying the opinion earlier formed by the court on the basis of the evidence before it that the newly added person appears to have committed the offence resulting in an order for his being brought before the court. (Para 9)

Sections 190, 193 and 209 CrPC read with Section 319 make it clear that the words "could be tried together with the accused" in Section 319 are only for the purpose of finding out whether such a person could be put on trial for the offence. Once it is so found, sub-section (4) of Section 319 comes into play. On the Magistrate committing the case under Section 209 to the Court of Session, the bar of Section 193 is lifted thereby investing the Court of Session with complete and unfettered jurisdiction of court of original jurisdiction to take cognizance of the offence which could include summoning of the person or persons whose complicity in the commission of crime can, prima facie, be gathered from the material on record. (Para 14)

On facts, the court could not have intended while concluding the trial against *C*, to nullify its earlier order directing issue of warrants against Respondent 1. The construction to be placed on a provision like this has to commend to justice and reason. It has to be a reasonable construction to promote the ends of justice. The words "could be tried together with the accused" in Section 319(1) cannot be said to be capable of only one construction. If it was so, approach to be adopted would be different since the intention of Parliament is to be respected despite the consequences of interpretation. There is, however, a scope for two possible constructions. That being the position, a reasonable and common sense approach deserves to be adopted and preferred rather than a construction that would lead to absurd results of Respondent 1 escaping the trial despite passing of an order against him on the court's satisfaction under Section 319(1) and despite the fact that the proceedings against him have to commence afresh. In this view, the fact that trial against *C* has already concluded is of no consequence insofar as Respondent 1 is concerned. (Para 12)

When a statute is passed for the purpose of enabling something to be done, and prescribes the way in which it is to be done, it may be either an absolute enactment or a directory enactment. The difference being that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially. No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed. (Para 8)

Where a statute does not consist merely of one enactment, but contains a number of different provisions regulating the manner in which something is to be done, it often happens that some of these provisions are to be treated as being directory only, while others are to be considered absolute and essential; that is to say, some of the provisions may be disregarded without rendering invalid the thing to be done, but others not. (Para 10). *Shashikant Singh* v. *Tarkeshwar Singh*, (2002) 5 SCC 738: 2002 SCC (Cri) 1203: AIR 2002 SC 2031: 2002 Cri LJ 2806.

Bench Strength **2**. Coram: *U.C. Banerjee* and **Y.K. Sabharwal**, JJ. [Date of decision: 24-4-2002]

Kishun Singh v. State of Bihar, (1993) 2 SCC 16: 1993 SCC (Cri) 470, relied on

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609, distinguished

Craies on Statute Law, 7th Edn., pp. 260-62, 266-67, relied on

See however Krishnappa v. State of Karnataka, (2004) 7 SCC 792

[3399] — Ss. 319 and 204 — Scope and manner of exercise of power under S. 319, stated — Expeditious and simultaneous disposal and parity in taking cognizance with the original accused, stressed

Section 319 CrPC empowers a court to proceed against any person not shown to be an accused if it appears from the *evidence* that such person has also committed an offence for which he can be tried together with the accused. Sometimes a Magistrate while hearing a case against one or more accused finds from the *evidence* that some person other than the accused before him is also involved in that very offence. It is only proper that a Magistrate should have power to summon by joining such person as an accused in the case. (Paras 20 and 21)

The primary object underlying Section 319 is that the whole case against all the accused should be tried and disposed of not only expeditiously but also simultaneously. Justice and convenience both require that cognizance against the newly added accused should be taken in the same case and in the same manner as against the original accused. The power must be regarded and conceded as incidental and ancillary to the main power to take cognizance as part of normal process in the administration of criminal justice. (Para 21). *Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

[3400] — Ss. 319 and 244 — Accused joined under S. 319 has a right of cross-examination of witnesses before framing of charge — Importance of right of cross-examination — *Evidence Act, 1872, S. 137. Harinarayan G. Bajaj* v. *State of Maharashtra*, (2010) 11 SCC 520: (2010) 1 ECrN 920: (2010) 94 AIC 196 .

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-1-2010]

Ajoy Kumar Ghose v. State of Jharkhand, (2009) 14 SCC 115: (2010) 1 SCC (Cri) 1301; Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203, relied on

Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203, explained and distinguished

Rakesh v. State of Haryana, (2001) 6 SCC 248: 2001 SCC (Cri) 1090; Ram Gopal v. State of U.P., 1999 Cri LJ 1865 (All); Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609; R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716: 1986 SCC (Cri) 256, distinguished

[3401] — Ss. 319 and 395 — Order of Sessions Judge under, directing respondents to be tried together with the original accused under S. 302/34 IPC and non-bailable warrants against respondents — *Single Judge of High Court quashing it on erroneous ground that S. 319(1) had no application to sessions trial and directing the Sessions Judge to proceed against original accused — Single Judge's order being contrary to the decision of Supreme Court in Joginder Singh case reference under S. 395 made by Sessions Judge before Division Bench of High Court — Division Bench having no jurisdiction to quash the order of Single Judge, rejecting the reference — Held, principle underlying S. 319 being well settled by the Supreme Court, order of Single Judge of the High Court quashed by invoking inherent jurisdiction of Supreme Court — However, occurrence having taken place 18 years ago, respondents at this length of time shall not be directed to face the trial of the Sessions case — Constitution of India, Art. 134. State of Assam* v. *Abdul Halim*, 1993 Supp (1) SCC 505: 1993 SCC (Cri) 281: AIR 1992 SC 2068.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *M. Fathima Beevi*, JJ. [Date of decision: 21-4-1992]

[3402] — Ss. 319, 245 and 398 — Persons who have been discharged under S. 245 of all or some of the charges are 'accused' and hence cannot be proceeded against under S. 319 — *However, power to order inquiry under S. 398 may be invoked*

An FIR was lodged against the appellants. On completion of investigation police framed charges under Ss. 147, 323, 325, 336 and 427 IPC and forwarded the charge-sheet to the Judicial Magistrate under S. 173 CrPC. After taking cognizance and hearing the arguments, the Magistrate ordered discharge of appellants 4 and 5 of all the charges levelled against them and ordered the appellants 1, 2 and 3 to be charged only under S. 427 IPC. The APP thereafter submitted an application to the Magistrate under S. 216 CrPC signed by one of the victims praying that as on the basis of the entire evidence a prima facie case is made out under Ss. 147, 325 and 336 IPC, the charge be amended and the accused be charged in accordance with the evidence. After recording the plea of the accused, the prosecution led evidence and examined witnesses. The Magistrate after hearing the APP and the advocate of the accused and discussing the evidence observed that if any accused was discharged of any charge under any section then there would be no bar for taking fresh cognizance and reconsideration against him according to S. 216 CrPC and that the provision of S. 319 CrPC was also clear in that connection. Accordingly the Magistrate took cognizance for offences under Ss. 147, 427, 336, 323, 325 IPC against all the appellants by the impugned order. A revision petition against the order was dismissed by the High Court. Partly allowing the appeal

Held :

The necessity of making a further inquiry as envisaged in S. 398 cannot be obviated or circumvented by taking resort to S. 319. The word "discharge" in S. 398 means discharge of an offence relating to the charge within the meaning of Ss. 227, 239, 245 and 249. Refusing to proceed further after issue of process is discharge. The discharge has to be in substance and effect though there is no formal order. The language of the section does not indicate that the word "discharge" should be given a restricted meaning in the sense of absolute discharge where the accused is set at liberty after examination of the whole case.

In the present case after the police submitted charge-sheet against appellants 4 and 5, the order of discharge, it was contended, could not be taken to be one under S. 203 but under S. 245 which is included in Chap. XIX and deals with trial of warrant cases by the Magistrates. This submission has not been refuted. The cases of appellants 4 and 5 would be one of total discharge. But it could not be said that they were not some of the accused in the case, or that cognizance was not taken of the offences against them. A person may be accused of several offences and he may be discharged of some offences and proceeded against for trial in respect of other offences. This was the proposition regarding appellants 1, 2 and 3, who were partially discharged.

Thus the APP's application under S. 216, insofar as the appellants 1 to 3 were concerned, could be dealt with under S. 216. But they being accused in the case at the time of passing the impugned order by the Magistrate, S. 319 would not cover them. Appellants 4 and 5, however, could be dealt with neither under S. 216 nor under S. 319. Therefore, the impugned orders of the Magistrate as well as that of the High Court insofar as the appellants 4 and 5 are concerned, have to be set aside. *Sohan Lal* v. *State of Rajasthan*, (1990) 4 SCC 580: 1990 SCC (Cri) 650: AIR 1990 SC 2158: (1990) 3 Crimes 120.

Bench Strength **2**. Coram: **K.N. Saikia** and *K. Ramaswamy*, JJ. [Date of decision: 21-8-1990]

Saraswatiben v. Thakorlal Himatlal, AIR 1967 Guj 263: 1967 Cri LJ 1632; Amarjit Singh v. State of Punjab, (1983) 85 Punj LR 324, overruled

State v. Ganga Ram Kalita, AIR 1965 Ass & Nag 9: (1965) 1 Cri LJ 144, approved

Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430: (1963) 2 Cri LJ 397; Joginder Singh v. State of Punjab, (1979) 1 SCC 345: 1979 SCC (Cri) 295; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; S.S. Khanna v. Chief Secretary, Patna, (1983) 3 SCC 42: 1983 SCC (Cri) 562, relied on

[3403] — Ss. 319 and 401 — Power to proceed against person other than accused — Exercise of — Relevant factors for — *During pendency of trial and after examination of material witnesses, application under S. 319 filed by complainant to include appellant as accused, on ground that during the course of trial appellant's participation in offence under Ss. 304/34 IPC had been established — Trial court rejecting the said application — Having regard to facts that apart from presence of the appellant no other overt act was attributed to him in the FIR, that prosecution did not send him for trial after investigation, and that evidence recorded at the time of trial and testimony of main witnesses also did not implicate him, held, trial court was justified in rejecting the application and High Court in revision erred in reversing the order of trial court without properly taking into consideration the relevant factors* (Paras 3, 4 and 5). *Kailash Dwivedi* v. *State of M.P.*, (2005) 11 SCC 182.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision: 3-2-2005]

Krishnappa v. State of Karnataka, (2004) 7 SCC 792: 2004 SCC (Cri) 2093, applied

[3404] — Ss. 319 and 401 — Power to summon a person as accused — Extraordinary and discretionary — Should be exercised sparingly — *A person can be summoned even though proceedings had earlier been quashed qua him — However, in this case trial court not rejecting the State's application under S. 319 for summoning that person solely on ground of the proceedings having been quashed against him but mainly on ground based on examination of evidence that possibilities of his being convicted were remote — High Court in revision setting aside the order of trial court because some PWs had deposed about his presence on the date of the incident and about instigation made by him to other accused to commit the offence — Held on facts, trial court cannot be said to have exercised discretion under S. 319 illegally, hence High Court's interference in exercise of revisional jurisdiction was not called for*

The appellant was arrayed as one of the accused along with others in a case before the trial Magistrate relating to an incident of the year 1993 which led to certain simple injuries and damage to some crops. The High Court quashed the case against the appellant in 1995 in a petition filed by him under Section 482 CrPC. The State filed an application under Section 319 CrPC before the Magistrate for summoning the appellant as an accused after conclusion of prosecution evidence examining 17 prosecution witnesses and recording of the statements of the accused under Section 313 CrPC by the trial Magistrate. The Magistrate by a detailed order, after examination of the evidence, dismissed the application, inter alia, on noticing that, on evidence, the possibilities of the appellant being convicted were remote. The Magistrate thereafter made a passing reference to the factum of the proceedings having been quashed in the year 1995. The High Court, in revision, set aside the order passed by the Magistrate, having come to the conclusion that some of the prosecution witnesses had deposed about the presence of the appellant on the date of the incident and also about the instigation made by him to the other accused persons to destroy the crops and trees grown by PW 1.

Allowing the appeal,

Held :

The power to summon an accused is an extraordinary power conferred on the court. It is discretionary and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. (Para 6)

Though an order under Section 319 CrPC summoning a person can be made on fulfilment of the conditions stipulated therein even when the proceedings had earlier been quashed, but in the present case the Magistrate did not dismiss the application merely on the ground of the proceedings having been quashed against the appellant. (Para 8)

The trial Magistrate was right in rejecting the application. The incident was of the year 1993. Seventeen witnesses had been examined. The statements of the accused under Section 313 CrPC had been recorded. The role attributed to the appellant, as per the impugned judgment of the High Court, was of instigation. Having regard to these facts coupled with the quashing of proceedings in the year 1995 against the appellant, it could not be held that the discretion was illegally exercised by the trial Magistrate. Thus the exercise of discretion by the Magistrate, in any event of the matter, did not call for interference by the High Court, having regard to the facts and circumstances of the case. Therefore, the question whether prima facie the evidence implicates the appellant or not and whether the possibility of his conviction is remote, or his presence and instigation stood established, need not be gone into. (Paras 10 and 7). *Krishnappa* v. *State of Karnataka*, (2004) 7 SCC 792: 2004 SCC (Cri) 2093: AIR 2004 SC 4298: (2004) 3 KLT 460.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 25-8-2004]

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115, relied on

Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609, applied

State of Karnataka v. Krishnappa, 2004 Cri LJ 2175 (Karn), reversed

[3405] — Ss. 319 and 482 — Recovery of coloured arrack from a lorry belonging to a firm — *Prosecution of managing partner of firm quashed by High Court at initial stage — Held, in circumstances, no interference by Supreme Court called for — If at any subsequent stage some material comes before the trial court the managing partner can be arrayed as accused by invoking S. 319 CrPC — T.N. Prohibition Act, 1937 (10 of 1937), Ss. 4(1)(a) and 14-A. State of T.N.* v. *Saleem*, 1994 SCC (Cri) 1151.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 18-11-1993]

[3406] — Ss. 319 and 482 — Inherent jurisdiction under S. 482 CrPC — Invocation of — Remedy against wrong cognizance/innocent person being joined as an accused — *If an innocent person is joined as an accused which is totally uncalled for or ex facie bad in law, held, it is open to the aggrieved party to invoke jurisdiction of the High Court under S. 482 CrPC*

It is clear and well settled that once an order is passed by a competent court issuing summons or process, it cannot be recalled. In absence of express provision in the Code, the court has no power to recall the process issued. In the instant case, the Magistrate ordered to join Respondent 2 as an accused on applications filed by the appellant and summons was issued to him. A revision filed by the State against that order was dismissed by the Additional Sessions Judge. The Judicial Magistrate, on the facts and in the circumstances, was right in dismissing recall application filed by Respondent 2. The Revisional Court, however, was not correct to hold that the Magistrate had power to recall the earlier order passed by him. The Additional Sessions Judge ought to have considered the material fact in its proper perspective that the order passed by the Magistrate was legal and proper and because of that, the revision filed against that order by the State was also dismissed by the Revisional Court. (Paras 41 and 44 to 46)

If the act of taking cognizance, issuance of process or joining of an innocent person as an accused is totally uncalled for or ex facie bad in law, it is open to the aggrieved party to invoke inherent jurisdiction of the High Court under Section 482 CrPC. If the High Court is satisfied that the order passed by the Magistrate was illegal, improper or arbitrary, it can exercise inherent powers and quash criminal proceedings initiated against the party. But that power is independent and has nothing to do with recalling of an earlier order by the court which passed it. (Para 48). *Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927; Nilamani Routray v. Bennett Coleman & Co. Ltd., (1998) 8 SCC 594: 1998 SCC (Cri) 1551; Subramanium Sethuraman v. State of Maharashtra, (2004) 13 SCC 324: 2005 SCC (Cri) 242; N.K. Sharma v. Abhimanyu, (2005) 13 SCC 213: (2006) 2 SCC (Cri) 135; Everest Advertising (P) Ltd. v. State (Govt. of NCT of Delhi), (2007) 5 SCC 54: (2007) 2 SCC (Cri) 444, followed

K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88, overruled

[3407] — Ss. 319 and 482 — Scope of power under — *Even if trial proceedings against some persons quashed under S. 482, court in proper cases can proceed against them under S. 319*

Section 319 is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. If the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence, the court can take cognizance against them and try them along with the other accused. The mere fact that the proceedings have been quashed under S. 482 against some of the accused persons (respondents 2 to 5) will not prevent the court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it. *MCD* v. *Ram Kishan Rohtagi*, (1983) 1 SCC 1: 1983 SCC (Cri) 115: AIR 1983 SC 67: 1983 Cri LJ 159.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *E.S. Venkataramiah*, JJ. [Date of decision: 1-12-1982]

Explained and limited in Rajendra Singh v. State of U.P., (2007) 7 SCC 378

[3408] — S. 319 and Ch. XVI — Nature of cognizance under — Powers of cognizance under S. 319, held, are incidental and ancillary to main power and part of the normal process (Para 21). *Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

[3409] — S. 319 read with Ss. 209 and 193, 227, 228, 229, 230, 231 and 482 — Power of Court of Session to array a new person or persons as accused under S. 319 — *Held, cannot be invoked prior to evidence collection stage — There is no power except that in S. 319 by which Court of Session can array a new person as an accused — Hence there is no intermediary stage at which Court of Session can add to the array of accused — Till the stage of S. 230 is reached, Sessions Court can deal only with the accused referred to in S. 209 — But Court purporting to act under S. 319 need not wait till the entire evidence has been collected — Further held, if however the Sessions Judge notices from the materials produced the positive involvement of any person, he can invoke the inherent or revisional power of the High Court to summon such a person before the evidence stage — CrPC, 1898 — S. 351*

According to the FIR, eight persons including the appellant, constituted an unlawful assembly; at the urging of appellant, one member of the assembly forcibly took the rifle of a gunman and fired at the deceased. The police carried out an investigation, at the end of which they exonerated the appellant completely. After committal of the case to the Court of Session by the Magistrate concerned, but before the evidence-collection stage, the Sessions Court, in response to a petition by the complainant alleging that the exoneration of the appellant by the police was improper, arraigned the appellant as an accused in the case. The Court of Session did so relying on the decision of a two-Judge Bench of the Supreme Court in *Kishun Singh* v. *State of Bihar*, (1993) 2 SCC 16.

After dismissal of his appeal by the High Court, the appellant came before the Supreme Court. By then a two-Judge Bench of the Apex Court had in *Raj Kishore Prasad* v. *State of Bihar*, (1996) 4 SCC 495 (quorum: M.M. Punchhi and K.T. Thomas, JJ.) expressed reservations about the legal position as propounded in *Kishun Singh case*, (1993) 2 SCC 16. The question, whether the Court of Session has the power under Section 319 CrPC to arraign a new person, prior to the evidence-collection stage, was thus directed to be considered by a larger Bench; the present appeal came before a three-Judge Bench (quorum: M.M. Punchhi, C.J., K.T. Thomas and S.S.M. Quadri, JJ.).

Allowing the appeal,

Held :

With the committal order, the Sessions Court gets unfettered jurisdiction to take cognizance of the offences involved in the case. But the crucial question is whether such jurisdiction would envelop powers to summon any person as an accused other than those covered by the committal order. From the stage of committal till the Sessions Court reaches the stage of evidence collection indicated in Section 230 of the Code, that court can deal with only the accused referred to in Section 209 of the Code. There is no intermediary stage till then for the Sessions Court to add any other person to the array of the accused.

Once the Sessions Court takes cognizance of the offence pursuant to the committal order, the only other stage when the court is empowered to add any other person to the array of the accused is after reaching evidence collection when powers under Section 319 of the Code can be invoked. There is no other power for the Sessions Court to permit addition of new person or persons to the array of the accused. However, it is not necessary for the court to wait until the entire evidence is collected for exercising the said powers.

However, where all the materials produced by the investigating agency clearly show the positive involvement of a person who was not shown in the array of the accused due to some inadvertence or omission. The Sessions Court is not altogether powerless to deal with such situations to prevent a miscarriage of justice. It is then open to the Sessions Court to send a report to the High Court detailing the situation so that the High Court can in its inherent powers or revisional powers direct the committing Magistrate to rectify the committal order by issuing process to such left-out accused. But the said procedure need be resorted to only for rectifying or correcting grave mistakes. *Ranjit Singh* v. *State of Punjab*, (1998) 7 SCC 149: 1998 SCC (Cri) 1554: AIR 1998 SC 3148.

Bench Strength 3. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas** and *S.S.M. Quadri*, JJ. [Date of decision: 22-9-1998]

Joginder Singh v. State of Punjab, (1979) 1 SCC 345: 1979 SCC (Cri) 295, followed

Kishun Singh v. State of Bihar, (1993) 2 SCC 16: 1993 SCC (Cri) 470, not followed

Nisar v. State of U.P., (1995) 2 SCC 23: 1995 SCC (Cri) 306, impliedly not followed

Doubted in *Dharam Pal v. State of Haryana, (2004) 13 SCC 9*

[3410] — S. 319 — Joint trial in respect of PFA Act offences — *Magistrate has power to proceed against the manufacturer, distributor or dealer if during the course of trial evidence adduced before the court discloses that such manufacturer, distributor or dealer is also concerned with that offence — S. 319(3) CrPC is not a bar to such a joint trial — Fact that the person from whom the article of food was purchased is a dealer would not make the section non-operational — Prevention of Food Adulteration Act, 1954, S. 20-A (as amended by Act 49 of 1964)*

The concept of vendor and vendee is known to civil law and passing of the title in the goods is alien to the prosecution for an offence under the PF Act. It cannot, therefore, be introduced in a trial for the offence under this Act. The Act advisedly made a person who sells adulterated article of food liable to be prosecuted for the offence of adulteration of the article of food. During the trial when it comes to the notice of the Magistrate, from the evidence adduced, that the manufacturer, distributor or dealer of that article of food, which is the subject-matter of adulteration, is also concerned with the offence, then the court has been empowered to proceed against such manufacturer, distributor or dealer as if prosecution has initially been instituted against him under Section 20 of the Act. In fact, for general offences, Section 319(1) of the Code empowers the court where during the course of enquiry or trial of an offence, if it appears from the evidence that any person not being accused has committed any offence for which such person could be tried together with the accused, to proceed against such person for the offence which he appears to have committed. In view of the language of Section 20-A of the Act, whatever is contained in sub-section (3) of Section 319 of the Code, would not stand in the way of the Magistrate to proceed at a trial against any person, i.e., the original accused and against others mentioned in Section 20-A. In other words, joint trial for the same offence is permitted. The object appears to be that in a case where common evidence discloses that the manufacturer, distributor or dealer is also concerned with the offence for which the prosecution was launched against a person from whom the article of food was purchased, to avoid multiplicity of prosecution and also keeping in view the doctrine of *autrefois acquit* the Legislature introduced Section 20-A to have joint trial. (Para 7)

It cannot be said that the original accused being a dealer of the manufacturer, Section 20-A has no application, as it speak of trial of a person not being, inter alia, a dealer as the section has mentioned about trial of commission of the offence by any person; and, if that person be not the manufacturer, distributor or dealer, Section 20-A permits trial of such manufacturer, distributor or dealer also, along with the person already before the court. So, the fact that the person being tried is a dealer would not make the section non-operational. (Para 8). *Delhi Cloth & General Mills Co. Ltd.* v. *State of M.P.*, (1995) 6 SCC 62: 1995 SCC (Cri) 1024: AIR 1996 SC 283.

Bench Strength **3**. Coram: *K. Ramaswamy*, *B.P. Jeevan Reddy* and *B.L. Hansaria*, JJ. [Date of decision: 12-9-1995]

[3411] — S. 319 — Applicability of S. 19, PC Act, 1988, where a person appearing to be guilty of offence is proceeded against under S. 319 CrPC — *Finding of trial court that S. 319 CrPC has to get preference/primacy over S. 19, PC Act, 1988 — Propriety of — Held, was not proper in view of the decision made in* Dilawar Singh, *(2005) 12 SCC 709 — Prevention of Corruption Act, 1988, S. 19* (Para 4). *Paul Varghese* v. *State of Kerala*, (2007) 14 SCC 783: AIR 2007 SC 2618: (2007) 2 KLT 529.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-4-2007]

Dilawar Singh v. Parvinder Singh, (2005) 12 SCC 709: (2006) 1 SCC (Cri) 727, followed

[3412] — Ss. 319 and 190 — Sanction for prosecution — Requirement of, qua specific accused — *Demand of illegal gratification by **D** (SHO) for releasing **P** (complainant), which was directed to be handed over to ASI **J** — Charge-sheet submitted only against **J** and **D** exonerated by the Investigating Officer — Sanction for prosecution of **J** obtained — **P**'s application under S. 319 CrPC for summoning **D** as co-accused allowed by High Court in revision petition and **D** directed to be proceeded against — Submission by appellant **D** that in absence of valid sanction he could not be summoned to face trial — Held, S. 19(1) creates a complete bar on the power of court to take cognizance of offence alleged to have been committed by a public servant except with previous sanction of the competent authority — Sanction for prosecution is required to be obtained with respect to specific accused — Hence, submission that if sanction for prosecution has been granted qua one accused, any other public servant for whose prosecution no sanction has been granted, can also be summoned to face prosecution, unacceptable — Hence High Court's order summoning **D** wholly illegal and unsustainable — Prevention of Corruption Act, 1988 — Ss. 19(1), 13(2), 7, 10, 11 and 15* (Paras 2 to 7). *Dilawar Singh* v. *Parvinder Singh*, (2005) 12 SCC 709.

Bench Strength **2**. Coram: *H.K. Sema* and **G.P. Mathur**, JJ. [Date of decision: 8-11-2005]

State v. Raj Kumar Jain, (1998) 6 SCC 551: 1998 SCC (Cri) 1485; Jaswant Singh v. State of Punjab, 1958 SCR 762: AIR 1958 SC 124: 1958 Cri LJ 265; State of Goa v. Babu Thomas, (2005) 8 SCC 130, relied on

[3413] — S. 319(4) — Power to proceed against other persons appearing to be guilty of offence — *One NS named in FIR but not charge-sheeted — PW 1 categorically stating the role played by him in causing death of H and injuries to PW 4 — Deposition of PW 1 recorded on 12-9-2000 — After summoning NS in terms of S. 319, charges framed afresh on 30-11-2001 and PW 1 chief-examined again on 5-9-2003 — Hence, submission that requirements of S. 319(4) had not been complied with rejected* (Paras 17 to 19). *Nishan Singh* v. *State of Punjab*, (2008) 17 SCC 505: AIR 2008 SC 1661: (2008) 65 AIC 172 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 7-3-2008]

Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203, distinguished

[3414] — Ss. 319(4) and 465 — Power to proceed against other persons appearing to be guilty of offence — *Held, S. 319(4) must be read with the residuary provision contained in S. 465 — Complaint in regard to non-compliance with statutory provisions must be made at the earliest opportunity — When a judgment is pronounced, a case must be made out that by reason of a procedural irregularity, failure of justice has occurred* (Para 22). *Nishan Singh* v. *State of Punjab*, (2008) 17 SCC 505: AIR 2008 SC 1661: (2008) 65 AIC 172 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 7-3-2008]

State of M.P. v. Bhooraji, (2001) 7 SCC 679: 2001 SCC (Cri) 1373; M.C. Sulkunte (Dr.) v. State of Mysore, (1970) 3 SCC 513: 1971 SCC (Cri) 119; CBI v. V.K. Sehgal, (1999) 8 SCC 501: 1999 SCC (Cri) 1494; State of Haryana v. Ram Singh, (2002) 2 SCC 426: 2002 SCC (Cri) 350, relied on

— **S. 320** *See also* S. 345, Criminal Procedure Code, 1898, pp. 1166 et seq. in Vol. 2

— **S. 320** *See* Ss. 24, 25 and 320
See also Ss. 156(3) & 320 and 482 & 483
See also Ss. 190, 309, 320 and 482
See also Ss. 357, 320, 431 and 428
See also Ss. 362 and 320
See also Ss. 406, 257 and 320
See also Ss. 482 and 320

[3415] — S. 320 — Nature and scope of

Per Khalid and Natarajan, JJ.

Section 320 confers only a supervisory power on the court in the matter of compounding of offences, in the manner indicated therein, with this safeguard that the accused does not by unfair or deceitful means, secure a composition of the offence. For granting permission or giving consent under sub-section (4)(*a*) or (4)(*b*) for compounding of an offence, the court is not enjoined to make a serious detailed evaluation of the evidence or assessment of the case to be satisfied that the case would result in acquittal or conviction. It is necessary to bear in mind that an application for compounding of an offence can be made at any stage. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength **5**. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[3416] — S. 320 — Compounding of offence — Considerations for — *Held, the same is linked to perceived seriousness of offence and nature of remedy provided — Negotiable Instruments Act, 1881, Ss. 147 and 138* (Para 16). *Damodar S. Prabhu* v. *Sayed Babalal H.*, (2010) 5 SCC 663.

Bench Strength **3**. Coram : *K.G. Balakrishnan, C.J.* and *P. Sathasivam* and *J.M. Panchal*, JJ. [Date of decision : 3-5-2010]

K.N.C. Pillai: R.V. Kelkar's Criminal Procedure, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p. 444, relied on

[3417] — S. 320 — Compounding of offences — Civil dispute with certain criminal facets — Offences involved included non- comoundable offences — Compromise between the parties — Effect of — *Whether criminal proceedings can be quashed under Art. 142 on the basis of compromise, even where non-compoundable offences are involved — Held, on overall view of facts on compromise between the parties, by which parties withdrew all claims and allegations against each other, technicality, held, should not be allowed to stand in the way of quashing of the criminal proceedings, since continuance of the same would be a futile exercise — Penal Code, 1860 — S. 120-B r/w Ss. 420, 467, 468 and 471 — CPC, 1908, Or. 23 R. 3 — Constitution of India, Art. 142*

CBI filed a charge-sheet against five accused persons under Section 120-B read with Sections 420, 467, 468, 471 IPC read with Sections 5(2) and 5(1)(*d*) of the Prevention of Corruption Act, 1947 and Section 13(2) read with Section 13(1)(*d*) of the Prevention of Corruption Act, 1988. In the said charge-sheet, the appellant herein was made Accused 3 and the company *N*, in respect of which he was the former MD, was made Accused 4. The other three accused were officials of the bank *A*.

The company *N* was granted financial assistance by the bank *A* under various facilities. On account of default in repayment of the loans, the Bank filed a suit for recovery of the amount payable and in addition, on a complaint made by the GM and the Chief Vigilance Officer of the Bank, investigations were undertaken by CBI, which filed charge-sheet in the court. The allegations under the charge-sheet indicated that the accused persons conspired with each other in fraudulently diverting the funds of the Bank. Offences alleging forgery were also included in the charge-sheet.

The suit between the Company and the Bank, to which the appellant herein was also a party, was disposed of on a compromise arrived at between the parties which was reduced into writing, and was filed in the suit. On the basis of the consent terms, the suit was compromised upon the defendants agreeing to pay the amounts due as per the schedule mentioned in the consent terms.

Consequent upon the compromise of the suit and having regard to the contents of Clause 11 of the consent terms, which read that neither party had any claim against the other and parties were withdrawing all allegations and counter-allegations made against each other, the appellant herein filed an application for discharge from the criminal complaint, in respect of which charge-sheet had been filed by CBI. The said application was rejected by the court which came to be challenged by the appellant before the High Court. The High Court rejected the appellant's prayer for discharge from the criminal cases. Hence the present appeal.

Before the Supreme Court, it was urged by the respondents that all the ingredients of the offences committed under Sections 468 and 471 as also Section 420 IPC were made out in the charge-sheet, and hence, even if the matter was compromised between the parties, the criminal proceedings could not be compounded on that basis since the offences involved also included non-compoundable offences.

The appellant contended that *B.S. Joshi case*, (2003) 4 SCC 675, squarely covered the facts of the instant case since in exercise of inherent powers, the Supreme Court could transcend the limitation imposed under Section 320 CrPC and pass orders quashing criminal proceedings or FIR or complaint even where non-compoundable offences were involved.

Allowing the appeal,

Held :

The question which is required to be answered in this case is whether the power which independently lies with the Supreme Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised? (Para 30)

The facts of the case warrant interference in these proceedings. (Para 27)

The basic intention of the accused in this case appears to have been to misrepresent the financial status of the company *N*, in order to avail of the credit facilities to an extent to which the Company was not entitled. In other words, the main intention of the Company and its officers was to cheat the Bank and induce it to part with additional amounts of credit to which the Company was not otherwise entitled. (Para 28)

Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under Section 320(2) CrPC, with the leave of the court. However, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in *B.S. Joshi case*, (2003) 4 SCC 675, becomes relevant. (Para 29)

In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. (Para 30)

On an overall view of the facts and keeping in mind the decision in *B.S. Joshi case*, (2003) 4 SCC 675, and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank, this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since the continuance of the same after the compromise arrived at between the parties would be a futile exercise. (Para 31)

Therefore, the order passed by the High Court is set aside and the proceedings against the appellant is quashed. (Para 32). *Nikhil Merchant* v. *CBI*, (2008) 9 SCC 677: (2008) 3 SCC (Cri) 858: (2008) 3 KLT 769: (2008) 69 AIC 34 (SC).

Bench Strength 2. Coram: **Altamas Kabir** and *Markandey Katju*, JJ. [Date of decision: 20-8-2008]

B.S. Joshi v. State of Haryana, (2003) 4 SCC 675: 2003 SCC (Cri) 848, followed

[3418] — S. 320 — Compromise in criminal proceedings — Application for quashing of FIR — Declined by High Court on grounds that offence under S. 406 IPC was not compoundable and case was already fixed for examination of prosecution witnesses — Sustainability of — *Held, from a reading of FIR and the other documents on record it is seen that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused — No useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has passed away and the possibility of a conviction being recorded was thus to be ruled out — Judge has confused compounding of an offence with the quashing of proceedings — Outer limit of Rs 250 which has led to the dismissal of the application was an irrelevant factor in the case*

Allowing the appeal,

Held :

From a reading of the FIR and the other documents on record it is seen that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused. Therefore no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has passed away and the possibility of a conviction being recorded has thus to be ruled out. Judge has confused compounding of an offence with the quashing of proceedings. The outer limit of Rs 250 which has led to the dismissal of the application is an irrelevant factor in the case. (Paras 5 and 7). *Madan Mohan Abbot* v. *State of Punjab*, (2008) 4 SCC 582: (2008) 2 SCC (Cri) 464: AIR 2008 SC 1969: 2008 Cri LJ 2243: (2008) 3 KLT 19.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **H.S. Bedi**, JJ. [Date of decision: 26-3-2008]

[3419] — S. 320 — Compromise in criminal proceedings — Circumstances in which to be allowed — Approach to be adopted by courts — Explained — *Held, it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings since keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation — This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law*

It needs to be emphasised that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common-sense approach to the matter based on ground of realities and bereft of the technicalities of the law. (Para 6). *Madan Mohan Abbot* v. *State of Punjab*, (2008) 4 SCC 582: (2008) 2 SCC (Cri) 464: AIR 2008 SC 1969: 2008 Cri LJ 2243: (2008) 3 KLT 19.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **H.S. Bedi**, JJ. [Date of decision: 26-3-2008]

[3420] — S. 320 — Pardon accorded to appellant-accused by family of victim and Panchayat — Effect, if any — *Held, such crime is committed against society/State and not only against family — Therefore, held, such pardon has no significance in such a heinous crime — Penal Code, 1860 — S. 302* (Para 51). *Paramjeet Singh* v. *State of Uttarakhand*, (2010) 10 SCC 439.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-9-2010]

[3421] — S. 320 — Special leave granted for compounding offence under S. 323 IPC in the circumstances of the case — *Court also taking a compassionate approach in respect of the other offence having regard to facts particularly that they had acted in a moment of aberration due to loss of self control and accordingly sentence reduced to the period already undergone. Madhusudan Sahu* v. *State of Orissa*, 1987 Supp SCC 80: 1987 SCC (Cri) 626.

Bench Strength **2**. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 17-2-1987]

[3422] — S. 320 — *Conviction altered in appeal to an offence which was compoundable — Permission to compound granted to one set of accused — Held, must be granted to the co-accused as well. Mainuddin* v. *State of U.P.*, (1982) 3 SCC 367(2): 1983 SCC (Cri) 48(2).

Bench Strength **2**. Coram: *Y.V. Chandrachud, C.J.* and *E.S. Venkataramiah*, J. [Date of decision: 6-3-1981]

[3423] — **S. 320 — Conviction for non-compoundable offence altered in appeal to that for a compoundable offence — Matter allowed to be compounded.** *Ram Shanker* v. *State of U.P.*, (1982) 3 SCC 388(1): 1983 SCC (Cri) 60.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and *R.B. Misra*, JJ. [Date of decision: 24-4-1981]

[3424] — S. 320 — Non-compoundable offence — Effect of compromise — *Husband and wife — Offence under Ss. 307/34 IPC — Victim-wife and accused-husband patching up their differences and living happily with their children — Special leave on question of sentence alone granted and sentence altered to that already undergone. Salim* v. *State of M.P.*, 1995 Supp (4) SCC 631: 1996 SCC (Cri) 72.

Bench Strength 2. Coram: *A.M. Ahmadi* and *Yogeshwar Dayal*, JJ. [Date of decision: 28-1-1994]

Ram Pujan v. State of U.P., (1973) 2 SCC 456: 1973 SCC (Cri) 870, followed

This decision should be deemed to be impliedly **overruled** by *Surendra Nath Mohanty* v. *State of Orissa*, (1999) 5 SCC 238

[3425] — S. 320 — Compounding of offence — Offences under Ss. 384 and 506 IPC — *Held, are not compoundable — Hence, prayer therefor rejected* (Para 16). *Karipi Rasheed Ahmed* v. *State of A.P.*, (2009) 17 SCC 515.

Bench Strength 2. Coram: **L.S. Panta** and *B. Sudershan Reddy*, JJ. [Date of decision: 26-2-2009]

[3426] — S. 320 — Non-compoundable offence — In view of compromise, sentence of two accused reduced by High Court to that already undergone — *Held, the sentence of other co-accused should also be similarly reduced. Malkiat Singh* v. *State of Punjab*, (1982) 3 SCC 371(2): 1983 SCC (Cri) 52(2).

Bench Strength 2. Coram: *A.C. Gupta* and *Baharul Islam*, JJ. [Date of decision: 27-1-1981]

[3427] — **S. 320 — Compounding of offences — Non-compoundable offences — Conviction under S. 326 IPC — Petitioners cannot be acquitted straightaway in spite of settlement between parties** — *Held, some of non-compoundable offences under Ss. 498-A, 326, etc. IPC can be made compoundable by introducing a suitable amendment in the statute — Law Commission of India could examine whether a suitable proposal can be sent to the Union Government in this regard — Penal Code, 1860, S. 326. Ramgopal* v. *State of M.P.*, (2010) 13 SCC 540.

Bench Strength 2. Coram: *Markandey Katju* and *T.S. Thakur*, JJ. [Date of decision: 30-7-2010]

[3428] — **S. 320 — Offence under S. 307 or S. 324 IPC — Compoundability — Parties wishing to compromise** — *In the present case the injuries were only skin deep and the circumstances under which the incident occurred would preclude any inference that the assault was launched with intent to murder — At best the case would fall within the scope of S. 324 IPC — But since the parties, who were neighbours, desired to compound the matter, the court permitted them to do so to ensure lasting peace — Accordingly the conviction and sentence imposed by the High Court under S. 307 IPC set aside and the appellants acquitted — Penal Code, 1860 — Ss. 307 and 324. Sanjay Kumar* v. *State of M.P.*, 1994 Supp (1) SCC 502: 1994 SCC (Cri) 586.

Bench Strength 2. Coram: *A.M. Ahmadi* and *S. Mohan*, JJ. [Date of decision: 15-2-1993]

[3429] — S. 320 — Trespass to seek sexual favours, but not for causing any physical hurt or assault or wrongful restraint — Offence whether under S. 452 or S. 451 — *Appellant-accused convicted under Ss. 354 and 452 by all courts below — In application for compounding of the offences, Supreme Court on finding that the appellant had entered the house to seek sexual favours, but not for causing any physical hurt or assault or wrongful restraint, converting conviction of accused to that under S. 451, and compounding both convictions — Penal Code, 1860 — Ss. 452, 451 and 354. Moreshwar* v. *State of Maharashtra*, (2005) 11 SCC 429.

Bench Strength 2. Coram: *Ashok Bhan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 29-4-2005]

[3430] — S. 320 — Applicability — Case of alleged kidnapping of/elopement with a girl *T*, less than 16 years of age, and her subsequent rape — Defence of appellant-accused *P* that he got married to *T* — Photographs relating to so-called marriage produced — *However, both appellant-accused convicted under S. 366 IPC by trial court and High Court — Before Supreme Court, three affidavits favouring appellants, filed — One by* **T**, *who swore that she had an affair with appellant* **P** *and wanted to marry him, but her parents got her married to another person, that she had no grudge or ill will against* **P**, *that she did not want any kind of action against appellants and that matter had been patched up — Other two affidavits sworn by different persons, giving a certificate of good character to* **P**, *certifying that he was a law-abiding citizen and had committed no offence — Only on basis of these affidavits, appellants praying for acquittal or alternatively some reduction in sentence (of 1+ years imposed by High Court) — Tenability — Held, S. 366 IPC is a non-*

compoundable offence — Therefore, argument of appellants about acquittal on basis of affidavits, unsustainable — Also, there is genuine doubt about affidavits — Again, under the circumstances, sentence is already on lenient side — Moreover, no contrition on part of accused for their crime — Hence, plea regarding sentence, also rejected — Penal Code, 1860, S. 366 (Paras 13 and 14). *Parshotam Lal* v. *State of Punjab*, (2010) 1 SCC 65.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 6-10-2009]

[3431] — S. 320 — Bigamy — Conviction upheld and two years' RI and Rs 500 fine awarded — *But looking to the facts and circumstances, especially the fact of irretrievable breakdown of the first marriage, court persuading the complainant to compound the offence and accept Rs 40,000 as compensation — Penal Code, 1860 — S. 494. Narotam Singh* v. *State of Punjab*, (1979) 4 SCC 505: 1980 SCC (Cri) 113: AIR 1978 SC 1542: 1978 Cri LJ 1612.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision: 11-1-1978]

[3432] — S. 320 — Compounding of offences — Divorce by mutual consent in transfer petitions — Decree passed considering comprehensive settlement of matrimonial discord — *Settlement carried out through High Court's Mediation Centre — Litigating parties living separately for more than one year — Parties filing counter criminal cases/proceedings — All proceedings quashed as per terms of settlement — CPC, 1908, Ss. 89, 25 and Or. 32-A R. 3 & Or. 23 R. 3 — Constitution of India, Art. 142 — Hindu Marriage Act, 1955 — S. 13-B . Aviral Bhatla* v. *Bhawna Bhatla*, (2009) 3 SCC 448.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 18-2-2009]

[3433] — S. 320 — Compounding of offences — Non-compoundable offence — Compromise between parties — Effect on sentence — Imposition of condition for reducing sentence according to peculiarity of the case — *Held, even if an offence is not compoundable within the scope of S. 320, Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction — In the instant case, appellant convicted under Ss. 279 and 304-A IPC for causing death of a small girl due to his rash and negligent driving — What remained after revision by High Court was conviction of appellant under Ss. 279 and 304-A IPC with sentence of 6 months' simple imprisonment and fine of Rs 2000 — Compromise between parties during pendency of matter before Supreme Court — Effect — Held, herein, instead of confining appellant in prison, interest of justice would be better served if he is made to compensate family of the deceased on account of loss suffered by them — Accordingly, while maintaining appellant's conviction under Ss. 279 and 304-A IPC, notwithstanding agreement arrived at between parties, amount of fine increased from Rs 2000 to Rs 20,000, to be paid by appellant to the parents of deceased, and sentence reduced to the period already undergone, subject to payment of the fine — If no deposit is made appeal would stand dismissed — Penal Code, 1860, Ss. 279 and 304-A — Constitution of India, Art. 142* (Paras 2, 5 and 12 to 14). *Puttaswamy* v. *State of Karnataka*, (2009) 1 SCC 711.

Bench Strength 2. Coram: **Altamas Kabir** and *Markandey Katju*, JJ. [Date of decision: 11-12-2008]

Surendra Nath Mohanty v. State of Orissa, (1999) 5 SCC 238: 1999 SCC (Cri) 998; Ram Lal v. State of J&K, (1999) 2 SCC 213: 1999 SCC (Cri) 123; Bachhu Singh v. State of U.P., (2002) 10 SCC 313: 2004 SCC (Cri) 1124; Avinash Shetty v. State of Karnataka, (2004) 13 SCC 375: (2006) 1 SCC (Cri) 316; Y. Suresh Babu v. State of A.P., (2005) 1 SCC 347: 2005 SCC (Cri) 320, relied on

[3434] — Ss. 320 and 321 — Compounding of offence under S. 302 IPC — Interlocutory applications for compromising matter in view of settlement arrived at between parties in panchayat, filed by appellants — *Held, offence under S. 302 IPC is not compoundable — In violation of the statutory provisions, except in some marginal cases, the court shall not allow composition of offence — Appellants were prosecuted for committing two murders and injuring one — Maintenance of rule of law is the prime duty of the State — If parties have settled their disputes they may live in peace in future but the same by itself cannot be a ground to pass a judgment of acquittal — Supreme Court Rules, 1966, Or. 47 Rr. 1 & 6* (Para 41). *Satbir Singh* v. *State of U.P.*, (2009) 13 SCC 790: AIR 2009 SC 2163: (2009) 3 All LJ 786: (2009) 76 AIC 120 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-2-2009]

Shivappa v. State of Karnataka, (2008) 11 SCC 337: (2009) 1 SCC (Cri) 143, considered and relied on

Modi's Medical Jurisprudence, p. 185, cited

[3435] — S. 320 — Compounding of offence — Offences under Ss. 406/420 IPC, compoundable with permission of the court — *In view of compromise between the parties, Supreme Court directing them to file an application under S. 320 before the court concerned — Penal Code, 1860, Ss. 406 and 420* (Para 2). *Raja Ram Kashyap* v. *State of U.P.*, (2009) 14 SCC 248.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 24-4-2009]

[3436] — S. 320 — Non-compoundable offence — Modification of sentence — Effect of compromise regarding compoundable offence — *During pendency of appeal, parties entering into compromise and as a result appellants acquitted of offence under S. 323 — Affidavit of complainant, ex-wife of Appellant 1, clearly stating that she had no wish to pursue the case and that she had remarried by then — Held, conviction under S. 498-A to be maintained, but sentence of imprisonment (1 year) to be reduced to period already undergone (Appellants 1 & 2, 8 months and 21/2 months respectively); Appellant 3 to be released on probation under Probation of Offenders Act, so that his job may not be jeopardised — Penal Code, 1860 — Ss. 498-A and 323 — Probation of Offenders Act, 1958 — S. 4* (Para 6). *Ramchandra Singh* v. *State of Bihar*, (2003) 10 SCC 234.

Bench Strength 2. Coram: *R.C. Lahoti* and *P. Venkatarama Reddi*, JJ. [Date of decision: 22-3-2002]

[3437] — S. 320 — Punishment — Compromise — Husband suspecting wife of unchastity right from day of marriage and indulging in mud-slinging and character assassination thereafter and lodging false complaint of theft against her — *Pursuant to complaint made by respondent-wife, appellant-husband convicted under S. 498-A IPC with fine of Rs 30,000 and under S. 500 with sentence of two months' simple imprisonment and fine of Rs 6000 by High Court — Before the Supreme Court settlement arrived at between the parties whereunder appellant agreeing to pay rupees one lakh to respondent in addition to payment of fine of Rs 6000 under S. 500 as also to pay fine of Rs 30,000 under S. 498-A as ordered by High Court and to file an unqualified apology before the Supreme Court for the mental strain and stress caused by him to the respondent — Appellants' brother also to file an undertaking before the Court to the effect that he will take no proceedings, civil or criminal, against the respondent for any averments, allegations or statements made by her in any proceedings — Respondent would be entitled to withdraw the amounts deposited by appellant — Compliance with the terms of the settlement would conclude all the proceedings — High Court was justified in taking serious view of appellant's conduct towards respondent — This should prove to be an eye opener to those who believe that they can get away by casting aspersions on a woman to serve their ends and to silence her — Criminal appeal — Compromise — Penal Code, 1860 — Ss. 498-A and 500. Mukund Martand Chitnis* v. *Madhuri Mukund Chitnis*, 1991 Supp (2) SCC 359: AIR 1992 SC 1804.

Bench Strength 3. Coram: *A.M. Ahmadi, V. Ramaswami* and *K. Ramaswamy*, JJ. [Date of decision: 23-4-1991]

[3438] — S. 320 — *Offence under S. 324 read with S. 34, IPC allowed to be compounded. Ram Prasad* v. *State of U.P.*, (1982) 2 SCC 149: 1982 SCC (Cri) 375.

Bench Strength 2. Coram: **P.N. Bhagwati** and *E.S. Venkataramiah*, JJ. [Date of decision: 21-4-1980]

[3439] — S. 320 — Supreme Court under Art. 136 allowing compounding of the offences where the parties were closely related — *Conviction and order of sentence set aside and accused acquitted — Penal Code, 1860 — Ss. 324 & 325. Hindu Singh* v. *State of U.P.*, (1982) 3 SCC 368(2): 1983 SCC (Cri) 49(2).

Bench Strength 2. Coram: *Y.V. Chandrachud, C.J.* and *V.D. Tulzapurkar*, J. [Date of decision: 29-1-1981]

[3440] — S. 320 — Compounding of offence from S. 307 to one under Ss. 324/34 IPC or release on probation of good conduct — *Counsel contending that parties being close relatives compromising offence under S. 307 IPC — But complainant not having been identified in court but claming to be so and willing to compound — Effect — Instead of compounding the offence, release of offender on terms to be settled by trial court, held, would be proper — Probation of Offenders Act, 1958, S. 4 — Applicability — Penal Code, 1860, Ss. 307 or 324 and 34. Gaya Prasad* v. *State of M.P.*, (2009) 17 SCC 757.

Bench Strength 2. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 10-11-2009]

[3441] — S. 320 — Accused-appellants claimed to have compounded offences with the injured persons — *Trial magistrate directed to verify from the injured persons, by calling them alone in his chamber, that they agreed to compounding of the offences voluntarily, willingly and without any pressure and submit a report to the Supreme Court — Constitution of India, Article 136. Madhusudan Sahu* v. *State of Orissa*, 1987 Supp SCC 180: 1988 SCC (Cri) 54.

Bench Strength 2. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 16-12-1986]

[3442] — S. 320 — Case allowed to be compounded at stage of appeal before Supreme Court where the complainant filed such application for compounding and State pressed no objection. *Chiranji Lal* v. *State of U.P.*, (1982) 3 SCC 371(1): 1983 SCC (Cri) 52(1).

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and *V. Balakrishna Eradi*, JJ. [Date of decision: 24-2-1981]

[3443] — S. 320 — Composition granted — *Offence under Ss. 323, 324 and 325 read with S. 34, Penal Code — Victim voluntarily entering into a composition to restore friendly and good neighbourly relations with the accused and rejecting compensation offer — In view of the chastened attitude of the accused and commendable attitude of the victim in order to restore harmony in society, composition acceptable. Ramji Lal* v. *State of Haryana*, (1983) 1 SCC 368: 1983 SCC (Cri) 189.

Bench Strength **2**. Coram: *D.A. Desai* and *R.B. Misra*, JJ. [Date of decision: 6-12-1982]

[3444] — S. 320 — Compoundable offence — Action constituting both civil and criminal wrong — Compromise in civil suit — Effect — *Act constituting both civil and criminal wrong — Civil suits for recovery of dues compromised on receiving payments from the companies concerned — Even if offence of cheating is prima facie constituted, compromise decree passed in such suits would amount to compounding of offence of cheating. CBI* v. *Duncans Agro Industries Ltd.*, (1996) 5 SCC 591: 1996 SCC (Cri) 1045: AIR 1996 SC 2452.

Bench Strength **2**. Coram: **G.N. Ray** and *G.B. Pattanaik*, JJ. [Date of decision: 9-7-1996]

[3445] — S. 320 — Compoundable offences — *Those offences which are not mentioned in S. 320, held, cannot be permitted to be compounded. B.S. Joshi* v. *State of Haryana*, (2003) 4 SCC 675: 2003 SCC (Cri) 848: AIR 2003 SC 1386: (2003) 2 KLT 1062: 2003 Cri LJ 2028.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *H.K. Sema*, JJ. [Date of decision: 13-3-2003]

[3446] — S. 320 — Compounding of compoundable offences — Ss. 325/149, 323/149 and 147 IPC — *Where after conviction confirmed by High Court, appellant made an application for compounding before Supreme Court and such application was endorsed by complainant-informant, and occurrence dated back to 1987, in the interests of justice permission for compounding accorded; conviction and sentence set aside* (Para 2). *Ramphal* v. *State of M.P.*, (2000) 9 SCC 61: 2000 SCC (Cri) 1162.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 13-1-2000]

[3447] — S. 320 — Compounding of non-compoundable case at the instance of court — Offence under S. 307 IPC — *Acquittal by trial court reversed by High Court — Prayer for compounding in appeal before Supreme Court allowed in view of fact that accused was a lawyer and counter case already compromised — Keeping in view of nature of case and circumstances under which offence committed trial court directed to accord permission to compound the offence. Mahesh Chand* v. *State of Rajasthan*, 1990 Supp SCC 681: 1991 SCC (Cri) 159: AIR 1988 SC 2111: 1988 BLJR 468.

Bench Strength **2**. Coram: *B.C. Ray* and *K. Jagannatha Shetty*, JJ. [Date of decision: 14-3-1988]

Overruled in Surendra Nath Mohanty v. State of Orissa, (1999) 5 SCC 238

Held to have been decided per incuriam in Ram Lal v. State of J&K, (1999) 2 SCC 213: 1999 SCC (Cri) 123 and Bankat v. State of Maharashtra, (2005) 1 SCC 343

[3448] — S. 320 — Compounding of offence — Parties entering into compromise outside the court and the injured compensated — *Injury caused by accused to victim not proved to be grievous injury — Conviction altered from S. 326 to S. 324 IPC and permission to compound the offence granted — Accused acquitted. Bharat Singh* v. *State of M.P.*, 1990 Supp SCC 62: 1990 SCC (Cri) 617.

Bench Strength **2**. Coram: *S. Natarajan* and *A.M. Ahmadi*, JJ. [Date of decision: 21-2-1989]

[3449] — S. 320 — Compounding of offence — Conviction under S. 325 IPC — *Complainant reported to be dead — Son of complainant present in court — In order to restore good relationship between them, parties compromising the matter — Prayer for compounding the offence allowed — Penal Code, 1860 — S. 325* (Para 3). *Pritam Singh* v. *State of Haryana*, (2005) 11 SCC 566.

Bench Strength **2**. Coram: *D.M. Dharmadhikari* and *B.N. Srikrishna*, JJ. [Date of decision: 21-4-2005]

[3450] — S. 320 — Compounding of offence — Offences under Ss. 324/149, 323/149, 147 and 148 IPC — Conviction and sentence under — *Since the incident took place in the year 1979 and subsequently the parties arrived at an amicable settlement, held on facts, it would be a fit case for reducing the sentence to the period already undergone — Penal Code, 1860 — Ss. 324/149, 323/149 and 148. Bachhu Singh* v. *State of U.P.*, (2002) 10 SCC 313.

Bench Strength **2**. Coram: *M.B. Shah* and *Ruma Pal*, JJ. [Date of decision: 6-12-2000]

[3451] — S. 320 — Compounding of offence — How and by whom offence to be compounded — Occurrence took place a long time back and in the meantime one of the injured died — *Appellant stood convicted under Ss. 324 and 323 r/w S. 34 IPC — Complainant volunteered to compound the case — Reasons for compounding offences found sufficient and genuine — Hence, compounding of offences granted — Penal Code, 1860, Ss. 323, 324 and 34*

The appellants stood convicted under Section 324 read with Section 34 and Section 323 read with Section 34 IPC.

Disposing of the appeal,

Held :

An application has been filed by the complainant and the accused persons stating that the occurrence took place nearly 25 years back and the parties are related to each other and therefore, they may be permitted to compound the offences. Complainant has volunteered to compound the offences with the appellants for sufficient and genuine reasons as stated in the affidavits and such compounding would be proper. So far as the offence under Section 323 is concerned, it is compoundable with the consent of the injured. So far as the offence under Section 324 is concerned, it is compoundable by the person to whom hurt is caused with the permission of the court, in terms of sub-section (2) of Section 320. (Paras 2 and 4). *Mathura Singh* v. *State of U.P.*, (2009) 13 SCC 420.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 27-4-2009]

Manoj v. State of M.P., (2008) 9 SCC 116: (2008) 3 SCC (Cri) 699, relied on

[3452] — S. 320 — Compounding of offence — Purpose of — *Held, the purpose of compounding of offence against payment of compounding amount is to prevent litigation and encourage early settlement of disputes — Customs (Compounding of Offences) Rules, 2005* (Para 6). *Rajesh Kumar Sharma* v. *Union of India*, (2007) 9 SCC 158: (2007) 51 AIC 17 (SC): (2007) 209 ELT 3: (2007) 138 DLT 121.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 2-2-2007]

[3453] — S. 320 — Compounding of offence committed under S. 324 IPC — Application for — *Complainant having no objection to it — Offence permitted to be compounded — Conviction and sentence set aside — Penal Code, 1860 — S. 324* (Paras 7 and 8). *Avinash Shetty* v. *State of Karnataka*, (2004) 13 SCC 375.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 13-9-2004]

[3454] — S. 320 — Compounding of offence under S. 323 IPC — Conviction under S. 307 applying S. 34 — Propriety of — *Appellant did not know that the other accused would be inflicting an injury on the victim with the intention of murdering him — Hence, conviction with the help of S. 34, held, was not proper — Appellant liable only for the offence committed by him under S. 323 — However, appellant acquitted of the offence under S. 323 due to the compounding of offence — Penal Code, 1860 — Ss. 34, 307 r/w Ss. 34 and 323*. *Sunderlal* v. *State of M.P.*, (2002) 9 SCC 564.

Bench Strength 2. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 22-9-2000]

[3455] — S. 320 — Proper stage for compounding — Offence under S. 138 of Negotiable Instruments Act — Compounding of the offence under, during final hearing before Supreme Court — Permissibility — *Conviction upheld by all the three forums — Complainant having received the entire money, stating before Supreme Court that he had no objection if the conviction was set aside — State opposing the setting aside of the conviction on the ground that the parties could have entered into a compromise only during the pendency of the appeal and not at this stage — Despite some force in the State's contention, in view of the nature of the offence and the existence of a compromise, Supreme Court granting permission, in the peculiar facts and circumstances of the case to compound — Hence, conviction and sentence, held, necessarily stood annulled — Constitution of India, Art. 136 — Negotiable Instruments Act, 1881 — S. 138* (Para 3). *O.P. Dholakia* v. *State of Haryana*, (2000) 1 SCC 762: 2000 SCC (Cri) 310.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 15-11-1999]

[3456] — S. 320 — Non obstante clause in S. 147 NI Act, gives S. 147 overriding effect over S. 320 CrPC — *Negotiable Instruments Act, 1881, S. 147*

Once a person is allowed to compound a case as provided for under Section 147 of the Negotiable Instruments Act, the conviction under Section 138 of the said Act should also be set aside. As far as the non obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of CrPC relating to compounding of offences. (Paras 9 to 13). *K.M. Ibrahim* v. *K.P. Mohammed*, (2010) 1 SCC 798.

Bench Strength 2. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 2-12-2009]

[3457] — S. 320 — Compounding of offence under S. 138, NI Act — Consequential relief — Forums before/stage of proceedings at which application for compounding may be made — *Offence under the Act (S. 138 in this case), if allowed to be compounded under S. 147, NI Act conviction and sentence therefor recorded by court deserve to be set aside — Application for compounding of offence under S. 147, NI Act can be made at appellate stage and even in a proceeding under Art. 136 of Constitution — If such applica-*

tion is made, Supreme Court is further empowered under Art. 142 to pass appropriate orders in consonance with S. 320(8) CrPC — Negotiable Instruments Act, 1881, Ss. 147 and 138

A cheque for Rs 95,000 issued by the appellant to the first respondent, when presented to the bank, was dishonoured on account of insufficiency of funds in the account of the appellant. The respondent, thereupon, issued statutory notice to the appellant. Since the appellant failed to pay the amount in time, the respondent filed a complaint before CJM. The trial court found the appellant guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to one year's RI and a fine of Rs 1,05,000 and in default of payment thereof, to undergo further 3 months' RI. If, however, the fine was realised, directions were given that a sum of Rs 1,00,000 should be given to the respondent by way of compensation. In appeal filed by the appellant, the appellate court, while confirming the conviction, reduced the sentence. The order of the appellate court was challenged in revision before the High Court which decided the matter in the light of Section 357(3) CrPC and dismissed the revision. In the present appeal before the Supreme Court under Article 136 of the Constitution, at the very initial stage of the hearing, a question was raised on behalf of the appellant as to whether an offence under Section 138 of the Negotiable Instruments Act could be compounded under Section 147 of the Act read with Section 320 CrPC.

Allowing the appeal,

Held :

Once a person is allowed to compound a case as provided for under Section 147 of the Negotiable Instruments Act, the conviction under Section 138 of the said Act should also be set aside. As far as the non obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of CrPC relating to compounding of offences. (Paras 9 to 13)

Apart from the above, the Supreme Court is further empowered under Article 142 of the Constitution to pass appropriate orders in line with sub-section (8) of Section 320 CrPC in an application under Section 147 of the aforesaid Act, in order to do justice to the parties. (Para 12)

It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the appellate forum. However, Section 147 does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, there is no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution. (Para 14)

Since the parties have settled their disputes, in keeping with the spirit of Section 147 of the Act, the parties are allowed to compound the offence, the judgments of the courts below are set aside and the appellant is acquitted of the charges against him. (Para 15). *K.M. Ibrahim* v. *K.P. Mohammed*, (2010) 1 SCC 798.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 2-12-2009]

O.P. Dholakia v. State of Ilaryana, (2000) 1 SCC 762: 2000 SCC (Cri) 310; Anil Kumar Haritwal v. Alka Gupta, (2004) 4 SCC 366: 2004 SCC (Cri) 1084; B.C. Seshadri v. B.N. Suryanarayana Rao, (2004) 11 SCC 510: 2004 SCC (Cri) Supp 112; G. Sivarajan v. Little Flower Kuries & Enterprises Ltd., (2004) 11 SCC 400: 2004 SCC (Cri) Supp 103; Kishore Kumar v. J.K. Corpn. Ltd., (2004) 13 SCC 494: (2006) 1 SCC (Cri) 348; Sailesh Shyam Parsekar v. Baban, (2005) 4 SCC 162: 2005 SCC (Cri) 1321; K. Gyansagar v. Ganesh Gupta, (2005) 7 SCC 54: 2005 SCC (Cri) 1593; K.J.B.L. Rama Reddy v. Annapurna Seeds, (2005) 10 SCC 632: 2005 SCC (Cri) 1652; Sayeed Ishaque Memon v. Ansari Naseer Ahmed, (2005) 12 SCC 140: (2006) 1 SCC (Cri) 533; Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd., (2008) 2 SCC 305: (2008) 1 SCC (Cri) 351; Sudheer Kumar v. Manakkandi M.K. Kunhiraman, (2008) 1 KLJ 203, relied on

[3458] — Ss. 320 and 357(1) — Compounding of offence under NI Act, 1881, before Supreme Court — *High Court directing appellant-accused to deposit a fine of Rs 2 lakhs as compensation under S. 357(1) CrPC — During the pendency of appeal before Supreme Court, parties entered into a compromise and in terms of the said compromise, entire amount was received by the respondent complainant — Appeal disposed of on the basis of settlement between the parties and appellant acquitted — Negotiable Instruments Act, 1881, Ss. 138 and 147* (Para 4). *Rajendran* v. *N. Mohanan*, (2009) 14 SCC 399: (2009) 77 AIC 71 (SC).

Bench Strength **2**. Coram: *D.K. Jain* and *R.M. Lodha*, JJ. [Date of decision: 6-4-2009]

[3459] — S. 320 — Compounding of offences — Settlement between parties — *Prayer by the appellant to withdraw appeal against acquittal since disputes and grievances settled between the parties and good relationship restored — Held, offences enumerated in S. 320 CrPC can only be compounded and not brutal murder — Further held, where prima facie, acquittal by the High Court appears to be erroneous such a prayer cannot be granted at this stage — Hence, further hearing of the appeal directed — Prosecution by the prosecutor is not as empty formality which can be* *permitted to be withdrawn after the appellant has withdrawn his appeal* (Para 3). *Kamma Otukunta Ram Naidu* v. *Chereddy Pedda Subba Reddy*, (2003) 12 SCC 723.

Bench Strength **2**. Coram: *B.N. Agrawal* and *B.N. Srikrishna*, JJ. [Date of decision: 30-7-2003]

[**Ed.**: Matter finally disposed of in (2003) 11 SCC 293: 2004 SCC (Cri) 155]

[3460] — S. 320 — Joint petition of compromise — Filing of, in a non-compoundable offence i.e. offence under S. 307 IPC — Relief — *Held, compromise cannot be recorded in such a case — But, while awarding sentence the effect of compromise can be taken into consideration — Thus, on facts, sentence of imprisonment reduced by High Court to six years was further reduced to period already undergone i.e. about 14 months — Penal Code, 1860 — S. 307 r/w S. 34* (Para 4). *Badrilal* v. *State of M.P.*, (2005) 7 SCC 55: 2005 SCC (Cri) 1597.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 11-7-2005]

Distinguished in Dhananjay v. State of Bihar, (2007) 14 SCC 768

[3461] — S. 320 — Non-compoundable offence — Compromise — Relevance of — *Held, factor of compromise cannot be recorded in such a case but the effect of compromise can be taken into consideration for reducing the sentence — Appellants convicted under S. 313 r/w S. 34 IPC i.e. offence of causing miscarriage without woman's consent and sentenced to 5 years' RI and fine of Rs 7000 — Sentence reduced by the High Court to 3 years' RI and fine of Rs 5000 — Appellant Hasi Mohan having an affair with the complainant and due to intimate relationship the complainant becoming pregnant — Appellant's refusal to marry the complainant and causing miscarriage despite her protest — During the pendency of the case complainant marrying the appellant and filing an affidavit to this effect in the Court that she has entered into a compromise with the appellants and wants the criminal case to be withdrawn as they are living peacefully — Supreme Court reducing the sentence of appellants to the one already undergone i.e. about 10 months — However, conviction of appellants under S. 313 IPC maintained — Penal Code, 1860 — S. 313*. *Hasi Mohan Barman* v. *State of Assam*, (2008) 1 SCC 184: (2008) 1 SCC (Cri) 161: AIR 2008 SC 388.

Bench Strength **2**. Coram: **G.P. Mathur** and *Altamas Kabir*, JJ. [Date of decision: 13-11-2007]

Ram Pujan v. State of U.P., (1973) 2 SCC 456: 1973 SCC (Cri) 870; Surendra Nath Mohanty v. State of Orissa, (1999) 5 SCC 238: 1999 SCC (Cri) 998, followed

Bankat v. State of Maharashtra, (2005) 1 SCC 343: 2005 SCC (Cri) 316; Badrilal v. State of M.P., (2005) 7 SCC 55: 2005 SCC (Cri) 1597; Jetha Ram v. State of Rajasthan, (2006) 9 SCC 255: (2006) 2 SCC (Cri) 561, relied on

[3462] — S. 320 — Non-compoundable offence — Filing of petition for compounding of — Effect — *Held, effect of compounding can be taken into account while awarding sentence — Compounding of offence involving S. 457 IPC, which is a non-compoundable offence — Considering the said fact, sentence liable to be reduced to period already undergone i.e. three months — Penal Code, 1860 — Ss. 457 and 354* (Para 4). *Sanjit Datta* v. *State of Tripura*, (2006) 13 SCC 294: (2007) 3 SCC (Cri) 172.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 7-11-2005]

[3463] — S. 320 — Compounding of non-compoundable offence — Effect on sentence — *On facts, as affidavit for compromise filed, though offence not compoundable, held, sentence imposed on appellant reduced and modified to the period already undergone* (Para 1). *Ishwarlal* v. *State of M.P.*, (2008) 15 SCC 671: (2009) 3 SCC (Cri) 1156.

Bench Strength **2**. Coram: *Sabyasachi Mukharji* and *K.N. Singh*, JJ. [Date of decision: 19-4-1988]

Ram Pujan v. State of U.P., (1973) 2 SCC 456: 1973 SCC (Cri) 870, relied on

[3464] — S. 320 — Sentence — Period already undergone — Mitigating circumstances — Appellant-accused convicted under S. 436 IPC and sentenced to RI for 3 years — *In order to live in peace and tranquillity, appellant and widow of complainant entering into compromise on intervention of local elders whereunder an amount of Rs 1 lakh was given by appellant to the widow aged about 61 years as solatium — Appellant was a young married man having small children, only earning member of the family, and had spend more than seven months in jail — Held, offence punishable under S. 436 being non-compoundable, the same cannot be compounded on basis of compromise entered into between the parties — However, having regard to the circumstances interest of justice would be met if sentence is reduced to period already undergone* (Paras 7 to 10). *Amar Nath Shukla* v. *State of Uttaranchal*, (2009) 9 SCC 390: (2009) 82 AIC 14 (SC).

Bench Strength **2**. Coram: *R.V. Raveendran* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-8-2009]

[3465] — S. 320 — Compounding of non-compoundable offence — Permissibility — Effect on sentence — *On facts, appellant- accused convicted under S. 307 IPC and sentenced to three years' RI with fine and default stipulation — During pendency of appeal before Supreme Court mutual compromise arrived at between accused and com-*

plainant victim — Separate affidavits were also filed by both in respect thereof — Joint prayer of parties that accused may be released, treating sentence already undergone as sufficient — Held, offence punishable under S. 307 IPC is not a compoundable offence — S. 320 CrPC expressly states that no offence shall be compounded if it is not compoundable under CrPC — However, Supreme Court may consider compromise between the parties for the purpose of reduction of sentence — Hence, considering the totality of facts and circumstances, conviction maintained but sentence reduced to that already undergone — However, sentence of payment of fine not disturbed — Penal Code, 1860, S. 307

It cannot be gainsaid that an offence punishable under Section 307 IPC is not a compoundable offence. Section 320 CrPC expressly states that no offence shall be compounded if it is not compoundable under CrPC. At the same time, however, while dealing with such matters, the Supreme Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence. (Para 12)

It would not be appropriate to order compounding of an offence not compoundable under CrPC, ignoring and keeping aside statutory provisions. However, limited submission of the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind. (Para 14)

In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after the decision of the High Court, he again surrendered. Though he had applied for bail, the prayer was not granted and he was not released on bail. Considering the totality of facts and circumstances, ends of justice would be met if the sentence of imprisonment awarded to the appellant is reduced to the period already undergone. (Para 15). *Ishwar Singh* v. *State of M.P.*, (2008) 15 SCC 667: (2009) 3 SCC (Cri) 1153: AIR 2009 SC 675: (2008) 72 AIC 140 (SC).

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 17-10-2008]

Jetha Ram v. State of Rajasthan, (2006) 9 SCC 255: (2006) 2 SCC (Cri) 561; Murugesan v. Ganapathy Velar, (2001) 10 SCC 504: 2003 SCC (Cri) 1032; Ishwarlal v. State of M.P., (2008) 15 SCC 671, relied on

[**Ed.**: *See also* in this regard (2008) 1 SCC 184: (2008) 1 SCC (Cri) 161; (1995) 5 SCC 238: 1999 SCC (Cri) 998.]

[3466] — S. 320 — Non-compoundable offence — Settlement between parties — *Held, conviction would stand, sentence reduced to that already undergone and accused directed to pay compensation to the complainant — Penal Code, 1860 — S. 326. Shah Noor* v. *State of A.P.*, (1982) 3 SCC 511: 1983 SCC (Cri) 107.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and *A.P. Sen*, JJ. [Date of decision: 27-7-1981]

[3467] — S. 320 — Offence under Ss. 323 and 325 IPC — *Parties willingly and voluntarily settling the dispute with the intervention of Mohalla people and relatives — With a view to maintain good relations between the parties permission to compound the offence granted. Mohd. Rafi* v. *State of U.P.*, 1998 SCC (Cri) 891.

Bench Strength 2. Coram: **G.T. Nanavati** and *S.S.M. Quadri*, JJ. [Date of decision: 27-3-1998]

[3468] — S. 320 — Offence under Ss. 324 and 324/149, IPC resulting out of quarrel between college students allowed to be compounded before the Supreme Court — *Conviction and sentence set aside — Compensation amount directed to be paid out of fines already paid. Bhupendra Singh* v. *State of M.P.*, 1980 Supp SCC 352: 1981 SCC (Cri) 280: AIR 1981 SC 1240: 1981 Cri LJ 751.

Bench Strength 2. Coram: **Y.V. Chandrachud, C.J.** and *D.A. Desai*, J. [Date of decision: 17-12-1980]

[3469] — S. 320 — Offence under S. 324, IPC — *Application for permission to compound the offence on terms already agreed upon with complainant — Complainant not present before Supreme Court — Trial court directed to verify genuineness of compromise and accord permission after recording its satisfaction — Fine imposed upon petitioner directed to be paid to complainant — Penal Code, 1860 — S. 324. Tanveer Aquil* v. *State of M.P.*, 1990 Supp SCC 63: 1990 SCC (Cri) 618.

Bench Strength 2. Coram: *K. Jagannatha Shetty* and *A.M. Ahmadi*, JJ. [Date of decision: 1-2-1989]

[3470] — S. 320 — Offence under S. 324 IPC (voluntarily causing hurt by dangerous weapon) — Compoundability of — Matters to be considered by court — *Held, amendment made in the Table under S. 320 CrPC, by means of the CrPC (Amendment) Act, 2005, against S. 324 IPC, has* *not yet been brought into force — Offence under S. 324 IPC is therefore still compoundable with court's permission — In present case compounding of offence found to be complainant's voluntary act inasmuch as the complainant and appellants were residents of the same village and compromise was brought about by intervention of village panchayat — The complainant and appellants categorically stating in their affidavits filed in the Supreme Court that after the incident, they had developed family relations and wished to live peacefully in the village without any kind of disruption in their future lives — Compounding allowed by the Supreme Court — Conviction set aside and appellants who were in prison, set free — Penal Code, 1860 — S. 324 — Compounding of offence under — Matters to be considered by court* (Paras 14 to 17). *Manoj* v. *State of M.P.*, (2008) 9 SCC 116: (2008) 3 SCC (Cri) 699.

Bench Strength **2**. Coram: *R.V. Raveendran* and **L.S. Panta**, JJ. [Date of decision: 25-9-2008]

[3471] — S. 320 — Offence under S. 326 IPC amicably settled — *On prayer and submissions of both parties, Supreme Court allowing the compounding of the offence under S. 326 IPC even though such compounding not permitted by S. 320, on the condition that the accused pay the respondent Rs 10,000 as compensation — Case, however, directed not to be treated as precedent — Constitution of India — Arts. 142 & 141 — Decision by Supreme Court intending to do complete justice — Provisions of statute not strictly followed — Directions passed not to treat the decision as a precedent. Y. Suresh Babu* v. *State of A.P.*, (2005) 1 SCC 347: 2005 SCC (Cri) 320.

Bench Strength **2**. Coram: *A.P. Sen* and *B.C. Ray*, JJ. [Date of decision: 29-4-1987]

***Held to have been decided per incuriam in** Surendra Nath Mohanty v. State of Orissa, (1999) 5 SCC 238: 1999 SCC (Cri) 998 and Bankat v. State of Maharashtra, (2005) 1 SCC 343*

[**Ed.**: It is interesting to note that despite the direction not to treat the case as a precedent the same has been cited at the Bar and discussed in at least three later decisions, namely, (1999) 2 SCC 213, (1999) 5 SCC 238 and (2005) 1 SCC 343.]

[3472] — S. 320 — Offence under S. 326 IPC, held, is not compoundable under S. 320 CrPC — *However, having regard to the facts of the case that the occurrence had taken place on 24-12-1979 on a trivial issue and that the complainant and the accused are close relations who are now living amicably, the sentence of 18 months' rigorous imprisonment reduced to the period already undergone by appellant — Penal Code, 1860 — S. 326 — Compounding of offence under. Jalaluddin* v. *State of U.P.*, (2002) 9 SCC 561: 2001 Cri LJ 4944.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and *Doraiswamy Raju*, JJ. [Date of decision: 7-4-2000]

[3473] — S. 320 — S. 494 r/w S. 109 IPC — Consent regarding compounding of offence — *Where consent given by complainant wife appeared to be free and genuine, and the compromise seemed on the face of it reasonable and in the interest of wife, and wife was an educated person, held, on facts, it was a fit case deserving permission for compounding of the offence of bigamy. Parameswari* v. *Vennila*, (2000) 10 SCC 348.

Bench Strength **2**. Coram: *G.T. Nanavati* and *S.N. Phukan*, JJ. [Date of decision: 2-8-1999]

[3474] — S. 320 — Settlement in respect of offence under S. 326 IPC — Sentence under — Reduction of — *Settlement arrived at between parties — On facts, sentence reduced to period of about 4 months already undergone — Penal Code, 1860 — S. 326. Ram Ekbal Upadhya* v. *State of Bihar*, (2001) 10 SCC 233.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 17-11-2000]

[3475] — S. 320 — SLP for compounding before Supreme Court of offences under Ss. 448 and 506 Part II, IPC — *Compounding permitted on the condition that the accused contribute Rs 3000 to the Prime Minister's Relief Fund — Penal Code, 1860 — Ss. 448 and 506 Part II. Devender Kumar Sharma* v. *State of M.P.*, 1994 SCC (Cri) 145.

Bench Strength **2**. Coram: *K. Ramaswamy* and *N.P. Singh*, JJ. [Date of decision: 30-4-1993]

[3476] — Ss. 320, 239 and 482 — Compounding of offence — Compromise between the parties — Sustainability of — *On an FIR, charge-sheet filed after investigation against the appellant for an offence under Ss. 323, 384, 504 r/w S. 34 IPC — Prior business relations between informant and accused — An application for discharge filed by the appellant under S. 239 CrPC, inter alia, on the ground that the dispute between the parties has been settled, rejected by the Judicial Magistrate on the ground that S. 384 IPC being non-compoundable, the said application was not sustainable — Application filed under S. 482 CrPC before the High Court also dismissed — Held, there was no allegation that money was paid by the informant having been put in fear of injury or putting him in such fear by the appellant was intentional — First informant, admittedly, had also not delivered any property or valuable security to the appellant — Hence, held, no case under S. 384 IPC was made out for proceeding against the appellant — Therefore, there was no reason to reject the settlement arrived at between the parties, as the same would not come within the purview of S. 320(9) CrPC — Hence, held, charge framed under S. 384 IPC* *quashed with the direction to the Magistrate to consider the maintainability of the compromise petition between the parties — Penal Code, 1860 — Ss. 323, 384, 504 r/w S. 34 — Compounding of*

A written report was lodged by the second respondent alleging that some unknown persons came to his room and asked him to make payment of Rs 1500 due from him. On his reply that he would make the payment only of the amount due from him as per settled accounts, abusive language was used and he was slapped by one *G*. A sum of Rs 1580 was said to have been taken away from his upper pocket. An FIR was lodged on the basis of the report. However, the parties arrived at an amicable settlement of their dispute. A charge-sheet was filed on completion of investigation against the appellant for an offence under Sections 323, 384, 504 read with Section 34 IPC. Application filed by the appellant for discharge under Section 239 CrPC, inter alia, on the premise that the disputes between the parties had been settled, was rejected by the Judicial Magistrate on the ground that Section 384 IPC being non-compoundable, the said application was not sustainable. An application filed by the appellant under Section 482 CrPC before the High Court was dismissed by reason of the impugned judgment. Hence this present appeal.

Allowing the appeal,

Held :

No case has been made out for proceeding against the appellant under Section 384 IPC. In that view of the matter, there was absolutely no reason as to why the settlement arrived at by and between the parties could not have been accepted, as the same would not come within the purview of sub-section (9) of Section 320 CrPC. (Para 16)

For the reasons aforementioned, while quashing the charge framed under Section 384 IPC, the learned Magistrate is directed to proceed to consider the question in regard to the maintainability of the compromise petition between the parties in accordance with law. (Para 17). *Dhananjay* v. *State of Bihar*, (2007) 14 SCC 768: (2007) 51 AIC 54 (SC): 2007 Cri LJ 1440: (2007) 2 KLJ 294 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 2-2-2007]

Bankat v. State of Maharashtra, (2005) 1 SCC 343: 2005 SCC (Cri) 316; Badrilal v. State of M.P., (2005) 7 SCC 55: 2005 SCC (Cri) 1597, distinguished

[3477] — Ss. 320 and 4 — Complaint regarding dishonour of cheque — Compromise petition in terms of S. 147 — When binding on the party — Authority of advocate to enter into settlement — Permissibility — Filing of affidavit affirmed by complainant/accused while arriving at settlement, whether required — Consideration of — *Appellant contending that consent terms were filed by the counsel without any instructions from appellant — Validity — Held, NI Act is a special Act — S. 147 provides for a non obstante clause — Indisputably, provisions of CrPC would be applicable to the proceedings pending before courts for trial of offences under NI Act — Stricto sensu, however, the table appended to S. 320 CrPC is not attracted as the provisions mentioned therein refer only to provisions of IPC and none other — In such a situation, a settlement could be arrived at by and between complainant and accused — While a settlement is arrived at, it is not necessary under provisions of NI Act and/or CrPC to file any affidavit affirmed by complainant or accused — By reason of authority granted by a litigant in favour of his advocate which, inter alia, empowers the latter to enter into a settlement, any settlement arrived at, on behalf of a party to a lis would be binding on the parties thereto — In the instant case, settlement made was permissible in law — Ex facie, it did not violate any public policy and was not otherwise inequitable — Hence, no case made out for interference — Negotiable Instruments Act, 1881 — Ss. 138 and 147 — CPC, 1908, Or. 23 R. 3* (Paras 12, 13, 17 and 18). *R. Rajeshwari* v. *H.N. Jagadish*, (2008) 4 SCC 82: (2008) 2 SCC (Cri) 186: (2008) 5 Mah LJ 404: (2008) 3 Guj LR 2286: (2008) 64 AIC 29 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 5-3-2008]

Manoharbahal Colliery v. K.N. Mishra, (1975) 2 SCC 244, relied on

[3478] — S. 320 — Compounding of the offence — When proper — *Accused and the complainant settling matter amicably and memo of settlement produced before the Supreme Court — In view of this, conviction and sentence set aside — Negotiable Instruments Act, 1881 — S. 138* (Para 4). *Kishore Kumar* v. *J.K. Corpn. Ltd.*, (2004) 13 SCC 494.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 6-9-2004]

[3479] — S. 320 — Compounding of offence — Conviction under S. 138 of Negotiable Instruments Act and sentence of three months' SI and fine of Rs 5000 — *Offence stated to have been compounded by paying the entire dues to complainant by accused-appellant — Joint application filed seeking permission for compounding the offence — Since S. 147 of the NI Act, as amended, makes the offence compoundable prayer for compounding the* *offence allowed — Sentence of imprisonment set aside while that of fine maintained — Negotiable Instruments Act, 1881 — Ss. 138 and 147 (as amended). Cochin Hotels Co. (P) Ltd.* v. *Kairali Granites*, (2005) 12 SCC 234.

Bench Strength **2**. Coram: *D.M. Dharmadhikari* and *B.N. Srikrishna*, JJ. [Date of decision: 4-2-2005]

[3480] — S. 320 — Compounding of offences — Offences under S. 138, Negotiable Instruments Act, 1881 and S. 420 IPC — *Both the parties filing joint petition for compromise before the Supreme Court — Held, said compromise was lawful — Hence, permission granted to compromise the disputes — Convictions and sentences awarded against appellant, set aside — Negotiable Instruments Act, 1881 — S. 138 — Penal Code, 1860 — S. 420* (Paras 4 and 5). *Sayeed Ishaque Memon* v. *Ansari Naseer Ahmed*, (2005) 12 SCC 140.

Bench Strength **2**. Coram: *B.N. Agrawal* and *P.K. Balasubramanyan*, JJ. [Date of decision: 25-4-2005]

[3481] — Ss. 320 and 321 — Compounding of offence — Factors to be considered — Non-compoundable offence — *Submission that 21 years had elapsed since the date of occurrence, a settlement had been arrived at by and between the parties and in fact the cousin of the deceased was married to appellant whereafter an application for compromise had also been filed, hence conviction under S. 304-B, Penal Code, may be condoned — Held, an offence under S. 304-B of the Penal Code is not compoundable — Why and under what circumstances the cousin of the deceased, if any, had been married to appellant not known — Only because such a marriage had allegedly taken place, the same by itself cannot be a ground for rejecting the prosecution story — Said grounds also do not entail imposition of lesser sentence than the minimum statutory sentence of 7 years' RI — Penal Code, 1860 — S. 304-B* (Paras 30 and 31). *Rameshwar Dass* v. *State of Punjab*, (2007) 14 SCC 696: AIR 2008 SC 890: 2008 Cri LJ 1400: (2008) 62 AIC 242 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 13-12-2007]

[3482] — Ss. 320 and 354 — Non-compoundable offence — Compromise in — Relevance of — *Held, though compromise cannot be recorded in such a case, but the effect of compromise can be taken into consideration while awarding the sentence — Appellants convicted under S. 326 IPC and sentenced to two years' RI — Compromise petition filed — Appellants in custody for about five months — Held, ends of justice would be met if sentence reduced to period already undergone — Penal Code, 1860 — S. 326* (Para 4). *Jetha Ram* v. *State of Rajasthan*, (2006) 9 SCC 255: (2006) 2 SCC (Cri) 561.

Bench Strength **2**. Coram: *B.N. Agrawal* and *S.H. Kapadia*, JJ. [Date of decision: 29-7-2005]

[3483] — Ss. 320 and 357 — Offences under Ss. 323/343/355 and 365 IPC — Compromise between the parties — *Maintaining the conviction of appellants under the said sections, sentence reduced to the period already undergone — Sentence of fine and imprisonment in default of payment of fine not interfered with — Out of the fine paid, Rs 25,000 directed to be paid to each of the two injured persons — Penal Code, 1860 — Ss. 323/343/355 and 365 — Reduction of sentence due to compromise between the parties. Murugesan* v. *Ganapathy Velar*, (2001) 10 SCC 504.

Bench Strength **3**. Coram: *Dr. A.S. Anand*, C.J. and *R.C. Lahoti* and *Brijesh Kumar*, JJ. [Date of decision: 13-11-2000]

[3484] — Ss. 320 and 482 — Quashing of criminal proceedings — Abuse of process of law — Parties entering into compromise and complainant not interested in continuing the proceedings — *But alleged offence under S. 498-A IPC not liable to compromise — Having regard to peculiar facts and circumstances of the case, held, continuation of the proceedings would amount to abuse of process of law — Hence proceedings liable to be quashed under Art. 142 — Constitution of India, Art. 142*

Criminal complaints were filed by Respondent 2 wife against the appellants viz. her husband, father-in-law and mother-in-law as a counterblast to divorce petition filed by the appellant husband. Subsequently, decree of divorce by mutual consent was granted by the Civil Judge. But the appellants were convicted under Section 498-A IPC and sentenced to 18 months' imprisonment and fine of Rs 100 each with default stipulation. During pendency of appeal thereagainst, the parties sorted out their differences and filed petitions for compromise in the criminal proceedings. The appellate court rejected the compromise on the ground that offence under Section 498-A IPC could not be compromised. The appellants filed petitions under Section 482 CrPC for quashing the criminal proceedings but the High Court declined to interfere. In the appeal before the Supreme Court, Respondent 2 submitted that she was not interested in prosecuting the appellants.

Disposing of the appeal,

Held :

Having regard to the facts that the parties belonged to cultured families, parents of the appellant husband were suffering from multiple ailments because of advanced age, parties have compromised and Respondent 2 was not interested in prosecuting the appellants, and even otherwise also, in the peculiar facts and circumstances of the case and in the interest of justice, continuation of criminal proceedings would be an abuse of the process of law. Therefore, in exercise of Supreme Court's power under Article 142, it is deemed proper to quash the criminal proceedings pending against the appellants emanating from FIR lodged under Section 498-A IPC. (Paras 9 and 10). *Arvind Barsaul (Dr.)* v. *State of M.P.*, (2008) 5 SCC 794: (2008) 3 SCC (Cri) 88: (2008) 66 AIC 1 (SC).

Bench Strength 2. Coram: *Tarun Chatterjee* and **Dalveer Bhandari**, JJ. [Date of decision: 8-5-2008]

[3485] — Ss. 320(1), (2) & (8) — Compounding of offences — Accused charged under Ss. 325 and 323 r/w S. 34 IPC — *Causing simple hurt falling under S. 323 IPC compoundable at the instance of person hurt — Causing grievous hurt under S. 325 IPC compoundable with permission of court — Compromise deed stating that parties were neighbours, their houses adjacent to each other, and that they were living peacefully for last many years and there was no dispute between them; hence to continue sweet relationship and harmony, the complainant side does not want to take any action against the accused — In view of same necessary permission to compound offence granted and consequently accused acquitted — Penal Code, 1860 — Ss. 325 and 323 — Compounding of offences under* (Paras 3, 10, 12, 13 and 15). *Khursheed* v. *State of U.P.*, (2007) 12 SCC 68: (2008) 2 SCC (Cri) 218: (2007) 6 All LJ 625: (2007) 59 AIC 265 (SC).

Bench Strength 2. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 28-9-2007]

[3486] — Ss. 320(1), Table and 320(8) — Compounding of offences — Voluntarily causing hurt by dangerous weapons or means (Penal Code, 1860 — S. 324) — *Offence committed on 15-6-1995 i.e. prior to the date (23-6-2006) when offence made non-compoundable — Offence allowed to compounded and held, appellants entitled to acquittal under S. 320(8) — Criminal Procedure Code (Amendment) Act, 2005 — Penal Code, 1860 — S. 324* (Paras 16 to 19). *Mohd. Abdul Sufan Laskar* v. *State of Assam*, (2008) 9 SCC 333: (2008) 3 SCC (Cri) 770: (2008) 70 AIC 129 (SC).

Bench Strength 2. Coram: **C.K. Thakker** and *Dalveer Bhandari*, JJ. [Date of decision: 25-8-2008]

Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd., (2008) 2 SCC 305: (2008) 1 SCC (Cri) 351, relied on

— S. 320(2) *See also* Ss. 320(1), (2) & (8)

[3487] — S. 320(2) — Offence under S. 325 IPC allowed to be compounded on the basis of affidavit of the injured person in that regard — *But conviction and sentence under Ss. 120 and 121, Indian Railways Act, 1890 (9 of 1890) maintained — Penal Code, 1860 — S. 325*. *Abdul Sattar* v. *State of M.P.*, (1981) 3 SCC 73: 1981 SCC (Cri) 633: AIR 1981 SC 1775 (2): 1981 Cri LJ 1705(1).

Bench Strength 2. Coram: **A.D. Koshal** and *E.S. Venkataramiah*, JJ. [Date of decision: 27-3-1981]

[3488] — S. 320(2) — Offence committed by appellant under S. 324, IPC allowed to be compounded, having regard to his amicable settlement of dispute with the victims and desire of the parties to maintain good relations between them. *Shakil Ahmed* v. *State of U. P.*, 1988 Supp SCC 438: 1988 SCC (Cri) 863.

Bench Strength 2. Coram: *A.P. Sen* and *B.C. Ray*, JJ. [Date of decision: 21-9-1987]

[3489] — S. 320(2) — Offence under S. 324 IPC allowed to be compounded subject to payment of Rs 1000 each to the victims as compensation in view of the fact that parties were neighbours and wanted to bear good relations and maintain peace. *Nazidalishah* v. *State of M.P.*, 1988 Supp SCC 427: 1988 SCC (Cri) 853.

Bench Strength 2. Coram: *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision: 7-12-1987]

[3490] — S. 320(2) — Offence under S. 325 IPC allowed to be compounded all the more since the incident occurred between neighbours some 16 years back. *Ganga Prasad* v. *State of U.P.*, (1987) 2 SCC 232: 1987 SCC (Cri) 345.

Bench Strength 2. Coram: *G.L. Oza* and *M.M. Dutt*, JJ. [Date of decision: 23-1-1987]

[3491] — Ss. 320(2) and (5) — Offence under Ss. 324 r/w 325, IPC committed by accused-appellants allowed to be compounded. *Fahimuddin* v. *State of U.P.*, (1982) 2 SCC 174 (2): 1982 SCC (Cri) 378(2): AIR 1981 SC 2008(3).

Bench Strength 2. Coram: *R.S. Sarkaria* and *E.S. Venkataramiah*, JJ. [Date of decision: 15-1-1981]

[3492] — Ss. 320(2) [prior to coming into force of CrPC (Amendment) Act, 2005 w.e.f. 23-6- 2006] and (8) — Amendment not applicable to offences committed prior to 23-6-2006 — *Offence under S. 324 IPC, committed on 23-7-1986 i.e. prior to coming into effect of Amendment Act, 2005, held, compoundable with permission of court — Penal Code, 1860, S. 324 — Criminal Procedure Code (Amendment) Act, 2005, S. 28(a)* (Paras 5 to 7). *Hirabhai Jhaverbhai* v. *State of Gujarat*, (2010) 6 SCC 688.

Bench Strength 2. Coram : *J.M. Panchal* and *S.S. Nijjar*, JJ. [Date of decision : 9-4-2010]

[3493] — Ss. 320(2) & (8) and 386 — Permission to compound offence of S. 325, Indian Penal Code granted by Supreme Court under S. 320(2), Criminal Procedure Code resulting in acquittal of the accused for that offence in view of S. 320(8), Criminal Procedure Code — *Offence under S. 452, IPC being non- compoundable, conviction under that provision maintained but sentence reduced to the period already undergone. Rajinder Singh* v. *State (Delhi Admn.)*, 1980 Supp SCC 337: 1981 SCC (Cri) 277: AIR 1980 SC 1200.

Bench Strength 2. Coram: *N.L. Untwalia* and *P.N. Shinghal*, JJ. [Date of decision: 9-5-1980]

[3494] — Ss. 320(4)(a), 330(2), 335(1)(b) and 339 — Writ petition by third party as 'next friend' on ground that the person aggrieved was under a disability — *Writ petition challenging conviction and sentence of death awarded to two assassinators of Gen. Vaidya by Designated Court and confirmed by Supreme Court — Held, writ petition filed by a third party as a next friend, instead of the convicts themselves, not maintainable. Karamjeet Singh* v. *Union of India*, (1992) 4 SCC 666: 1993 SCC (Cri) 17: AIR 1993 SC 284.

Bench Strength 2. Coram: *A.M. Ahmadi* and *K. Ramaswamy*, JJ. [Date of decision: 8-10-1992]

[3495] — Ss. 320(4)(a), 330(2) r/w Ss. 335(1)(b) and 339 — Minority or insanity as grounds to waive usual rule for locus standi — PIL — Locus standi/Standing — Standing of third party to challenge the sentence and conviction (in this case the pending death sentence) — *Legal disability sufficient to permit relaxation of the general rule granting standing only to the aggrieved party — Whether a mere obsession based on religious belief or any other personal philosophy can be regarded as such a disability — Seriousness of consequences that may ensue from relaxation of the rule — Constitution of India, Arts. 32 and 21*

This petition under Article 32 of the Constitution was filed purportedly in public interest. The prayer in the writ petition was to the effect that the death sentence imposed on one *D* by the Sessions Court, affirmed by the Calcutta High Court and the Supreme Court, needed to be converted to a life sentence because there had been no execution of the death sentence for a long time.

According to the petitioner, he saw a news item on a TV channel wherein it was shown that the authorities were unaware of the non-execution of the death sentence and, therefore, the condemned prisoner, the accused, had suffered a great degree of mental torture and that itself was a ground for conversion of his death sentence to a life sentence on the basis of the ratio in *Triveniben case*, (1989) 1 SCC 678. It was noted that the prayer for conversion of death sentence to life sentence had already been turned down by the Governor of West Bengal and the President of India in February 1994 and June 1994 respectively.

Dismissing the petition,

Held :

Ordinarily, only the aggrieved party has the right to seek redress under Article 32. Unless the aggrieved party is a minor or insane or one who is suffering from any other disability which the law recognizes as sufficient to permit another person e.g. next friend, to move the court on his behalf, for example, see Sections 320(4)(*a*), 330(2) read with Sections 335(1)(*b*) and 339 CrPC, a third party would not be permitted to initiate proceedings under Article 32. (Para 30)

A mere obsession based on religious belief or any other personal philosophy cannot be regarded as a legal disability of the type recognized by the Code of 1973 or any other law, which would permit initiation of proceedings under Article 32 by a third party, be he a friend. It must be remembered that the repercussions of permitting such a third party to challenge the findings of the court can be serious e.g. any co-accused who may have been acquitted and whose acquittal may have been confirmed would run the risk of a fresh trial and a possible conviction. (Paras 30, 31, 33 and 34)

Neither under the provisions of the Code of 1973 nor under any other statute is a third-party stranger permitted to question the correctness of the conviction and sentence. It has not been shown as to how and in what manner the accused condemned prisoner is handicapped in not seeking relief, if any, as available in law. (Paras 34, 35 and 17). *Ashok Kumar Pandey* v. *State of W.B.*, (2004) 3 SCC 349: AIR 2004 SC 280.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-11-2003]

— **S. 320(5)** *See also* Ss. 320(2) and (5)

[3496] — S. 320(5) — Compounding of offence under S. 500 IPC — Defamation — *Compromise reached between parties and offence allowed to be compounded — Directions passed as to the payment of the settlement money. K. Kandasamy* v. *K.P.M.V.P. Chandrasekaran*, (2005) 4 SCC 349: 2005 SCC (Cri) 1024: AIR 2005 SC 2485: 2005 Cri LJ 2597.

Bench Strength **2**. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 26-4-2005]

— **S. 320(8)** *See* Ss. 320(1), (2) & (8)
See also Ss. 320(1), Table and 320(8)

[3497] — S. 320(9) — Compounding of non-compoundable offence — Non- compoundable offences falling outside the two tables in S. 320 — *Held, cannot be compounded even with the permission of the court — Conviction of first appellant for offence under S. 326 IPC which is non-compoundable — Considering the facts that the parties have come to a settlement and the accused has already undergone a period of imprisonment of about six months his sentence reduced to the period already undergone — Second appellant who was convicted under S. 324 IPC permitted to compound the offence*

Section 320 which deals with "compounding of offences" provides two Tables therein, one containing descriptions of offences which can be compounded by the person mentioned in it, and the other containing descriptions of offences which can be compounded with the permission of the court by the persons indicated therein. Only such offences as are included in the said two Tables can be compounded and none else. Sub-section (9) of Section 320 of the Code of Criminal Procedure, 1973 imposes a legislative ban on compounding except as provided in the section. *Ram Lal* v. *State of J&K*, (1999) 2 SCC 213: 1999 SCC (Cri) 123: AIR 1999 SC 895: 1999 Cri LJ 1342.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 25-1-1999]

Y. Suresh Babu v. State of A.P., JT (1987) 2 SC 361; Mahesh Chand v. State of Rajasthan, 1990 Supp SCC 681: 1991 SCC (Cri) 159, held, per incuriam

[3498] — S. 320(9) — Compounding of non-compoundable offence — Not permissible — Offence under S. 326 IPC — *Considering the fact that parties have settled their dispute and 10 years have elapsed from the date of the incident and further fact that the appellants have already undergone 3 months' imprisonment, sentence reduced to the period already undergone with fine of Rs 5000 on each accused. Surendra Nath Mohanty* v. *State of Orissa*, (1999) 5 SCC 238: 1999 SCC (Cri) 998: AIR 1999 SC 2181: 1999 Cri LJ 3496.

Bench Strength **3**. Coram: *K.T. Thomas*, **M.B. Shah** and *D.P. Mohapatra*, JJ. [Date of decision: 4-5-1999]

Ram Lal v. State of J&K, (1999) 2 SCC 213: 1999 SCC (Cri) 123, followed

Ram Pujan v. State of U.P., (1973) 2 SCC 456: 1973 SCC (Cri) 870; Mahesh Chand v. State of Rajasthan, 1990 Supp SCC 681: 1991 SCC (Cri) 159, overruled

Y. Suresh Babu v. State of A.P., JT (1987) 2 SC 361, held per incuriam

***See also** Bankat v. State of Maharashtra, (2005) 1 SCC 343*

[3499] — S. 320(9) — Compounding of offence — Offence under S. 326 IPC, held, not compoundable — *High Court rightly refused to grant permission to compound the same — Penal Code, 1860 — S. 326*

Sub-section (9) of Section 320 specifically provides that "no offence shall be compounded except as provided by this section". In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 provided under Section 320 can be compounded and the rest of the offences punishable under IPC cannot be compounded. (Para 11). *Bankat* v. *State of Maharashtra*, (2005) 1 SCC 343: 2005 SCC (Cri) 316: AIR 2005 SC 368: 2005 Cri LJ 646: (2005) 2 Mah LJ 707.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 25-11-2004]

Ram Lal v. State of J&K, (1999) 2 SCC 213: 1999 SCC (Cri) 123; Surendra Nath Mohanty v. State of Orissa, (1999) 5 SCC 238: 1999 SCC (Cri) 998, followed

Mahesh Chand v. State of Rajasthan, 1990 Supp SCC 681: 1991 SCC (Cri) 159; Y. Suresh Babu v. State of A.P., (2005) 1 SCC 347, held, per incuriam

Ram Pujan v. State of U.P., (1973) 2 SCC 456: 1973 SCC (Cri) 870, distinguished

***Distinguished in** Dhananjay v. State of Bihar, (2007) 14 SCC 768*

[3500] — S. 320(9) — Compounding of offence under Acts other than IPC — Complaint under — Compromise — Relief — *Complaint for dishonour of cheque culminating in sentence of six months' simple imprisonment — Thereafter, parties reaching a compromise and the convict paying a certain amount in full and final settlement to the complainant who receiving the same — Receipt filed before Supreme Court and complainant raising no objection to dismissal of the complaint or modification of the sentence — In such circumstances, Supreme Court commuting the sentence of six months' imprisonment to one of a fine of Rs 1000 — Negotiable Instruments Act, 1881 — S. 138* (Paras 4 and 3). *Sivasankaran* v. *State of Kerala*, (2002) 8 SCC 164: 2002 SCC (Cri) 1872.

Bench Strength **3**. Coram: *B.N. Kirpal*, C.J. and *K.G. Balakrishnan* and *Arijit Pasayat*, JJ. [Date of decision: 5-8-2002]

[3501] — **S. 320(9) — Applicability of principles of administrative law to criminal jurisprudence** — *Power conferred by criminal law should not be absolute, unfettered and uncanalised*

Per Bhagwati, C.J.

The entire development of administrative law is characterised by a consistent series of decisions controlling and structuring the discretion conferred on the State and its officers. The law always frowns on uncanalised and unfettered discretion conferred on any instrumentality of the State and it is the glory of administrative law that such discretion has been through judicial decisions structured and regulated. This Court has therefore, despite fluctuating opinions delivered in different cases, laid down the broad principle and consistently acted upon it, namely, that the power to apply for withdrawal from the prosecution can be exercised only in furtherance of justice. *Sheonandan Paswan* v. *State of Bihar,* (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

— S. 321 *See also* S. 494, Criminal Procedure Code, 1898, pp. 1268 et seq. in Vol. 2

— S. 321 *See* Ss. 24, 25 and 321
See also Ss. 24, 225 and 321
See also Ss. 24 and 321
See also Ss. 307 and 321
See also Ss. 320 and 321
See also Ss. 397, 401 and 321
See also Ss. 452, 457 and 321
See also Ss. 482 and 321

[3502] — **S. 321 — Misappropriation of public funds by appellant (an MLA) — State trying to protect appellant from being prosecuted under Ss. 420, 463, 468 and 471 r/w S. 120-B IPC, by issuing consecutive G.Os. and tampering with course of justice by getting filed consecutive petitions to withdraw prosecution under S. 321 CrPC — Impropriety** — *Respondents 3 and 4 herein levelling charges of misappropriation of public funds against appellant on premise that he obtained huge amount on basis of false and fabricated medical bills — Appellant, being an MLA, matter referred to Ethics Committee of State Legislature, which accepted apology tendered by him and having regard to the fact that amount was refunded by him to Government, recommended for withdrawal of the criminal case — State issuing G.O. for directions to Public Prosecutor to withdraw case — Application filed under S. 321 CrPC by Public Prosecutor for withdrawal of case, rejected — Revisions filed thereagainst by State and appellant, dismissed, while writ of Respondents 3 and 4 allowed by High Court — Sustainability — Held, Ethics Committee was empowered to deal with disciplinary action — So criminal case against an MLA, ordinarily, should be allowed to be continued on its own merit — Action of State on basis of recommendations of Ethics Committee, vitiated in law — Recommendations being unauthorised, action of State would attract doctrine of malice in law — Even otherwise, action of State suffers from malice on fact as well — State being protector of law, when it deals with a public fund, it must act in terms of procedure established by law — In respect of public fund, doctrine of public trust would also be applicable so far as State and its officers are concerned — Herein, State was not acting in public interest — It showed unusual interest in appellant, which is not expected of an executive which believes in good governance — Therefore, impugned judgment, held, unassailable — However, clarified that High Court committed error in entering into merit of the matter — In the circumstances, Magistrate directed to proceed with the matter independently — Also, in the peculiar facts and circumstances of instant case, State directed to pay Rs 1,00,000 to State Legal Services Authority — Penal Code, 1860, Ss. 420, 463, 468 and 471 r/w S. 120-B — Prevention of Corruption Act, 1988, S. 13*

Dismissing the appeals,

Held :

The Ethics Committee of the legislature of the State was empowered to deal with the disciplinary action or otherwise which may be taken against the Members of the Legislative Assembly. A criminal case against a Member of the Legislative Assembly, ordinarily, should be allowed to be continued on its own merit, particularly, in the light of the facts of the present matter wherein the High Court had refused to interfere at the earlier stages of the proceedings. The High Court, in fact, had not only been monitoring the investigation, but also directed the trial court to complete the trial within a period of three months. The action on the part of the State to issue the said government order despite the earlier orders of the High Court must be considered keeping in view the said factual matrix. (Para 15)

The government order was issued even according to the State in terms of the recommendations made by the Ethics Committee alone. The Ethics Committee had no jurisdiction to make such recommendations. If the State had acted on the basis of recommendations made by a body who had no role to play, its action would be vitiated in law. The recommendations of the Ethics Committee being unauthorised, the action of the State would attract the doctrine of malice in law. (Para 18)

Even otherwise, the action on the part of the State suffers from malice on fact as well. The State is the protector of law. When it deals with a public fund, it must act in terms of the procedure established by law. In respect of public fund, the doctrine of public trust would also be applicable so far as the State and its officers are concerned. It could not, save and except very strong and cogent reasons, have issued the said government order despite the orders of the High Court. (Para 19)

The State was not acting in public interest but in private interest. The State has shown unusual interest in the appellant which is not expected of an executive which believes in good governance. It is really a matter of great surprise that the State independently filed a revision application before the High Court. It did not stop at that. It has also filed a special leave petition before the Supreme Court against the judgment of the High Court. The Supreme Court has times without number noticed the unusual interest shown and unusual orders passed by the State Governments to protect its own Ministers and Members of Legislative Assembly. (Para 20)

Therefore, the impugned judgment is unassailable. However, there cannot be any doubt whatsoever that the High Court committed an error in entering into the merit of the matter. It is directed that the Magistrate shall proceed to deal with the matter independently. However, in the peculiar facts and circumstances of this case, the State is directed to pay a sum of Rs 1,00,000 to the State Legal Services Authority. (Paras 21 and 22). *Yerneni Raja Ramchandar* v. *State of A.P.*, (2009) 15 SCC 604: (2009) 81 AIC 107 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 4-8-2009]

Govt. Branch Press v. D.B. Belliappa, (1979) 1 SCC 477: 1979 SCC (L&S) 39; M.P. State Coop. Dairy Federation Ltd. v. Rajnesh Kumar Jamindar, (2009) 15 SCC 221; Swaran Singh Chand v. Punjab SEB, (2009) 13 SCC 758; Epuru Sudhakar v. Govt. of A.P., (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438; M.P. Special Police Establishment v. State of M.P., (2004) 8 SCC 788: 2005 SCC (Cri) 1; Vijaykumar Baldev Mishra v. State of Maharashtra, (2007) 12 SCC 687: (2008) 3 SCC (Cri) 362, relied on

[3503] — S. 321 — Permission to withdraw from prosecution — When should not be refused — *CrPC, 1898 — S. 494*

As a part of an overall settlement between the Central Government and the employees of the P & T Department, the State Government took a policy decision that in all cases which did not involve acts of serious personal violence or material destruction of State property, the prosecutions against the employees of the P & T Department who went on one day's token strike should be withdrawn. The applications under S. 494, CrPC, 1898 moved by the Public Prosecutor in accordance therewith were allowed by the Magistrates and the respondent-employees were acquitted. But the High Court set aside the orders of acquittal. Allowing the appeals Supreme Court,

Held :

It would certainly not subserve the interests of justice to direct retrial of the respondents despite the settlement arrived at, after a lapse of nearly 18 years. Such a course would give rise to unnecessary industrial unrest for no reason whatever.

The Public Prosecutor may withdraw from the prosecution of a case not merely on the ground of paucity of evidence but also in order to further the broad ends of public justice which may include appropriate social, economic and political purposes. The ultimate guiding consideration while granting a permission to withdraw from the prosecution must always be the interest of administration of justice. The court must satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. *State of Punjab* v. *Union of India*, (1986) 4 SCC 335: 1986 SCC (Cri) 441: AIR 1987 SC 188.

Bench Strength **2**. Coram: *A.P. Sen* and *B.C. Ray*, JJ. [Date of decision: 24-9-1986]

[3504] — S. 321 — Discretion of court in granting consent for withdrawal from prosecution — Nature of — *How to be exercised*

Per Khalid and Natarajan, JJ.

Having regard to the provisions of Ss. 493 and 333 of the old Code, the difference in scheme between Ss. 203, 227, 254, 257 and 258 and S. 321 of the new Code and taking colour from the immediately proceeding S. 320, it is clear that the court while granting or refusing consent under S. 321 performs supervisory and not adjudicatory function. It is not necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal. The acquittal or discharge orders under S. 321 are not the same as the normal final orders in criminal cases. The conclusion will not be backed by a detailed discussion of the evidence in the case of acquittal or absence of prima facie case or groundlessness in the case of discharge. All that the court has to see is whether the application is made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law. The court, after considering these facets of the case, will have to see whether the application suffers from such improprieties or illegalities as to cause manifest injustice if consent is given. The section should not be construed to mean that the court has to give a detailed reasoned order when it gives consent. If on a reading of the order giving consent, a higher court is satisfied that such consent was given on an overall consideration of the materials available, the order giving consent has necessarily to be upheld.

Per Venkataramiah, J.

I respectfully agree with the legal position flowing from S. 321 as explained in *Rajender Kumar Jain case* [(1980) 3 SCC 435].

Per Bhagwati, C.J. and Oza, J. (minority view)

The function which the court exercises in arriving at its decision as to whether to grant consent to withdrawal from prosecution or not, is a judicial function. The Court has to exercise its judicial discretion with reference to such material as is then available to it and has to satisfy itself not only that the grounds are germane or relevant to the advancement of public justice but also whether the grounds in fact are satisfactorily established. The ultimate test which must be applied by the court in order to determine the validity of the grounds in a particular case is that the requirement of public justice outweighs the legal justice of that case so that withdrawal from the prosecution could be permitted in the large interest of public justice. It is however, not possible to provide an exclusive definition of what may be regarded as falling within the imperative of public justice nor is it possible to place the concept of public justice in a strait-jacket formula. Some of those grounds which bring the case within the rubric of public justice have already been indicated.

The discretion has not to be exercised by the court mechanically and the consent applied for has not to be granted as a matter of formality or for the mere asking. The court must not accept the ipse dixit of the Public Prosecutor and content itself by merely examining whether the Public Prosecutor has applied an independent mind. The same considerations which are applicable while determining what are the legitimate grounds on which an application may be made by the Public Prosecutor for withdrawal from the prosecution must also apply in guiding the court as to whether consent for withdrawal of the prosecution should be granted or not. Every case must depend on its peculiar facts and circumstances. The paramount consideration must be the requirement of public justice. *Sheonandan Paswan* v. *State of Bihar,* (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[3505] — S. 321 — Nature and scope of, discussed

Per Dalveer Bhandari, J. (concurring)

While Section 321 CrPC *itself* does not apply to POTA, the principle of judicial review embodied therein does. In other words, Section 321 CrPC is a codified version of judicial review. At the trial court level, Section 321 CrPC ensures that the judiciary makes the final decision by approving the Public Prosecutor's decision to withdraw a case. Even if Section 321 CrPC is made inapplicable by a special law like POTA (Repeal), 2004 or POTA, 2002, judicial review still applies. Section 321 CrPC is a general provision that can be subjected to special laws. (Paras 65 and 63). *Mahmadhusen Abdulrahim Kalota Shaikh (2)* v. *Union of India,* (2009) 2 SCC 1.

Bench Strength 3. Coram: **K.G. Balakrishnan, C.J.**[1] and *R.V. Raveendran*[1] and **Dalveer Bhandari**[2], JJ. [Date of decision: 21-10-2008]

[3506] — S. 321 — Grounds for seeking court's consent for withdrawal from prosecution

Per Khalid and Natarajan, JJ.

Section 321 clothes the Public Prosecutor to withdrawal from the prosecution of any person, accused of an offence both when no evidence is taken or even if entire evidence has been taken. The outer limit for the exercise of this power is "at any time before the judgment is pronounced".

The section gives no indication as to the grounds on which the Public Prosecutor may make the application, or the considerations on which the court is to grant its consent.

Since S. 321 does not give any guidelines regarding the grounds on which a withdrawal application can be made, such guidelines have to be ascertained with reference to decided cases under this section as well as its predecessor S. 494.

In the judgments rendered by various High Courts, public policy, interests of the administration, inexpediency to proceed with the prosecution for reasons of State and paucity of evidence were considered good grounds for withdrawal in many cases and not good grounds for withdrawal in certain other cases depending upon the peculiar facts and circumstances of the cases in those decisions.

Ram Naresh Pandey case (AIR 1957 SC 389) is a landmark case which has laid down the law on the point with precision and certainty. In this decision the functions of the court and the Public Prosecutor have been correctly outlined. While discussing the role of the court, this Court observed:

"His discretion in such matters has necessarily to be exercised with reference to such material as is by then available and it is not a prima facie judicial determination of any specific issue. The Magistrate's functions in these matters are not only supplementary, at a higher level, to those of the executive but are intended to prevent abuse. Section 494 requiring the consent of the court for withdrawal by the Public Prosecutor is more in line with this scheme, than with the provisions of the Code relating to inquiries and trials by court. It cannot be taken to place on the court the responsibility for a prima facie determination of a triable issue. For instance the discharge that results therefrom need not always conform to the standard of "no prima facie case" under Ss. 209(1) and 253(1) or of 'groundlessness' under Ss. 209(2) and 253(2). This is not to say that a consent is to be lightly given on the application of the Public Prosecutor, without a careful and proper scrutiny of the grounds on which the application for consent is made."

This decision was approved by this Court in *M.N. Sankarayarayanan Nair* v. *P.V. Balakrishnan*, [(1972) 1 SCC 318: (1972) 2 SCR 599] as is seen at page 606: (SCC p. 324, para 7)

"In the *State of Bihar* v. *Ram Naresh Pandey* it was pointed out by this Court that though the section does not give any indication as to the ground on which the Public Prosecutor may make an application on the consideration of which the court is to grant its consent, it must nonetheless satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised and that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes."

Per Vankataramiah, J.

There is no need to differ from the legal position expounded in *Ram Naresh Pandey* and *Rajender Kumar Jain* [(1980) 3 SCC 435] *cases.*

Chinnappa Reddy, J. has summarised the true legal position thus: (SCC p. 445, paras 14 and 15)

(1) Under the scheme of the Code prosecution of an offender for a serious offence is primarily the responsibility of the executive.

(2) The withdrawal from the prosecution is an executive function of the Public Prosecutor.

(3) The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.

(4) The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.

(5) The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, we add political purposes sans Tammary Hall enterprises.

(6) The Public Prosecutor is an officer of the court and responsible to the court.

(7) The court performs a supervisory function in granting its consent to the withdrawal.

(8) The court's duty is not to reappreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution.

We may add it shall be the duty of the Public Prosecutor to inform the court and it shall be the duty of the court to apprise itself of the reasons which prompt the Public Prosecutor to withdraw from the prosecution. The court has a responsibility and a stake in the administration of criminal justice and so has the Public Prosecutor, its 'Minister of Justice'. Both have a duty to protect the administration of criminal justice against possible abuse or misuse by the executive by resort to the provisions of S. 321, Criminal Procedure Code. The independence of the judiciary requires that once the case has travelled to the court, the court and its officers alone must have control over the case and decide what is to be done in each case.

Per Bhagwati, C.J. and Oza, J.

The paramount consideration must always be the interest of administration of justice. That is the touchstone on which the question must be determined whether an application for withdrawal of the prosecution can be sustained. Supreme Court tried to formulate several instances where the cause of public justice would be served better by withdrawal from the prosecution. It was observed by Supreme Court in *M.N. Sankarayarayanan* v. *P.V. Balakrishnan* that an application for withdrawal from the prosecution may be made on the ground that (SCC p. 332, para 5) " it will not be possible to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstance which it is difficult to predicate as they are dependent entirely on the facts and circumstances of each case". The Court also pointed out in *State of Orissa* v. *C. Mohapatra* [(1976) 4 SCC 250] that (SCC p. 253, para 6) "it is not sufficient for the Public Prosecutor merely to say that it is not expedient to proceed with the prosecution. He has to make out some ground which would show that the prosecution is sought to be withdrawn because inter alia the prosecution may not be able to produce sufficient evidence to sustain the charge or that the prosecution does not appear to be well founded or that there are other circumstances which clearly show that the object of administration of justice would not be advanced or furthered by going on with the prosecution". It was also emphasised by the Court in *Subhash Chandra* v. *State* that justice cannot be allowed to be scuttled by the Public Prosecutor or the State "because of hubris, affection or other noble or ignoble considerations". (SCC pp. 158-59, para 4). The Court also observed in *Rajender Kumar Jain* v. *State*: (SCC pp. 445-56, para 16)

"In the past, we have often known how expedient and necessary it is in the public interest for the Public Prosecutor to withdraw from prosecutions arising out of mass agitations, communal riots, regional disputes, industrial conflicts, student unrest etc. Wherever issues involve the emotions and there is a surcharge of violence in the atmosphere it has often been found necessary to withdraw from prosecutions in order to restore peace, to free the atmosphere from the surcharge of violence, to bring about a peaceful settlement of issues and to preserve the calm which may follow the storm. To persist with prosecutions where emotive issues are involved in the name of vindicating the law may even be utterly counter-productive. An elected government, sensitive and responsive to the feelings and emotions of the people, will be amply justified if for the purpose of creating an atmosphere of goodwill or for the purpose of not disturbing a calm which has descended it decides not to prosecute the offenders involved or not to proceed further with prosecution already launched."

It will thus be seen that the Public Prosecutor cannot maintain an application for withdrawal from the prosecution on the ground that the government does not want to produce evidence and proceed with the prosecution against the accused or that the government considers that it is not expedient to proceed with the prosecution. The Public Prosecutor has to make out some ground which would advance or further the cause of public justice. If the Public Prosecutor is able to show that he may not be able to produce sufficient evidence to sustain the charge, an application for withdrawal from the prosecution may be legitimately made by him.

Ultimately every offence has a social or economic cause behind it and if the State feels that the elimination or eradication of the social or economic cause of the crime would be better served by not proceeding with the prosecution, the State should clearly be at liberty to withdraw from the prosecution. There may be broader considerations of public peace, large considerations of public justice and even deeper considerations of promotion of long lasting security in a locality, of order in a disorderly situation or harmony in a factitious milieu which may legitimately persuade the State to "sacrifice a pending case for a wider benefit". The imperative of public justice may in such cases transcend and overflow the legal justice of a particular litigation. These are broadly the considerations which can be brought under the rubric of public justice so as to justify an application for withdrawal from prosecution. But, in this area no hard and fast rule can be laid down nor can any categories of cases be defined in which an application for withdrawal of the prosecution could legitimately be made. It must ultimately depend on the facts and circumstances of each case in the light of what is necessary in order to promote the ends of justice. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength **5**. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

State of Bihar v. Ram Naresh Pandey, 1957 SCR 279, AIR 1957 SC 389: 1957 Cri LJ 567, affirmed

[3507] — S. 321 — Grounds for withdrawal under — Political offence is only one of the grounds — *No distinction between political and common law offences can be made by trial court while according or refusing consent*

Per Baharul Islam, J.

The object of S. 321, CrPC appears to be to reserve power to the Executive Government to withdraw any criminal case on larger grounds of public policy such as inexpediency of prosecutions for reasons of State; broader public interest like maintenance of law and order; maintenance of public peace and harmony, social economic and political; changed social and political situation; avoidance of destabilization of a stable government and the like. And such powers have been rightly reserved for the Government; for, the Government is in the know of such conditions and situations prevailing in a State or in the country. The Court is not in a position to know such situations.

Section 321 has not dichotomised into common law offences and political offences. Offences relating to security of State cannot be said to be less serious corruption. Therefore, the view that the common law offences cannot be permitted to be withdrawn from the prosecution while the political offences can be so withdrawn is not acceptable.

Per Misra, J. (concurring)

Withdrawal from prosecution cannot be said to be permissible only in political offences and not in common law offences. Section 321 is not confined only to political offences or social offences, but it applies to all kinds of offences and the application for withdrawal can be made by the Public Prosecutor on various grounds, in order to further broad on aims of justice, public order and peace. Broad aims of public justice will certainly include appropriate social, economic and political purposes. The only guiding factor which should weigh with the Public Prosecutor while moving the application for withdrawal and the court according its permission for withdrawal is to see whether the interest of public justice is advanced and the application for withdrawal is not moved with oblique motive unconnected with the vindication of cause of public justice.

To say that unless the crime allegedly committed are per se political offences or are motivated by political ambition or consideration or are committed during mass agitation, communal frenzies, regional disputes, no question of serving a broader cause of public justice, public order or peace can arise is to put limitation on the broad terms of S. 321 of the Code.

The Public Prosecutor was of the view that as a result of election there was a change in the situation inasmuch as respondent 2's party received the people's mandate and voted to power and respondent 2 had become the Chief Minister of the State and that the prosecution against the head of the State would have had adverse effect on public interest, including public order and peace and, therefore, he thought it inexpedient for reasons of State and public policy to proceed with the case. It is the Public Prosecutor who has been given the exclusive power to apply for withdrawal and if he in his discretion thinks that it would be inexpedient to proceed with the case the court cannot reconsider the matter afresh and come to its own conclusion different from the one taken by the Public Prosecutor unless the court comes to a conclusion that the Public Prosecutor has done so with an improper or oblique motive.

Per Tulzapurkar, J. (dissenting)

There is as such no dichotomy between political offences or the like on the one hand and common law crimes on the other for purposes of S. 321. But unless the crimes in question are per se political offences like sedition or are motivated by political considerations or are committed during or are followed by mass agitations, communal frenzies, regional disputes, industrial conflicts, student unrest or the like situations involving emotive issues giving rise to an atmosphere surcharged with violence, no question of serving any broader cause of public justice, public order or peace would arise and in the absence thereof the public interest of administering criminal justice in a given case cannot be permitted to be sacrificed, particularly when a highly placed person is allegedly involved in the crime, as otherwise the common man's faith in a the rule of law and democratic values would be shattered. In case of conflict between the broader cause of public justice, public order and peace and the public interest of administering criminal justice in a particular litigation the narrower public interest should yield to the broader public interest, and therefore, an onerous duty is cast upon the court to weigh and decide which public interest should prevail in each case while granting or refusing to grant its consent to the withdrawal from the prosecution.

Victory at the elections by an accused has no relevance to the prosecution of common law crimes such as bribery and forgery especially when such offences were not actuated by any political motivation nor had been committed in or followed by any explosive situation involving an emotive issue. Election victory cannot be construed as condonation or compounding of common law offences by the people. The argument that the accused is now well placed in government and his prosecution would destabilise the government is misplaced. On the other hand non-prosecution of such a person is bound to affect the common man's faith in the rule of law and administration of justice. In the present case no political or personal vendetta is involved. *Sheonandan Paswan* v. *State of Bihar*, (1983) 1 SCC 438: 1983 SCC (Cri) 224: AIR 1983 SC 194: 1983 Cri LJ 348.

Bench Strength 3. Coram: **V.D. Tulzapurkar**[1], **Baharul Islam**[2] and **R.B. Misra**[3], JJ. [Date of decision: 16-12-1982]

[3508] — S. 321 — Political vendetta in opposing grant of consent for withdrawal of prosecution — *Whether an independent ground for not interfering with the consent to withdraw — What if such consent otherwise unjustified and illegal*

Per Bhagwati, C.J. and Oza, J.

Even if such political vendetta is proved, a criminal prosecution, if otherwise justifiable and based upon adequate evidence, does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant. The same principle must apply where a person is opposing withdrawal of prosecution against an accused. His political motivation or vendetta cannot justify grant of consent for withdrawal if otherwise it is not legitimate or justified.

Per Khalid and Natarajan, JJ.

The appellant was admittedly a political rival of the accused. There was no love lost between them. It was at the instance of such a highly interested person that Supreme Court was called upon to direct retrial of the case, setting aside the consent given by the Special Judge. Viewed against this background, it would not advance either the interest of justice or public interest, on the unsatisfactory factual details of the case, to accept the appeal and direct retrial. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[3509] — S. 321 — Inadequacy of evidence as a ground for withdrawal from prosecution — *On facts, whether a prima facie case existed on the basis of the evidence on record to vitiate the withdrawal*

Per Baharul Islam, J.

Paucity of evidence is only one of the grounds of withdrawal and merely because there is a triable case the court cannot be said to have erred in according its consent to the withdrawal. The recognised grounds for withdrawal have been laid down in earlier cases.

Per Misra, J.

It is not the function of the court to make a fresh appraisal of the evidence and come to its own conclusion on the question whether there is a triable issue to be investigated by the Court.

The ground of lack of prospect of a successful prosecution in the light of evidence, stated in the application for withdrawal from the case is sustainable on the facts of the case as it is clear from the material on record that a prima facie case under S. 5(1)(*d*) of the Prevention of Corruption Act and of forgery under S. 466, IPC are not made out.

Per Tulzapurkar, J. (dissenting)

When paucity of evidence or lack of prospect of successful prosecution is the ground for withdrawal, Supreme Court must of necessity examine the material on record in order to determine the validity or propriety of the ground adduced. *Sheonandan Paswan* v. *State of Bihar*, (1983) 1 SCC 438: 1983 SCC (Cri) 224: AIR 1983 SC 194: 1983 Cri LJ 348.

Bench Strength 3. Coram: **V.D. Tulzapurkar**[1], **Baharul Islam**[2] and **R.B. Misra**[3], JJ. [Date of decision: 16-12-1982]

[3510] — S. 321 — Ingredients of

Per Khalid, J.

Section 321 needs three requisites to make an order under it valid ; (1) The application should be filed by a Public Prosecutor or Assistant Public Prosecutor who is competent to make an application for withdrawal, (2) He must be in charge of the case, (3) The application should get the consent of the court before which the case is pending. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[3511] — S. 321 — Limits of power of Public Prosecutor under — Applicability of principles of administrative law in construing — *Constitution of India, Article 14*

Per Bhagwati, C.J. and Oza, J.

While conferring power on the Public Prosecutor to withdraw from prosecution under S. 321, the legislature has followed the same scheme as underlies Ch. XII of the Code. The power is not absolute and unrestricted. It has to be a controlled and guided power or else it will fall foul of Art. 14. The power can be exercised only with the consent of the court so that the court can ensure that the power is not abused or misused or exercised in an arbitrary or fanciful manner. Once prosecution is launched its relentless course cannot be halted except on sound considerations germane to public justice and it is not left to the sweet will of the State or the Public Prosecutor to withdraw from the prosecution. Further, the Public Prosecutor can apply for withdrawal only on the basis of certain legitimate grounds which are germane or relevant to public justice. It is significant to note that the entire development of administrative law is characterised by a consistent series of decisions controlling and structuring the discretion conferred on the State and its officers. The law always frowns on uncanalised and unfettered discretion conferred on any instrumentality of the State and it is the glory of administrative law that such discretion has been through judicial decisions structured and regulated. Hence the grounds for withdrawal must be relatable to furtherance of public justice.

Per Khalid and Natarajan, JJ.

The discretion given to the Public Prosecutor by S. 321 is less plenary and is made subject to one limitation and that is the consent of the court before which the prosecution is pending.

Per Venkataramiah, J.

It is difficult to construe S. 321 in the light of the principles of administrative law. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[3512] — S. 321 — Only PP or APP is authorised to withdraw from the prosecution with the consent of the court — *Withdrawal is justified only if based on pertinent considerations and actual application of mind by the PP or APP — District Magistrate or Minister has no authority to interfere is this matter — On facts, the withdrawal moved by the APP, held, justified*

In the present case, there is no evidence to support the allegation of political influence. When deciding whether or not to withdraw from the prosecution, it was for the APP to consider whether the second investigation of the case on the executive side, which led to the discovery that the earlier investigation was motivated, was vitiated by the omission to question the first informant. Secondly the APP had applied his mind to the disclosures emerging from the second enquiry.

Therefore, on facts the courts below were justified in accepting the APP's move for withdrawal from the prosecution . *Subhash Chander* v. *State (Chandigarh Admn.)*, (1980) 2 SCC 155: 1980 SCC (Cri) 376: AIR 1980 SC 423: 1980 Cri LJ 324: 1980 MLJ (Cri) 423.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *R.S. Pathak*, JJ. [Date of decision: 15-11-1979]

[3513] — S. 321 — Permission to withdraw special leave petition, if sought without furnishing any reason or on the basis of frivolous reasons, held, liable to be refused by Court

That the case was not a fit one for granting special leave or that on a reconsideration of the matter Government decided to withdraw the special leave petition are not convincing reasons on the basis of which the Court can grant permission to withdraw the special leave petition. Was the State unaware of the nature and extent of the jurisdiction under Art. 136? Why did the Government reconsider the matter and what were the reasons which impelled the Government to change its mind? Were there any supervening circumstances? Did any fresh facts come to light? Did the Government move at the instance of somebody? Was any legal opinion taken? An affidavit should be filed in the Court explaining these circumstances.

In the present case it can be presumed that the grounds were prepared on instructions and with a sense of responsibility and legal advisers were consulted before the special leave petition was filed. If so, withdrawal of the special leave petition at this state, without stating why it is being withdrawn now, would be a waste of public time and money. *State of A.P.* v. *P. Anjaneyulu*, (1984) 2 SCC 445: 1984 SCC (Cri) 269: AIR 1982 SC 1598.

Bench Strength 2. Coram: *O. Chinnappa Reddy* and *V. Balakrishna Eradi*, JJ. [Date of decision: 2-11-1982]

[**Ed.**: See *Jagannath Misra case*, (1983) 1 SCC 438 on the question of scope of court's power in the matter of grant or refusal of application for withdrawal from prosecution filed under S. 321, Criminal Procedure Code and Supreme Court's power of interference under Art. 136.]

[3514] — S. 321 — Permitting public prosecutor to withdraw the case after committal to Court of Session and before filing of evidence, held, on facts, to be improper in the absence of any justification whatsoever — Criteria for withdrawal restated

A case under Ss. 147, 148, 302, 342 and 149 IPC was registered against five persons and case committed to the Court of Session and charges framed. The public prosecutor then presented an application for withdrawal of the case against two of the accused on the ground that the prosecution "does not want to produce evidence and continue the criminal proceedings" against those accused. The Additional Sessions Judge allowed the application for the mere asking. Revision application against the withdrawal was dismissed in limine by the High Court. Hence the appeal by special leave.

Held :

Under S. 321 the essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice. (Para 4)

The request to grant permission under S. 494 should not be accepted "as a necessary formality", "for the mere asking", but the court must be satisfied "on the materials placed before it" that the grant of permission would serve the administration of justice and that permission was not being sought covertly with an ulterior purpose unconnected with the vindication of the law which the executive organs are in duty bound to further and maintain. (Para 4) . *Bansi Lal* v. *Chandan Lal*, (1976) 1 SCC 421: 1976 SCC (Cri) 39: AIR 1976 SC 370: 1976 Cri LJ 328.

Bench Strength **2**. Coram: *Y.V. Chandrachud* and **A.C. Gupta**, JJ. [Date of decision: 5-12-1975]

[3515] — S. 321 — Power under, held, not confined only to court empowered to discharge or acquit the accused but extends to committing court also — *"Judgment" — Meaning of*

The power to discharge or acquit the accused under S. 321 is itself a special power conferred on the court before whom a prosecution is pending and is to be exercised by the Court independently of its power of enquiry into the offence or to try the accused. It is, therefore, not proper to say that only the court competent to discharge or acquit the accused under some other provision of the Code can exercise the power under S. 321. The expression 'judgment' in the section may in the context be understood to mean the judgment which may be ultimately pronounced if the case were to be committed to a Court of Session. Moreover, it cannot be said that the Committing Magistrate has no judicial function to perform under the Code. *Rajender Kumar Jain* v. *State*, (1980) 3 SCC 435: 1980 SCC (Cri) 757: AIR 1980 SC 1510: 1980 Cri LJ 1084: (1980) 17 ACC 201.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and **O. Chinnappa Reddy**, JJ. [Date of decision: 2-5-1980]

[3516] — S. 321 — Public Prosecutor — His role and autonomy — *Whether should act solely on the advice of the Government — Whether can satisfy himself on the legitimacy of the grounds — Alternatives open to him pointed out*

Per Bhagwati, C.J. and Oza, J.

Previous decisions of the Supreme Court present a confused picture regarding the degree of autonomy enjoyed by the Public Prosecutor vis-à-vis the Government under S. 321. Hence the need to approach the question on first principles.

Prosecution of an alleged offender is primarily the responsibility of the State which through the investigating authorities files charge-sheet and initiates prosecution. Therefore, the Government has to take a decision to withdraw from the prosecution and communicate such direction to the Public Prosecutor. The Public Prosecutor would inter alia consider the grounds on which the Government has taken the decision to withdraw from the prosecution and if he is satisfied that those grounds are legitimate, he may file an application for withdrawal from the prosecution. If on the other hand he takes the view that the grounds which have been given by the Government are not legitimate he has two options available to him. He may inform the Government that in his opinion, the grounds which have weighed with the Government are not valid and that he should be relieved from the case and if this request of his is not granted, he may tender his resignation. Or else, he may make an application for withdrawal from the prosecution as directed by the Government and at the hearing of the application he may offer his considered view to the court that the application is not sustainable on the grounds set out by him and leave it to the court to reject the application. Therefore an application made by the Public Prosecutor at the behest of the Government is not necessarily vitiated.

The Public Prosecutor can of course come to his own independent decision that the prosecution should be withdrawn and if in that event he seeks the permission of the Government for withdrawal from the prosecution and the Government grants such permission to him and on the basis of such permission he applies for withdrawal the application cannot be said to be vitiated. There is no danger of abuse or misuse of power by the Government inherent in this process because there are two principal safeguards against any such abuse or misuse of power by the Government; one is that the application must be based on grounds which advance public justice and the other is that there can be no withdrawal without the consent of the court.

Per Venkataramiah, J.

There is no need to differ from the legal position expounded in *Ram Naresh Pandey and Rajender*

Kumar Jain cases. If any change in the law is needed, it is for Parliament to make necessary amendment to S. 321. It is significant that S. 321 is allowed to remain in the same form in 1973 Code even though in 1957 Supreme Court had construed S. 494 of the former Criminal Procedure Code as laid down in *Ram Naresh Pandey case. Sheonandan Paswan* v. *State of Bihar,* (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[**Ed.**: Khalid and Natarajan, JJ. have not directly touched this aspect, but they also seem to have placed reliance on the decision of *Ram Naresh Pandey case.*]

[3517] — S. 321 — Public Prosecutor's request is subject to judicial discretion of the Court before it accedes to the request — Nature and scope of trial court's power explained — *On facts, the trial court exercised its power properly (Per majority: Tulzapurkar, J. contra)*

Per Baharul Islam, J.

The exercise of the power to accord or withdraw consent by the court is discretionary which it has to exercise judicially. The power is judicial to the extent that the court, in according or refusing consent, has to see (*i*) whether the grounds of withdrawal are valid

and (*ii*) whether the application is bona fide or is collusive. So the court cannot merely accede to the request to withdraw without applying its own mind to the case. The order passed by the court under S. 321 is not appealable.

Per Misra, J.

The function of the court under S. 321 is a limited one and intended only to prevent abuse. It is, however, a judicial function. It, therefore, becomes necessary for the court before whom the application for withdrawal is filed by the Public Prosecutor to apply its mind so that the appellate court may examine and be satisfied that the court has not accorded its consent as a matter of course but has applied its mind to the grounds taken in the application for withdrawal by Public Prosecutor.

The court's duty in dealing with the application under S. 321 is not to reappreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent uninfluenced by irrelevant and extraneous or oblique considerations as the court has a special duty in this regard inasmuch as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from prosecution.

The decision of the Public Prosecutor to withdraw from the case on the grounds given by him in his application for withdrawal cannot be said to be actuated by improper or oblique motive. He bona fide thought that in the changed circumstances of the case it would be inexpedient to proceed with the case and it would be sheer wastage of public money and time to drag on with the case if the chances for conviction are few and far between. In the circumstances instead of serving the public cause of justice it will be to the detriment of public interest.

Per Tulzapurkar, J.

The trial court's supervisory function of either granting or refusing to grant the permission is a judicial function. *Sheonandan Paswan* v. *State of Bihar,* (1983) 1 SCC 438: 1983 SCC (Cri) 224: AIR 1983 SC 194: 1983 Cri LJ 348.

Bench Strength 3. Coram: **V.D. Tulzapurkar**[1], **Baharul Islam**[2] and **R.B. Misra**[3], JJ. [Date of decision: 16-12-1982]

[3518] — S. 321 — Special Public Prosecutor seeking withdrawal of prosecution on ground of paucity of evidence — Special Judge declining to grant consent on ground that the Special Public Prosecutor had not applied his mind to the material in support of the prosecution as a free agent uninfluenced by irrelevant and extraneous considerations — *Held, Special Judge applied the correct test — In the facts and circumstances of the case, High Court not justified in setting aside order of the Special Judge declining to give consent for withdrawal of prosecution — High Court had no power to refer to the administrative files of the State Govt. and place reliance on material not forming part of the record — Opinion of Public Prosecutor alone material and grounds stated by him open to review — Direction by High Court to consider withdrawal of prosecution against other accused for whom no proposal to withdraw the prosecution made also not sustainable. V.S. Achuthanandan* v. *R. Balakrishna Pillai*, (1994) 4 SCC 299: 1994 SCC (Cri) 1185: AIR 1995 SC 436.

Bench Strength 3. Coram: **J.S. Verma**, *B.P. Jeevan Reddy* and *S.P. Bharucha*, JJ. [Date of decision: 13-5-1994]

[3519] — S. 321 — Whether the Public Prosecutor was justified, on facts, in applying for withdrawal — *Whether consent granted by Magistrate to withdrawal from prosecution justified on facts — Facts that warrant case instituted on police report against the accused and that decision to withdraw from prosecution was taken in cabinet* *meeting headed by the accused himself— Whether relevant in deciding propriety of the consent granted by the Magistrate — Applicability of rule of nemo judex in causa sua ·*

Per Khalid and Natarajan, JJ.

The consent was given by the Magistrate after consideration on various details. When the Magistrate states in his order that he has considered the materials, it is not proper for Supreme Court not to accept that statement. The proper thing to do is to hold that the Magistrate gave consent on objective consideration of the relevant aspects of the case. It would be acting against the mandate of S. 321 to find fault with the Magistrate in such cases, unless the order discloses that the Magistrate has failed to consider whether the application is made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law.

Per Venkataramiah, J.

The averments in the application of the Public Prosecutor under S. 321 in the present case were similar to the averments in the application made for withdrawal in *Rajender Kumar Jain case* [(1980) 3 SCC 435]. It is difficult to say that the Public Prosecutor had not applied his mind to the case or had conducted himself in an improper way. If in the light of the material before him the Public Prosecutor has taken the view that there was no prospect of securing a conviction of the accused it cannot be said that his view is an unreasonable one. No case has been made out in this case for interference. It is difficult to construe S. 321 in the light of the principles of administrative law.

Per Bhagwati, C.J. and Oza, J. (minority view)

There are two very strong cogent reasons why consent to the withdrawal of the prosecution must be refused in this case:

(1) Chief Judicial Magistrate could have considered under S. 239 whether the material placed before him was sufficient to make out a prima facie case against the accused so that if the Chief Judicial Magistrate came to the conclusion on the basis of such material that the charge against the accused was groundless, he would be bound to discharge them for reasons to be recorded by him in writing. There is no reason why in these circumstances the Public Prosecutor should be allowed to withdraw from the prosecution under S. 321. The same exercise could be performed by the Chief Judicial Magistrate by acting under S. 239.

(2) The decision to withdraw from the prosecution was taken by the Cabinet at a meeting presided over by the accused himself. It may be that the Special Public Prosecutor did not implicitly obey the decision of the Cabinet and applied his independent mind to the question whether the prosecution should be withdrawn or not but even so, it would seriously undermine the confidence of the people in the administration of justice if a decision to withdraw the prosecution against him is taken by the accused himself and pursuant to this decision the Special Public Prosecutor, who was appointed by the State Government of which the accused was the Chief Minister, applies for withdrawal from the prosecution. Justice must not only be done but must also appear to be done.

It would be desirable in the interest of public justice that high political personages, accused of offences should face the judicial process and get discharged, rather than seem to manoeuvre the judicial system and thus endanger the legitimacy of the political as well as the judicial process. It is possible that in a particular case personal harassment or inconvenience may be caused by non-withdrawal of the prosecution, if the accused is really innocent and is ultimately liable to be discharged, but such harassment or inconvenience must be considered as an inevitable cost of public life, which the repositories of public power should have no hesitation to pay, as justice must not only be done but must also appear to be done. *Sheonandan Paswan* v. *State of Bihar,* (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[3520] — S. 321 — Withdrawal from prosecution — Scope of Public Prosecutor's executive discretion to act independently in the face of Government's instructions or suggestions for withdrawal from prosecution

Per Baharul Islam, J.

The settled law laid down by the Supreme Court has been that the withdrawal from the prosecution is an executive function of the Public Prosecution and the ultimate decision to withdraw from the prosecution is his. Before an application is made under S. 321, the Public Prosecutor has to apply his mind to the facts of the case independently without being subject to any outside influence. The Government may suggest to the Public Prosecutor that a particular case may not be proceeded with, but nobody can compel him to do so.

However, S. 321 of the Code does not lay any bar on the Public Prosecutor to receive any instruction from the Government before he files an application under that section. If the Public Prosecutor receives such instructions, he cannot be said to act under extraneous influence. On the contrary, the Public Prosecutor cannot file an application for withdrawal of a case on his own without instruction from the Government, since a Public Prosecutor cannot conduct a case absolutely on his own, or contrary to the instruction of his client, namely, the Government. Unlike the Judge, the Public Prosecutor is not an absolutely independent officer. He is appointed by the Government for conducting in court any prosecution or other proceedings on behalf of the Government concerned. So there is the relationship of counsel and client between the Public Prosecutor and the Government.

If the Government gives instructions to a Public Prosecutor to withdraw from the prosecution of a case, the latter after applying his mind to the facts of the case may either agree with the instructions and file a petition stating grounds of withdrawal or disagree therewith having found a good case for prosecution and refuse to file the withdrawal petition. In the latter event the Public Prosecutor will have to return the brief and perhaps to resign, for, it is the Government, not the Public Prosecutor, who is in the know of larger interest of the State.

Mere mention of S. 5(1)(*c*) in place of S. 5(1)(*d*) of the Prevention of Corruption Act in the petition under S. 321, CrPC cannot serve as a proof of non-application of mind for, it is too insignificant an error to be taken note of.

Per Misra, J.

The statutory responsibility for deciding withdrawal squarely rests upon the Public Prosecutor. It is non-negotiable and cannot be bartered away. Section 321 does not prescribe any ground, nor does it put any embargo or fetter on the power of the Public Prosecutor to withdraw from prosecuting a particular criminal case pending in any court. All that it requires is that he can do so only with the consent of the court where the case is pending. If the Public Prosecutor after applying his mind comes to the conclusion that the continuance of the prosecution in the circumstances would only end in an exercise in futility, he is fully justified in moving the application for withdrawal.

Consultation with the Government or high officer is not improper. But the Public Prosecutor has to apply his own mind to the facts and circumstances of the case before coming to the conclusion to withdraw from the prosecution. From the materials on the record it is clear that the Public Prosecutor applied his mind and on perusal of case diary and other materials he was satisfied in the interest of public justice to withdraw from the case.

Per Tulzapurkar, J. (dissenting)

In the present case the executive function of the Public Prosecutor and/or the supervisory function of the trial court in granting its consent to the withdrawal had been improperly performed and were vitiated by reason of illegality.

The non-application of mind both on the part of the Public Prosecutor as also of the Special Judge, at least on one material aspect, is clear and glaring.

The High Court erred in simply accepting the trial court's order.

Though exercise of power under S. 321 is an executive function of the Public Prosecutor for which statutory discretion is vested in him, the discretion is neither absolute nor unreviewable. Being an executive function it would be subject to a judicial review on certain limited grounds like any other executive action which may be grouped in two main categories: failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive.

In the present case the Public Prosecutor cannot be said to have sought the withdrawal from the prosecution at the behest of the Government. The State Government merely suggested to him (which it was entitled to do) to withdraw from the prosecution but at the same time asked him to consider the matter on his own and after satisfying himself about it make the necessary application which he did and there is no material to doubt the recital that is found in the application that he had himself considered relevant materials connected with the case and had come to his own conclusion in that behalf. *Sheonandan Paswan* v. *State of Bihar*, (1983) 1 SCC 438: 1983 SCC (Cri) 224: AIR 1983 SC 194: 1983 Cri LJ 348.

Bench Strength 3. Coram: **V.D. Tulzapurkar**[1], **Baharul Islam**[2] and **R.B. Misra**[3], JJ. [Date of decision: 16-12-1982]

[3521] — S. 321 — Withdrawal from prosecution — *Veerappan case* — Requirements for making a valid application by Public Prosecutor (PP) and for grant of consent for withdrawal by court — Application of mind — *PP must independently apply his mind to all the relevant material and reach his own satisfaction regarding need for withdrawal from prosecution in good faith disregarding any decision, order or direction of the Govt. in that regard — He must briefly set out the material considered by him in his application or affidavit or in some cases before the court — Though power of court is supervisory but consent cannot be granted as a matter of course — Court has also to be satisfied that on the basis of such* *material PP's satisfaction was bona fide, in public interest and will not thwart or stifle the process of law or cause manifest injustice — On the basis of such consideration and satisfaction, court has to accord an informed consent for withdrawal — Pursuant to kidnapping of film actor Rajkumar of Karnataka by the forest brigand Veerappan and his gang, State Govt. in a panic reaction yielding to the demand of Veerappan to withdraw the TADA charges against Veerappan's associates who were in jail facing charges under various penal statutes including TADA and to facilitate their release and also to release some of his men who were preventively detained under National Security Act in order to secure Rajkumar's release from the clutches of Veerappan — Accordingly PP moving application under S. 321 for withdrawal of the TADA charges and the Govt. also revoking the order of detention of those detained under NSA — No relevant material placed showing application of independent mind by PP in good faith and in public interest — Consent granted by court for such withdrawal — Bail applications thereafter moved by the accused persons granted and accused thus securing their release from custody — On facts held, orders granting consent for withdrawal did not meet the requirements of S. 321 and hence were bad in law — Materials which should have been considered by PP while making application under S. 321 and by court while according consent, were not so considered — Affidavit of PP permitting bail applications by the several accused showed complicity of the State Govt. and PP in securing their release — Orders granting bail therefore cancelled — Conduct of State Govt. and PP deprecated*

In a forest land, stretching half in Karnataka and half in Tamil Nadu, a dreaded criminal Veerappan and his associates are engaged in various criminal activities including poaching of elephants, smuggling of ivory and sandalwood, murder of more than 100 persons, among them police and forest officers, kidnapping, possession of arms and ammunitions, opening fire on task force personnel etc. Despite various attempts over a number of years Veerappan could not be apprehended. Cases were filed against them under the provisions of TADA Act, IPC, Arms Act and Explosive Substances Act. On 30-7-2000 Rajkumar, a popular film actor of Karnataka, was abducted by Veerappan and his gangmen from his farmhouse. Several demands were set out by Veerappan for his release, main of them being withdrawal of charges under TADA Act framed against some of his associates who are in judicial custody and withdrawal of detention order passed under the National Security Act (NSA) against few of his other associates and facilitating their release. The State Govt. promptly decided to accept the demand. The arrangement was that once TADA charges are withdrawn, the accused in judicial custody would move bail applications in cases of offences under IPC and other penal enactments. The Public Prosecutor would concede and would not oppose the grant of bail. The court would grant the bail and, thus, accused would come out from judicial custody. Accordingly, an application was filed by the Special PP under Section 321 CrPC seeking consent of the Designated Court to withdraw the TADA charges. The application was made when the trial of the cases to which it related was in progress and the evidence of 51 witnesses had been recorded. It was submitted by the Prosecutor that in order to restore the peace and normalcy in the border area and among the people living in the border area and to maintain peace among the public in general and inhabitants of the particular village, the prosecutor had decided to withdraw from the prosecution the charges under the offences of the provision punishable under Sections 3, 4 and 5 of TADA. It was further submitted that the trial regarding other offences were being continued and the charges under the Arms Act and the Explosive Substances Act, to a certain extent covered the provisions of Sections 3 and 4 of TADA. Therefore, no injustice would be caused if the charges for the offences under Sections 3, 4 and 5 of the TADA Act were withdrawn. It was also submitted that as a matter of policy, since the Central Government had already withdrawn the Central enactment, no purpose would be served immediately by the prosecution for the offences under Sections 3, 4 and 5 of TADA.

The appellant, being father of a police SI who was allegedly killed by Veerappan and his men, opposed the Special PP's application stating that consequent upon abduction of Rajkumar the Karnataka Government had yielded to the demands of Veerappan and had issued notifications that it would withdraw all cases against Veerappan and his associates, and this had been widely publicised by the media. The statement of opposition submitted that no cogent reasons had been given for the decision to drop the TADA cases. The Special Public Prosecutor rejoined to the statement of opposition by denying the objection regarding yielding to the blackmail by Veerappan and contending that all cases against Veerappan and his associates were not being withdrawn, and they would be prosecuted. The Special Judge Designated for trial of TADA offences stated in his order dated 19-8-2000 that he was satisfied that the Special PP had applied his mind in filing the application. In view of the grounds and circumstances mentioned by the Special PP, he was satisfied, on the materials placed before him, "that the grant of permission to withdraw subserves the administration of justice and the permission had not been sought covertly with an ulterior purpose unconnected with the vindication of law, which the executive organs are duty-bound to further and maintain". The case against the accused for other offences would be proceeded with. Accordingly, the learned Judge allowed the application, according consent to withdrawal of the charges relating to offences punishable under the TADA Act against the accused. He ordered, "the accused in custody and on bail, facing trial for offences under the TADA Act stand acquitted/discharged as the case may be". He transferred the cases to the Court of the Principal District and Sessions Judge, Mysore for disposal in accordance with law of all charges other than under TADA. The accused who were in custody and were discharged by the Special Court in respect of TADA charges against them immediately filed an application for bail before the Court of District and Sessions Judge, Mysore. Even though the Principal District and Sessions Judge had noted in his order dated 28-8-2000 that the counsel for the present appellant had informed him that the appellant had filed a petition for special leave to appeal against the order on the Special Public Prosecutor's application which was to be taken up for hearing on the next day and that the counsel had prayed that orders on the bail petition should not be pronounced until thereafter, but keeping in view "the urgency of the matter" and the change in the circumstances in view of the Designated Court's permission to withdraw TADA charges, he held that no prima facie case was made out against the accused for the said offences and therefore, "having regard to the facts and circumstances, the social status of the accused and other relevant factors", he allowed the bail applications. The accused were directed to be released on bail on each of them executing a bond for Rs 10,000 with one surety for the like sum or, in the alternative, on each furnishing cash security of Rs 20,000, on the conditions that they would appear before the court regularly, as and when required, they would not tamper with the prosecution witnesses and they would not commit any other offence. The order dated 19-8-2000 on the Special Public Prosecutor's application was impugned before the Supreme Court.

On 14-8-2000 the Government of the State of Tamil Nadu issued a Government Order directing that charges against one *R*, another associate of Veerappan, in respect of two cases registered against him under TADA be withdrawn "in the public interest". The Inspector General of Police Intelligence, Chennai was directed to take necessary action accordingly. On 16-8-2000 the Special Public Prosecutor before the Designated Court (TADA) at Chennai made two applications to that court under Section 321 CrPC stating that *R* was charged before the Designated Court in cases arising under TADA, the Explosive Substances Act, IPC and the Arms Act and the cases were pending for framing charges and that he was satisfied that under the new change of circumstances and also in the public interest the charges under TADA be withdrawn. The court held: "As this application has been filed by the learned Special Public Prosecutor on the basis of the Government Order referred above, permission is granted to withdraw the TADA case against the accused." This order was challenged before the Supreme Court in a public interest petition. (Para 13)

In respect of the four detenus under NSA, the State of T.N. passed orders dated 14-8-2000 revoking the detention orders in view of the tense situation prevailing due to kidnapping of Rajkumar and there being "an apprehension that in case any harm is caused to him, there may be a backlash on Tamils in Karnataka. In order to avoid such a situation and in the public interest the Government has decided to revoke the order of detention". The aforesaid order of the Government of the State of Tamil Nadu was also challenged in a public interest petition before the Supreme Court. Allowing the appeals and making the writ petitions absolute the Supreme Court.

Held :

Per majority

Though the Government may have ordered, directed or asked a Public Prosecutor to withdraw from a prosecution, it is for the Public Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the court has to be satisfied, after considering all that material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his withdrawal from the prosecution is in the public interest, and that such withdrawal will not stifle or thwart the process of law or cause manifest injustice. (Para 19)

It must follow that the application under Section 321 must aver that the Public Prosecutor is, in good faith, satisfied, on consideration of all relevant material, that his withdrawal from the prosecution is in the public interest and it will not stifle or thwart the process of law or cause injustice. The material that the Public Prosecutor has considered must be set out, briefly but concisely, in the application or in an affidavit annexed to the application or, in a given case, placed before the court, with its permission, in a sealed envelope. The court has to give an informed consent. It must be satisfied that this material can reasonably lead to the conclusion that the withdrawal of the Public Prosecutor from the prosecution will serve the public interest; but it is not for the court to weigh the material. The court must be satisfied that the Public Prosecutor has considered the material and, in good faith, reached the conclusion that his withdrawal from the prosecution will serve the public interest. The court must also consider whether the grant of consent may thwart or stifle the course of law or result in manifest injustice. If, upon such consideration, the court accords consent, it must make such order on the application as will indicate to a higher court that it has done all that the law requires it to do before granting consent. (Para 20)

The applications under Section 321 made by the Special Public Prosecutor before the Designated Court at Mysore did not state why the Special Public Prosecutor apprehended a disturbance of the peace and normalcy of "the border area" or the "particular village", nor was any material in this behalf, or a summary thereof, set out. There was, therefore, no basis laid in the applications upon which the learned Judge presiding over the Designated Court could conclude that the Special Public Prosecutor had applied his mind to the relevant material and exercised discretion in good faith and that the withdrawal would not stifle or thwart the course of the law and cause manifest injustice. The order of the learned Judge did not note that the statement of opposition also said that, consequent upon such abduction, the State of Karnataka had yielded to the demands made by Veerappan and had issued notifications that it would withdraw all cases against Veerappan and his associates. No query in this regard was made by the learned Judge with the Special Public Prosecutor. The learned Judge said that he was satisfied on the material placed before him that the grant of permission to withdraw subserved the administration of justice and it had not been sought covertly, but he did not state what those materials were. No materials were placed before the learned Judge upon the basis of which he could have been satisfied that the Special Public Prosecutor had applied his mind thereto and had reached, in good faith, the conclusion that the withdrawal he sought was necessary for the reasons he pleaded. The order granting consent on the Special Public Prosecutor's application, therefore, does not meet the requirements of Section 321 and is bad in law. (Para 21)

Regarding decision of the Government of Karnataka that, in view of its apprehension of the unrest that would follow if any harm were to come to Rajkumar, it was better to yield to Veerappan's demand and to withdraw TADA charges against Veerappan and his associates, including the respondents-accused, the Special Public Prosecutor should have considered and answered the following questions for himself before he decided to exercise his discretion in favour of such withdrawal from prosecution of TADA charges.

1. Was there material to show that the police and intelligence authorities and the State Government had a reasonable apprehension of such civil disturbances as would justify the dropping of charges against Veerappan and others accused of TADA offences and the release on bail of those in custody in respect of the other offences they were charged with?

2. What was the assessment of the police and intelligence authorities and of the State Government of the risk of leaving Veerappan free to commit crimes in future, and how did it weigh against the risk to Rajkumar's life and the likely consequent civil disturbances?

3. What was the likely effect on the morale of the law-enforcement agencies?

4. What was the likelihood of reprisals against the many witnesses who had already deposed against the respondents-accused?

5. Was there any material to suggest that Veerappan would release Rajkumar when some of Veerappan's demands were not to be met at all?

6. When the demand was to release innocent persons languishing in the Karnataka Jails, was there any material to suggest that Veerappan would be satisfied with the release of only the respondents-accused?

7. In any event, was there any material to suggest that after the respondents-accused had secured their discharge from TADA charges and bail on the other charges Veerappan would release Rajkumar?

8. Given that the Government of the States of Karnataka and Tamil Nadu had not for 10 years apprehended Veerappan and brought him to justice, was this a ploy adopted by them to keep Veerappan out of the clutches of the law? (Para 25)

The affidavit of the Special Public Prosecutor reveals that he was "informed" that the Government of the State of Karnataka had intelligence reports that if any harm were to be caused to Rajkumar, it would lead to problems between two linguistic communities. Clearly, he was not shown the intelligence reports, and there was no statement therein showing that the Special Public Prosecutor had the opportunity of assessing the situation for himself by reading the primary material and deciding, upon the basis thereof, whether he should exercise his discretion in favour of the withdrawal of TADA charges. Acting upon the information, which he could not verify, the Special Public Prosecutor could not be satisfied that such withdrawal was in the public interest and that it would not thwart or stifle the process of the law or cause manifest injustice. The Special Public Prosecutor, in fact, acted only upon the instructions of the Government of the State of Karnataka. He, therefore, did not follow the requirement of the law that he be satisfied, and the consent he sought under Section 321 therefore cannot be granted. (Para 27)

The affidavit of the Special Public Prosecutor speaks of "withdrawal of TADA charges which would enable the accused to file necessary bail applications and their consequent release on bail ...." It is, thus, clear that what was envisaged by the Government of the State of Karnataka and the Special Public Prosecutor was a package which comprised of the withdrawal of TADA charges against the respondents-accused and their release on bail on applications filed by them. This indicates complicity with the respondents-accused. Stress was laid by the Special Public Prosecutor in his application under Section 321 on the fact that the prosecutions against the respondents-accused on charges other than under the TADA Act would continue, and this was noted in the order of the Designated Court. The Designated Court was not told either in the application or thereafter that the Government of the State of Karnataka and the Special Public Prosecutor had in mind that the respondents-accused would file bail applications subsequent to the order under Section 321 which would not be opposed. There can, in the circumstances, be little doubt that after their release on bail the respondents-accused were not expected to attend the court to answer the remaining charges against them and that the stress laid as aforesaid was intended to mislead the Designated Court the conduct of the Government of the State of Karnataka and the Special Public Prosecutor in this behalf is deprecated. It is appropriate, in the facts and circumstances, to set aside the orders granting bail to the respondents-accused. (Para 28)

In the applications under Section 321 filed before the Designated Court at Chennai seeking consent to the withdrawal from TADA prosecution against *R*, what the record was that the Special Public Prosecutor had perused was not set out nor was it annexed nor a summary thereof recited. What the changed circumstances were was also not set out. The order on the applications was founded only upon the relevant Government Order. The order, therefore, was not passed after meeting the requirements of Section 321, and it is bad in law. (Para 22)

Having set aside the order under Section 321 passed by the Designated Court at Chennai in the matter of *R*, the Government of the State of Tamil Nadu cannot comply with Veerappan's demand to release the five prisoners from its jails. It is appropriate in the circumstances to set aside the orders of the Government of the State of Tamil Nadu under the National Security Act releasing the other four persons from detention. (Para 29)

There was no material that could give rise to a reasonable apprehension of such civil disturbances as justifies the decision to drop TADA charges against Veerappan and his associates, including the respondents-accused, and to release the latter on bail. There is nothing on the record which suggests that the possibility of reprisals against the witnesses who have already deposed against the respondents-accused or the effect on the morale of the law-enforcement agencies were considered before it was decided to release the respondents-accused. There is also nothing to suggest that there was reason to proceed upon the basis that Veerappan would release Rajkumar when his demands were not being met in full. The Government of the State of Karnataka would appear to be unaware that once the respondents-accused were discharged from TADA charges, the deal was done; and that when they were released on bail they could not be detained further, whether or not Rajkumar was released in exchange. While it cannot be asserted that conceding to Veerappan's demands was a ploy of the Government of the State of Karnataka to keep him out of the clutches of the law, it acted in panic and haste and without thinking things through in doing so. That this is so, is clear from the fact that the demands were conceded overnight and also from the fact that the Government of the State of Karnataka did not ascertain the legal position that it was not for it but for the court to decide upon the release of persons facing criminal prosecutions. (Para 30)

What causes the gravest disquiet is that when, not so very long back, as the record shows, his gang had been considerably reduced, Veerappan was not pursued and apprehended and now, as the statements in the affidavit filed on behalf of the State of Tamil Nadu show, Veerappan is operating in the forest that has been his hideout for 10 years or more along with secessionist Tamil elements. It seems certain that Veerappan will continue with his life of crime and very likely that those crimes will have anti-national objectives. (Para 31)

It would have been prudent, in the circumstances, to post round the clock at Rajkumar's farmhouse in Gajanoor one or two policemen who could inform their local station house of his arrival there and thus ensure his safety. (Para 32)

Hence, the order under appeal, dated 19-8-2000, is set aside. The order dated 28-8-2000 passed by the Principal District and Sessions Judge, Mysore granting bail to the respondents-accused is also set aside. Further, the order of the Designated Court at Chennai dated 16-8-2000 is set aside. The orders of the Government of the State of Tamil Nadu passed on 14-8-2000 under the National Security Act in respect of Sathyamoorthy and three others revoking the orders of their detention under the National Security Act are also set aside. The writ petitions are made absolute accordingly. (Paras 35 and 36)

Per Sabharwal, J. (concurring)

The satisfaction for moving an application under Section 321 CrPC has to be of the Public Prosecutor which in the nature of the case in hand has to be based on the material provided by the State. Grant of consent by the court is not a matter of course. True, the power of the court under Section 321 is supervisory but that does not mean that while exercising that power, the consent has to be granted on mere asking. The court has to examine that all relevant aspects have been taken into consideration by the Public Prosecutor and/or by the Government in exercise of its executive function. When such an application is filed by the Public Prosecutor after taking into consideration the material before him, the court exercises its judicial discretion by considering such material and on such consideration either gives consent or declines consent. The court has to see that the application is made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law or suffers from such improprieties or illegalities as to cause manifest injustice if consent is given. (Paras 41 and 42)

The Public Prosecutor has to be straight, forthright and honest and has to admit the arrangement and inform the court that the real arrangement is to ultimately facilitate the release of these accused from judicial custody by not opposing the bail applications after the withdrawal of TADA charges. It is well established that the real purpose for withdrawal of TADA charges was to facilitate the grant of bail to the accused. In such circumstances, why the camouflage? Why is it not so stated in the application filed under Section 321? In fact, it is a deceit. These are the questions for which there is no plausible answer. No court of law can be a party to such a camouflage and deceit in judicial proceedings. The answer to these basic questions cannot be that the Judge knew about it from the very nature of the case. Under these circumstances, it cannot be said that the application was made in good faith. (Para 40)

Besides the eight questions noticed in the main judgment, the question and aspect of association of Veerappan with those having secessionist aspirations were also not considered. Further, though it may have been considered as to what disturbances occurred, immediately after the abduction of Rajkumar, but what does not seem to have been considered is that those were spontaneous outbursts and the authorities may have been taken unaware but what would be the ground realities when the law-enforcing agencies have sufficient time to prepare for any apprehended contingency. (Para 43)

The application and order under Section 321 is a result of panic reaction by overzealous persons without proper understanding of the problem and consideration of the relevant material, though they may not have any personal motive. It does not appear that anybody considered that if democratically-elected governments give an impression to the citizens of this country of being lawbreakers, would it not breed contempt for law; would it not invite citizens to become a law onto themselves. It may lead to anarchy. The Governments have to consider and balance the choice between maintenance of law and order and anarchy. It does not appear that anyone considered this aspect. It yielded to the pressure tactics of those who according to the Government are out to terrorise the police force and to overawe the elected Governments. It does not appear that anyone considered that with their action people may lose faith in the democratic process, when they see public authority flouted and the helplessness of the Government. The aspect of paralysing and discrediting the democratic authority had to be taken into consideration. It is the executive function to decide in the public interest to withdraw from prosecution as claimed, but it is also for the Government to maintain its existence. Self-preservation is the most pervasive aspect of sovereignty. To preserve its independence and territories is the highest duty of every nation and to attain these ends nearly all other considerations are to be subordinated. Of course, it is for the State to consider these aspects and take a conscious decision. In the present case, without consideration of these aspects the decision was taken to withdraw TADA charges. It is evident from material now placed on record before the Supreme Court that Veerappan was acting in consultation with secessionist organisations/groups which had the object of liberation of Tamil from India. There is no serious challenge to this aspect. None of the aforesaid aspects were considered by the Government or the Public Prosecutors before having recourse to Section 321 CrPC. (Para 44). *Abdul Karim* v. *State of Karnataka*, (2000) 8 SCC 710: 2001 SCC (Cri) 59: AIR 2001 SC 116.

Bench Strength 3. Coram: **S.P. Bharucha**, *D.P. Mohapatra* and *Y.K. Sabharwal*, JJ. [Date of decision: 7-11-2000]

Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288: 1987 SCC (Cri) 82, relied on

[3522] — S. 321 — Withdrawal of cases — Duty of public prosecutor under S. 321 — *Held, Public Prosecutor cannot act like a postbox or act on dictates of the State Government — He has to act objectively as befits an officer of the court — Furthermore, court is not bound by opinion of Public Prosecutor and is free to assess whether a prima facie case is made out or not — On facts, prima facie case having been made out against the accused, application of Public Prosecutor and order of State Government for withdrawal of cases, quashed*

The Public Prosecutor has to shoulder a greater responsibility for withdrawal of cases under Section 321 CrPC. The Public Prosecutor cannot act like a postbox or act on the dictates of the State Government. He has to act objectively as he is also an officer of the court. At the same time the court is also not bound by that. The courts are also free to assess whether a prima face case is made out or not. The court, if satisfied, can also reject the prayer. (Para 32)

In the present case there is a prima facie case to proceed against the accused persons under Section 4(*b*) of the Act and the other provisions of the Explosives or Arms Acts. Therefore, the sanction granted by the Government and application moved by the Public Prosecutor for withdrawal of the cases cannot be sustained. Hence the order of the State Government withdrawing the cases against the accused persons is quashed, likewise direction to the Public Prosecutor for withdrawing the cases from the court. (Para 32). *S.K. Shukla* v. *State of U.P.*, (2006) 1 SCC 314: (2006) 1 SCC (Cri) 366: AIR 2006 SC 413: (2006) 37 AIC 523 (SC): 2006 Cri LJ 148.

Bench Strength 2. Coram: *B.N. Agrawal* and **A.K. Mathur**, JJ. [Date of decision: 10-11-2005]

Sheonandan Paswan v. State of Bihar, (1983) 1 SCC 438: 1983 SCC (Cri) 224; Rajender Kumar Jain v. State, (1980) 3 SCC 435: 1980 SCC (Cri) 757; R.M. Tewari v. State (NCT of Delhi), (1996) 2 SCC 610: 1996 SCC (Cri) 361; Ayyub v. State of U.P., (2002) 3 SCC 510: 2002 SCC (Cri) 673, followed

[3523] — Ss. 321, 301 and 24 — Public Prosecutor — Has full freedom to function effectively, independently and fearlessly — *He can at one stage seek framing of certain charges and at a subsequent stage in the same proceedings he can seek dropping of those charges against the accused*

In the present case, the hearing as to framing of charges has gone on for nearly eight months. Considering the nature of the charges to be framed in the case, the voluminous record of the case presented before the court, the seriousness and magnitude of the matter when several hundreds of persons have been killed and property worth crores of rupees has been destroyed, in what manner the case should be conducted is a very serious affair. If the Public Prosecutor had been supporting at one stage of the proceedings the charge-sheet that had been laid in respect of the offences arising under Sections 121 and 121-A IPC, later on he realises that evidence is not available at that stage of the case, seeks that for the time being these charges need not be proceeded with, and if further investigation discloses such offences as having been committed, supplementary charge-sheet would be filed before the court later, such shift in the stand would not attract offences enumerated under Section 195 CrPC. The submissions made by the learned Public Prosecutor — however contradictory they may be — in a case cannot amount to fabrication of evidence by any stretch of imagination. The substance of the complaint should have been looked into and should have been decided. (Para 14)

The stand of a counsel, howsoever inconsistent it may be at different stages of the proceedings, cannot amount to offences adverted to under Section 195 CrPC. If the courts begin to issue notice for prosecution or as to why the inquiry should not be made in the matter or to launch a prosecution, no advocate can function with safety nor can he assist the court with the necessary fearlessness which is required of him. It is not unknown that even in criminal cases even after committal proceedings are over at the stage of sessions trial before charges are framed by the court or at the stage of final arguments, many Public Prosecutors have entered *nolle prosequi* in cases where they thought that a charge could not be framed or the accused concerned should be acquitted. However, that does not mean that such a stand could not have been taken or attracts the wrath of Section 340 CrPC. (Para 10)

Issue of notice on an application of this nature would have serious impact upon the Public Prosecutor in conduct of the case particularly when at every stage he has got to be conscious whether any of his statements would attract Section 340 CrPC. This is not the kind of atmosphere where a Public Prosecutor can function effectively, independently and fearlessly. In the conduct of the case a Public Prosecutor must have full freedom and he can even give up certain cases and request the court to discharge or acquit any accused. If that kind of autonomy is to be enjoyed by the Public Prosecutor, he cannot be fettered in conducting the proceedings. By initiating the proceedings against him, the learned Designated Judge has crippled the freedom of the Public Prosecutor in functioning effectively and such a matter certainly results in serious miscarriage in administration of justice and no advocate would be safe if such proceedings are initiated on the basis of the allegations of the nature made in the complaint. Either the learned Designated Judge has not applied his mind or he has not understood the scope of the application and if he had done either, he would have dismissed the application. (Para 15). *N. Natarajan* v. *B.K. Subba Rao*, (2003) 2 SCC 76: 2003 SCC (Cri) 437: AIR 2003 SC 541: 2003 Cri LJ 820.

Bench Strength 2. Coram: **S. Rajendra Babu** and *Arun Kumar*, JJ. [Date of decision: 3-12-2002]

[3524] — S. 321 — No further challenge made to judgment of High Court confirming withdrawal of prosecution — Effect of — Grievance relating to said matter made in present appeal — Sustainability of — *Held, said judgment of High Court became final and binding on the parties — Making grievance relating to that matter in present appeal, held, was wholly unjustified*

The appellant aggrieved by the order by which the Court's approval was granted for withdrawal of the prosecution, preferred a criminal revision petition in the High Court. The High Court by a detailed and comprehensive judgment on 28-9-1991 dismissed the revision petition. The said judgment of the High Court became final and binding on the parties because the appellant had never challenged that judgment. Therefore, the appellant is wholly unjustified in making any grievance in respect of the prosecution which had already been withdrawn against Respondent 3 a long time ago and the said order was affirmed by the High Court and no proceedings were taken against the said judgment of the High Court. (Paras 15 and 20). *Ghanshyam* v. *State of M.P.*, (2006) 10 SCC 473: (2006) 3 SCC (Cri) 602.

Bench Strength 2. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[3525] — S. 321 — Application for withdrawal of only charges under TADA Act from prosecution while retaining charges under IPC — *Application filed by Prosecuting Officer on the basis of govt. order which stated that the Govt., after proper discussion on the facts of the case and the evidence/reports/letters on the record, decided to waive the TADA charges — Held, rejection of the application by Designated Court was not justified*

When the order itself states that all records were perused and considered, the Designated Court was not justified in rejecting the application. It cannot be said that the Senior Prosecuting Officer had filed the application without consideration of the relevant facts. It cannot also be said that application was filed with any *mala fide* intention to save some of the culprits from the clutches of law. The request was made only to withdraw from prosecution as against the offences punishable under the TADA Act. Charges in respect of other offences punishable under the Indian Penal Code remained and the accused had to face trial for that. The Government must have thought that the stringent and harsh provisions of the TADA Act were not necessary to deal with such situations. (Para 11). *Ayyub* v. *State of U.P.*, (2002) 3 SCC 510: 2002 SCC (Cri) 673: AIR 2002 SC 1192.

Bench Strength 2. Coram: *R.P. Sethi* and **K.G. Balakrishnan**, JJ. [Date of decision: 28-2-2002]

State of Bihar v. Ram Naresh Pandey, AIR 1957 SC 389: 1957 Cri LJ 567; State of Orissa v. Chandrika Mohapatra, (1976) 4 SCC 250: 1976 SCC (Cri) 584; Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; R.M. Tewari, Advocate v. State (NCT of Delhi), (1996) 2 SCC 610: 1996 SCC (Cri) 361, relied on

[3526] — Ss. 321 & 24(8) — 'Public Prosecutor' — *Advocate validly appointed as Special Public Prosecutor under S. 24(8), without cancelling previous appointment of another Special Public Prosecutor, and in charge of the case, held, becomes the 'Public Prosecutor' competent to apply for withdrawal under S. 321 even if appointed for that purpose only — Doctrine of de facto jurisdiction applied*

Per Baharul Islam, J.

The Panel Advocate (Shri L.P. Sinha) was a Public Prosecutor validly appointed under S. 28(8), CrPC. His appointment without cancelling the previous appointment of the Special Public Prosecutor (Shri A.K. Datta), might at best be irregular or improper, but cannot be said to be legally invalid. The doctrine of de facto jurisdiction which has been recognised in India will operate in this case.

From the facts of the case it is clear that at the relevant time Shri Sinha and not Shri Datta was in charge of the case. Thus Shri Sinha was both de jure and de facto Public Prosecutor in the case.

Since Shri L.P. Sinha fulfilled the two conditions as required by S. 321 of the Code, namely, that (*i*) he was a Public Prosecutor and (*ii*) was in charge of the case, he was competent to apply for withdrawal of the case, even if he were appointed for that purpose only.

Per Tulzapurkar, J.

Appointments of Public Prosecutors generally fall under S. 24(3) but when the State Government appoints Public Prosecutors for the purposes of any case or class of cases the appointees become Special Public Prosecutors under S. 24(8). Shri Sinha had been validly appointed as a Special Public Prosecutor under S. 24(8).

Although the appointment of Shri Datta made by the previous Government as the Special Public Prosecutor to conduct the case had not been cancelled, but that did not prevent the new Government to make a fresh appointment of a Public Prosecutor and to put him in charge of the case. Though Shri Datta was appointed as the Special Public Prosecutor to conduct the case in question, he was neither incharge of the case nor was actually conducting the same at the material time and since Shri Sinha was not merely incharge of the case but was actually conducting the case, he was the proper officer to apply for the withdrawal from the prosecution. *Sheonandan Paswan* v. *State of Bihar*, (1983) 1 SCC 438: 1983 SCC (Cri) 224: AIR 1983 SC 194: 1983 Cri LJ 348.

Bench Strength 3. Coram: **V.D. Tulzapurkar**[1], **Baharul Islam**[2] and **R.B. Misra**[3], JJ. [Date of decision: 16-12-1982]

[3527] — S. 321 — Withdrawal from prosecution — Designated Court's order refusing to grant consent for, held, is an interim order — *Whether an appeal will lie against that order is doubtful and question left open* (Para 6). *Ayyub* v. *State of U.P.*, (2002) 3 SCC 510: 2002 SCC (Cri) 673: AIR 2002 SC 1192.

Bench Strength 2. Coram: *R.P. Sethi* and **K.G. Balakrishnan**, JJ. [Date of decision: 28-2-2002]

[3528] — S. 321 — Withdrawal from prosecution — On recommendation of Review Committee constituted by State Govt., application made before Designated Court for withdrawal from prosecution of cases under Ss. 3 and 4 of TADA Act against appellants — *Application rejected by Designated Court — Fresh application for withdrawal from prosecution filed by Special Public Prosecutor giving details to show how he reached the satisfaction envisaged in S. 321 — Held, in the interest of justice it is necessary that the fresh application should be disposed of by the Designated Court untrammelled by any observations made by it in its earlier order — TADA, 1987 — Ss. 3 & 4. Mohd. Husain* v. *State of Rajasthan*, (2003) 10 SCC 295.

Bench Strength 2. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 31-1-2001]

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; R.M. Tewari, Advocate v. State (NCT of Delhi), (1996) 2 SCC 610: 1996 SCC (Cri) 361 (paras 10, 11 and 12), relied on

[3529] — S. 321 — Withdrawal from prosecution against a former Chief Minister — *Whether on facts sufficient and relevant grounds made out — Whether there was proper application of mind by the public prosecutor*

Per Khalid and Natarajan, JJ. (Venkataramiah, J. concurring)

In the present case the application for withdrawal from prosecution was made by the Public Prosecutor on four grounds. At no stage was a case put forward by any one that the application made by the Public Prosecutor was either mala fide or that it was not in good faith or was motivated by improper considerations. There was no allegation of bias against the Special Judge. The application disclosed the fact that he had gone through the case diary and the relevant materials connected with the case and that he came to the conclusion that in the circumstances prevailing at the time of institution of the case and investigation thereof, the case was instituted on the ground of political vendetta and only to defame the fair image of the accused. The Special Judge performed his function in conformity with the section. Also the statement of the Public Prosecutor had not been challenged as borne out of any unwholesome motive. Thus his part under S. 321 in this case had been performed strictly in conformity with this section. The application clearly shows that he applied his mind to the facts of the case. One would normally not expect a more detailed statement in an application for withdrawal than the one contained in the application in question, keeping in view the scope of S. 321 and the wide language it uses. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[3530] — S. 321 — Withdrawal from prosecution against a former Chief Minister — Where proper application filed by Public Prosecutor and consent for withdrawal granted by Magistrate after objective assessment of the merits and his order affirmed by High Court in revision, Supreme Court's interference whether, on facts, called for — *Whether Public Prosecutor can withdraw on ground of insufficient evidence once the charge has been framed — Constitution of India, Article 136*

Respondent 1 was Chief Minister of the State of Orissa when Congress (I) Party was in power. Later she left the Congress Party and joined the Congress for Democracy, which was later merged with Janata Party. A complaint was lodged against her when she was no longer the Chief Minister by a person who had been suspended from the Congress Party. The Vigilance Department submitted a charge-sheet against her on the allegation of misappropriation of fund collected from various companies by District Congress Committee for publication of their advertisements in the Party's souvenirs. The Additional Chief Judicial Magistrate framed charges under Ss. 406, 467, 471 and 120, IPC against respondent 1 and under S. 406 read with S. 34, IPC against respondent 2. At that time Janata Party was in power in the State of Orissa. In 1980 Assembly election, respondent 1 was elected as a Congress (Urs) Party candidate defeating her opponent of Congress (I) Party. But the Congress (I) Party formed the Government in Orissa. Thereafter the Law Department advised the Government to take a policy decision to withdraw cases against political leaders who were subjected to victimisation. After considering the matter from all angles, the then Chief Minister ordered that the case against the respondents be withdrawn. The Special Public Prosecutor examined the case diary and the connected papers and on being satisfied that the charge of criminal breach of trust would fail against respondent 1 and that withdrawal from prosecution in the changed circumstances would be in public interest, he made an application under S. 321, CrPC. After making an objective assessment of the merits of the application, the Additional Chief Judicial Magistrate held that the withdrawal of the prosecution "would in no way affect any public interest or improve any public confidence" and therefore, granted consent to withdrawal from the prosecution. Thereafter, the present appellant who was not a party to these proceedings filed a revision petition in the High Court of Orissa challenging the order of the Additional Chief Judicial Magistrate permitting withdrawal but the same was dismissed. Dismissing the appeal by special leave Supreme Court

Held :

Per curiam

Appeal to be dismissed

Per Bhagwati, C.J. and Oza, J. (minority view)

The Special Public Prosecutor could not make an application for withdrawal from the prosecution and the Chief Judicial Magistrate give his consent to such withdrawal on the ground that there was insufficient or no evidence to sustain the prosecution when a charge was already framed against respondent 1 on the basis that in the opinion of the Chief Judicial Magistrate who framed the charge there was ground for presuming that respondent 1 had committed the offences charged against her.

But since entire record was before the Supreme Court and the matter had been argued at great length before it, the Court could quash the charge against respondent 1 if it was found on the basis of the material on record that no charge could be framed against her.

On facts, since there was nothing to indicate that the entrustment of the fund to respondent 1 was for the specific purpose of being utilised only for the purpose of publication of advertisements in the souvenirs, a charge of criminal breach of trust could not be sustained against her. The entrustment of the fund, if at all, was to the Souvenir Committee of the All-India Congress Committee and respondent 1 could not therefore possibly be charged for utilising any of these amounts for a purpose other than that for which it was entrusted to her. Therefore, the charge framed against respondent 1 was totally groundless and therefore, liable to be quashed.

Accordingly, instead of permitting the prosecution to be withdrawn under S. 321, the charge framed against respondent 1 under S. 239, CrPC be quashed.

Per Venkataramiah, J.

The Public Prosecutor had applied his mind to the case before applying for withdrawal and the Chief Judicial Magistrate had not committed any error in giving his consent to such withdrawal. Such consent can be given at any time before the judgment is pronounced. The framing of the charge cannot be an impediment to give consent to such withdrawal.

The decision in *Ram Naresh Pandey* and *Rajender Kumar Jain* do not call for any reconsideration and the views expressed therein are fully acceptable.

Per Khalid, J.

Consent can be given for withdrawal from the prosecution of a case, not only when the charge is not framed, but even after the charge is framed and at any time before the judgment.

On the basis of the reasons given by me in Cri. Appeal 241 of 1982 (*Sheonandan Paswan* v. *State Bihar)* I uphold the order of withdrawal passed in this case.

Per Natarajan, J.

There was no material in the case to show that the Special Public Prosecutor was influenced by any improper motives for filing the application for withdrawal of the prosecution or that he had acted against his will at the behest of anyone else. The Additional Chief Judicial Magistrate had bestowed judicial consideration over the matter and had thereafter passed a reasoned order. Not only the Magistrate but also the High Court had found, after a careful scrutiny of relevant factors and circumstances, that the application for withdrawal of the prosecution made by the Special Public Prosecutor fully satisfied the tests laid down by Supreme Court in *State of Bihar* v. *Ram Naresh Pandey,* reiterated in *Rajender Kumar Jain* v. *State,* for its being allowed viz., that the executive function of the public prosecutor in applying for withdrawal of the prosecution had not been improperly exercised and that it was not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. *Mohd. Mumtaz* v. *Nandini Satpathy (I)*, (1987) 1 SCC 269: 1987 SCC (Cri) 63: AIR 1987 SC 863 at 869.

Bench Strength **5**. Coram: *P.N. Bhagwati, C.J.*[3] and **E.S. Venkataramiah**[1], **V. Khalid**[2], **G.L. Oza**[3] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

State of Bihar v. Ram Naresh Pandey, 1957 SCR 279: AIR 1957 SC 389: 1957 Cri LJ 567 and Rajender Kumar Jain v. State, (1980) 3 SCC 435: 1980 SCC (Cri) 757, followed

Ignore Ed. Note on SCC p. 271 [SCC (Cri) p. 65] based on error in certified copy

[3531] — S. 321 — Withdrawal from prosecution against a former Chief Minister in a warrant case instituted on a police report — Application seeking consent for withdrawal allowed and confirmed by High Court in revision — *Per majority, on facts, interference by Supreme Court under Art. 136 not called for — Minority preferring to quash the charge under S. 239, Criminal Procedure Code on the basis of material on record and discharge the accused — Constitution of India — Article 136*

The respondent 1 was Chief Minister of the State of Orissa. The ruling political party at that time was Congress (I). Later she left the Congress (I) Party and joined the Congress for Democracy Party which was later merged with Janata Party. But when the Janata Party came in power in that State a prosecution was launched against her under S. 5(1)(*d*) read with S. 5(2) of the Prevention of Corruption Act for having assets disproportionate to her known sources. When the charge-sheet was filed against her by the Vigilance Department, the Income Tax Department also issued notice for reopening of her assessments and after conducting detailed inquiries, the Income Tax authorities passed a final order accepting her returns as correct and rejecting the allegations that she had suppressed any income from undisclosed sources. The Special Public Prosecutor moved an application under S. 321, CrPC for withdrawal from prosecution against respondent 1. At that time Congress (I) Party had once again come in power in Orissa and respondent had become a member of Congress (Urs) (Opposition) Party and was elected as MLA. The Additional Chief Judicial Magistrate after fully discussing the matter gave his consent for withdrawal from the prosecution. The High Court in criminal revision critically assessed the order of the Magistrate and following the Supreme Court's decision in *Rajender Kumar Jain case*, upheld the grant of consent by the Magistrate "when the Public Prosecutor in his application had indicated that the evidence already collected did not support the prosecution".

Held :

Per curiam

The appeal must be dismissed.

Per Venkataramiah, J.

The decision in *Ram Naresh Pandey* and *Rajender Kumar Jain cases* do not call for any reconsideration. I am in full agreement with the views expressed in these decisions. I am satisfied that the Public Prosecutor had applied his mind to the case before applying for withdrawal and the

Chief Judicial Magistrate had not committed any error in giving his consent to such withdrawal.

Per Khalid, J.

The Court is not called upon to consider the propriety of the charge framed and then examine the evidence and see whether the accused should be discharged or the charge framed should be upheld. Under S. 321 consent can be given for withdrawal from, the prosecution of a case, not only when the charge is not framed, but even after the charge is framed and at any time before the judgment.

I adopt the reasons given by me in *Sheonandan Paswan case*, relying upon the decisions in *Ram Naresh Pandey and Rajender Kumar Jain cases* and uphold the order of withdrawal passed by the Additional Special Judge as confirmed by the High Court.

Per Natarajan, J.

Section 321 does not lay down that an application for withdrawal of the prosecution should necessarily be made at the earliest stages of the case or only if the evidence is of a weak and infirm nature. The application may be made at any time ranging between the court taking cognizance of the case till such time the court actually pronounces judgment. Consequently, even where reliable evidence has been adduced to prove the charges, the Public Prosecutor can seek the consent of the court to withdraw the prosecution.

In his application the Special Public Prosecutor had set out the reasons which justified his filing an application under S. 321. The Magistrate had considered the matter judicially in the light of the decision in *Rajender Kumar Jain case* which had allowed the earlier decision in *Ram Naresh Pandey case.* The order of the Magistrate had been approved and affirmed by the High Court. There is no material in the appeal to persuade me to hold that the order passed by the Additional Chief Judicial Magistrate or the High Court suffers from any error of law, patent or latent.

Per Bhagwati, C.J. and Oza, J. (minority view)

Ordinarily when the exercise of considering the material on record for the purpose of determining whether there is sufficient material to sustain the prosecution can be performed by the Court under S. 239 the Court should not allow the prosecution to be withdrawn under S. 321 but in the present case there was no point in setting aside the withdrawal and sending the case back to the Special Judge because there was no material on record to establish a prima facie case against respondent 1. The charges against her appear to be groundless and in any event she was entitled to be discharged under S. 239, CrPC. The application moved by the Special Public Prosecutor for withdrawal from the prosecution was bona fide and in furtherance of public justice and it was clearly a false and vexatious criminal prosecution which had been launched against respondent No. 1 which was sought to be halted. It was, therefore, not necessary or expedient to interfere with the order made by the Special Judge and confirmed by the High Court. *Mohd. Mumtaz* v. *Nandini Satpathy (II)*, (1987) 1 SCC 279: 1987 SCC (Cri) 73: AIR 1987 SC 863: 1987 Cri LJ 778.

Bench Strength **5**. Coram: *P.N. Bhagwati, C.J.*[3] and **E.S. Venkataramiah**[1], **V. Khalid**[2], **G.L. Oza**[3] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

State of Bihar v. Ram Naresh Pandey, 1957 SCR 279: AIR 1957 SC 389: 1957 Cri LJ 567 and Rajender Kumar Jain v. State, (1980) 3 SCC 435: 1980 SCC (Cri) 757, affirmed

[3532] — S. 321 — Withdrawal from prosecution of accused under TADA — Proper disposal — Court must apply its mind to ground of withdrawal — While deciding to refuse to grant permission, Court should not express opinion on merits of the case — *Public Prosecutor, while filing the application must also apply its mind and assess effect of withdrawal from prosecution on society — FIR lodged against appellant under Ss. 302/307 IPC, under Arms Act as also under S. 3(1) of TADA — Review Committee, constituted in terms of Supreme Court's direction in* Kartar Singh, *(1994) 3 SCC 569, opined in its report that murder was result of gang rivalry and personal enmity and did not constitute offence under S. 3(1) of TADA and that long time had elapsed since commission of the offence and accused was still in jail, trial had still not commenced and that no case for continuation of a case under TADA was made out against appellant — Pursuant thereto Special Pubic Prosecutor filed application for withdrawal of charges under TADA — Designated Court, TADA dismissed the application on ground that certain confessions having been made thereunder by appellant, same would not be available if appellant was not proceeded against under TADA — Held, Designated Court erred in refusing to grant permission for withdrawal from prosecution under TADA — TADA, 1987 — S. 3(1)*

Per Sinha, J. (Katju, J., concurring)

Section 321 CrPC provides for withdrawal from prosecution at the instance of the Public Prosecutor or Assistant Public Prosecutor. Indisputably therefore the consent of the Court is necessary. Application of mind on the part of the Court, therefore, is necessary in regard to the grounds for withdrawal from the prosecution in respect of any one or more of the offences for which the appellant is tried. The Public Prosecutor in terms of the statutory scheme laid down under the Code of Criminal Procedure plays an important role. He is supposed to be an independent person. While filing such an application, the Public Prosecutor also is required to apply his own mind and the effect thereof on the society in the event such permission is granted. (Paras 12 and 13)

The provisions of TADA could be attracted only in the event one or the other of the four "things" specified in *Nalini* is found applicable and not otherwise. The Review Committee made recommendations upon consideration of all relevant facts. It came to its opinion upon considering the materials on record. Its recommendations were based also upon the legality of the charges under TADA in the fact situation obtaining in the case. It came to the conclusion that in committing the purported offence, the appellant inter alia had no intention to strike terror in people or any section of the people and in fact the murder had been committed only in view of group rivalry and because the parties intended to take revenge, and therefore, the provisions of TADA should not have been invoked. (Para 12)

Therefore, the application filed by the State for withdrawal of the charges under TADA against the appellant shall stand allowed. The designated Judge may now proceed with the matter in accordance with law. (Para 18)

While refusing to grant permission, the Designated Court was not correct in expressing its opinion on the merits of the matter and the effect of confessions made in terms of the provisions of TADA. It was also not necessary to consider as to whether the action of the Public Prosecutor as also the State was bona fide or not. Moreover, bona fide on the part of the Public Prosecutor itself cannot automatically lead to grant of consent. There are other circumstances also which are required to be taken into consideration. (Para 18). *Vijaykumar Baldev Mishra* v. *State of Maharashtra*, (2007) 12 SCC 687: (2008) 3 SCC (Cri) 362: AIR 2008 SC 961: 2008 Cri LJ 1409.

Bench Strength **2**. Coram: **S.B. Sinha**[1] and **Markandey Katju**[2], JJ. [Date of decision: 18-5-2007]

State v. Nalini, (1999) 5 SCC 253: 1999 SCC (Cri) 691, relied on

[3533] — S. 321 — Withdrawal from the prosecution on political reasons, if otherwise proper, held, valid — *Ultimate discretion on Public Prosecutor though Government may give its suggestions, advice or guidance to him — Court's jurisdiction under, is supervisory and it has only to see if the PP has applied his independent mind in the broader interest of public justice and for that purpose can ascertain the reasons for the withdrawal move but cannot reappreciate the grounds of the same — CrPC, 1898 — S. 494*

The PP is an officer of the court and therefore, responsible to it and has a duty to inform of his intention to withdraw from the prosecution. The court performs a supervisory function and has a special duty in granting its consent to the withdrawal. It has to appraise itself of the reasons which prompt the PP to withdraw from the prosecution. Its duty is not to reappreciate the grounds which led the PP to request the withdrawal but to consider whether the PP applied his mind as a free agent uninfluenced by irrelevant and extraneous considerations.

The PP may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well as in order to further the broad ends, of public justice, public order and peace which include appropriate social, economic and political purposes. It is not correct to argue that the criminal law of India does not recognise 'political offences'. Politics are about Government and therefore, a political offence is one committed with the object of changing the Government of a State or inducing it to change its policy. To say that an offence is of a political character is not to absolve the offender of the offence. But the question is, is it a valid ground for the Government to advise the PP to withdraw from the prosecution? . *Rajender Kumar Jain* v. *State*, (1980) 3 SCC 435: 1980 SCC (Cri) 757: AIR 1980 SC 1510: 1980 Cri LJ 1084: (1980) 17 ACC 201.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and **O. Chinnappa Reddy**, JJ. [Date of decision: 2-5-1980]

[3534] — S. 321 — Withdrawal of charges under TADA — Public Prosecutor seeking consent of court on the sole basis of recommendation of Review Committee — Held, Designated Court rightly rejected the application — *Public Prosecutor must satisfy himself that it is a fit case for withdrawal from prosecution — If the Public Prosecutor seeks court's consent on the basis of recommendation of Review Committee such recommendation must be based on a reason which permits withdrawal from prosecution — Court must give weight to the opinion formed by the Public Prosecutor on the basis of the recommendation of Review Committee — Mere existence of prima facie material to support framing of charge is not by itself sufficient for refusal to accord consent — Manner of disposal of an application for withdrawal of charges of offences under TADA pursuant to review* *of a case by the Review Committee indicated — Public Prosecutor permitted to file fresh application which the Designated Court must decide in accordance with law*

In the instant case the Review Committee reviewed the prosecutions made under TADA Act and the Government conveyed its approval to the Director of Prosecution for deletion of charges under TADA Act in the specified criminal cases pending before the Designated Court. The Public Prosecutor filed applications in the Designated Court for withdrawal from prosecution in all those cases. The only reason assigned for withdrawal of charges under the TADA Act by the Public Prosecutor was the recommendation of the Review Committee. The Designated Court dismissed those applications taking the view that administrative decisions cannot interfere with the working of the judicial system. On appeal by special leave

Held :

The Designated Court was right in taking the view that withdrawal from prosecution is not to be permitted mechanically by the court on an application for that purpose made by the public prosecutor. It is equally clear that the public prosecutor also has not to act mechanically in the discharge of his statutory function under Section 321 CrPC on such a recommendation being made by the Review Committee; and that it is his duty as public prosecutor to satisfy himself that it is a fit case for withdrawal from prosecution before he seeks the consent of the court for that purpose.

The public prosecutor did not fully appreciate the requirements of Section 321 CrPC and made the applications for withdrawal from prosecution only on the basis of the recommendations of the Review Committee. It was necessary for the public prosecutor to satisfy himself in each case that the case is fit for withdrawal from prosecution in accordance with the settled principles indicated in the decisions of the Supreme Court and then to satisfy the Designated Court of the existence of a ground which permits withdrawal from prosecution under Section 321 CrPC.

If the recommendation of the Review Committee, based on the material present, is that resort to provisions of the TADA Act is unwarranted for any reason which permits withdrawal from prosecution for those offences, a suitable application made under Section 321 CrPC on that ground has to be considered and decided by the Designated Court giving due weight to the opinion formed by the public prosecutor on the basis of the recommendation of the High Power Committee.

The initial invocation of the stringent provisions of the TADA Act is itself subject to sanction of the Government and, therefore, the revised opinion of the Government formed on the basis of the recommendation of the High Power Committee after scrutiny of each case should not be lightly disregarded by the court except for weighty reasons such as mala fides or manifest arbitrariness. The worth of the material to support the charge under the TADA Act and the evidence which can be produced is likely to be known to the prosecuting agency and, therefore, mere existence of prima facie material to support the framing of the charge should not by itself be treated as sufficient to refuse the consent for withdrawal from prosecution. It is in this manner that an application made to withdraw the charges of offences under the TADA Act pursuant to review of a case by the Review Committee has to be considered and decided by the Designated Courts.

The applications made under Section 321 CrPC not having been decided on the basis indicated above, fresh applications made in all such cases pursuant to the recommendations of the Review Committee or the revised opinion of the Government have to be considered and decided by the Designated Courts in the manner indicated above. *R.M. Tewari* v. *State (NCT of Delhi)*, (1996) 2 SCC 610: 1996 SCC (Cri) 361: AIR 1996 SC 2047.

Bench Strength 2. Coram: **J.S. Verma** and *K. Venkataswami*, JJ. [Date of decision: 20-2-1996]

State of Orissa v. Chandrika Mohapatra, (1976) 4 SCC 250: 1976 SCC (Cri) 584; Sheonandan Paswan v. State of Bihar, (1983) 1 SCC 438: 1983 SCC (Cri) 224, followed

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899, explained

[3535] — S. 321 — Withdrawal of prosecution — Discretion as to — Who can exercise — Relevant factors for withdrawal — *Held, discretion to withdraw from prosecution is that of Public Prosecutor and none else — Public Prosecutor cannot surrender that discretion to anyone — He may withdraw from prosecution not merely on ground of paucity of evidence but on other relevant factors as well in order to further the broad ends of justice, public order, peace and tranquillity* (Para 14). *Ghanshyam* v. *State of M.P.*, (2006) 10 SCC 473: (2006) 3 SCC (Cri) 602.

Bench Strength 2. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[3536] — **S. 321 — Withdrawal of prosecution — Matter within sole discretion of Public Prosecutor, who should independently form his opinion in the interests of administration of justice** — *District Magistrate or Superintendent of Police cannot order the Prosecutor to withdraw — Magistrate also should not yield to executive pressures — Duty of State to be sure in the first instance when launching prosecution. Balwant Singh* v. *State of Bihar*, (1977) 4 SCC 448: 1977 SCC (Cri) 633: AIR 1977 SC 2265: 1977 Cri LJ 1935.

Bench Strength 3. Coram: **V.R. Krishna Iyer**, *Jaswant Singh* and *D.A. Desai*, JJ. [Date of decision: 4-10-1977]

[3537] — **S. 321 — Withdrawal of prosecution — When can be allowed — Necessary considerations** — *Held, it must be permitted only when valid reasons are made out for the same — Can be allowed only in the interest of justice — Hence, court to consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice — Discretion under S. 321 should not be exercised to stifle the prosecution — Withdrawal can be permitted if the case is likely to end in an acquittal and the continuance of the case is only causing severe harassment to the accused — Also, can be allowed if it is likely to bury the dispute and bring about harmony between the parties — In the present case reason given by High Court for allowing withdrawal of case, not correct — Further, when the case was about to be over the same should not have been allowed to be withdrawn by holding that the trial had been pending for over seven years — Held, High Court's order not legally sustainable — Hence, set aside*

Every crime is an offence against the society and if the accused committed an offence, society demands that he should be punished. Punishing the person who perpetrated the crime is an essential requirement for the maintenance of law and order and peace in the society. Therefore, the withdrawal of the prosecution shall be permitted only when valid reasons are made out for the same. (Para 10)

The law is very clear that the withdrawal of prosecution can be allowed only in the interest of justice. Even if the Government directs the Public Prosecutor to withdraw the prosecution and an application is filed to that effect, the court must consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice. If the case is likely to end in an acquittal and the continuance of the case is only causing severe harassment to the accused, the court may permit withdrawal of the prosecution. Also, if the withdrawal of prosecution is likely to bury the dispute and bring about harmony between the parties and it would be in the best interest of justice, the court may allow the withdrawal of prosecution. The discretion under Section 321 is to be carefully exercised by the court having due regard to all the relevant facts and shall not be exercised to stifle the prosecution which is being done at the instance of the aggrieved parties or the State for redressing their grievance. (Para 10)

Not many reasons are given in the impugned order as to why the Court allowed the withdrawal of the prosecution under Section 321. It is only stated that looking at the facts and circumstances of the case, permission should have been granted for withdrawal as the petitioner therein had been harassed mentally and suffered continuously for seven years during the trial. The fact that the trial was not over and the case was posted for the examination of the accused was not noticed by the High Court. In the application filed by the Public Prosecutor, the only reason given for withdrawal of the prosecution was that the accused was not a habitual criminal and, therefore, the prosecution must be withdrawn. In these circumstances, the order passed by the High Court permitting the withdrawal of the prosecution is not legally sustainable. The reason given by the learned Single Judge in the impugned order is not correct, and when the case was about to be over the same should not have been allowed to be withdrawn by holding that the trial had been pending for over seven years. (Paras 4, 5 and 11). *Rahul Agarwal* v. *Rakesh Jain*, (2005) 2 SCC 377: 2005 SCC (Cri) 506: AIR 2005 SC 910: 2005 Cri LJ 963.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 18-1-2005]

State of Bihar v. Ram Naresh Pandey, 1957 SCR 279: AIR 1957 SC 389: 1957 Cri LJ 567; State of Orissa v. Chandrika Mohapatra, (1976) 4 SCC 250: 1976 SCC (Cri) 584; Balwant Singh v. State of Bihar, (1977) 4 SCC 448: 1977 SCC (Cri) 633; Abdul Karim v. State of Karnataka, (2000) 8 SCC 710: 2001 SCC (Cri) 59, relied on

[3538] — **S. 321 — Withdrawal of prosecution on ground of paucity of evidence** — *Held, where grounds for withdrawal of prosecution found to be non-existent and there being prima facie material to support the prosecution, motive for launching the prosecution immaterial. V.S. Achuthanandan* v. *R. Balakrishna Pillai*, (1994) 4 SCC 299: 1994 SCC (Cri) 1185: AIR 1995 SC 436.

Bench Strength 3. Coram: **J.S. Verma**, *B.P. Jeevan Reddy* and *S.P. Bharucha*, JJ. [Date of decision: 13-5-1994]

[3539] — S. 321 — Withdrawal of the prosecution — Rule for according permission restated *— Held, expediency cannot, but lack of evidence can be, good ground for withdrawal — High Court not justified in suo motu interfering with accord of consent by Magistrate based on his examination of the case-diary. State of Orissa* v. *Chandrika Mohapatra,* (1976) 4 SCC 250: 1976 SCC (Cri) 584: AIR 1977 SC 903: 1977 Cri LJ 773.

Bench Strength **2.** Coram: **P.N. Bhagwati** and *S. Murtaza Fazal Ali,* JJ. [Date of decision: 23-8-1976]

[3540] — S. 321 — Order of Chief Judicial Magistrate, as affirmed by High Court, granting permission for withdrawal of prosecution *— Not interfered with by Supreme Court under Art. 136 in public interest on the finding that no useful purpose would be served in setting aside the order in view of no chance of ultimate conviction and resulting harassment to parties and wastage of public time — Constitution of India — Article 136*

The incident is dated April 2, 1974. The first information report has been registered *suo motu* by the police in November 1977 — after a gap of more than 3 1/2 years. The victims of the injuries were also accused of criminal offences said to have taken place at the same point of time and were produced before the Judicial Magistrate of Bhiwani on April 3, 1974. The Judicial Magistrate enlarged them on bail and finding injuries on their persons directed them to be medically examined. There is no material before Supreme Court to show that the victims had complained to the Judicial Magistrate that the accused persons were the authors of the injuries on them. For the first time, witnesses to the occurrence were examined towards the end of 1977 and beginning of 1978 during investigation. One of the accused persons happens to be the son of a political figure wielding influence. But this fact did not deter the Judicial Magistrate in ordering release of the victims who had been produced before him as accused persons. The Magistrate also made an order for their medical examination and that was carried out. There was no justification as to why a private complaint was not made contemporaneously and the matter had to wait for 3 1/2 years for investigation on the basis of the first information report.

A period of more than 14 months intervened between the occurrence and the promulgation of emergency.

A Commission was set up after the emergency had ended and holding a fresh elections, a different political party had come to power. Following the report of the Commission this prosecution had been launched. The finding of the Commission is not evidenced and no conviction can lie on the conclusion either. In these circumstances, chances of conviction are too far-fetched and bleak. It is not in public interest that the prosecution should proceed. In a report under S. 173(8) of the Code, the investigating agency has also indicated that adequate evidence has not been forthcoming to support the prosecution. It is thus not necessary to examine the legal aspect. *Tek Chand* v. *Tek Chand, Supdt. of Police,* 1986 Supp SCC 533: 1987 SCC (Cri) 163: AIR 1987 SC 349.

Bench Strength **2.** Coram: *Ranganath Misra* and *G.L. Oza,* JJ. [Date of decision: 28-11-1986]

[3541] — Ss. 321, 227, 239 and 397 — Supreme Court's interference with grant of consent for withdrawal from prosecution against former Chief Minister *— Prosecution permitted to be withdrawn under S. 321 Criminal Procedure Code by order of trial court, revision under S. 397 Criminal Procedure Code against that order dismissed by High Court and appeal under Art. 136 also dismissed by Supreme Court — In review petition under Art. 137 Supreme Court finding error apparent on the face of record and ordering rehearing — Interference on facts whether justified*

Respondent 2 was the Chief Minister of Bihar at the material time. Respondent 3, who was a close friend of respondent 2, was Chairman of a cooperative bank. There were certain allegations of irregularities in the bank account. When the Government headed by respondent 2 was defeated in the mid-term poll and the opposition party came into power, charge-sheets were filed against the respondents and other employees of the bank. The charge against the second respondent was that he, who at all material times, was either a Minister or the Chief Minister of Bihar abusing his position as a public servant, in conspiracy with the other accused, sought to interfere with the criminal prosecution and surcharge proceedings against respondents and others with a view to obtain to himself and to the other respondents pecuniary advantage to the detriment of the bank. Subsequently, there was again a change of ministry in Bihar as a result of which respondent 2 once again became Chief Minister. In a cabinet meeting presided over by respondent 2 a policy decision was taken that criminal cases launched out of political vendetta and cases relating to political agitation be withdrawn. The Government appointed a Special Public Prosecutor and on the Government's advice he moved an application under S. 321 CrPC before Chief Judicial Magistrate seeking court's permission to withdraw from prosecution of the respondents on four grounds: *(a)* Lack of prospect of successful prosecution in the light of the evidence, *(b)* Implication of the persons as a result of political and personal vendetta, *(c)* Inexpediency of the prosecution for the reasons of the State and public policy and *(d)* Adverse effects that the continuance of the prosecution would bring on public interest in the light of the changed situation. The Magistrate gave the consent sought. A criminal revision filed before the High Court was dismissed in limine. The appellant thereupon filed an appeal before Supreme Court under Art. 136. A bench of three Judges of the Court by a majority of 2:1 dismissed the appeal [reported at (1983) 1 SCC 438]. The appellant preferred a review petition before the Court. Since by that time one of the Judges who was a party to the decision in the appeal had demitted office, another Judge had to be replaced. This bench by its order [(1983) 4 SCC 104] admitted the review petition without expressly setting aside the appellate order and ordered rehearing as according to the Court there were errors apparent on the face of the record. The Court, however, deliberately refrained from expressing any reasons. The appeal was to be reheard immediately after the decision in *Nandini Satpathy cases* [(1987) 1 SCC 269 and (1987) 1 SCC 279]. Accordingly the present case came up before the Constitution Bench of 5 Judges.

Per Khalid and Natarajan, JJ.

The Supreme Court will not allow itself to be converted into a court of facts and evidence. When the Magistrate states in his order that he has considered the materials, it is not proper for Supreme Court not to accept that statement. The proper thing to do is to hold that the Magistrate gave consent on objective consideration of the relevant aspects of the case. It would be acting against the mandate of S. 321 to find fault with the Magistrate in such cases, unless the order discloses that the Magistrate has failed to consider whether the application is made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law. In this case the application for withdrawal by the Public Prosecutor has been made in good faith after careful consideration of the materials placed before him and the order of consent given by the Magistrate was also after due consideration of various details. It would be improper for the Supreme Court, keeping in view the scheme of S. 321, to embark upon a detailed inquiry into the facts and evidence of the case or to direct re-trial for that would be destructive of the object and intent of the section.

Per Venkataramiah, J.

If the case has been withdrawn by the Public Prosecutor for good reason with the consent of the court, Supreme Court should be slow to interfere with the order of withdrawal. If the Special Judge had rejected the application for withdrawal and the High Court had affirmed that order, Supreme Court may not have interfered with that order under Art. 136. Even if the Special Judge had permitted the withdrawal but the High Court had reversed that order, the Supreme Court may not have interfered with the orders of the High Court. But this is a case where the Special Judge had permitted the withdrawal of the prosecution and the said order of withdrawal had been affirmed by the High Court as well as by the majority judgment pronounced by the Supreme Court earlier. In absence of any strong and compelling reasons which require interference with the order permitting withdrawal, Supreme Court on review should not interfere with the order permitting the withdrawal of the case.

In the appeal under Art. 136 all the other Judges who have dealt with the case on merits from the Special Judge onwards, except Tulzapurkar, J., have opined that the permission was properly given for withdrawal. In the circumstances, it is difficult to take a different view in this case. The review petition was admitted after the appeal had been dismissed only because *Nandini Satpathy cases* had been subsequently referred to a larger Bench to review the earlier decisions. When the earlier decisions were allowed to remain intact, there was no justification to reverse the decision of Supreme Court by which the appeal had already been dismissed. There was no warrant for this extraordinary procedure to be adopted in this case. The reversal of the earlier judgment of Supreme Court by this process strikes at the finality of judgments of Supreme Court and would amount to the abuse of the power of review vested in Supreme Court, particularly in a criminal case. No other court in the country has been given the power of review in criminal cases. The majority judgment of Baharul Islam and R.B. Misra, JJ. should remain undisturbed. This case cannot be converted into an appeal against its earlier decision.

Per Bhagwati, C.J. and Oza, J.

Where the question is of purity of public administration in present day conditions, Supreme Court should regard as its bounden duty to examine carefully whenever it is alleged that a prosecution for an offence of corruption or criminal breach of trust by a person holding high public office has been wrongly withdrawn and it should not matter at all as to how many Judges in the High Court or the lower court have been party to the granting of such consent for withdrawal. In the instant case order granting consent for withdrawal of the prosecution was made by the Chief Judicial Magistrate and it was upheld by the High Court and two out of three Judges of the bench of Supreme Court which initially heard the appeal agreed with the view taken by the High Court but the fact that according to the Review Bench which also consisted of three Judges, there was an error apparent on the face of the record in the judgment of the earlier Bench, cannot be overlooked. The mathematics of numbers cannot therefore be invoked for the purpose of persuading Supreme Court not to exercise its discretion under Art. 136. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength **5**. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[3542] — Ss. 321, 227 and 239 — Grant of permission to withdraw from prosecution does not amount to discharge of the accused

Per Bhagwati, C.J. and Oza, J. (minority view)

Although the effect of withdrawal of the prosecution is that the accused stands discharged in respect of the offences for which he is sought to be prosecuted but in this case it is not an order of discharge. The analogy of an order of discharge made under S. 227 or S. 239 CrPC is not apposite. Under S. 321 the Magistrate performs a totally different judicial exercise by granting consent for withdrawal of the prosecution. Therefore, when the High Court sets aside the order of the Magistrate granting consent to withdrawal of the prosecution, it does not really sets aside an order of discharge made by the Magistrate. The High Court only holds that the withdrawal from the prosecution was incorrect or improper and that the prosecution should proceed against the accused and ultimately if there is not sufficient evidence or the charges are groundless, the accused may still be discharged. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength **5**. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[3543] — Ss. 321, 228, 240 & 173 — Prosecution if can be withdrawn on ground of insufficient or no evidence even after framing of charges

Per Bhagwati, C.J. and Oza, J. (minority view)

Though the prosecution can be withdrawn at any stage, even after the framing of the charge, when under S. 228 or 240, CrPC court after applying its mind to the material consisting of the police report and the documents sent with it under S. 173 comes to a conclusion that a prima facie case has been made out against the accused and the charge should therefore be framed, it would not be competent for the Public Prosecutor, once the charge is framed, to apply for withdrawal of the prosecution on the ground that the same material which was before the court when it framed the charge is not sufficient to sustain the prosecution. It is not possible on the same material to permit the Public Prosecutor to make a volte face so as to persuade the court to hold that there is not sufficient evidence to sustain the prosecution. However, if some material has subsequently come to light which throws doubt on the veracity of the prosecution case the Public Prosecutor can certainly apply for withdrawal on the ground that the prosecution is not well-founded. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength **5**. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

Balwant Singh v. State of Bihar, (1977) 4 SCC 448: 1977 SCC (Cri) 633 and Bansi Lal v. Chandan Lal, (1976) 1 SCC 421: 1976 SCC (Cri) 39, relied on

[3544] — Ss. 321 & 239 — Prosecution if can be withdrawn on ground of insufficient or no evidence where charge-sheet filed but charge not framed in a warrant case instituted on police report

Per Bhagwati, C.J. and Oza, J. (minority view)

Where a charge-sheet has been filed but charge has not been framed in a warrant case instituted on police report the Public Prosecutor should not be entitled to make an application for withdrawal from the prosecution on the ground that there is insufficient or no evidence in support of the prosecution. The matter should be left to the Court to consider the same issue under S. 239 and it will most certainly further or advance the cause of public justice if the court examines the issue under S. 239 and gives its reasons for discharging the accused after a judicial consideration of the material before it, rather than allow the prosecution to be withdrawn by the Public Prosecutor. Instead of the prosecution being withdrawn and taken out of the ken of judicial scrutiny the judicial verdict based on assessment and evaluation of the material before the court will always inspire greater confidence. The guiding consideration in all these cases is the imperative of public justice and it is absolutely essential that justice must not only be done but also appear to be done. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[3545] — Ss. 321, 378 and 386 — Appeal against acquittal dismissed by High Court as State wanted to withdraw that appeal — Legality of dismissal of appeal challenged — *Held, since on merits judgment of acquittal does not call for any interference no purpose would be served to go into legal questions raised by appellant. Nawab Ali* v. *State of Meghalaya*, 1990 Supp SCC 653: 1991 SCC (Cri) 155.

Bench Strength 2. Coram: *G.L. Oza* and *K. Jagannatha Shetty*, JJ. [Date of decision: 29-3-1988]

[3546] — Ss. 321, 397 and 401 — Every citizen has locus standi to oppose withdrawal from prosecution and on failing, to file a revision before HC failing which file an appeal to the Supreme Court — *Constitution of India — Arts. 134 and 136*

Per Bhagwati, C.J. and Oza, J.

Any citizen can lodge a first information report or file a complaint and set the machinery of the criminal law in motion and his locus standi to do so cannot be questioned. Therefore, a citizen who finds that a prosecution for an offence against the society is being wrongly withdrawn, can oppose such withdrawal. If he can be a complainant or initiator of criminal prosecution, he should equally be entitled to oppose withdrawal of the criminal prosecution which has already been initiated at his instance. If the offence for which a prosecution is being launched is an offence against the society and not merely an individual wrong, any member of the society must have locus to initiate a prosecution as also to resist withdrawal of such prosecution, if initiated.

In the present case the offences charged against a former Chief Minister of a State were offences of corruption, criminal breach of trust etc. and therefore, any person who is interested in cleanliness of public administration and public morality would be entitled to file a complaint and equally he would be entitled to oppose the withdrawal of such prosecution if it is already instituted. Since the appellant, an MLA, was entitled to oppose the withdrawal of prosecution, on the turning down of his opposition by the Chief Judicial Magistrate he was entitled to prefer a revision application to the High Court and on the High Court rejecting his revision application he had standing to prefer an appeal to the Supreme Court. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[3547] — Ss. 321 and 397 — Scope of High Court's power of revision and Supreme Court's power of interference under Art. 136 against the trial court's order under S. 321 — *Constitution of India — Article 136*

Per Baharul Islam, J.

An order under S. 321 does not have the same status as an order of conviction or acquittal recorded by a trial or appellate court in a criminal prosecution, inasmuch as the former has not been made appealable. An order under S. 321 has a narrower scope. As the order is judicial, the trial court is expected to give reasons for according or refusing its consent to the withdrawal. The duty of the court is to see that the grounds of withdrawal are legally valid and the application made by the Public Prosecutor is bona fide and is not collusive. In revision of an order under S. 321 of the Code, the duty of the High Court is to see that the consideration by the trial court of the application under S. 321 was not misdirected and that the grounds of withdrawal are legally valid.

The normal practice of the Supreme Court in a criminal appeal by special leave under Art. 136 of the Constitution directed against an order of conviction or acquittal is that Supreme Court does not pursue the evidence on record and reappreciate it to find whether findings of facts recorded by the courts below are correct or erroneous, far less does it peruse the Police Diary to see whether adequate materials were collected by the investigating agency. It accepts the findings of the courts below unless it is shown that the findings are the results of a wrong application of the principles of law and that the impugned order has resulted in grave miscarriage of justice.

Per Misra, J.

All that the Supreme Court has to see is that the Public Prosecutor was not actuated by extraneous or improper considerations while moving the application for withdrawal from the prosecution. Even if it is possible to have another view different from the one taken by the Public Prosecutor while moving the application for withdrawal from prosecution Supreme Court should be reluctant to interfere with the order unless it comes to the conclusion that the Public Prosecutor has not applied his mind to the facts and circumstances of the case, and has simply acted at the behest of the Government or has been actuated by extraneous and improper considerations. If the view of the Public Prosecutor is one, which could in the circumstances be taken by any reasonable man, the court cannot substitute its own opinion for that of the Public Prosecutor by making a roving enquiry into the evidence and materials on the record. That would virtually convert the Court into an appellate court sitting on judgment.

Normally the observation made by the Court that it has perused the relevant records of the case should be presumed to be correct unless a very strong case is made out for holding that it did not do so and the vaunted remark made by the Court that it has done so is incorrect.

Per Tulzapurkar, J. (dissenting)

The trial court's supervisory function of either granting or refusing to grant the permission is a judicial function. Therefore, the same is liable to correction by the High Court under its revisional powers both under the old as well as the present Code of Criminal Procedure, and naturally the Supreme Court would have at least co-extensive jurisdiction with the High Court in an appeal preferred to it by special leave or upon a certificate by the High Court.

The High Court erred in simply putting its seal on the trial court's order. *Sheonandan Paswan* v. *State of Bihar*, (1983) 1 SCC 438: 1983 SCC (Cri) 224: AIR 1983 SC 194: 1983 Cri LJ 348.

Bench Strength 3. Coram: **V.D. Tulzapurkar**[1], **Baharul Islam**[2] and **R.B. Misra**[3], JJ. [Date of decision: 16-12-1982]

[3548] — Ss. 321 and 397 — Untenability of order permitting withdrawal found in revision or appeal — Preventing adverse effect on losing party — *Held, in revision the High Court or in appeal the Supreme Court may have to go into the evidence on record to find a prima facie case for refusing consent for withdrawal if there is no other ground for reversing the order under S. 321 permitting withdrawal. (Per Bhagwati, C.J. and Oza, J.). Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[3549] — Ss. 321, 4 and 5 — Procedure under S. 321, held, not applicable to deemed withdrawal of cases in terms of S. 2(3)(a), Prevention of Terrorism (Repeal) Act, 2004 in which cognizance had been taken by the court — Provision in S. 2(3) for deemed withdrawal of cases in which cognizance had been taken by the court — Inapplicability of S. 321 CrPC to — *Held, (per curiam), the said provision is not subject to the procedure contemplated in S. 321 CrPC — Per K.G. Balakrishnan, C.J. and Raveendran, J., the role of Public Prosecutor in such a case would be limited to bring the Review Committee's direction to the notice of the court which would then, on satisfying itself as to whether such opinion was in fact rendered but without resorting to judicial review thereof, record that the case stood withdrawn — Plain meaning of the words given effect to — Rule against redundancy applied — However, repelling the apprehension that in such a case there would be no remedy in the event of a wrong opinion of the Review Committee, held, a person aggrieved by such opinion still had the remedy of judicial review under Art. 226 of the Constitution — Per Bhandari, J. (concurring), POTA (Repeal), 2004 is a special Act and therefore prevails over a general Act, such as CrPC — Moreover, Ss. 4 and 5 CrPC themselves allow Parliament to deviate from CrPC when necessary — Subjecting the Review Committee's decision to S. 321 CrPC would produce an absurd result and would go against the objective of POTA (Repeal), 2004 contained in its SOR — Remedy of judicial review under Arts. 226 and 136 of Constitution is still available to persons aggrieved by the Review Committee's decision to withdraw cases — Constitution of India — Arts. 226 and 136 — Prevention of Terrorism (Repeal) Act, 2004 — S. 2(3)(a) and Statement of Objects and Reasons (SOR)*

The relatives of some persons killed in the Godhra train burning incident and in the Akshardham Temple attack challenged the constitutionality of the provisions of Sections 2(3) & (5) of the Prevention of Terrorism (Repeal) Act, 2004 (the repealing Act) before the Gujarat High Court. The High Court upheld the constitutionality of the said provisions but added that Section 2(3) of the said Act had not dispensed with the requirements of Section 321 CrPC; and where the Review Committee, in regard to any case where cognizance had been taken by the court, held that there was no prima facie case for proceeding against the accused under the provisions of POTA, such opinion of the Review Committee would not have the effect of deemed withdrawal of the case from the court until the procedure prescribed in Section 321 CrPC was complied with. That when the said procedure was complied with, the Special Court would pass appropriate orders by giving due weightage to the opinion of the Review Committee. The relatives of the victims then filed one of the present two sets of appeals by special leave.

The other set of the present appeals was filed by persons charged in respect of offences under the provisions of the Prevention of Terrorism Act, 2002 in terrorism related cases. They were aggrieved by the Gujarat High Court's direction to read Section 2(3) of the repealing Act subject to Section 321 CrPC. Moreover, they challenged other judgments of the said High Court and the judgment of the Bombay High Court which had followed the said decision.

Initially, the present appeals came up before a two-Judge Bench in *Mahmadhusen Abdulrahim Kalota Shaikh (1)*, (2009) 2 SCC 47, which referred them to the present three-Judge Bench.

Before the Supreme Court, the relatives of the victims contended that Sections 2(3) and 2(5) of the repealing Act were unconstitutional as they amounted to encroachment on the judicial power of the State. Alternatively, they supported the decision of the High Court and contended that once the Special Judge took cognizance of the offence, the proceedings could be withdrawn only under Section 321 CrPC. That the Review Committee being purely a committee appointed by the executive, had no right to determine the innocence or otherwise of an accused. They expressed an apprehension that if the Review Committee reached a wrong opinion there would be no remedy. They pointed out that if Section 321 CrPC was applicable, there would at least be a judicial scrutiny before the opinion resulted in withdrawal.

The POTA accused contended that once the Review Committee held that there was no prima facie case to continue the proceedings against the accused, the case should, by virtue of Section 2(3) of the repealing Act, be deemed to have been withdrawn w.e.f. the date of issuance of the direction by such Review Committee. That in such cases, Section 321 CrPC would have no application and there was neither any need for the Public Prosecutor to file any application for withdrawal from prosecution, nor any need or occasion for the court to consider whether consent should be given for such withdrawal from prosecution.

The State of Gujarat contended that the High Court had rightly held that Section 2(3) of the repealing Act did not dispense with the requirements of Section 321 CrPC for withdrawal and that after the Review Committee formed an opinion, the same would have to be placed before the court by the Public Prosecutor with an application and the court would have to independently consider such application and come to a conclusion whether it should consent to the prosecution being withdrawn or not.

The Union of India submitted that the power exercised by the Review Committee under Section 2(3) of the repealing Act, though not subject to the supervising power of the Special Court under Section 321 CrPC, was amenable to the power of judicial review of the High Court under Article 226. That thus there were adequate safeguards against any misuse or abuse of power by the Review Committee under Section 2(3).

Partly allowing the appeals of the POTA accused and granting to the relatives of victims liberty to challenge the opinions of the Review Committee wherever they were aggrieved,

Held :

Per K.G. Balakrishnan, C.J. and Raveendran, J.

Parliament in its plenary power, can make an outright repeal which will not only destroy the effectiveness of the repealed Act in future, but also operate to destroy all existing inchoate rights and pending proceedings. That is because the effect of repealing a statute is to obliterate it completely from the record, except to the extent of savings. If Parliament specifically excludes any saving clause in a repealing Act, or severely abridges the provision for savings, which it has the power to do, the effect would be that after the repeal of the statute, no proceeding can continue, nor can any punishment be inflicted for violation of the statute during its currency. (Para 36)

When Parliament has the power to repeal a law outright without any savings and thereby put an end to all pending prosecutions and proceedings forthwith (without any need to comply with Section 321 CrPC), it would also have the power to make a provision in the repealing Act for the pending proceeding to continue, but those proceedings to come to an end, when a duly constituted Review Committee with a sitting or retired Judge of the High Court as Chairman, reviews the cases registered under the repealed Act and reaches the opinion that there is no prima facie case for proceeding against the accused. Surely, the wider and larger power includes the narrower and smaller power. The continuation of a proceedings in respect of any offence under an Act, after the repeal of such Act, is itself as a result of a deeming fiction. The natural consequence of repeal is complete obliteration including pending proceedings. Continuation of a pending proceeding is possible only on account of the deeming fiction created by the savings clause in the repealing Act which provides for continuation of the proceedings as if the principal Act had not been repealed. Therefore, any provision in the repealing Act for saving a pending proceeding, with any further provision for termination of such pending proceedings, is a provision relating to "winding-up" matters connected with the repealed Act. By no stretch of imagination can such a provision be termed as interference with judicial power, even assuming that such a provision in a live unrepealed statute may be considered as interference with judicial power. It is, therefore, unnecessary to examine whether Section 2(3) of the repealing Act is an encroachment of judicial power. (Paras 37 and 53)

Many tests applied for deciding the constitutional validity of live and current statutes may not apply to "winding-up" provisions in a savings clause of a repealing Act dealing with repeal. Parliament has the legislative competence to make the repealing Act. The repealing Act repeals POTA and provides for certain savings from repeal to meet the special features of the repealed statute. It does not violate any constitutional provisions. Hence the repealing Act and in particular Sections 2(3) and 2(5) thereof are valid and constitutional. [Paras 38 and 52(*i*)]

Section 2(3) of the repealing Act does not contemplate or provide for compliance with Section 321 CrPC before the withdrawal comes into effect. The clear intention of Section 2(3) of the repealing Act is that when the Review Committee opines that there is no prima facie case for proceeding against the accused, on review of the pending POTA cases, such cases, even though cognizance has been taken by the court, shall be deemed to have been withdrawn without anything further to be done. In view of expression of such clear legislative intent in Section 2(3) of the repealing Act, there is no question of bringing Section 321 CrPC into play. If Section 321 is held to be applicable, then the provision in Section 2(3) that the cases shall be deemed to be withdrawn, is rendered nugatory and the cases are not actually withdrawn until the requirements of Section 321 are complied with. That would amount to rewriting Section 2(3), which is clearly impermissible. (Para 41)

If Parliament wanted to make the provisions of Section 2(3) of the repealing Act subject to Section 321 CrPC it would have been done by making appropriate provisions therefor. As that is not done, the plain meaning of the words of the legislation has to be given effect to. (Para 48)

Section 2(3) of the repealing Act also contains clear indications which exclude Section 321 CrPC. They are: (*i*) the review is by the Review Committee with a sitting or retired Judge of the High Court as the Chairman, having the power of a civil court in respect of discovery and production of documents and requisitioning records; (*ii*) all cases registered under POTA are required to be reviewed irrespective of whether any application was made by an aggrieved person or not, so as to find out whether there was a prima facie case for proceeding against the accused under POTA; (*iii*) Section 2(3) clearly provides that where a Review Committee opines that there was no prima facie case for proceeding against the accused, cases pending in court also should be deemed to have been withdrawn w.e.f. the date of issuance of such direction by the Review Committee. The wording is clear and unambiguous and does not contemplate or provide for a further application of mind by the Public Prosecutor or grant of consent by the court under Section 321 CrPC. [Paras 49 and 52(*ii*)]

The opinion of the Review Committee is open to judicial review under Article 226 of the Constitution. Any person aggrieved by the opinion can challenge it in a writ petition. As long as an aggrieved person can challenge the opinion expressed by the Review Committee by invoking judicial review, the apprehension that there would be no remedy in the event of wrong opinion by the Review Committee, is unwarranted. The opinions of the Review Committee under Section 2(3) of the repealing Act are limited in number and are required to be given as a one-time measure with reference to a repealed statute. The availability of judicial review under Article 226 in the event of errors and abuse, is a sufficient safeguard and deterrent against any wrongdoing by the Review Committee. The appeals by the relatives of victims are disposed of reserving liberty to challenge the opinions of the Review Committee, wherever they are aggrieved. [Paras 50 and 52(*iii*)]

Therefore, it is held that once the Review Committee on review under Section 2(3) of the repealing Act, expresses the opinion that there is no prima facie case for proceeding against the accused, in cases in which cognizance has been taken by the court, such cases shall be deemed to have been withdrawn. The only role of the Public Prosecutor in the matter is to bring to the notice of the court, the direction of the Review Committee. The court on satisfying itself as to whether such an opinion was rendered, will have to record that the case stands withdrawn by virtue of Section 2(3) of the repealing Act. The court will not examine the correctness or propriety of the opinion nor exercise any supervisory jurisdiction in regard to such an opinion of the Review Committee. But, if the opinion of the Review Committee is challenged by any aggrieved party in writ proceedings and is set aside, the court where the proceedings were pending, will continue with the case as if there had been no such opinion. (Para 51)

Per Dalveer Bhandari, J. (concurring)

While Section 321 CrPC *itself* does not apply to POTA, the principle of judicial review embodied therein does. In other words, Section 321 CrPC is a codified version of judicial review. At the trial court level, Section 321 CrPC ensures that the judiciary makes the final decision by approving the Public Prosecutor's decision to withdraw a case. Even if Section 321 CrPC is made inapplicable by a special law like POTA (Repeal), 2004 or POTA, 2002, judicial review still applies. Section 321 CrPC is a general provision that can be subjected to special laws. (Paras 65 and 63)

A violation of judicial review is another way of saying that the separation of powers between the principal three organs of the State has been violated. Judicial review forms part of the basic structure of the Constitution. And when judicial review is removed—even at the trial court level—the question becomes one of degree: has the basic structure been destroyed? The short answer is that because POTA (Repeal), 2004 has not removed judicial review under Article 226 or Article 136, the basic structure has not been destroyed. (Para 66)

The courts' powers to grant consent to a prosecutor's request to withdraw exits in the absence of Section 321 CrPC. The court's decision to grant consent to an application for withdrawal is a judicial function. If it is granted, the case is over. Resolving legal disputes is the core function of the judiciary. The power to take a final decision once a case is before a court, irrespective of the stage at which the determination is made, should rest with the Judge. To the extent POTA (Repeal), 2004 takes this decision away from the Judge, it implicates the basic structure doctrine. (Para 67)

Separation of powers is a part of the basic structure of the Constitution of India. However, the Constitution does not envisage a strict separation of powers. There is separation by necessary implication. (Paras 70 to 72)

Even a ruling wherein prima facie cases are withdrawn, the decision to withdraw is final and terminates the case in favour of the accused. A case has thus been decided. The question regarding the Review Committee's competence to decide the court case loses some relevance when one considers that the aggrieved party could still file an appeal against such a decision. Nevertheless, the Review Committee is an executive body that is making a judicial decision. The executive appoints the Review Committee. A majority of its members belong to the executive branch. Under POTA (Repeal), 2004, the executive's Review Committee has the power to decide cases. Thus, judicial review has been implicated. Given that judicial review forms part of the basic structure, it has to be determined if POTA (Repeal), 2004 has gone too far. (Paras 79 and 80)

Under POTA (Repeal), 2004, a portion of judicial review has been removed. The trial court no longer has the power to override the Review Committee's decision to withdraw, as it would have had under Section 321 CrPC. But that is not as drastic as it sounds, given that the Review Committee's job is to act as a filter. Where there is obviously no case against the accused, the Review Committee should withdraw the case. Where there is some evidence that suggests that a case against the accused might exist, the Review Committee must allow the proceedings to continue. (Para 89)

A violation of separation of powers need not rise to the level under the provisions at issue in *Raj Narain*, 1975 Supp SCC 1, *Minerva Mills Ltd.*, (1980) 3 SCC 625, *L. Chandra Kumar*, (1997) 3 SCC 261 and *I.R. Coelho*, (2007) 2 SCC 1 before the Supreme Court will consider it an abrogation of the basic structure. (Para 91)

Those who are aggrieved by the Review Committee's decision to withdraw still have judicial recourse under Article 226 of the Constitution. Under that article, it may take appropriate steps in the High Court (or in the Supreme Court) against the Review Committee's decision to withdraw. One cannot say that the aggrieved parties are without a remedy, when those parties can approach the High Court (or the Supreme Court). The High Court should examine the aggrieved parties' cases, if those parties choose to contest the Review Committee's decision to withdraw. POTA (Repeal), 2004 does not strip the higher judiciary of judicial review. As such, POTA (Repeal), 2004 survives. In this view of the matter, the basic principle of separation of power is not violated. (Paras 90 to 92 and 103)

In addition, POTA (Repeal), 2004 is a special Act that trumps a general Act such as CrPC. This is consistent with the general principle of statutory interpretation. What is more, CrPC itself in

Sections 4 and 5 allows Parliament to deviate from CrPC when necessary. CrPC says that it is a general law that is subject to special laws. The provisions of the special law must prevail and CrPC must give way. (Paras 94 to 97)

The Statement of Objects and Reasons of POTA (Repeal), 2004 expressly says that it is special. POTA, like TADA before, deviates from the general criminal codes (IPC, 1860 and CrPC, 1973) and provides special substantive and procedural rules for acts of terrorism. It was first reasoned by the legislature that harsher laws were necessary to combat and deter terrorism. (Para 98)

Inserting Section 321 CrPC itself into POTA (Repeal), 2004 defies logic and produces an absurd result. "The object of the construction of a statute being to ascertain the will of the legislature, it may be presumed that neither injustice nor absurdity was intended." (Para 101)

The Statement of Objects and Reasons of POTA (Repeal), 2004 gives guidance in two areas. First, the allegations of misuse of POTA, 2002 were directed at some of the State Governments. That is relevant because it shows that Parliament wanted a mechanism by which it could reverse the State Governments' alleged misuse of POTA, 2002. Subjecting the Central Review Committee's decision to the will of the State Government's Public Prosecutor, as is done when Section 321 CrPC applies, clearly goes against the very objective of POTA (Repeal), 2004. (Para 102). *Mahmadhusen Abdulrahim Kalota Shaikh (2)* v. *Union of India*, (2009) 2 SCC 1.

Bench Strength **3**. Coram: **K.G. Balakrishnan, C.J.**[1] and *R.V. Raveendran*[1] and **Dalveer Bhandari**[2], JJ. [Date of decision: 21-10-2008]

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; Kathi Raning Rawat v. State of Saurashtra, AIR 1952 SC 123: 1952 SCR 435; Special Courts Bill, 1978, In re, (1979) 1 SCC 380, relied on

G.P. Singh: Principles of Statutory Interpretation, 11th Edn., p. 633; Constitution Assembly Debates, Vol. VII, p. 959; Julius Stone: Social Dimensions of Law and Justice, (1966) p. 668; G.P. Singh: Principles of Statutory Interpretation, 11th Edn., 2008, p. 129, referred to

Govt. of T.N. v. Union of India, (2004) 1 CTC 641; Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1; Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625; L. Chandra Kumar v. Union of India, (1997) 3 SCC 261: 1997 SCC (L&S) 577; I.R. Coelho v. State of T.N., (2007) 2 SCC 1, distinguished

Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1; Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625; L. Chandra Kumar v. Union of India, (1997) 3 SCC 261: 1997 SCC (L&S) 577; I.R. Coelho v. State of T.N., (2007) 2 SCC 1, considered

Harbans Singh v. State, AIR 1953 All 179; Kirpa Ram v. Ram Asrey, AIR 1951 All 414, impliedly approved

— **S. 323** *See also* S. 347, Criminal Procedure Code, 1898, p. 1167 in Vol. 2

— **S. 323** *See* Ss. 190, 198-A, 209, 239, 240, 242 and 323

See also Ss. 209, 323 and 465(1)

[3550] — Ss. 323 and 209 — Commitment of cross-cases to Sessions Court — Power of Magistrate regarding — *Where one of the counter-cases involved an offence triable by Sessions Court but the other did not, held, the Magistrate could nonetheless commit under S. 323 CrPC even the latter case to Sessions Court — Scope of powers of Magistrate under Ss. 209 and 323 CrPC, explained*

Where one of the two cases (relating to the same incident) is charge-sheeted or complained of, involves offences or offence exclusively triable by a Court of Session, but none of the offences involved in the other case is exclusively triable by the Sessions Court, the Magistrate has no escape from committing the former case to the Sessions Court as provided in Section 209 CrPC. Though, the next case cannot be committed in accordance with Section 209 of the Code, the Magistrate has, nevertheless, power to commit the case to the Court of Session. Section 323 is incorporated in CrPC to meet similar cases also. (Para 12)

Section 323 CrPC does not make an inroad into Section 209 because the former is intended to cover cases to which Section 209 does not apply. When a Magistrate has committed a case on account of the legislative compulsion by Section 209, its cross-case, having no offence exclusively triable by the Sessions Court, must appear to the Magistrate as one which ought to be tried by the same Court of Session. Commitment under Sections 209 and 323 might be through two different channels, but once they are committed their subsequent flow could only be through the stream channelised by the provisions contained in Chapter XVIII. (Para 13). *Sudhir* v. *State of M.P.*, (2001) 2 SCC 688: 2001 SCC (Cri) 387: AIR 2001 SC 826.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 2-2-2001]

— **S. 325** *See* Ss. 235(2), 248(2), 325, 360 and 361

— **S. 325(1)** *See* Ss. 29(2), 5, 4(2), 325(1) and 357

— **S. 326** *See also* S. 350, Criminal Procedure Code, 1898, pp. 1168 et seq. in Vol. 2

— **S. 326** *See* Ss. 231, 242, 243, 246 and 326

See also Ss. 307/34 or Ss. 326/34

[3551] — S. 326 — Applicability — Conditions for, restated

The appellant was challaned before a Designated Court at Madras (now Chennai) which was constituted under the Terrorist and Disruptive Activities (Prevention) Act, 1987 ("TADA" for short). He was charged of offences under Section 302 read with Section 120-B IPC and Section 4 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992, besides Sections 3 and 5 of TADA. During the trial the appellant was released on bail. After the expiry of TADA, the Designated Courts in the State of T.N. were abolished and the appellant's case was transferred to the Sessions Court for trial of the non-TADA offences. The Sessions Court proposed to proceed with the trial acting on the evidence recorded by the Designated Court and rejected the appellant's demand for a de novo trial. After unsuccessfully approaching the High Court, the appellant approached the Supreme Court. Dismissing the appeal,

Held :

Section 18 of TADA, 1987, which permits the transferee court to start from the stage up to which the Designated Court proceeded, is not applicable in the present case because the Designated Court itself had ceased to exist during the progress of the trial. (Paras 8 and 9)

Normally, the offences under Sections 302 and 120-B IPC etc. are triable by the Court of Session. Under Section 12 of TADA, all Designated Courts can try any other offence also, while trying any offence under TADA if such other offence is also triable in the same case together with the offence under TADA. But a Sessions Court cannot try an offence under TADA even in conjunction with other non-TADA offences. The fallout of the non-existence or cessation of the existence of a Designated Court is that no offence under TADA can be tried against any accused. But the offences not falling under TADA, which could be tried in a regular Sessions Court, have to go for trial to a regular court. (Para 10)

Section 326 CrPC, as it originally remained, was meant to apply only to cases before Courts of Magistrates. By Act 45 of 1978 the words "Judge or" were also inserted just before the word "Magistrate". So from 1978 onwards the applicability of the section was extended to all trial courts. (Para 12)

For the application of Section 326 of the Code three postulates must be concatenated together. First is, a Judge should have recorded the evidence in the case either in part or in whole. Next is, the said Judge should have ceased to exercise jurisdiction in that case, and the third is, another Judge should have succeeded him and such successor Judge must have jurisdiction to try the offences concerned. If the above conditions are completed the successor Judge stands empowered to act on the evidence already recorded in the case. (Para 13)

The legislative intention is clear from a reading of the section that the words "succeeded by another Judge" must get a wide amplitude. It is for the said purpose that Section 326(2) is incorporated bringing even cases transferred from one Judge to another, within the scope of the section. The words "such jurisdiction" in Section 326(1) are not intended to narrow down the ambit of the provision to Judges who could have exercised exactly the same jurisdiction which his predecessor Judge exercised. It is enough that the successor Judge has jurisdiction to try the offences sought to be proved against the accused. (Para 14). *Bhaskar* v. *State*, (1999) 9 SCC 551: 2000 SCC (Cri) 425: AIR 1999 SC 3539.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 22-9-1999]

[3552] — S. 326 (as amended by Act 45 of 1978) — Transfer of part-heard case from TADA court to regular court — Procedure of transferee court — *TADA courts in T.N. State abolished after expiry of TADA — Consequently part-heard case involving offence under S. 302 read with S. 120-B IPC and S. 4 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992, besides Ss. 3 and 5 of TADA transferred to Sessions Court after dropping out offences under TADA — Such a case, held, attracts S. 326(1) — Hence, the Sessions Court can act on the evidence recorded by TADA court and need not try the case de novo — Further, held, S. 18 of TADA is not applicable in such a case — TADA, 1987 — Ss. 3, 5, 12 and 18 — Penal Code, 1860 — Ss. 302 and 120-B — T.N. Public Property (Prevention of Damage and Loss) Act, 1992 (59 of 1992), S. 4. Bhaskar* v. *State*, (1999) 9 SCC 551: 2000 SCC (Cri) 425: AIR 1999 SC 3539.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 22-9-1999]

Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47: AIR 1990 SC 1962, distinguished

[3553] — S. 326 — **Part-heard trial — Evidence partly recorded by one Magistrate/Judge and partly by other** — *Magistrate/Judge can re-summon a witness already examined only for further examination — Fresh examination of such witnesses for fresh trial not permissible — Accused has* *no right to claim de novo trial — Effect of amendment of S. 350 of 1898 Code by amending Act of 1955 — CrPC, 1898 — S. 350 (as amended by Act 26 of 1955)*

When the Code of 1898 was repealed and replaced by the new Code of 1973 Section 350 was renumbered as Section 326 without any textual change. From a comparative reading of sub-section (1) of Section 350 as it stood prior to its amendment in 1955 and as it stands since then with the change in its numeral and inclusion of the word 'Judge' therein it is clear that the discretion earlier given to the Presiding Officer of the Court to act on the evidence recorded by his predecessor or partly recorded by him still remains. While earlier he could re-summon *the witnesses and recommence the inquiry or trial* — which necessarily meant a *de novo* trial — he can now only re-summon *a witness who has already been examined for further examination* and discharge him after such *further* examination, cross-examination and re-examination, if any. It is evident therefore that now the Magistrate or Judge can exercise his judicial discretion only for *further* examination of a witness already examined and not for fresh examination of witnesses for a fresh trial. Obviously, keeping in view the inevitable frequent changes in the office of the Magistrate and Judge and in order to provide a speedy trial the legislature has taken away the well-established right of the accused to claim a *de novo* trial and that of the court to so direct, by express words of the amending statute of 1955. (Para 20). *Ranbir Yadav* v. *State of Bihar*, (1995) 4 SCC 392: 1995 SCC (Cri) 728: AIR 1995 SC 1219: 1995 Cri LJ 2665.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 21-3-1995]

Payare Lal v. State of Punjab, (1962) 3 SCR 328: AIR 1962 SC 690, distinguished

[3554] — S. 326 (as amended by Act 45 of 1978) — Legislative history of, and reasons for, restated — *External aids — History of the Legislation — Law Commission's 41st Report — Considered*

The archaic concept was that the very same judicial personage who heard and recorded the evidence must decide the case. But over the years it was revealed in practice that fossilisation of the said concept, instead of fostering the administration of criminal justice, was doing the reverse. Hence the legislature wanted to discontinue the aforesaid antediluvian practice and decided to afford option to the successor judicial officer. The legislature conferred such option only on the Magistrates at the first instance and as the new experiment showed positive results towards fostering the cause of criminal justice the Law Commission recommended that such option should advisedly be extended to Judges of all other trial courts also. The said recommendation was later accepted by the Government and was finally approved by Parliament through Section 27 of Act 45 of 1978. (Paras 15, 17 and 21). *Bhaskar* v. *State*, (1999) 9 SCC 551: 2000 SCC (Cri) 425: AIR 1999 SC 3539.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 22-9-1999]

— S. 327 *See also* S. 352, Criminal Procedure Code, 1898, p. 1168 in Vol. 2

— S. 327 *See* Ss. 9(6), 194, 327 and 2(p)
See also Ss. 273 to 275, 284, 285 and 327

[3555] — S. 327 — Open trial — Purpose and need for open trial — Explained — *Held (per Bhandari, J.), public trial ensures fairness and creates public confidence in functioning of courts — It is a facet of the rule of law — Constitution of India — Article 21*. [Paras 136, 143(*iv*), 143(*v*) and 144]. *Mohd. Shahabuddin* v. *State of Bihar*, (2010) 4 SCC 653.

Bench Strength **2**. Coram : **Dalveer Bhandari**[1] and **Dr. M.K. Sharma**[2], JJ. [Date of decision : 25-3-2010]

[3556] — S. 327 — "Open Court" — Meaning of — Restrictions which can be imposed by Court — *Sessions Court holding trial within jail premises pursuant to order of High Court under S. 9(6), having regard to the unprecedented violent situation then prevailing, held, deemed to be an open court. Kehar Singh* v. *State (Delhi Admn.)*, (1988) 3 SCC 609: 1988 SCC (Cri) 711: AIR 1988 SC 1883.

Bench Strength **3**. Coram: **G.L. Oza**[1], **B.C. Ray**[2] and **K. Jagannatha Shetty**[3], JJ. [Date of decision: 3-8-1988]

See fully under Ss. 9(6), 194, 327, 2(p), supra

[3557] — S. 327 — Open trial/court — What is and importance of — Need for compliance with requirements of S. 327 — Holding of trial in jail premises — If can be in compliance with S. 327 — *Held (per curiam), a trial does not lose its quality of being an open trial merely because it is conducted inside jail premises, provided the public has free access — On facts held, S. 327 was not violated by conducting trials against appellant inside jail premises when lawyers, press and public were free to watch court proceedings subject to security procedures — Constitution of India — Article 21*

The appellant's second objection was that his right to open trial was violated by conducting trials against him in jail premises.

Rejecting this objection,

Held :

Per Bhandari, J.

In all civilised countries governed by the rule of law, all criminal trials have to be public trials where public and press have complete access. Public access is essential if trial adjudication is to achieve the objective of maintaining public confidence in administration of justice. Publicity is the authentic hallmark of judicial functioning distinct from administrative functioning. Open trial serves an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion. Public trial restores the balance in cases when a shocking crime occurs in society. People have an inherent distrust for secret trials. One of the demands of democratic society is that the public should know what goes on in court while being told by the press or what happens there, to the end that the public may judge whether the Indian system of criminal justice is fair and right. Criminal trial is a public event. What transpires is a public property. Open trial is the universal rule and must be scrupulously adhered to except under exceptional and extraordinary circumstances. The right to public trial has also been recognised under Section 327 CrPC. (Paras 133 to 135 and 136 & 144)

The importance of public trial in a democratic country governed by the rule of law can hardly be overemphasised but at the same time the fact cannot be overlooked that the primary function of the judiciary is to do justice between parties which bring their causes before it. It is difficult to accede to proposition that there cannot be any exception to the universal rule that all cases must be tried in open court. In a case of extraordinary nature, the universal rule of open trial may not be adhered to. The High Court looking to exceptional and extraordinary circumstances can take such a decision and no personal hearing is warranted before taking such a decision. Apart from 38 lawyers, public and press had access to court proceedings. Jail premises are only one kilometre from Siwan Court. Court proceedings were regularly reported in the press. No real prejudice has been caused to the appellant. The case in hand would fall in the category of those extraordinary and exceptional cases where in the interest of justice, it became imperative to shift the venue of trial. [Paras 136, 143(*iv*), 143(*v*) and 144]

There are situations where the action of the State is prima facie void and therefore has to be set aside. If the denial of a public trial was a prima facie case of vitiation of natural justice, the court would be justified in exercising judicial review. However, when there is no prima facie violation of principles of natural justice, then it has to be tested whether there is need for a judicial review of the orders for shifting trials. There is no presumption that trial in prison is not an open trial. To hold that the appellant's right to a public trial has been denied the appellant has to prove more than mere shifting of the location of the trial. In the present case, there is no violation of the principles of natural justice in shifting the trials of the cases of the appellant from a regular court to a Special Court. (Paras 99, 101, 107, 109 and 100)

In the present case, it is necessary to maintain the discipline of the court which is not only trying the appellant's case but a large number of other cases which were getting delayed by the presence of a large number of supporters of the appellant. The appellant is claiming that his right to a public trial has been vitiated by the court being set up inside the jail. The State must demonstrate that: (*a*) nobody is being denied entry to courtroom as long as they agree to regular security checks; and (*b*) there is a clear and logical reason as to why case was transferred from Siwan Courthouse to Siwan Jail. (Para 129)

In this case though the trials are taking place in jail but in fact no real prejudice has been caused to the appellant. It has been shown by the respondent that no one has been denied from attending or watching trial. The appellant is being represented by 38 lawyers. The press and those who want to attend the trial or case have access to remain present during court proceedings. [Paras 109, 111, 117, 139 to 142 and 143(*v*)]

Per Sharma, J. (concurring)

An "open court" is a court to which the general public has a right to be admitted and access to the court is granted to all the persons desirous of entering the court to observe the conduct of the judicial proceedings. Although the general rule still remains that a trial must be conducted in an open court, it may sometimes become necessary or rather indispensable to hold a trial inside a jail. Considerations of public peace and tranquillity, maintenance of law and order situation, safety and security of the accused and the witnesses may make the holding of a trial inside the jail premises imperative as is the situation in the present case. (Paras 214 and 215)

A trial does not stand vitiated solely because it is conducted inside jail premises. However, at the same time, there must be compliance with the provisions contained in Section 327 CrPC which guarantees certain safeguards to ensure that a trial is an open trial. (Para 217)

An invitation to the public to witness the appellant's trial was affixed on the jail gate, the appellant was represented by 38 advocates who regularly attended court in the jail premises, day-to-day court proceedings were reported in newspapers and entry was allowed to all persons after entering their personal details into a register maintained by the jail authorities. A retired judicial officer who was the appellant's relative had attended all court proceedings. All the aforesaid facts have not been controverted by the appellant. The Court had also not been shown or made aware of any fact that any permission sought for by any intending person to witness the proceedings was refused by the authority. Presence of a press person in the audience, present on one occasion at least was vehemently objected to by the appellant himself. In view of the aforesaid, there was sufficient compliance with Section 327 CrPC. (Paras 218 and 219). *Mohd. Shahabuddin* v. *State of Bihar,* (2010) 4 SCC 653.

Bench Strength **2**. Coram : **Dalveer Bhandari**[1] and **Dr. M.K. Sharma**[2], JJ. [Date of decision : 25-3-2010]

Kailash Nath Agarwal v. Emperor, AIR 1947 All 436; M.R. Venkataraman, In re, AIR 1950 Mad 441; T.R. Ganeshan, In re, AIR 1950 Mad 696; Prasanta Kumar Mukerjee v. State, AIR 1952 Cal 91; Narwarsingh v. State, AIR 1952 MB 193; Richmond Newspapers Inc. v. Commonwealth of Virginia, 65 L Ed 2d 973: 448 US 555 (1980); Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1: (1966) 3 SCR 744; State of Oregon v. James Donald Jackson, 178 or App 233: 36 P 3d 500 (2001), referred to

Cora Lillian McPherson v. Oran Leo McPherson, AIR 1936 PC 246; Scott v. Scott, 1913 AC 417: (1911-13) All ER Rep 1 (HL); Richmond Newspapers Inc. v. Commonwealth of Virginia, 65 L Ed 2d 973: 448 US 555 (1980); Mueller, Problems Posed by Publicity to Crime and Criminal Proceedings, 110 U Pa L Rev 1, 6 (1961); Oliver, In re, 92 L Ed 682: 333 US 257: 68 S Ct 499 (1947); Craig v. Harney, 91 L Ed 1546: 331 US 367: 67 S Ct 1249 (1946); Estes v. Texas, 14 L Ed 2d 543: 381 US 532: 85 S Ct 1628 (1964); Gannett Co. Inc. v. DePasquale, 61 L Ed 2d 608: 443 US 368: 99 S Ct 2898 (1978); A.K. Roy v. Union of India, (1982) 1 SCC 271: 1982 SCC (Cri) 152; Sahai Singh v. Emperor, AIR 1917 Lah 311, cited

F. Pollock: The Expansion of Common Law (1904), pp. 31-32; E. Jenks: The Book of English Law, 6th Edn. (1967), pp. 73-74; Sources of Our Liberties, R. Perry Edn., 1959, p. 188; B. Schwartz: The Bill of Rights: A Documentary History, 1971, p. 129; J. Bentham: Rationale of Judicial Evidence, 1827, p. 524; H. Weihofen: The Urge to Punish, (1956), pp. 130-131; Mueller, Problems Posed by Publicity to Crime and Criminal Proceedings, 110 U Pa L Rev 1, 6 (1961), cited

Gannett Co. Inc. v. DePasquale, 61 L Ed 2d 608: 443 US 368: 99 S Ct 2898 (1978); Kehar Singh v. State (Delhi Admn.), (1988) 3 SCC 609: 1988 SCC (Cri) 711; Sheppard v. Maxwell, 16 L Ed 2d 600: 384 US 333 (1966); Press-Enterprise Co. v. Superior Court, 92 L Ed 2d 1: 478 US 1 (1986); Stephen Gary Howard v. Commonwealth of Virginia, 6 Va App 132 (1988); Adolph Dammerau v. Commonwealth of Virginia, 3 Va App 285 (1986); People v. Robert England, 83 Cal App 4th 772 (2000); Globe Newspaper Co. v. Superior Court for the County of Norfolk, 73 L Ed 2d 248: 457 US 596 (1981); Richmond Newspapers Inc. v. Commonwealth of Virginia, 65 L Ed 2d 973: 448 US 555 (1980); Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1: (1966) 3 SCR 744; Sahai Singh v. Emperor, AIR 1917 Lah 311; Malloch v. Aberdeen Corpn., (1971) 1 WLR 1578: (1971) 2 All ER 1278 (HL); K.L. Tripathi v. SBI, (1984) 1 SCC 43: 1984 SCC (L&S) 62; George v. Secy. of State for the Environment, (1979) 77 LGR 689 (CA); R. Balakrishna Pillai v. State of Kerala, (2000) 7 SCC 129: 2000 SCC (Cri) 1293; Jankinath Sarangi v. State of Orissa, (1969) 3 SCC 392; R. v. Denbigh Justices, ex p Williams, 1974 QB 759: (1974) 3 WLR 45: (1974) 2 All ER 1052, relied on

Cooley's Constitutional Law, Vol. I, 8th Edn., p. 647; Black's Law Dictionary, 6th Edn., 1990, p. 1091, relied on

[3558] — S. 327 — Open trial — Deviation from, in exceptional circumstances — Permissibility — Requirements of natural justice — *Held (per Bhandari, J.), in a case of extraordinary nature, the universal rule of open trial may not be adhered to — High Court looking to exceptional and extraordinary circumstances can take such a decision and no personal hearing is warranted before taking such a decision — If the denial of a public trial was a prima facie case of vitiation of natural justice, the court would be justified in exercising judicial review — However, when there is no prima facie violation of principles of natural justice, then it has to be tested whether there is need for a judicial review of the orders of shifting trials — Constitution of India — Arts. 21 and 14*. [Paras 136, 143(iv), 143(v) and 144]. *Mohd. Shahabuddin* v. *State of Bihar,* (2010) 4 SCC 653.

Bench Strength **2**. Coram : **Dalveer Bhandari**[1] and **Dr. M.K. Sharma**[2], JJ. [Date of decision : 25-3-2010]

[3559] — Ss. 327 and 9(6) — In the context of open trial — *Held (per Bhandari, J.), if denial of public trial is a prima facie case of violation of natural justice, court is justified in exercising power of judicial review in such situation — However, when there is no prima facie violation of principles of natural justice then one must test whether there is need for a judicial review of the orders for shifting the trials — In present case, there is no violation of the principles of natural justice in shifting trials of cases of appellant from a regular court to a Special Court*

The appellant was aggrieved by Notification dated 20-5-2006 issued by Patna High Court under Section 9(6) of the Criminal Procedure Code, 1973, declaring that premises of District Jail, Siwan, would be the place of sitting of the Court of Session for trial of sessions cases pending against the appellant. The reason given in the Notification for selecting the District Jail as the venue for conducting trials against the appellant was the "expeditious trial of sessions cases". Pursuant to this Notification, the State Government also issued two notifications making available the jail premises for conducting trial against the appellant.

The appellant challenged the Notification dated 20-5-2006 inter alia on the ground that no opportunity of hearing was given to him before issuing the notification. The High Court dismissed the appellant's writ petition.

Dismissing the appeal,

Held :

Per Bhandari, J.

Since exercise of power under Section 9(6) is an administrative function, the test is whether decision of the High Court stands up to the test of judicial review of administrative decisions. Wording of Section 9(6) shows that there is no need for the High Court to give a hearing while deciding venue of trial. It is only if Sessions Court is moving the place of trial that parties have a right to a hearing. There is no statutory right for the appellant to be heard. However, common law and the principles laid down in the Constitution lay down that even in administrative action there must be minimum standards that are to be maintained. Thus, it has to be seen whether right to fair hearing has been denied to the appellant even if there is no statutory provision for it. The principles of natural justice are essential to the framework of our laws and a protection against arbitrary actions. There is every duty of the courts to judicially review administrative actions. However, this is usually not to be applied blindly. (Paras 91 to 94 and 97)

There are situations where the action of the State is prima facie void and therefore has to be set aside. If the denial of a public trial was a prima facie case of vitiation of natural justice, the court would be justified in exercising judicial review. However, when there is no prima facie violation of the principles of natural justice then one must test whether there is need for a judicial review of the orders of shifting the trials. In the present case, there is no violation of the principles of natural justice in shifting the trials of the cases of the appellant from a regular court to a Special Court. (Paras 99 to 101)

The High Court in view of the extraordinary facts and circumstances of a particular case is empowered to change the venue of a pending case/trial without hearing the appellant and this would not violate the appellant's fundamental rights under Articles 14 and 21 or any other provision of the Constitution. [Para 143(*iv*)]

A large number of the appellant's supporters may create unrest in front of courtroom and much larger security would be required to protect witnesses, court officers and the appellant. The letter written by the Superintendent of Police of Siwan indicates that it is not possible to hold the appellant's trials in open court as it may affect trials of other civil and criminal cases that are going on in the same court building. There is no violation of principles of natural justice in shifting trials of cases of the appellant from a regular court to a Special Court. In the instant case apart from the appellant's 38 lawyers, the public and the press had access to the court proceedings. Siwan Jail is only one kilometre from the Siwan Court. The court proceedings were regularly reported in the press. So in the instant case no real prejudice has been caused to the appellant. [Paras 100, 109, 111, 117, 139 to 142 and 143(*v*)]

Per Sharma, J. (disagreeing)

It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. (Para 179)

Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision. (Para 180)

The power of the High Court under Section 9(6) to notify a particular place or places where the Court of Session should ordinarily hold its sitting is an administrative power unlike the power of the Court of Session under the second part of Section 9(6) which is judicial in nature. Being so, the High Court was under no obligation to observe rule of audi alteram partem. The second part of Section 9(6) expressly requires the Court of Session to afford opportunity of hearing but there is no such requirement in first part. The omission is to be construed as a conscious decision on the part of the legislature for it intended to exclude such a requirement when such power is to be exercised by the High Court. An administrative order when passed by a competent authority may not necessarily be required to be issued only after due compliance with the principles of natural justice. (Paras 173, 177 and 178)

The intention of the legislature for providing an opportunity of hearing in matters of transfer of criminal cases can be gathered from the language used in Section 9(6) wherein the legislature desired that there should be an opportunity of hearing that is so specifically stated in the language itself and where the legislature desired that there should be a power of the High Court to fix place or places of sittings of a Sessions Court for holding its trial, it has so mentioned explicitly by excluding the rules of natural justice from its ambit thereby excluding the principles of audi alteram partem. (Para 174)

On a detailed and proper interpretation of Section 9(6) CrPC there can be only one opinion that it was not necessary for the High Court to observe or comply with the rule of audi alteram partem before notifying a shift in the venue of the trial. Consequently, the High Court was under no requirement to follow and to comply with the rule of audi alteram partem before issuing the impugned Notification dated 20-5-2006. (Para 181). *Mohd. Shahabuddin* v. *State of Bihar*, (2010) 4 SCC 653.

Bench Strength 2. Coram : **Dalveer Bhandari**^{1} and **Dr. M.K. Sharma**^{2}, JJ. [Date of decision : 25-3-2010]

[3560] — Ss. 327, 231, 233, 242 to 244, 247, 273 and 283 — Mode of taking and recording of evidence — Embarrassment likely to be caused to judge(s) and witnesses due to nature of subject-matter of proceedings — *Held, such adjustments/arrangements could be made by the judge(s) in the taking and recording of evidence so as to minimise the embarrassment caused to herself/himself and the witnesses — This is a matter of procedure to be adopted by the judge(s) — Evidence Act, 1872 — Ss. 137, 146, 148, 151, 152 and 155(4) — Cross-examination/taking of evidence of witnesses/accused in case of offences relating to pornographic acts/material — Minimising embarrassment/harassment/humiliation — Arrangements/adjustments that may be made by judge(s)* (Paras 12 and 14). *Fatima Riswana* v. *State*, (2005) 1 SCC 582: 2005 SCC (Cri) 427: AIR 2005 SC 712: 2005 Cri LJ 900: (2005) 116 DLT 382: (2005) 26 AIC 73 (SC): (2005) 1 KLT 502.

Bench Strength 2. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 11-1-2005]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, followed

[3561] — S. 327 — Witness protection — Restrictions on entry of persons into courtrooms — Permissibility — Balancing needs of accused and victims — Duty and powers of court — *While accused shall have right to fair trial, rights of victims and perception that perpetrator of crime be punished, cannot be ignored — In order to balance need for a public trial with need to ensure that victims/witnesses are not intimidated within courtrooms, held, court can impose reasonable restrictions on entry of persons into courtroom*

It needs to be emphasised that the rights of the accused have to be protected. At the same time the rights of the victims have to be protected and the rights of the victims cannot be marginalised. Accused persons are entitled to a fair trial where their guilt or innocence can be determined. But from the victims' perception the perpetrator of a crime should be punished. They stand poised equally in the scales of justice. In order to ensure that the trials are conducted in a fair manner and within the realm of protecting the rights of the victims it is important that the decorum of the court is maintained at all times. In order to balance the need for a public trial with the need to ensure that victims/witnesses are not intimidated within the courtrooms, it is necessary for the court to impose reasonable restrictions on the entry of persons into the courtroom. (Paras 21 and 22)

Moreover, it was apprehension of some learned counsel that unruly situations may be created in court to terrorise witnesses. It needs no indication that the court shall have to deal with such situations sternly and pass necessary orders. SIT shall also look into this area. [Para 40(*xii*)]. *NHRC* v. *State of Gujarat*, (2009) 6 SCC 767.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 1-5-2009]

[3562] — S. 327(1) proviso — Proximate security to Prime Minister/former Prime Minister — Held, extends even when the protectee summoned as an accused in court for trial — *Protection under the Act will be available wherever he goes like his shadow — In view of SPG's apprehensions and perception of threat to life of the protectee based on its assessment of the situation, assistance of the summoning court for change in venue of the trial can be sought by it so as to provide proximate security to the protectee — Suggestions made by a sitting Judge of the Supreme Court (J.S. Verma, J.), who sat in Commission to report the security failures relatable to the assassination of late Prime Minister Shri Rajiv Gandhi, on which SPG's prayer for change in venue was also based, entitled to great respect — Court obliged to provide conducive conditions for fair trial to which the protectee as undertrial entitled under Art. 21 —*

Though trial has to be in open court but in view of proviso to S. 327(1) CrPC, court can regulate its proceedings in accordance with the circumstances of the case — Change of venue being for person afforded special protective cover by the Act and being based on assessment of peculiar fact situation, would not constitute a precedent — However, suggestion to shift timings of the court for trial of the protectee to after regular court hours instead of changing the venue, not acceptable — Constitution of India — Art. 21 — Special Protection Group Act, 1988 — Ss. 14, 2(g) & 4(1). Commr. of Police, Delhi v. *Registrar, Delhi High Court*, (1996) 6 SCC 323: 1996 SCC (Cri) 1325: AIR 1997 SC 95.

Bench Strength 2. Coram: **M.M. Punchhi** and *K.T. Thomas*, JJ. [Date of decision: 11-10-1996]

— S. 327(2) *See* Ss. 164, 273 and 327(2)
See also Ss. 237(2) and 327(2)

[3563] — S. 327(2) — Inquiry or conduct of trial in-camera — *Applicability of, to offences committed under Ss. 354 and 377 IPC — Deposition of the victims for said offences can at times be very embarrassing and therefore S. 327(2) CrPC ought to be applicable to offences under the said sections — Failure of amending Act 43 of 1983 to include these provisions noted*

The provisions of sub-section (2) of Section 327 CrPC shall, in addition to the offences mentioned in the sub-section, also apply in inquiry or trial of offences under Sections 354 and 377 IPC. *Sakshi* v. *Union of India*, (2004) 5 SCC 518: 2004 SCC (Cri) 1645: AIR 2004 SC 3566: (2004) 98 Cut LT 491: (2004) 112 DLT 457.

Bench Strength 2. Coram: *S. Rajendra Babu, C.J.* and **G.P. Mathur**, J. [Date of decision: 26-5-2004]

[3564] — Ss. 327(2) and (3) — Trial in camera — Rape cases — Courts obliged to hold the trial in camera — Trial of rape cases in camera should be the rule and an open trial an exception — *High Courts directed to impress upon the Presiding Officers to invariably hold the trial in camera — Cases of sexual assault should be tried by lady Judges, if available — Court should, as far as possible, avoid to disclose names of the victims in its orders to maintain anonymity of the victim — Press or anyone else not to print or publish any matter in relation to the proceedings except by permission under S. 327(3), CrPC — Contempt of Courts Act, 1971 — S. 7*

Sub-sections (2) and (3) of Section 327 inserted by Act 43 of 1983 are in the nature of exception to the general rule of an open trial. In spite of the amendment, however, it is seen that the trial courts either are not conscious of this amendment or do not realise its importance for hardly does one come across a case where the inquiry and trial of a rape case has been conducted by the court in camera. The expression that the inquiry into and trial of rape "shall be conducted in camera" as occurring in sub-section (2) of Section 327 CrPC is not only significant but very important. It casts a *duty* on the court to conduct the trial of rape cases etc. invariably "in camera". The courts are obliged to act in furtherance of the intention expressed by the legislature and not to ignore its mandate and must invariably take recourse to the provisions of Sections 327(2) and (3) CrPC and hold the trial of rape cases in camera. It would enable the victim of crime to be a little comfortable and answer the questions with greater ease in not too familiar a surroundings. Trial in camera would not only be in keeping with the self-respect of the victim of crime and in tune with the legislative intent but is also likely to improve the quality of the evidence of a prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in an *open court*, under the gaze of the public. The improved quality of her evidence would assist the courts in arriving at the truth and sifting truth from falsehood. The High Courts would therefore be well-advised to draw the attention of the trial courts to the amended provisions of Section 327 CrPC and to impress upon the Presiding Officers to invariably hold the trial of rape cases in camera, rather than in the open court as envisaged by Section 327(2) CrPC. When trials are held in camera, it would not be lawful for any person to print or publish any matter in relation to the proceedings in the case, except with the previous permission of the court as envisaged by Section 327(3) CrPC. This would save any further embarrassment being caused to the victim of sex crime. Wherever possible, it may also be worth considering whether it would not be more desirable that the cases of sexual assaults on the females are tried by lady Judges, wherever available, so that the prosecutrix can make her statement with greater ease and assist the courts in properly discharging their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities while appreciating evidence in such cases. The courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout. The trial courts should take recourse to the provisions of

Sections 327(2) and (3) CrPC liberally. Trial of rape cases *in camera* should be the rule and an *open trial* in such cases an exception. *State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

— S. 327(3) *See* Ss. 327(2) and (3)

[3565] — Ch. XXV and Ss. 328 to 339 — Detention, retention and release of accused in/from a lunatic asylum — Procedural compliance with, directed — Enforcement of rights of lunatic undertrials — Compliance with CrPC (Ch. XXV, Ss. 328 to 339) and Mental Health Act, 1987 (Ss. 37 to 40) — *General directions and guidelines given to Chief Secretaries of different States and Registrars of different High Courts for compliance with said statutory provisions — Judicial notice taken of long illegal detention of lunatic undertrials under CrPC and negligence of mental asylums with regard to periodic inspection and examination and Magistrate's authorisation for detention of lunatic undertrials under Mental Health Act, 1987 — Registrars General and Chief Secretaries further directed to take necessary steps and submit report in this regard — Mental Health Act, 1987, Ss. 37 to 40 — Prisoners Act, 1900, S. 30 — Constitution of India — Arts. 32, 21, 22, 19 and 14*

A news item was published on 14-10-2005 in the *Indian Express*, New Delhi stating that one *M* continued to languish as an undertrial prisoner in a psychiatric hospital for a period of thirty-eight years even after he was declared fit by the hospital in 1967. The Supreme Court took judicial note of this fact and a series of orders were passed requiring the High Courts' Registries to collect and furnish the particulars of undertrial prisoners lodged in mental asylums. The reports received from the High Courts showed that there were several such cases in various States.

Whether these persons have been subjected to periodic medical check-up was not known. The nature of their ailments was not very clear. In some cases, it was vaguely stated that they suffered from "mental abnormality". Many of these undertrial prisoners were charged with offences of trifle nature, for which maximum sentence prescribed is hardly six months.

The Supreme Court stated the provisions of Chapter XXV CrPC relating to (1) inquiry regarding fact of unsoundness, (2) postponement of proceedings on the finding of such fact, (3) resumption of proceedings when the person concerned ceases to be of unsound mind so that he is able to defend himself, (4) the procedure of release of such persons by appointment of Commission and (5) the delivery of such person to the care of a relative or friend.

The Supreme Court also stated the provisions of Mental Health Act, 1987 (which repealed the Lunacy Act, 1912) to admission of such persons to mental hospitals and periodic inspection by visitors and their remarks.

Adjourning the matter for three months, for compliance with directives given,

Held :

In many of these cases, the undertrial prisoners have been confined to a psychiatric hospital for more than the period of maximum sentence. It is clear that in such cases, the trial courts have not considered whether the undertrial prisoners could be released pending investigation or trial under Section 330(1) CrPC. It is also not possible that no friend or relative of the prisoner came forward with sufficient security and seek release under the said provision. There are also several cases where the undertrial prisoners have been charged for offence under Section 302 IPC. In such cases also, it appears that there is no periodic medical check-up, nor periodic consideration by the court as to whether they would be in a position to face trial. (Paras 7 and 8)

From the reports filed by the Registries of various High Courts it is evident that the monthly, quarterly and half-yearly inspections/examinations are not regularly being carried out as required under Sections 38 and 39 Mental Health Act, 1987 (the Act) and the Magistrates/courts authorising the prisoners to be detained are not receiving the quarterly/half-yearly reports under Sections 39(1), (3) and (4) of the Act. It is unfortunate that the provisions of Sections 38 and 39 of the Act are not being implemented effectively. (Para 26)

As there are a large number of mentally ill undertrial prisoners in various psychiatric hospitals/nursing homes, we consider it just and proper to issue some general directions to avoid such mentally ill persons languishing in psychiatric hospitals for long periods: (*i*) Whenever a persons of unsound mind is ordered to be detained in any psychiatric hospital/nursing home under Section 330(2) CrPC, the reports contemplated under Section 39 shall be submitted to the court/Magistrate concerned periodically. The court/Magistrate shall also call for such reports if they are not received in time. When the reports are received, the court/Magistrate shall consider the reports and pass appropriate orders wherever necessary. In regard to prisoners covered Section 30(1) of the Prisoners Act, 1900, the procedure prescribed by Sections 30(2) and (3), Prisoners Act, 1900 read with Section 40 of the Mental Health Act, 1987 shall be followed. (*ii*) Wherever any undertrial prisoner is in jail for more than the maximum period of imprisonment prescribed for the offence for which he is charged (other than those charged for offences for which life imprisonment or death is the punishment), the Magistrate/court shall treat the case as closed and report the matter to the medical officer in charge of the psychiatric hospital, so that the medical officer in charge of the hospital can consider his discharge as per Section 40 of the Act. (*iii*) In cases where the undertrial prisoners who are not being charged with offence for which the punishment is imprisonment for life or death penalty, their cases may be considered for release in accordance Section 330(1) CrPC, if they have completed five or more years as in-patients. (*iv*) As regards the undertrial prisoners who have been charged with grave offences for which life imprisonment or death penalty is the punishment, such persons shall be subjected to examination periodically as provided in Sections 39 (1), (3) and (4) of the Act and the officers named therein (visitors, medical officer in charge of the hospital and the examining medical officer respectively) should send the reports to the court as to whether the undertrial prisoner is fit enough to face the trial to defend the charge. The Sessions Courts where the cases are pending should also seek periodic reports from such hospitals and every such case shall be given a hearing at least once in three months. The Sessions Judge shall commence the trial of such cases as soon as it is found that such mentally ill person has been found fit to face trial. (Para 27)

Copy of this order is directed to be sent to the Registrars-General of various High Courts and the Chief Secretaries of the State Governments/Union Territories to take necessary steps and follow up action, and submit report to the Supreme Court as to the steps taken in pursuance of this order. (Para 28). *News Item "38 Yrs In Jail Without Trial" Published in The Hindustan Times, In Re*, (2007) 15 SCC 18. Bench Strength 3. Coram: *K.G. Balakrishnan, C.J.* and *R.V. Raveendran* and *Dalveer Bhandari*, JJ. [Date of decision: 24-10-2007]

[3566] — S. 330 — **Release of lunatic pending investigation or trial — When proper** — *Held, in case the appellant (accused) was lunatic, procedure as laid down in Ch. 25 CrPC had to be followed — It was for the appellant to make an appropriate motion before the trial court — If the trial court came to the conclusion that the appellant was insane, order in terms of S. 330 CrPC should have been passed, without being influenced by earlier rejection of the bail applications* (Para 2). *Sarfu Khan* v. *State of Jharkhand*, (2004) 13 SCC 460. Bench Strength 2. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 20-9-2004]

— **S. 330(2)** *See* Ss. 320(4)(a), 330(2), 335(1)(b) and 339

— **S. 330(2) r/w Ss. 335(1)(b)** *See* Ss. 320(4)(a), 330(2) r/w Ss. 335(1)(b) and 339

— **S. 335(1)(b)** *See* Ss. 320(4)(a), 330(2), 335(1)(b), 339

— **S. 339** *See* Ss. 320(4)(a), 330(2), 335(1)(b) and 339

See also Ss. 320(4)(a), 330(2) r/w Ss. 335(1)(b) and 339

— S. 340 *See also* Ss. 476 and 476-A, Criminal Procedure Code, 1898, pp. 1252 et seq. in Vol. 2

— S. 340 *See* Ss. 156, 195 & 340 and 341
See also Ss. 156(3), 340 and 195
See also Ss. 195, 190 and 340
See also Ss. 195 and 340
See also Ss. 195(1)(b) and 340
See also Ss. 195(1)(b)(i) and 340
See also Ss. 231 and 340
See also Ss. 341, 340, 2(d) and 482
See also Ss. 344 and 340

[3567] — S. 340 — "Expedient in the interests of justice" — Delay in making request for prosecution — *Filing of fabricated documents in the High Court by a company in a proceeding relating to the payment of excise duty — Revenue seeking dismissal of writ petition on ground of fabrication of false evidence alone and no request made for the prosecution of the company and other persons responsible — Writ petition disposed of by the High Court providing for payment of duties by the company — No reference made to the said fabricated documents — After about 15 months the Revenue moving a notice of motion to prosecute the company, its officers and dealers under S. 193 IPC — Held, in the circumstances of the case an order levying penal interest would meet the ends of justice instead of making any direction for prosecution of the company and other persons responsible — Penal Code, 1860 — Ss. 192 and 193. Phiroze Dinshaw Lam* v. *Union of India*, (1996) 8 SCC 209. Bench Strength 2. Coram: **B.P. Jeevan Reddy** and *K.S. Paripoornan*, JJ. [Date of decision: 28-2-1996]

[3568] — S. 340 — Locus standi to lodge complaint under — Any citizen, even a stranger to the proceedings, can file a complaint

It is not necessary to consider the submission of the appellant that the respondent has a habit of making such complaints and he is not a person who is interested in the matter in any way and no public interest would be served by entertaining an application made by him and he is a total stranger to the proceedings. In criminal law a complaint can be lodged by anyone who has become aware of a crime having been committed and thereby set the law into motion. In respect of offences adverted to in Section 195 CrPC there is a restriction that the same cannot be entertained unless a complaint is made by a court because the offence is stated to have been committed in relation to the proceedings in that court. Section 340 CrPC is invoked to get over the bar imposed under Section 195 CrPC. In ordinary crimes not adverted to under Section 195 CrPC, if in respect of any offence, law can be set into motion by any citizen of this country, there is no reason why any citizen of this country cannot approach even under Section 340 CrPC. For that matter, the wording of Section 340 CrPC is significant. The court will have to act in the interest of justice on a complaint or otherwise. Assuming that the complaint may have to be made at the instance of a party having an interest in the matter, still the court can take action in the matter otherwise than on a complaint, that is, when it has received information as to a crime having been committed, covered by the said provision. (Paras 7 and 8). *N. Natarajan* v. *B.K. Subba Rao*, (2003) 2 SCC 76: 2003 SCC (Cri) 437: AIR 2003 SC 541: 2003 Cri LJ 820.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *Arun Kumar*, JJ. [Date of decision: 3-12-2002]

[3569] — S. 340 — Nature and scope of inherent power under — Expression "in or in relation to a proceeding in that court"

S. 340 confers an inherent power on a court to make a complaint in respect of an offence committed in or in relation to a proceeding *in that court*, or as the case may be, in respect of a document produced or given in evidence in a proceeding *in that court*, if *that court* is of opinion that it is expedient in the interest of justice that an enquiry should be made into an offence referred to in clause (*b*) of sub-section (1) of S. 195 and authorises *such court* to hold preliminary enquiry as it thinks necessary and then make a complaint thereof in writing after recording a finding to that effect as contemplated under sub-section (1) of S. 340. The words "in or in relation to a proceeding *in that court*" show that the court which can take action under this section is only the court operating within the definition of S. 195(3) before which or in relation to whose proceeding the offence has been committed. There is a word of caution inbuilt in that provision itself that the action to be taken should be expedient in the interest of justice. Therefore, it is incumbent that the power given by S. 340 of the Code should be used with utmost care and after due consideration. *K.T.M.S. Mohd.* v. *Union of India*, (1992) 3 SCC 178: 1992 SCC (Cri) 572: AIR 1992 SC 1831: 1992 Cri LJ 2781: (1992) 197 ITR 196: (1992) 75 Comp Cas 321.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 28-4-1992]

[3570] — Ss. 340 and 341 — Order passed under S. 340 whether appealable or revisionable — Appeal by a person not making the complaint under S. 340, if maintainable — *Held, revision does not lie against an order passed under S. 340 in view of the legal embargo created under S. 341(2) — Held, the case being initiated suo motu, High Court rightly held that the State could not file appeal in present case* (Paras 6 and 7). *K. Sudhakaran* v. *State of Kerala*, (2009) 4 SCC 168.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 5-2-2009]

State of Kerala v. K. Sudhakaran, 2001 Cri LJ 3658, partially reversed

[3571] — Ss. 340 and 195 — Arbitrator, held, cannot be termed a "court" within the meaning of S. 195 — *Therefore the question of applicability of S. 340 to arbitral proceedings does not arise — Arbitrator, held, not a court for purposes of S. 195 CrPC — Arbitration and Conciliation Act, 1995 — S. 27*

The body of sub-section (1)(*b*) of Section 195 CrPC refers to the expression "court" and the same stands explained in sub-section (3). Without a reading of sub-section (3), "court" may be interpreted in a narrow context, but with the inclusion of sub-section (3), widest possible connotation is to be made available provided however, the statute declares it to be so. The language "if declared by that Act" is significant. (Para 6)

The inclusion of sub-section (3) under Section 195 cannot but be taken to be an explanatory provision. The body of Section 195(1)(*b*) refers to the expression "court" and the same stands thus explained in sub-section (3). The restriction imposed is easily ascertainable by reason of the inclusion of the words "*if declared by that Act to be a court for the purposes of this section*" (emphasis supplied) — the user of the words is very significant. One of the golden canons of interpretation is that the legislature always avoids surplusage and attributes a definite meaning to each of the words mentioned in the statute. By the very inclusion of sub-section (3) and the language, the intent of the legislature cannot thus be far to seek — it is connotative of a definite meaning. (Para 7)

The clear language of Section 195(3) CrPC unmistakably depicts the restrictive intent of the legislature and if the intent was otherwise to include an Arbitral Tribunal within the fold of Section 195(3) of the Code, that is to say, if the legislature wanted to confer such a status there was no difficulty as such in incorporating thereunder a provision as is contained in the Debt Recovery Act (vide Section 22); Income Tax Act (vide Section 136); Motor Vehicles Act [vide Section 169(2)]; Administrative Tribunals Act [vide Section 22(3)]; Consumer Protection Act; MRTP Act; and Companies Act etc. etc. since these statutes have definitely included and declared the Tribunal being ascribed to be a court within the meaning of Section 195 of the Criminal Procedure Code. The inclusion of explanatory provision by way of sub-section (3) makes the situation abundantly clear. (Para 16). *Manohar Lal* v. *Vinesh Anand*, (2001) 5 SCC 407: 2001 SCC (Cri) 1322: AIR 2001 SC 1820: 2001 Cri LJ 2044.

Bench Strength 2. Coram: *A.P. Misra* and **U.C. Banerjee**, JJ. [Date of decision: 9-4-2001]

Baliram Waman Hiray (Dr.) v. Justice B. Lentin, (1988) 4 SCC 419: 1988 SCC (Cri) 941, relied on

Sailaja Kanta Mitra v. State of W.B., AIR 1971 Cal 137: 75 CWN 804, overruled

Puhupram v. State of M.P., 1968 MPLJ 629, approved by implication

Virindar Kumar Satyawadi v. State of Punjab, AIR 1956 SC 153: 1956 Cri LJ 326; H.C. Ganti v. F.L. Harcourt, AIR 1931 Cal 436: 32 Cri LJ 826, distinguished

[3572] — **Ss. 340, 192 to 196, 227 and 482 — Appellate power of Supreme Court under Art. 136 vis-à-vis statutory appeals under S. 19, TADA** — *This power is conferred notwithstanding statutory provisions for regular appeals — It is not restricted by any statutory limitations including appellate provisions under CrPC — Appeal before Supreme Court against interim order — Application under S. 340 CrPC filed before Designated Court under TADA Act in Bombay Blast Cases by respondent, a stranger to the proceedings, alleging that conduct of Public Prosecutor concerned in taking contradictory stands by seeking to withdraw certain charges against the accused person at a subsequent stage attracted Ss. 192 to 196 and 227 CrPC — Interim order passed by Designated Court to register the application taking the view that even a stranger like respondent had locus standi to file such an application and Designated Court had jurisdiction to entertain such application — Appeal before Supreme Court against such order of Designated Court, held, maintainable — Exercise of extraordinary jurisdiction under Art. 136 or 226 or under S. 482 CrPC does not amount to deprivation of statutory appeal — Order of the Designated Court set aside — Constitution of India — Art. 136 — TADA, 1987 — S. 19*

The respondent filed an application under Section 340 CrPC before the Designated Court dealing with what was popularly known as "Bombay Blast Cases", alleging that the appellant, who was conducting the cases as Chief Public Prosecutor, had at one stage of the proceedings both orally and in writing had submitted to the court that the material on record was sufficient to frame charges against various offences arising under Chapter VI of the Indian Penal Code like waging war against the State etc., after adverting to the decisions of the Supreme Court. It was contended in the course of the application that the conduct of the Public Prosecutor had "polluted the course of administration of justice, notwithstanding the fact that there is material or not to frame the charge. This kind of conduct on the part of the Public Prosecutor if not dealt with according to law would leave wide scope in our judicial system to injure and cause injustice to ill-placed citizens". Therefore, it was contended in the application, a judicial examination of the conduct of the Public Prosecutor "will be in public interest, as it would act as a deterrent against Public Prosecutors indulging in unfair practices". He submitted that this conduct on the part of the appellant would attract the provisions of Sections 192 to 196 and 227 CrPC.

Though the appellant was not notified of the said application, the Designated Judge heard the Special Public Prosecutor in the matter. He contended that there can be only two parties before the court, that is, the Public Prosecutor or the complainant, as the case may be, and on the other side the accused represented by his advocate and in those circumstances the respondent could not be heard in the matter. However, the court by an order recorded its satisfaction as to the *locus standi* of the respondent and directed to register the application and to issue notice to the Public Prosecutor. The Public Prosecutor noted to have taken notice of the matter. Against this order of the Designated Judge, the present appeal has been filed by the appellant. The respondent appeared in person and contended that the Supreme Court should not entertain a petition on appeal under Article 136 of the Constitution inasmuch as the order passed by the Designated Judge being under the TADA Act is an interim order and no appeal lies against such order in view of Section 19 thereof. He further contended that inasmuch as an appeal lies under Section 341 CrPC against an order made under Section 340 CrPC in the event of a complaint having been made against the appellant. In this context, he also drew the Court's attention to the provisions of sub-section (2) of Section 340 CrPC to point out that the power conferred on the court under Section 340(1) CrPC in respect of an offence could be exercised by an appellate court in case the subordinate has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint. He, therefore, submitted that the powers of the Supreme Court under Article 136 should not be exercised as exercise of such power would affect a statutory right of appeal.

Allowing the appeal,

Held :

Article 136 of the Constitution enables the Supreme Court to exercise in its discretion appellate powers by granting special leave from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in India. This power is conferred on the Supreme Court notwithstanding the provisions for regular appeal from proceedings in different enactments being available and there may remain some cases where justice might require interference by the Supreme Court with the decisions of the High Courts or the tribunals of the land. The power of the Supreme Court to grant leave to appeal from any decision of any court or tribunal is not subject to any limitation and is left entirely to the discretion of the Supreme Court. Though the Supreme Court is circumspect in its exercise of its jurisdiction under Article 136, it has a duty to interfere in cases of grave miscarriage of justice. It is trite to say that the extraordinary power conferred under Article 136 of the Constitution cannot be taken away by any legislation, short of constitutional amendment. The nature of the statute or limitations imposed within a statute cannot deter the Supreme Court from exercising its jurisdiction. It is not even restricted by the appellate provisions enumerated in the Criminal Procedure Code or any other statute. Therefore, contentions urged, which are preliminary in nature, cannot detain this Court in entertaining this matter or examining the correctness of the proceedings before the Designated Judge. There is no substance in the submission based on *Antulay case*, (1988) 2 SCC 602 that one of the considerations in exercise of its power by the Supreme Court is not to deprive any party of a statutory appeal and if such deprivation occasions then the matter will have to be reopened as was done in that case as it proceeds on a misconception of the position in law. An appeal lies when a matter is finally and conclusively decided by a court or a tribunal. If the High Court or the Supreme Court, in exercise of the extraordinary jurisdiction under Article 226 or Article 136 of the Constitution or Section 482 CrPC, as the case may be, quashes certain proceedings, a party cannot complain that his right to statutory appeal had been deprived. (Para 6)

The stand of the respondent that the Supreme Court should not interfere in this matter as relevant facts are before the Designated Court and not before the Supreme Court does not hold water. What the Court is examining is whether the complaint made by the respondent, taking it as a whole, deserves to be proceeded with. (Para 12)

It is also not necessary to consider the submission of the appellant that the respondent has a habit of making such complaints and he is not a person who is interested in the matter in any way and no public interest would be served by entertaining an application made by him and he is a total stranger to the proceedings. In criminal law a complaint can be lodged by anyone who has become aware of a crime having been committed and thereby set the law into motion. In respect of offences adverted to in Section 195 CrPC there is a restriction that the same cannot be entertained unless a complaint is made by a court because the offence is stated to have been committed in relation to the proceedings in that court. Section 340 CrPC is invoked to get over the bar imposed under Section 195 CrPC. In ordinary crimes not adverted to under Section 195 CrPC, if in respect of any offence, law can be set into motion by any citizen of this country, there is no reason why any citizen of this country cannot approach even under Section 340 CrPC. For that matter, the wording of Section 340 CrPC is significant. The court will have to act in the interest of justice on a complaint or otherwise. Assuming that the complaint may have to be made at the instance of a party having an interest in the matter, still the court can take action in the matter otherwise than on a complaint, that is, when it has received information as to a crime having been committed, covered by the said provision. (Paras 7 and 8)

Issue of notice on an application of this nature would have serious impact upon the Public Prosecutor in conduct of the case particularly when at every stage he has got to be conscious whether any of his statements would attract Section 340 CrPC. This is not the kind of atmosphere where a Public

Prosecutor can function effectively, independently and fearlessly. In the conduct of the case a Public Prosecutor must have full freedom and he can even give up certain cases and request the court to discharge or acquit any accused. If that kind of autonomy is to be enjoyed by the Public Prosecutor, he cannot be fettered in conducting the proceedings. By initiating the proceedings against him, the learned Designated Judge has crippled the freedom of the Public Prosecutor in functioning effectively and such a matter certainly results in serious miscarriage in administration of justice and no advocate would be safe if such proceedings are initiated on the basis of the allegations of the nature made in the complaint. Either the learned Designated Judge has not applied his mind or he has not understood the scope of the application and if he had done either, he would have dismissed the application. (Para 15)

Therefore, the order made by the Designated Court is set aside and the application filed by the respondent under Section 340 CrPC is dismissed. At the same time it is made clear that the respondent shall not engage in this kind of litigation hereafter and he is restrained from making any applications of this nature and, if any such application is made before any court, the same shall be dismissed in limine and appropriate proceedings be initiated against him. (Para 16). *N. Natarajan* v. *B.K. Subba Rao*, (2003) 2 SCC 76: 2003 SCC (Cri) 437: AIR 2003 SC 541: 2003 Cri LJ 820.

Bench Strength 2. Coram: **S. Rajendra Babu** and *Arun Kumar*, JJ. [Date of decision: 3-12-2002]

A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602: 1988 SCC (Cri) 372, distinguished

[3573] — **Ss. 340 and 195 — Only the court falling within the definition under S. 195(3) competent to take action under S. 340** — *Exercise of power under S. 340 should be on a careful consideration as regards expediency in the interest of justice. K.T.M.S. Mohd.* v. *Union of India*, (1992) 3 SCC 178: 1992 SCC (Cri) 572: AIR 1992 SC 1831: 1992 Cri LJ 2781: (1992) 197 ITR 196: (1992) 75 Comp Cas 321.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 28-4-1992]

[3574] — **Ss. 340 and 195(1)(b) — Inquiry under S. 340 CrPC for offences specified under S. 195(1)(b) CrPC — Who can initiate — Commission of fraud by Subordinate Judge concerned and others while awarding compensation under Land Acquisition Act** — *Inquiry by District Judge in case of, held, was impermissible — Under Land Acquisition Act, appeal from judgment of Land Acquisition Judge lie only to High Court and not to District Court — Thus, under the said Act, Land Acquisition Judge/Subordinate Judge would not be subordinate to District Judge but to High Court — Subordination of courts as specified in S. 3 CPC not applicable herein — Hence, judgment of Division Bench of High Court setting aside order of District Judge was proper — Legal fiction under S. 195(4) CrPC that the court shall be deemed to be subordinate to the court to which appeals ordinarily lie — Purpose of, explained — Plea that Division Bench failed to notice the effect and purport of the term "ordinarily" in its proper perspective, rejected*

Interpretation of the provisions of Section 340 CrPC was in question in the instant appeal.

Lands in the village concerned were acquired by the State of Andhra Pradesh for providing house-sites to the weaker sections of society. Awards in respect of the said acquisition were made by the Land Acquisition Collector. Reference thereagainst was made to the civil court at the instance of the owners of the land. A large-scale fraud, allegedly, took place in awarding compensation wherein the Subordinate Judge concerned, his staff, the advocates of the claimants, the advocates appearing on behalf of the State and other officials were said to be involved. Upon obtaining requisite permission from the High Court, CBCID registered a case and investigation thereinto was carried on. In its report the Additional Director General of Police, CID, Hyderabad indicated about a large-scale conspiracy and fraud committed by the accused persons. Allegations made as against the accused came within the purview of the offences specified under Section 195 CrPC. Therefore, an inquiry under Section 340 CrPC was imperative. The High Court got the matter examined by a special committee. It was opined that an inquiry may be conducted by the District Judge concerned. The report of the said committee having been approved by the Full Court of the High Court, an inquiry was made by the District Judge. The District Judge examined a large number of witnesses and ultimately filed a complaint pursuant to the findings recorded therein. An appeal came to be filed thereagainst by the respondents herein before the High Court. The Single Judge of the High Court, in view of the importance of the question involved, referred the matter to a Division Bench.

The Division Bench, vide the impugned judgment, allowed the appeal holding that the inquiry conducted by the District Judge was impermissible in law. It held that the court under the Land Acquisition Act is a court subordinate to the High Court as all appeals lie to the High Court. Hence, the Division Bench would have ordered an inquiry under Section 340 CrPC by the Sub-Judge himself. But as the matter had earlier been considered by two Judges of the High Court, though administratively and the report of such committee had been approved by the Full Court, it was directed that the matter be heard and decided by the High Court reminding itself of the old maxim that *justice must not only be done but also seen to have been done.*

The State challenged the decision of the Division Bench before the Supreme Court. The appellant submitted that the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that Section 340 CrPC read with Section 195 thereof specifies the courts being civil, criminal or revenue, which are genus and, as the Land Acquisition Judge is governed by the provisions of the Code of Civil Procedure in terms of Section 53 of the Land Acquisition Act, 1894, thus, being subordinate to the District Judge, the statutory requirements in relation to filing of complaint petition in terms of Section 340 CrPC stood fulfilled. The respondents, on the other hand, urged that the Land Acquisition Judge being not a court subordinate to the District Judge, the complaint petition at the instance of the latter was not maintainable.

Dismissing the appeal,

Held :

The Division Bench of the High Court cannot be said to have committed any error in passing the impugned judgment. (Para 26)

The Court of the Subordinate Judge may be subordinate to the District Judge for administrative purpose. He may be a court subordinate to it under the Code of Civil Procedure. But in relation to a proceeding under the Land Acquisition Act, it would not be. In terms of Section 53 of the Land Acquisition Act, the procedures laid down under the Civil Procedure Code would apply but the same is subject to the exceptions specified therein viz. save insofar as they may be inconsistent with anything contained therein. The Land Acquisition Act is a special statute. It provides for the forums, both original and appellate. The subordination of courts as specified in Section 3 CPC, is only for the purpose of the said Code and not for the purpose of a special Act, although the provisions thereof may be applicable to a case arising thereunder. The civil courts exercise their jurisdiction not only in respect of a suit filed before it, they do so under various special statutes. The hierarchy of the courts for the purpose of Section 195 CrPC, therefore, will have to be determined, having regard to the nature of the proceedings and the statutes under which the same is required to be determined. The Act makes a distinction between filing a complaint by a public servant and a court. Whereas clause (*a*) of sub-section (1) of Section 195 contemplates administrative subordination, clause (*b*) contemplates judicial subordination. Each expression used in CrPC, therefore, must be understood upon reading the provisions thereof in their entirety and not in isolation. (Paras 16, 17 and 25)

It is one thing to say that an appeal, depending upon the valuation, would lie before different forums, but if under the provisions of a special statute an appeal shall lie only before the High Court and to no other, the District Court would not be a court where an appeal would ordinarily lie from a judgment of the Land Acquisition Judge. The Land Acquisition Act being self-contained code; in relation to the matters falling within the purview of the Land Acquisition Act, the civil courts would have no jurisdiction. (Paras 17 and 12)

Emphasis laid on the word "ordinarily" occurring in sub-section (4) of Section 195 CrPC is not of much importance. Sub-section (4) of Section 195 must be read with sub-section (3) thereof. Sub-section (3) broadly divides the courts into civil, revenue or criminal as also a Tribunal constituted by or under a Central, Provincial or State Act. If a statute constitutes such Tribunal and declares it to be a court for the purport of the said section, Section 195 CrPC shall apply. It is, thus, the presiding officers of those forums only, which are specified under sub-section (3) of Section 195 CrPC, who may file a complaint petition in relation to the offences punishable under the sections specified in clause (*b*) of sub-section (1) of Section 195 CrPC. It is only for that purpose a legal fiction has been created, stating that the court shall be deemed to be subordinate to the court to which appeals ordinarily lie. If an appeal exclusively lies to the High Court, the Court of Land Acquisition Judge shall be subordinate to the High Court and not the Principal Civil Court, although appeal may lie before the latter from the judgments and decrees passed by it in the suits which may be filed before it. (Para 18). *State of A.P.* v. *V. Sarma Rao*, (2007) 2 SCC 159: (2007) 1 SCC (Cri) 535: AIR 2007 SC 137: 2007 Cri LJ 289.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-11-2006]

Laxmi Chand v. Gram Panchayat, Kararia, (1996) 7 SCC 218, relied on

[3575] — Ss. 340 and 195(1)(b) — Making complaint regarding commission of an offence referred to in S. 195(1)(b) — Power of the court concerned in respect of — *Held, the court is not bound to make such complaint — Complaint will be made only if it is expedient in the interests of justice and not in every case — This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by the offence, but having regard to the effect or impact of that offence upon administration of justice*

In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(*b*), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(*b*) CrPC. This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. The broad view of clause (*b*)(*ii*) i.e. extending it to cases where forgery of a document is committed prior to that document being produced or given in evidence in a proceeding in any court would render the victim of such forgery or forged document remediless in cases where the court may not consider it expedient in the interests of justice to make a complaint. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded. (Para 23). *Iqbal Singh Marwah* v. *Meenakshi Marwah*, (2005) 4 SCC 370: 2005 SCC (Cri) 1101: AIR 2005 SC 2119: (2005) 3 Mah LJ 530: 2005 Cri LJ 2161.

Bench Strength 5. Coram: *R.C. Lahoti*, *C.J.* and *B.N. Agrawal*, *H.K. Sema*, **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 11-3-2005]

M.S. Sheriff v. State of Madras, 1954 SCR 1144: AIR 1954 SC 397: 1954 Cri LJ 1019, followed

***Affirmed** in Rugmini Ammal v. V. Narayana Reddiar, (2007) 12 SCC 611*

[3576] — Ss. 340 and 195(1)(b)(i) — Applicability — Held, not applicable to a party answering a question put to it under Or. 10 R. 2 CPC — *Civil Procedure Code, 1908, Or. 10 R. 2 — Penal Code, 1860, S. 195*

The power under Section 340 CrPC read with Section 195 IPC can be exercised only where someone fabricates false evidence or gives false evidence. By no stretch of imagination, can a party giving an answer to a question put under Order 10 Rule 2 CPC when not under oath and when not being examined as a witness, attract Section 195 IPC and consequently cannot attract Section 195(1)(*b*) and Section 340 CrPC. (Paras 28, 29 and 31)

Consequently, the decision of the Court to consider initiation of proceedings under Section 340 CrPC read with Section 195 IPC in regard to an answer to a question put under Order 10 Rule 2 of the Code is ill-conceived and wholly without jurisdiction. (Paras 32 and 33). *Kapil Corepacks (P) Ltd.* v. *Harbans Lal*, (2010) 8 SCC 452.

Bench Strength 2. Coram : **R.V. Raveendran** and *H.L. Gokhale*, JJ. [Date of decision : 3-8-2010]

Satish Kumar v. Union of India, (2009) 108 DRJ 317, overruled

B.K. Gupta v. Damodar H. Bajaj, (2001) 9 SCC 742: 2002 SCC (Cri) 1103, distinguished

[3577] — Ss. 340 and 195(1)(b)(ii) — Applicability — Interpretation of S. 195(1)(b)(ii), considered — Allegation of commission of forgery in respect of document produced/given in evidence in a proceeding in court — Initiation of proceeding under S. 340 — Sustainability — *On facts, following* Iqbal Singh case, *(2005) 4 SCC 370, held, High Court rightly placed reliance on* Sachida Nand case, *(1998) 2 SCC 493 and held that initiation of proceeding under S. 340 was without jurisdiction and accordingly allowed the writ appeal — Present appeal, therefore, held, was without merit — Penal Code, 1860 — Ss. 463, 471, 475 and 476*

Challenge in this appeal was to the judgment of Division Bench of the High Court by which the judgment of the Single Judge was set aside and the writ appeal was allowed.

Matter related to tenancy of a building by lease agreement where lease deed enabled tenant, Respondent 1, to make alterations in it. Accordingly, tenant effected some alterations in the building for which he received an order from the Municipality directing him to demolish the structure, citing it to be unauthorised. Tenant approached Government thereagainst which directed him to submit application to local authority seeking regularisation of additional structure made by him.

Appellant's contention in writ was that there was no lease agreement and construction was unauthorised which could not be legalised on other grounds. Tenant then filed counter-affidavit annexing photocopy of lease agreement. Contention of appellant thereafter was that purported lease agreement was a forged document for which she had sought opinion of handwriting expert. Fabrication of lease agreement was denied by tenant.

The Single Judge of High Court relied on the opinion given by the handwriting expert and prima facie came to the conclusion that the lease agreement was fabricated and hence there was a reasonable likelihood to establish the offences punishable under Sections 463, 471, 475 and 476 IPC. The Single Judge directed Registrar of the Court to make a complaint for the purpose in writing and send it to the Magistrate of the First Class having jurisdiction. Against this order the writ appeal was filed which was allowed. Hence the present appeal.

Dismissing the appeal,

Held :

It is to be noted that in view of the conflict of language between two decisions of the Supreme Court, each rendered by a Bench of three learned Judges in *Sachida Nand case* and *Surjit Singh case* regarding interpretation of Section 195(1)(*b*)(*ii*) CrPC, the matter was placed before a five-Judge Bench in *Iqbal Singh Marwah* v. *Meenakshi Marwah*. After referring to the provisions contained in Sections 190, 195(1)(*b*)(*ii*) and 340 CrPC it was held that the decision in *Sachida Nand case* was correctly decided and the view taken is the correct view. (Para 11)

The Division Bench of High Court was, therefore, right in placing reliance on *Sachida Nand case* and holding that stage for initiation of the proceeding, if any, under Section 340 CrPC had not come, and therefore, initiation of the proceeding under Section 340 CrPC was without jurisdiction. The appeal is, therefore, without merit. (Paras 12, 8 and 13). *Rugmini Ammal* v. *V. Narayana Reddiar*, (2007) 12 SCC 611: (2008) 3 SCC (Cri) 309: AIR 2008 SC 895: (2008) 61 AIC 46 (SC): 2008 Cri LJ 1405.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 13-12-2007]

Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, followed

Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493: 1998 SCC (Cri) 660, affirmed

Francis Bennion: Statutory Interpretation, 3rd Edn., para 313, cited

[3578] — S. 340 — Notice against police officials for fabrication of record and setting up a false case against two ladies — *Finding of Additional District Judge that the said ladies were too weak to pelt stones and kick the police officers based on statement of witnesses under S. 161 and physical features of the said ladies — Witnesses not examined in the court — Held, order issuing notice under S. 340 is unjustified and liable to be quashed — Penal Code, 1860 — Ss. 194 and 195. Omkar Namdeo Jadhao* v. *Second Additional Sessions Judge*, (1996) 7 SCC 498: AIR 1997 SC 331.

Bench Strength 2. Coram: *K. Ramaswamy* and *G.B. Pattanaik*, JJ. [Date of decision: 4-1-1996]

[3579] — Ss. 340 and 195 — Different statements at different stages of the proceedings made by Public Prosecutor would not constitute any offence so as to attract S. 340 — *Bombay Blast case — At one stage of the proceedings before Designated Court under TADA Act, Public Prosecutor submitting that material on record was sufficient to frame charges relating to offences under Ch. VI IPC like waging war against the State etc. but at a later stage Public Prosecutor praying for dropping of charges under Ss. 121 and 121-A IPC against the accused as there was no material — Held, such shifting of stand by the Public Prosecutor would not amount to offences adverted to under S. 195 CrPC and hence would not attract S. 340*

In the present case, the hearing as to framing of charges has gone on for nearly eight months. Considering the nature of the charges to be framed in the case, the voluminous record of the case presented before the court, the seriousness and magnitude of the matter when several hundreds of persons have been killed and property worth crores of rupees has been destroyed, in what manner the case should be conducted is a very serious affair. If the Public Prosecutor had been supporting at one stage of the proceedings the charge-sheet that had been laid in respect of the offences arising under Sections 121 and 121-A IPC, later on he realises that evidence is not available at that stage of the case, seeks that for the time being these charges need not be proceeded with, and if further investigation discloses such offences as having been committed, supplementary charge-sheet would be filed before the court later, such shift in the stand would not attract offences enumerated under Section 195 CrPC. The submissions made by the learned Public Prosecutor — however contradictory they may be — in a case cannot amount to fabrication of evidence by any stretch of imagination. The substance of the complaint should have been looked into and should have been decided. (Para 14)

The stand of a counsel, howsoever inconsistent it may be at different stages of the proceedings, cannot amount to offences adverted to under Section 195 CrPC. If the courts begin to issue notice for prosecution or as to why the inquiry should not be made in the matter or to launch a prosecution, no advocate can function with safety nor can he assist the court with the necessary fearlessness which is required of him. It is not unknown that even in criminal cases even after committal proceedings are over at the stage of sessions trial before charges are framed by the court or at the stage of final arguments, many Public Prosecutors have entered *nolle prosequi* in cases where they thought that a charge could not be framed or the accused concerned should be acquitted. However, that does not mean that such a stand could not have been taken or attracts the wrath of Section 340 CrPC. (Para 10). *N. Natarajan* v. *B.K. Subba Rao*, (2003) 2 SCC 76: 2003 SCC (Cri) 437: AIR 2003 SC 541: 2003 Cri LJ 820.

Bench Strength 2. Coram: **S. Rajendra Babu** and *Arun Kumar*, JJ. [Date of decision: 3-12-2002]

[3580] — Ss. 340 and 195(3) — Perjury — Prosecution for, should be expedient in the interest of justice — Conditions for applicability — *Statements made under S. 39/40, FERA before officers of Enforcement Department, admitting receipt of large sum of money for distribution to some persons, subsequently retracted alleging that the statements were extracted by inducement, coercion, threat or promise — Prosecuting authority not applying its mind to reach the subjective satisfaction that the statements were obtained voluntarily — Held on facts, conviction under S. 193 or under S. 193/120-B not sustainable — FERA, 1973 — Ss. 39 and 40 — Penal Code, 1860 — S. 193*

Appellants 1 and 2 in Crl. A. No. 631 of 1990 received a cash of Rs 6 lakhs, brought by a person from Bombay for distributing the said amount to various persons as per the instructions received from a person at Singapore. While he was engaged in the said illegal transaction, the Enforcement Directorate, raided his premises and recovered a sum of Rs 4,28,713 and certain documents in coded language relating to the disbursement of the cash. After the search, the two appellants were interrogated by Enforcement Officers on Oct. 19, 1966 and their statements were recorded. The first appellant in his statement admitted that he received a sum of Rs 6 lakhs from a person of Bombay on the previous day for being disbursed to various parties in accordance with information received from one 'G' of Singapore whose full address he did not know. The second appellant in his statement admitted the receipt of the amount by the first appellant and the disbursement to two named persons as instructed by the first appellant in compliance with the instructions received from Singapore. However, on October 20, 1966, both the appellants sent their retraction to the Deputy Director of Enforcement Directorate through their advocate stating that their statements recorded on the previous day were not voluntary statements but obtained under threat and force and the facts stated therein were not correct. The Income Tax Officer (ITO) on coming to know about the raid, issued summons to the first appellant who was then an assessee within his jurisdiction and recorded a statement from him on November 16, 1966. The first appellant denied of having any connection with the cash of Rs 4,28,713 said to have been recovered from his premises and reiterated that the statement by the Enforcement Officers was taken from him under force. The second appellant also gave a similar statement on January 11, 1974 when examined after 8 years. The appellant in Crl. A. No. 632 of 1990, arrayed as accused 3 (referred to as appellant 3) sent a letter dated November 4, 1966 to the Enforcement Officers claiming the money seized as belonging to him and explaining that he was negotiating with some film producers for financing film production and the seized amount included a sum of Rs 2,79,000 being the sale proceeds of his mother's jewels and Rs 70,000 being his father's money and therefore the said amount should be returned to him. Thereafter, the third appellant gave a statement before the Enforcement Officers on December 22, 1966 reiterating what he has stated in his letter dated November 4, 1966. In view of the subsequent developments, proceedings were initiated against the third appellant under the provisions of the I.T. Act. The ITO on the basis of the statement of the first appellant given before the Enforcement authorities found that the amount of Rs 6 lakhs was the income from other sources of the assessee (the first appellant) and that the explanation given by him was not satisfactory and included that amount in his taxable income. The Appellate Assistant Commissioner agreed with the ITO but the Income Tax Appellate Tribunal held that the department had not brought any material to show that the assessee was the owner of the money in question and that the evidence only indicated that the assessee had been engaged for disbursing the money not belonging to him but belonging to a third party. On the above finding, the Tribunal set aside the assessment order and referred the case back to the ITO to make a fresh assessment. In the meantime criminal proceedings were initiated against the three appellants in January 1977 pursuant to a complaint lodged by the ITO alleging that all the appellants have conspired together to give false evidence at all stages of the proceedings under the I.T. Act and to fabricate false evidence intending that the same might cause the Income Tax Officer to arrive at an erroneous opinion touching the nature and source of the sum of Rs 4,28,713 which is alleged to have been recovered from the first appellant and that all the appellants thereby have committed the offences punishable under S. 120-B IPC read with S. 193 IPC, under S. 120-B read with S. 277 of the I.T. Act and under S. 193 (simpliciter) of Indian Penal Code and in addition appellants 1 and 3 were indicted under S. 277 (simpliciter) of the Act. The trial court convicted the appellants accordingly but taking into consideration of the fact that the appellants were detained under COFEPOSA in respect of the amount seized and they have also undergone the ordeal of enquiries and trial for a considerable length of time sentenced each of them to undergo imprisonment till the rising of the Court for each of the offences and to pay a total fine of Rs 2,000, Rs 600 and Rs 1,500 respectively with the default clause. The appellate court and the High Court in revision confirmed the conviction and sentence. Allowing the appeals

Held :

The words "in or in relation to a proceeding *in that court*" in S. 340 CrPC show that the court which can take action under this section is only the court operating within the definition of S. 195(3) before which or in relation to whose proceeding the offence has been committed. There is a word of caution in-built in that provision itself that the action to be taken should be expedient in the interest of justice. Therefore, it is incumbent that the power given by S. 340 of the Code should be used with utmost care and after due consideration.

It has not been shown that either the sanctioning authority or the prosecuting authority applied its mind even subjectively and found that the accused-appellants 1 and 2 gave their earlier inculpatory statements voluntarily but not under any inducement, coercion, threat or promise; that the deponents intentionally gave a false statement before the ITO at the subsequent stage within the ambit of S. 193 IPC and that it was expedient in the interest of justice to initiate the criminal proceedings for perjury. The statements were initially recorded under S. 39 of FERA. But the subsequent statements recorded by the ITO were in exercise of the powers under the provisions of the I.T. Act. It is not the case of the prosecution that these two appellants gave any inculpatory statement before the ITO and thereafter retracted. In fact, appellants 1 and 2 had retracted their earlier statements even on the very next day which retraction was not taken note of by the ITO. In the circumstances the convictions recorded by the courts below under Ss. 120-B read with 193 IPC and 193 (simpliciter) as against appellants 1 and 2 cannot be sustained. *K.T.M.S. Mohd.* v. *Union of India*, (1992) 3 SCC 178: 1992 SCC (Cri) 572: AIR 1992 SC 1831: 1992 Cri LJ 2781: (1992) 197 ITR 196: (1992) 75 Comp Cas 321.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 28-4-1992]

[3581] — S. 340 — Application for taking proceedings in perjury against owner of the land on ground of deliberately misleading the Court by suppressing facts and making untrue allegations — *Supreme Court's interim order prohibiting construction on the land in dispute — Land sold to third parties by original owner while retaining possession of a portion thereof, and purchasers commencing construction thereon — Yet the original owner without appearing before the Court assuring through his counsel and contesting that no construction was going on on the land — Held, though technically the owner was right as he was not making any construction on the portion of the land in his occupation, but factually he was wrong as construction was going on on the plot and hence his statement was apt to mislead the Court — Though he may not be guilty of contempt or perjury but he was unfair to the Court — While not taking any action for perjury, the original owner directed to pay a cost of Rs 10,000 which shall be deposited by him within one month with the Supreme Court Legal Aid Committee. State of Maharashtra* v. *Pandurang K. Pangare*, 1995 Supp (2) SCC 119: AIR 1995 SC 1202.

Bench Strength 2. Coram: **R.M. Sahai** and *N.P. Singh*, JJ. [Date of decision: 13-2-1995]

[3582] — S. 340 — PIL — Abduction and alleged murder of an advocate, his wife and minor child — *Lawyers going on indefinite strike demanding inquiry by an independent agency — Petition in the nature of public interest litigation filed by a stranger — Bar associations directed to be impleaded as parties to the writ petition — Report of 'Action Committee' of bar association and other relevant documents placed before the High Court — On application of the petitioner High Court dismissing the petition as withdrawn — Held, the High Court wholly unjustified in dismissing the petition which had shocked the lawyer fraternity in the region — Ordinarily after completion of investigation and submission of charge-sheet to the court the Supreme Court does not reopen the investigation — However, in facts and circumstances of the case, to do complete justice and to instil confidence in the public mind the Supreme Court directed the CBI to make fresh investigation in the matter — CBI to exercise all the powers available to it under CrPC* *and other provisions of law — Constitution of India, Arts. 226 and 136. Punjab & Haryana High Court Bar Assn.* v. *State of Punjab*, (1994) 1 SCC 616: 1994 SCC (Cri) 455: AIR 1994 SC 1023: 1994 Cri LJ 1368.

Bench Strength **2**. Coram: *Kuldip Singh* and *S.C. Agrawal*, JJ. [Date of decision: 7-12-1993]

[3583] — **S. 340 — After about 10 years of the alleged incident State succeeding in restoring its application which had been dismissed for default** — *Held, continuance of proceedings of such lapse of time not justified — State free to file suits to recover any amounts wrongly paid on the basis of the false statement — CrPC, 1898 — S. 476 — Penal Code, 1860 — S. 193*

It is not the function of the court hearing an application under S. 476 to cater to the acrimonious and vengeful attitudes taken up by the parties and to advance their interests elsewhere. *K.N. Mishra* v. *Jiwaji University*, 1980 Supp SCC 415: 1981 SCC (Cri) 356: AIR 1981 SC 174(5).

Bench Strength **2**. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 22-9-1980]

[3584] — **S. 340 — Detenu falsely claiming to have sent his written representation to the President of India through another person** — *Government preferring application under S. 340 Criminal Procedure Code, 1973 for prosecution of the persons responsible for forging the documents and making interpolations in dak register of President's Secretariat — CBI enquiring into the matter — Hence passing of final orders on the application under S. 340 deferred till completion of investigation by CBI — Preventive Detention — Representation to appropriate authority/Government — Generally. Pushpa Devi M. Jatia* v. *M.L. Wadhawan*, (1987) 3 SCC 367: 1987 SCC (Cri) 526: AIR 1987 SC 1748: 1987 Cri LJ 1888: (1987) 12 ECC 356.

Bench Strength **2**. Coram: *A.P. Sen* and *S. Natarajan*, JJ. [Date of decision: 29-4-1987]

[3585] — **S. 340 — Doubtful signature — Remedy — Inquiry directed in terms of S. 340 CrPC**

There being no merit in the appeal, it is dismissed accordingly. However, keeping in view the fact that there appears to be an apparent dissimilarity in the signatures of the deponent, there exists a necessity for conducting an enquiry in this behalf. Therefore, the Registrar (Judicial) is directed to conduct an enquiry in terms of Section 340 CrPC. (Paras 22 and 7 to 9). *Radhey Shyam Garg* v. *Naresh Kumar Gupta*, (2009) 13 SCC 201: (2009) 80 AIC 54 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

[3586] — **S. 340 — When invocable** — *Held, provisions of S. 340 can be invoked by the court only when it is established that offence of forgery had already been committed (in respect of document produced or given in evidence in the proceedings in that court) — Penal Code, 1860, Ss. 463, 471, 475 and 476*

The appellant purchased land from one *M* (vendor) and pursuant to the execution of sale deed in his favour, he was handed over possession. Respondent-accused (Respondents 2 to 4 herein) contended that land in question was recorded in their names. On inquiries made by both appellant and vendor in Tahsildar's court, they came to know that accused, in collusion with the Area Lekhpal, got their names mutated on the basis of Area Lekhpal's report. Area Lekhpal had given a totally untrue statement, and by showing an alive person, appellant's vendor as dead had got the names of the accused mutated. Appellant filed an application before SDM to set aside such mutation order, which was allowed and appeal of respondent-accused thereagainst dismissed. Thus, matter relating to mutation proceedings came to an end.

However, the appellant initiated criminal proceedings against respondent-accused by filing application/complaint under Section 156(3) CrPC, alleging the aforesaid facts. The said application/complaint of the appellant was allowed and police registered the FIR and started investigation. Ultimately, after further litigation, police completed the investigation and the investigating officer submitted the charge-sheet for commission of alleged offences under Sections 420, 467, 468, 471 and 120-B IPC and criminal case was registered against the respondents and cognizance taken against them. Respondent-accused then filed petition under Section 482 CrPC before the High Court for quashing the charge-sheet and taking cognizance thereof, which was allowed.

The High Court held that the application under Section 156(3) CrPC was barred in view of the provisions of Section 195 CrPC. However, appellant complainant was given liberty to move an application before the court concerned for taking action against the accused persons in accordance with the provisions of Section 340 CrPC.

Allowing the appeal,

Held :

The High Court further committed a gross error in resorting to Section 340 CrPC as provisions of the said section can be invoked only when it is established that offence of forgery had already been committed. (Para 24)

The accused had miserably failed for grant of any relief under Section 482 CrPC. The limit of exercising jurisdiction conferred on the High Court under Section 482 CrPC is well defined and by no stretch of imagination, it could be said that petition filed by the accused under Section 482 CrPC had fulfilled the requirement as contemplated in this section. (Para 25)

Hence, the impugned order cannot be sustained. The same is, accordingly, set aside and quashed. As a necessary consequence thereof, the Magistrate is directed to proceed with the criminal complaint filed by the appellant against respondent-accused in accordance with law and on merits. (Para 26). *Mahesh Chand Sharma* v. *State of U.P.*, (2009) 15 SCC 519: (2009) 82 AIC 227 (SC).

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **Deepak Verma**, JJ. [Date of decision: 28-8-2009]

Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493: 1998 SCC (Cri) 660; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, followed

[3587] — S. 340 — Arms Act, 1959 — S. 7 — Alleged recovery of arms and ammunition made on 8-3-1990 at 5.30 p.m. — *Telegram sent by father of the appellant to the higher authorities on 8-3-1990 at 5 a.m. complaining that his son was illegally arrested by the police on 6-3-1990 — Identical complaint made to the Metropolitan Magistrate on same day on which the Magistrate directed the SHO to report on the following day — Held, in the circumstances, it can be presumed that the application was filed during the court hours which ended at 5.00 p.m. making the defence version probable — Interpolations in the relevant entries of Daily Diary Book of police post making changes in time of departure of police party from 6 p.m. to 5 p.m. — Conviction and sentence of the appellant set aside and Delhi Government directed to pay to the appellant a sum of Rs 50,000 as compensation — Notice issued to the police personnel concerned to show cause why a complaint should not be made against them for offences under Ss. 193, 195 and 211 IPC — TADA, 1987 — S. 5 — Constitution of India — Art. 21. Mohd. Zahid* v. *Govt. of NCT of Delhi*, (1998) 5 SCC 419: 1998 SCC (Cri) 1327: AIR 1998 SC 2023: 1998 Cri LJ 2908.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *G.B. Pattanaik*, JJ. [Date of decision: 8-5-1998]

[3588] — S. 340 — Identification for regularisation — Filing false certificates before Supreme Court for seeking — Effect — *Industrial Tribunal passing an award for regularisation of workmen of BCCL — On BCCL's application, Supreme Court directing the workmen to furnish a list of workmen concerned to the counsel of BCCL so as to enable their identification — Workmen furnishing the list accordingly and filing a copy thereof with Supreme Court — S filing for himself and for other workmen certain certificates along with counter-affidavit, claiming themselves to be the real workmen to be regularised as per the Industrial Tribunal's award — Objecting to those certificates, the respondent-workmen by an IA under S. 340 CrPC read with Or. 47 of Supreme Court Rules, 1966, seeking a direction for enquiry into the correctness or otherwise of the said documents — Pursuant to Supreme Court's order, Chief Judicial Magistrate submitting a report to the effect that the individual certificates filed before Supreme Court were not reliable and were intended to deprive the actual workmen from getting jobs — In such circumstances, S and other filing the certificates in question, held, not entitled to claim before the management that they were the workmen to be regularised — Supreme Court Rules, 1966, Or. 47 — Application under S. 340 CrPC read with Or. 47 SC Rules — Relief. Bharat Coking Coal Ltd.* v. *Raghunath Balmiki*, (1999) 1 SCC 177: 1999 SCC (L&S) 188.

Bench Strength **2**. Coram: *K. Venkataswami* and *A.P. Misra*, JJ. [Date of decision: 8-9-1998]

— S. 340(1) *See* Ss. 195(1)(b)(ii) and 340(1)
See also Ss. 344 and 340(1)

[3589] — S. 340(1) — Court is not obliged to make a preliminary inquiry or a complaint — *But if court decides to do so it should make a finding that on facts it is expedient in the interest of justice that offence should be further probed into*

The court at the stage envisaged in Section 340 is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the Magistrate. At that stage the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. The would-be accused is not necessary for the court to decide the question of expediency in the interest of justice that an inquiry should be held. The persons against whom proceedings were instituted have no such right to participate in the preliminary inquiry. (Paras 16 and 18). *Pritish* v. *State of Maharashtra*, (2002) 1 SCC 253: 2002 SCC (Cri) 140: AIR 2002 SC 236: 2002 Cri LJ 548.

Bench Strength **3**. Coram: **K.T. Thomas**, *S.N. Phukan* and *Y.K. Sabharwal*, JJ. [Date of decision: 21-11-2001]

Nimmakayala Audi Narrayanamma v. State of A.P., AIR 1970 AP 119: 1970 Cri LJ 443, overruled

M. Muthuswamy v. Special Police Establishment, 1985 Cri LJ 420 (Mad), approved

Pritish R. Tayde v. State of Maharashtra, 2001 Cri LJ 1594 (Bom), affirmed

[3590] — S. 340(1) — Preliminary inquiry under — *Purpose of — Held, the purpose is not to find whether a person is guilty or not but is only to decide whether it is expedient in the interest of justice to inquire into the offence*

The nub of Section 340(1) CrPC is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. *Pritish* v. *State of Maharashtra*, (2002) 1 SCC 253: 2002 SCC (Cri) 140: AIR 2002 SC 236: 2002 Cri LJ 548.

Bench Strength **3**. Coram: **K.T. Thomas**, *S.N. Phukan* and *Y.K. Sabharwal*, JJ. [Date of decision: 21-11-2001]

[3591] — S. 340(1) — Scope of — Departure in the new Code in the matter of appeal — *Ss. 476 and 476-B, Criminal Procedure Code, 1898, compared*

Section 340, Criminal Procedure Code, 1973, corresponds to old S. 476, Criminal Procedure Code, 1898. Significant change has been made in respect of right of appeal under old S. 476-B. Now an order of the High Court made under sub-section (1) or sub-section (2) of S. 340 is specifically excluded for the purpose of appeal to the superior Court under S. 341(1), Criminal Procedure Code, (new). This is, therefore, a new restriction in the way of the appellant when he approaches the Supreme Court under Art. 136 of the Constitution. *K. Karunakaran* v. *T.V. Eachara Warrier*, (1978) 1 SCC 18: 1978 SCC (Cri) 32: AIR 1978 SC 290: 1978 Cri LJ 339: 1978 MLJ (Cri) 237.

Bench Strength **2**. Coram: **P.K. Goswami** and *V.D. Tulzapurkar*, JJ. [Date of decision: 16-11-1977]

[3592] — S. 340(1)(b) — Conditions for making complaint under, against a person who made false affidavit and adduced false evidence in proceedings before court — *In case of non-application of mind by court in respect of any of the conditions, order for filing complaint would be vitiated*

There are two conditions on fulfilment of which a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a court. Firstly, that a person has given a false affidavit in a proceeding before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an enquiry against such a person in relation to the offence committed by him. (Para 3)

In the present case the High Court has recorded a finding that the appellant has made a false statement on oath and has also used evidence known to be false and fabricated. But there is no material on record to show that the Court applied its mind regarding the second condition as to whether it was expedient in the interest of justice to make an enquiry into the false evidence given by the appellant and a complaint was to be filed. In the absence of application of mind in that regard, the order passed by the High Court directing the Prothonotary and Senior Master of the High Court to file a complaint against the appellant was vitiated. (Para 3). *B.K. Gupta* v. *Damodar H. Bajaj*, (2001) 9 SCC 742.

Bench Strength **2**. Coram: *V.N. Khare* and *Shivaraj V. Patil*, JJ. [Date of decision: 10-1-2001]

[3593] — Ss. 340(1)(b) and 341 to 344 & 238 to 243 — Opportunity of hearing to person concerned during preliminary inquiry — *During preliminary inquiry under S. 340(1) by court into offence committed in relation to a proceeding in that court or in respect of any document produced or given in evidence, held, the court is not required to afford any opportunity of hearing to the person against whom it might file a complaint before Magistrate for initiating prosecution proceedings — Provision for appeal under S. 341 does not indicate that such person has any right to participate in the preliminary inquiry*

An area of 3.9 acres of land was acquired by the State Govt. and a total of Rs 24,000 was awarded as compensation by the Land Acquisition Officer. But the Reference Court (a civil court) under Section 18 of the Land Acquisition Act, on the basis of evidence adduced by the parties, enhanced the amount of compensation to rupees ten lakhs thirty thousand, besides other benefits under Section 23 of the Act. The appellant was one of the beneficiaries of the said award. Thereupon some persons of the locality brought to the notice of the Reference Court that the claimants had wangled the enhancement by producing forged copies of sale deeds. The Reference Court conducted an inquiry, got down the relevant records from the Sub-Registry and on examining the same, found that the appellant and another person had committed offences affecting the administration of justice by using forged documents. The court then passed the following order:

"Therefore, it is expedient in the ends of justice on my part to file the complaint in writing against them before Judicial Magistrate of the First Class having jurisdiction to take appropriate and proper criminal action against them, as it appears that they have not only cheated the public at large and the Government but have misguided or tried to misguide my learned predecessor by preparing and producing false documentary evidence as well as by giving false oral evidence just to have a wrongful gain."

The persons who had moved the Reference Court bringing the fact regarding forgery of the documents to its notice, having felt that the other persons who also had secured advantage of such enhancement were also to be proceeded against, filed an appeal before the District Court. The District Judge ordered that the complaint shall be filed against five more persons besides the appellant and another person. The five persons moved the High Court and got themselves extricated from the prosecution proceedings. The appellant then filed an appeal before the High Court purportedly under Section 341 CrPC in challenge of the order of the Reference Court. The main contention he raised before the High Court was that the Reference Court had overlooked the basic principles of natural justice and proceeded to make an inquiry without giving an opportunity to him to be heard in the matter and hence great prejudice had been caused to him as he had been deprived of the opportunity to be heard. The High Court rejected the contention. Before the Supreme Court it was contended on behalf of the appellant that the scheme of Sections 340 to 344 of the Code contains an inbuilt safety for the persons sought to be proceeded against, by obliging the court to afford an opportunity of being heard to them and that thus the basic principle of natural justice was violated when the Reference Court ordered prosecution against the appellant without affording him an opportunity of being heard. Rejecting the contention and dismissing the appeal

Held:

The appellant cannot complain that he was not heard during the preliminary inquiry conducted by the Reference Court under Section 340 of the Code. (Para 19)

The nub of Section 340(1) CrPC is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. Even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. (Para 9)

The definition of "inquiry" in Section 2(*g*) CrPC refers to the pre-trial inquiry, and in the present context it means the inquiry to be conducted by the Magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the Magistrate of the First Class concerned. As the offences involved are all falling within the purview of "warrant case" [as defined in Section 2(*x*)] of the Code the Magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. The Magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code. From those provisions it is clear that the person against whom the complaint is made has a legal right to be heard whether he should be tried for the offence or not, but such a legal right is envisaged only when the Magistrate calls the accused to appear before him. The person concerned has then the right to participate in the pretrial inquiry envisaged in Section 239 of the Code. It is open to him to satisfy the Magistrate that the allegations against him are groundless and that he is entitled to be discharged. Thus the scheme delineated above would clearly show that there is no statutory requirement to afford an opportunity of hearing to the persons against whom that court might file a complaint before the Magistrate for initiating prosecution proceedings. (Paras 10, 13 and 15)

There is no substance in the contention that even if there is no specific statutory provision for affording such an opportunity during the preliminary inquiry stage, the fact that an appeal is provided in Section 341 of the Code to any person aggrieved by the order is indicative of his right to participate in such preliminary inquiry. Section 341 confers a power on the party on whose application the court has decided or not decided to make a complaint, as well as the party against whom it is decided to make such complaint, to file an appeal to the court to which the former court is subordinate. But the mere fact that such an appeal is provided, it is not a premise for concluding that the court is under a legal obligation to afford an opportunity (to the persons against whom the complaint would be made) to be heard prior to making the complaint. There are other provisions in the Code for reaching conclusions whether a person should be arrayed as accused in criminal proceedings or not, but in most of those proceedings there is no legal obligation cast on the court or the authorities concerned, to afford an opportunity of hearing to the would-be accused. In any event the appellant has already availed of the opportunity of the provisions of Section 341 by filing the appeal before the High Court. (Paras 13 and 14). *Pritish* v. *State of Maharashtra*, (2002) 1 SCC 253: 2002 SCC (Cri) 140: AIR 2002 SC 236: 2002 Cri LJ 548.

Bench Strength 3. Coram: **K.T. Thomas**, *S.N. Phukan* and *Y.K. Sabharwal*, JJ. [Date of decision: 21-11-2001]

M.S. Sheriff v. State of Madras, AIR 1954 SC 397: 1954 Cri LJ 1019, relied on

— S. 340(3) *See also* Ss. 195(1)(a) and 340(3)

[3594] — S. 340(3) — Need for amendment of stressed to eliminate perjury which has become a way of life in law courts

Perjury has also become a way of life in the law courts. A trial Judge knows that the witness is telling a lie and is going back on his previous statement, yet he does not wish to punish him or even file a complaint against him. He is required to sign the complaint himself which deters him from filing the complaint. Perhaps law needs amendment to clause (*b*) of Section 340(3) of the Code of Criminal Procedure in this respect as the High Court can direct any officer to file a complaint. To get rid of the evil of perjury, the court should resort to the use of the provisions of law as contained in Chapter XXVI of the Code of Criminal Procedure. (Para 36). *Swaran Singh* v. *State of Punjab*, (2000) 5 SCC 668: 2001 SCC (Cri) 190: AIR 2000 SC 2017: 2000 Cri LJ 2780.

Bench Strength 2. Coram: **D.P. Wadhwa**[2] and **Ruma Pal**[1], JJ. [Date of decision: 26-4-2000]

— S. 341 *See also* S. 476-B, Criminal Procedure Code, 1898, p. 1256 in Vol. 2

— S. 341 *See* Ss. 156, 195 & 340 and 341

See also Ss. 340 and 341

See also Ss. 340(1)(b) and 341 to 344 & 238 to 243

See also Ss. 482, 341 and 397(2)

[3595] — Ss. 341, 340, 2(d) and 482 — Order of the Additional District and Sessions Judge directing the Rent Control Officer to file complaint cannot be treated as complaint within the meaning of S. 2(d) — *Hence no appeal can be filed against it under S. 341. Surendra Gupta* v. *Bhagwan Devi*, (1994) 4 SCC 657: 1994 SCC (Cri) 1318: AIR 1996 SC 509.

Bench Strength 2. Coram: *R.M. Sahai* and *B.L. Hansaria*, JJ. [Date of decision: 5-4-1994]

— S. 342 *See* Ss. 340(1)(b) and 341 to 344 & 238 to 243

See also Ss. 482, 148(3), 342, 359, 357, 358 and 227

[3596] — S. 342 — Scope of — Rebuttable presumption under S. 4, PC Act, 1947 — Extent of burden of proof on accused under — *Not of the same degree and character as under Evidence Act, 1872 — S. 101 — Explanation under S. 342, CrPC when enough — Prosecution story militating against the fact presumed — Effect of — Prevention of Corruption Act, 1947 — S. 4(1)*

The operation of S. 4(1), in terms, is confined to a trial of an offence punishable under S. 161 or S. 165, Penal Code or under cl. (*a*) or (*b*) of S. 5(1) read with sub-section (2) of that section of the Act. If at such a trial, the prosecution proves that the accused has accepted or obtained gratification other than legal remuneration, the court has to presume the existence of the further fact in support of the prosecution case, viz., that the gratification was accepted or obtained by the accused as a motive or reward such as mentioned in S. 161, Penal Code. The presumption, however, is not absolute. It is rebuttable. The accused can prove the contrary.

The quantum and the nature of proof required to displace this presumption may vary according to the circumstances of each case. Such proof may partake the shape of defence evidence led by the accused, or it may consist of circumstances appearing in the prosecution evidence itself, as a result of cross-examination or otherwise. But the degree and the character of the burden of proof which S. 4(1) casts on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which under S. 101, Evidence Act rests on the prosecution. While the mere plausibility of an explanation given by the accused in his examination under S. 342, CrPC, 1898, may not be enough, the burden on him to negate the presumption may stand discharged, if the effect of the material brought on the record, in its totality, renders the existence of the fact presumed, improbable.

The accused may rebut the presumption by showing a mere preponderance of probability in his favour; it is not necessary for him to establish his case beyond a reasonable doubt.

The sole purpose of the presumption under S. 4(1) is to relieve the prosecution of the burden of proving a fact which is an essential ingredient of the offence under S. 5(1)(2) of the Prevention of Corruption Act and S. 161, Penal Code. The presumption therefore can be used *in furtherance of* the prosecution case and not *in derogation of it*. If the story set up by the prosecution inherently militates against or is inconsistent with the fact presumed, the presumption will be rendered sterile from its very inception. *Trilok Chand Jain* v. *State of Delhi*, (1975) 4 SCC 761: 1975 SCC (Cri) 725: AIR 1977 SC 666: (1976) 1 SCR 348: 1977 Cri LJ 254.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 19-8-1975]

[3597] — Ss. 342, 345 and 348 — Perjury — Lying on oath before court — Imposition of heavy costs as punishment instead of prosecution for perjury — Issue left open — *Contempt of Courts Act, 1971, Ss. 2(c) and 12 — Constitution of India, Arts. 129 and 215 — Penal Code, 1860 — Ss. 177, 181, 182, 191, 193, 196 and 209*

The question involving moral and ethical issues, as to whether a court, having reached a conclusion that a party deserves to be prosecuted for perjury, should let him off with what it considers to be a stiff penalty by way of costs, on the ground that courts are overburdened with work, is left open for the present. (Para 11). *Ashok Kumar Mittal* v. *Ram Kumar Gupta*, (2009) 2 SCC 656.

Bench Strength **2**. Coram: **R.V. Raveendran** and *J.M. Panchal*, JJ. [Date of decision: 9-1-2009]

[3598] — S. 342 — Application made by Co-accused before magistrate alleging that police had already arrested the accused and was also trying to falsely implicate him — *Held, the application is relevant under S. 11(2), Evidence Act and could be considered as a part of the co-accused's statement made under S. 342, CrPC. Satbir* v. *State of Haryana*, (1981) 4 SCC 508: 1981 SCC (Cri) 860: AIR 1981 SC 2074: 1981 Cri LJ 1702.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 8-1-1981]

— S. 343 *See* Ss. 340(1)(b) and 341 to 344 & 238 to 243

— S. 344 *See also* S. 479-A, Criminal Procedure Code, 1898, pp. 1257 et seq. in Vol. 2

— S. 344 *See also* Ss. 340(1)(b) and 341 to 344 & 238 to 243

[3599] — S. 344 — Scope and applicability of — Mere falsity of statements made not enough — *They should have been made "intentionally" — Official in the department swearing on the instructions of his superiors, held, cannot be said to have made the statements intentionally — CrPC, 1898 — S. 479-A*

Held :

That the facts stated are not true is not enough for sanctioning the prosecution. An essential prerequisite of S. 479-A is that the court must form the opinion that the witnesses had made the statement complained of "intentionally".

Again under S. 479-A, CrPC, not only is it necessary that the court must form the opinion that the witness had intentionally given false evidence, but it is further necessary that the court must come to the conclusion that for the eradication of the evils of perjury and in the interests of justice it is expedient that the witness should be prosecuted for the offence which appears to have been committed by him. *Mohd. Ibrahim* v. *B. Rama Rao*, (1976) 2 SCC 33: 1976 SCC (Cri) 233: AIR 1976 SC 1822: 1976 Cri LJ 1385.

Bench Strength **2**. Coram: **Y.V. Chandrachud** and *A.C. Gupta*, JJ. [Date of decision: 28-11-1975]

[3600] — S. 344 — Essential ingredients for invocation of — *Held, are: (i) Court at the time of delivery of judgment or final order must at the first instance express an opinion to the effect that the witness before it has either intentionally given false evidence or fabricated such evidence; (ii) Court must come to the conclusion that in the interest of justice the witness concerned should be punished summarily by it for the offence which appears to have been committed by the witness; and (iii) Before commencing the summary trial for punishment the witness must be given reasonable opportunity of showing cause why he should not be so punished — All these conditions are mandatory* (Para 10). *Mahila Vinod Kumari* v. *State of M.P.*, (2008) 8 SCC 34: (2008) 3 SCC (Cri) 414: AIR 2008 SC 2965: (2008) 3 KLT 509: (2008) 69 AIC 189 (SC): 2008 Cri LJ 3867.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 11-7-2008]

Narayanswami v. State of Maharashtra, (1971) 2 SCC 182: 1971 SCC (Cri) 507, followed

[3601] — S. 344 — Perjury — Petitioner filing false report against two persons alleging rape — *On basis of the report charge-sheet filed and accused put to trial — During trial petitioner resiling from her statement made during investigation and even denying lodging of FIR or having given any statement to police — Accused were acquitted but cognizance taken against petitioner in terms of S. 344 — Before the trial court petitioner admitting that she had lodged false report of rape against the accused and hence sentenced to undergo three months' simple imprisonment — Appeal filed thereagainst dismissed by High Court — Submission before the Supreme Court that being a girl of tender age, she was pressurised by her mother and uncle to give a false report was found at variance with the statement made in court during trial to the effect that she had not reported anything to the police — Held, it is a settled position in law that so far as sexual offences are concerned, sanctity is attached to the statement of a victim — It has been repeatedly held that evidence of the prosecutrix alone is sufficient for the purpose of conviction if it is found to be reliable, cogent and credible — In the present case, on the basis of the allegations made by the petitioner, two persons were arrested and had to face trial and suffered the ignominy of being involved in a serious offence like rape — Their acquittal, may, to a certain extent, have washed away the stigma, but that is not enough — Hence, no infirmity in the order of the trial court and the High Court to warrant interference* (Paras 4 to 8 and 13). *Mahila Vinod Kumari* v. *State of M.P.*, (2008) 8 SCC 34: (2008) 3 SCC (Cri) 414: AIR 2008 SC 2965: (2008) 3 KLT 509: (2008) 69 AIC 189 (SC): 2008 Cri LJ 3867.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 11-7-2008]

[3602] — Ss. 344, 311 and 391 — Enforcement of rule of law — Politically and/or financially influential persons — Enforcement of law against, despite their attempts to coerce/buy witnesses to turn hostile — Role of courts in — *Held, if the court acts contrary to the role it is expected to play, it will be the destruction of the fundamental edifice on which the justice delivery system stands — Judiciary — Fundamental duty of — Evidence Act, 1872 — S. 165*

The complex pattern of life which is never static requires a fresher outlook and a timely and vigorous moulding of old precepts to some new conditions, ideas and ideals. If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system. Increasingly, people are believing that laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away. (Paras 22 and 24)

Zahira's role in the whole case is an eye-opener for all concerned with the administration of criminal justice. The criminal justice system is likely to be affected if persons like Zahira are to be left unpunished. Not only the role of Zahira but also of others whose conduct and approach before the inquiry officer has been highlighted needs to be noted. The inquiry officer has found that Zahira could not explain her assets and the explanations given by her in respect of the sources of bank deposits, etc. have been found to be unacceptable. There is no reason to take a different view. Zahira has committed contempt of the Supreme Court. (Paras 18 and 20). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694: (2006) 2 Guj LR 1493.

Bench Strength 2. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

Sukhdev Singh Sodhi v. Chief Justice and Judges of the Pepsu High Court, 1954 SCR 454: AIR 1954 SC 186: 1954 Cri LJ 460, clarified

Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, discussed

T.N. Godavarman Thirumulpad (67) v. Union of India, (2003) 10 Scale 1126, relied on

[3603] — Ss. 344 and 340 — Whether S. 344 or S. 340 attracted — *Order issued by Magistrate while acquitting an accused in a criminal case directing that notices be sent to the ASI and the Head Constable to show cause as to why proceedings be not initiated against them under Ss. 191, 192 and 193 IPC — No notices having been issued, application filed by appellant intimating the Magistrate about that fact — Held, order of the Magistrate directing issuance of the notices was one under S. 344 and not under S. 340 — Hence Sessions Judge in revision and High Court committed gross error in quashing the proceedings on the erroneous assumption that the application filed by the appellant intimating about non-issuance of notices was an application for initiation of criminal proceedings pursuant to which Magistrate had started criminal action. Gurnam Singh* v. *State of Punjab*, (2000) 10 SCC 359.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 13-9-1999]

[3604] — S. 344 and S. 340(1) — Purpose of S. 344 — *Held, object of the legislature underlying enactment of the provision is that the evil of perjury and fabrication of evidence has to be eradicated* *and can be better achieved now as it is open to courts to take recourse to S. 340(1) in cases in which they have failed to take action under S. 344 — It was to further arm the court with a weapon to deal with more flagrant cases and not to take away the weapon already in its possession — It introduced an additional alternative procedure to punish perjury by the very court before which it was committed — Further held, evil of perjury has assumed alarming proportions in cases depending on oral evidence and in order to deal with the menace effectively it is desirable for the courts to use the provision more effectively and frequently than it is presently done* (Paras 8, 9 and 12). *Mahila Vinod Kumari* v. *State of M.P.*, (2008) 8 SCC 34: (2008) 3 SCC (Cri) 414: AIR 2008 SC 2965: (2008) 3 KLT 509: (2008) 69 AIC 189 (SC): 2008 Cri LJ 3867.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 11-7-2008]

— **S. 345** *See also* S. 480, Criminal Procedure Code, 1898, p. 1260 in Vol. 2

— **S. 345** *See* Ss. 342, 345 and 348

See also CONTEMPT OF COURT in Vol. 12

[3605] — S. 345 — Offences under, held, per se do not amount to contempt — They are contempt only if they are committed "in the view or presence of the court" — *Otherwise they remain offences under IPC simpliciter — Penal Code, 1860 — Ss. 175, 178, 179, 180 or 228* (Para 17). *Arun Paswan* v. *State of Bihar*, (2004) 5 SCC 53: 2004 SCC (Cri) 1503: AIR 2004 SC 721.

Bench Strength 2. Coram: *S.N. Variava* and **H.K. Sema**, JJ. [Date of decision: 12-12-2003]

[3606] — S. 345 — Abusive slogans raised against judiciary and a District Judge outside the courtroom within the court premises — *Bar to jurisdiction of High Court under proviso to S. 10, Contempt of Courts Act, 1971, held, not attracted since offences under Ss. 175, 178 to 180 or S. 228 IPC were not committed in the view or presence of the court but outside and such court took no action under S. 345 CrPC — Also, if the alleged conduct is one which scandalises the court and impairs administration of justice, the said bar would not apply — Penal Code, 1860 — Ss. 175, 178, 179, 180 or 228 — Contempt of Courts Act, 1971 — S. 10 proviso*

Appellant police officers [three Sub-Inspectors and a Deputy Superintendent of Police (Dy. SP)] were convicted and sentenced in a contempt proceeding initiated against them before the High Court, Patna on a complaint lodged by the District and Sessions Judge, Sasaram. In the said complaint, the District Judge alleged that since the contemner *AP* had failed to comply with his order whereby he was directed to produce a case diary before the court, *AP* was ordered to remain present in court till the rising of the court at 4.30 p.m. The complainant further stated that while he was hearing another criminal matter in the court after recess, a group of persons in plain clothes as also in police uniform were seen on the road in front of his courtroom in the civil court premises and after some time the said persons started raising abusive slogans against him. The District Judge stated that the said police officials were led by Dy. SP, Sasaram, Sub-Inspector *SY* [President of Bihar Police Officers' Association (BPOA)] and Sub-Inspector *AK* (Secretary of BPOA). It was also stated that they were present in the court premises with their official arms with them for creating trouble and causing disruption in the functioning of the court. A meeting was said to have been held in the chamber of the Deputy Superintendent of Police for creating pandemonium and to assault the District Judge. An FIR was also lodged against the said District Judge.

On receipt of the complaint, the High Court issued notices to the contemners to show cause as to why contempt proceedings should not be initiated against them. The High Court also directed the Director General of Police and the Additional Director General of Police to appear before the Court. The Additional Director General of Police made spot enquiry and submitted a report to the Court. The High Court, after examining the said report and other material on record, found the contemners guilty and recorded the sentence.

Before the Supreme Court, the contemner *AP* submitted (*i*) that he was the second IO of the case and had not received any information to produce the case diary, (*ii*) that he was present inside the courtroom at the time when slogans in abusive language were being shouted against the Judge and the judiciary, (*iii*) that he had not played any role therein, and (*iv*) that pursuant to the show-cause notice he had tendered apology which ought to have been accepted. Further, the Deputy Superintendent of Police, Sasaram submitted that at the time of the incident he was sitting in the SDM's office and he had no knowledge as to what was happening in the civil court. It was only after he came to know about the same that he went to the spot and pacified the officers. The remaining two contemners i.e. *SY* (President of BPOA) and *AK* (Secretary of BPOA) urged (*a*) that there was breach of principles of natural justice inasmuch as the contemners were not afforded an opportunity of cross-examining the witnesses who had deposed against them, (*b*) that their names were not mentioned in the complaint, (*c*) that they were not at all present on the spot as they were at Dehri Police Lines at that particular time, and (*d*) that the contempt proceedings initiated against the contemners by the High Court were incompetent and were hit by proviso to Section 10 of the Contempt of Courts Act, 1971 as Section 345 CrPC, 1973 empowers any civil, criminal or revenue court to punish summarily a person who is found guilty of committing any offence under Sections 175, 178, 179, 180 or Section 228 of the Penal Code in the view or presence of the court.

Dismissing the appeals,

Held:

(i) In relation to the submissions made by the contemner AP

Before the Additional Director General of Police, Sub-Inspector *AP* admitted that he had written the FIR PS Case No. 46 of 2002 lodged on 19-1-2002 under Sections 342/504 IPC and Sections 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the District and Sessions Judge. It is unthinkable that SI, who is a part and parcel of the administration of justice, could have filed an FIR against the District and Sessions Judge for such offences. This itself disclosed the frame of mind of the contemner towards the judicial officers and judicial administration. (Para 8)

(ii) In relation to the submissions made by the Deputy Superintendent of Police

The office of the SDM is situated on the north of G.T. Road and the civil court is situated on the south of G.T. Road. In such a situation, it is difficult to believe that the Dy. SP, when sitting with the SDM, would not know as to what was happening in the adjacent building. This apart, *SK* who was posted as Police Inspector-cum-Officer-in-charge of Police Station Sasaram and was present in the meeting held in the office of the SDM, had stated that the information about the detention of *AP* was received by him and other Junior Inspectors who were sitting with him in the said meeting. It is hard to believe that all the junior police officers assembled at that place had received the information but Dy. SP, who is the senior police officer, would not know about the incident. *SK* had stated that the said information was within the knowledge of Dy. SP but he did not stop the Junior Inspectors from going towards the court nor he went to the court premises promptly. The argument that the contemner had not received the information about the incident is, therefore, inherently unbelievable and cannot be accepted. (Para 10)

(iii) In relation to the submissions made by the contemners SY (President of Bihar Police Officers' Association) and AK (Secretary of the said Association)

(*b*) The names of the contemners were clearly mentioned in the complaint. (Para 13)

(*c*) The facts clearly show that the two contemners were at Sasaram at the time of the incident and in fact they led the mob in shouting slogans in abusive language and vandalism against the Judge and the judicial officers. It is, therefore, clear that these two officers set up a false defence to escape punishment. The fact that they put up false defence is also clearly indicative of their presence at the spot and participation at the time of the incident. (Para 14)

(*d*) The bar of the jurisdiction of the High Court imposed by proviso to Section 10 of the Contempt of Courts Act is not attracted in the cases where the offences under Sections 175, 178, 179, 180 or 228 IPC are not committed in the view or presence of the court. In the present case, the alleged slogan-shouting and levelling abusive language against the Judge took place outside the court. Therefore, the District and Sessions Judge rightly has not taken any action under Section 345 of the Code of Criminal Procedure and, therefore, the jurisdiction of the High Court would not be ousted. (Para 18)

Further, as held by the Supreme Court in *State of M.P.* v. *Revashankar*, AIR 1959 SC 102, if the conduct is one which scandalises the court and impairs administration of justice, the jurisdiction of the High Court would not be barred. In the present case also it is not a mere personal insult to the District Judge. Such conduct of police officers scandalises the court itself and impairs administration of justice inasmuch as it tends to demoralise the judicial officers and makes it difficult for them to perform their duties fearlessly. (Para 20). *Arun Paswan* v. *State of Bihar*, (2004) 5 SCC 53: 2004 SCC (Cri) 1503: AIR 2004 SC 721.

Bench Strength 2. Coram: *S.N. Variava* and **H.K. Sema**, JJ. [Date of decision: 12-12-2003]

Bathina Ramakrishna Reddy v. State of Madras, AIR 1952 SC 149: 1952 Cri LJ 832, followed

State of M.P. v. Revashankar, AIR 1959 SC 102: 1959 Cri LJ 251, applied

Report of District & Sessions Judge, Rohtas, In re, (2003) 1 BLJR 799 (Pat) (FB), affirmed

[3607] — S. 345 — Interfere or obstruct administration of justice — Contempt of court — Acts not amounting to — Holding departmental enquiry into the contemptuous conduct of the

contemner police officer under directions of superiors issued pursuant to complaint made by the Judge — *Judge making a complaint to IGP that Station Officer* **C** *had entered in his court hall and threatened him, Judge requesting IGP to take action against* **C** *— IGP directing SP to conduct an inquiry and take action against* **C** *— SP, in turn, directing SDO (Police) to look into the matter and report — SDO (Police) accordingly holding a preliminary inquiry in respect of the conduct of* **C** *— He recording statements of* **C** *and his defence witnesses who denying the occurrence of any such incident as reported by Judge — No contempt proceedings or other proceedings pending before any court in regard to the said incident at that time — SDO (Police), in his inquiry report, holding* **C** *guilty and recommending punishment — In such circumstances, SDO (Police), held, not guilty of contempt — As it was necessary to give an opportunity to* **C**, *the recording of statements of* **C** *or his witnesses would not amount to holding of an inquiry into the conduct of the Judge necessitating High Court's permission — Even falsity of the statements of* **C** *and his witnesses would not render the enquiry officer [SDO (Police) in this case], liable or responsible therefor — Moreover, in the absence of pendency of any judicial proceedings in regard to the incident in question at that time, holding of the departmental enquiry against* **C** *did not amount to interference with administration of justice — Hence, High Court's order awarding to the SDO (Police) punishment for contempt of court, held, improper — More so, when High Court had exonerated the IGP who had directed the inquiry — Constitution of India, Arts. 129 and 215 — Penal Code, 1860 — S. 228 — Contempt of Courts Act, 1971 — Ss. 2(a) & (c), 10, 12 and 19*

A Magistrate sent a report to the IG of Police stating that one *C*, Station Officer had come to his court hall and threatened him. Reproducing the words uttered by *C*, the Magistrate complained that such an act was unbecoming of a police officer and the misbehaviour warranted stern action. The Magistrate enclosed a copy of the order-sheet of the relevant date and statements of two witnesses to the incident. The IGP sent the complaint to the SP under cover of a letter with a direction to take necessary action. The subject of the letter stated: "Regarding conducting an inquiry and taking disciplinary action against *C*". The SP, in turn, forwarded the IG's letter along with the Magistrate's complaint and its enclosures to the appellant herein, the then SDO (Police), with a direction to personally look into the matter and send a detailed report. Accordingly, the appellant conducted an inquiry. He recorded the statements of *C* and witnesses cited by *C*. The witnesses denied the occurrence of the incident. The appellant sent a report to the SP recording a finding of guilty against *C* and recommending punishment.

In an earlier matter, the same Magistrate had made a reference to the High Court consequent to which the High Court had initiated a contempt proceedings against *C*. The second reference made by the Magistrate against *C* was also placed before the High Court in the said contempt proceedings. The High Court took note of the second proceedings and issued a show-cause notice to *C* who in his reply denied to have misbehaved with the Judge. The High Court held *C* guilty in respect of both the incidents and imposed sentence. Moreover, the High Court directed notices to be issued to the IGP and the appellant to show cause why they should not be punished for contempt of court, for having enquired into the conduct of a Judge, without the permission of the High Court. Accordingly, notices were issued to them. The IGP stated that he had merely written to the SP to enquire into the matter and take disciplinary action against *C*, that there was no intention to hold any inquiry into the conduct of the Judge and that consequent to the enquiry report submitted by the appellant a penalty of Rs 50 was imposed on *C* for misbehaviour. The High Court accepted the said explanation and dropped the proceedings against the IGP. The appellant also filed a similar reply with an unconditional apology but the High Court rejected the same. After issuing a chargesheet to the appellant and receiving his reply, the High Court held that holding an inquiry in respect of the conduct of *C* in the Magistrate's court amounted to holding an inquiry into the conduct of the Magistrate which was not permissible without the permission of the High Court. It further held that recording the evidence of several witnesses by the appellant to the effect that *C* had not misbehaved with the Judge (which contradicted the Magistrate who had reported that *C* had misbehaved with him), was with the ulterior intention of helping *C* to create a defence of malice on the part of Magistrate. The High Court concluded that the said acts amounted to scandalising the court and interfering with the administration of justice and imposed the punishment of seven days' simple imprisonment and a fine of Rs 2000. The appellant then filed the present appeal under Section 19 of the Contempt of Courts Act, 1971.

Allowing the appeal,

Held :

When *C* misbehaved in the court, the Magistrate did not take any action under Section 228 IPC nor under Section 345 CrPC read with Section 228 IPC. Even before making a reference to the High Court for initiating action for contempt, the Magistrate sent a complaint to the IGP requiring action against *C*. The action that was required was, obviously departmental disciplinary action. It was only in pursuance of the directive from his superiors that the appellant held a preliminary inquiry in respect of the conduct of *C*. The inquiry was not in regard to the conduct of the Judge. As the inquiry was against *C*, the appellant had to give an opportunity to him, to make his statement. He also had to record the statements of persons, whom *C* stated were present at the time of the incident. After recording the statements of witnesses, the appellant submitted a report holding *C* guilty of having used unwarranted language in court and recommending punishment. It cannot, therefore, be said, that recording the statements of *C*, and several other persons on the request of *C*, in the course of the preliminary inquiry, amounted to holding an inquiry in regard to the conduct of a Judge. (Para 13)

When the appellant held the preliminary inquiry, no contempt proceedings had been initiated by the High Court in regard to the incident in the Magistrate's court. There was no other proceedings pending before the Magistrate or any other court in regard to the said incident. Unless the inquiry by the appellant was a parallel proceeding with reference to a matter pending in court and unless such parallel proceeding interfered with or, intended to interfere with the pending court proceeding, there was no interference with administration of justice. (Para 14)

Even if *C* or the witnesses named by him stated something false, the appellant who recorded their statements in the course of preliminary inquiry cannot be held liable or responsible for such statements, unless there was material to show that the appellant was part of a conspiracy to create false evidence. There is nothing to show such conspiracy. The appellant submitted a report holding that *C* had used unwarranted language in court and that he should be punished. It cannot, therefore, be said that the appellant recorded the statements of witnesses with an ulterior motive of helping *C* to create a false defence. (Para 16)

The Police Department had issued a Circular dated 14-9-1999 (read with Para 36 of the M.P. Police Regulations) which required that whenever any complaint was received against police, a report should be sent at the earliest after holding necessary inquiry into such complaints. The letters of the IGP and the SP also make it clear that the appellant was required to hold an inquiry in connection with initiating a disciplinary action against *C*. The report submitted by the appellant has to be treated as one made bona fide in pursuance of the instructions of the official superiors directing him to hold a preliminary inquiry. It was not intended to scandalise the court. Nor was there any attempt by the appellant to sit in judgment over the order-sheet of the Magistrate in his inquiry report. (Para 18)

The Supreme Court has repeatedly cautioned that the power to punish for contempt is not intended to be invoked or exercised routinely or mechanically, but with circumspection and restraint. Courts should not readily infer an intention to scandalise courts or lowering the authority of court unless such intention is clearly established. Nor should they exercise power to punish for contempt where mere question of propriety is involved. (Para 20)

There is no material to show that the appellant acted with any ulterior motive. Any bona fide act in the course of discharge of duties and complying with the directions of the superior officers should not land the inquiry officer in a contempt proceedings. Though common contempt proceedings were initiated against the IGP and the appellant, the High Court dropped the proceedings against the IGP who directed the inquiry, but chose to proceed against the appellant who merely complied with the directions of the IG of Police. Therefore, it is held that the appellant is not guilty of contempt of court. (Paras 22 and 23). *Rajesh Kumar Singh* v. *High Court of Judicature of M.P.*, (2007) 14 SCC 126: AIR 2007 SC 2725: 2007 Cri LJ 3753.

Bench Strength 2. Coram: **R.V. Raveendran** and *L.S. Panta*, JJ. [Date of decision: 31-5-2007]

Security and Finance (P) Ltd. v. Dattatraya Raghav Agge, (1969) 1 SCC 181, followed

Rizwan-ul-Hasan v. State of U.P., AIR 1953 SC 185: 1953 SCR 581, relied on

[3608] — Ss. 345 and 346 — Rules framed by High Court of Kerala under S. 34(1) of Advocates Act, 1961 regarding conditions of practice of advocates — R. 11 — *Provision in, barring an advocate found guilty of contempt of court from appearing, acting or pleading in any court till he got himself purged of the contempt — Validity — Held, neither violative of Arts. 14 and 19(1)(g) nor impinging upon Bar Council of India's jurisdiction under S. 35, Advocates Act nor violative of principles of natural justice — Case-law discussed — Constitution of India — Arts. 14, 19(1)(g), 129 and*

215 — Advocates Act, 1961 — Ss. 34(1), 35, 36, 2(j), 19 and S. 30 (not yet brought into force). Bar Council of India v. *High Court of Kerala*, (2004) 6 SCC 311: AIR 2004 SC 2227: (2004) 3 LLN 74: (2004) 2 KLT 485.

Bench Strength **3**. Coram: *V.N. Khare, C.J.* and *Brijesh Kumar* and **S.B. Sinha**, JJ. [Date of decision: 27-4-2004]

Pravin C. Shah v. K.A. Mohd. Ali, (2001) 8 SCC 650; Ex-Capt. Harish Uppal v. Union of India, (2003) 2 SCC 45; Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405; N.K. Prasada v. Govt. of India, (2004) 6 SCC 299; Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311; Canara Bank v. Debasis Das, (2003) 4 SCC 557: 2003 SCC (L&S) 507, followed

Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, explained

R.L. Kapur v. State of Madras, (1972) 1 SCC 651: 1972 SCC (Cri) 380; Kapildeo Prasad Sah v. State of Bihar, (1999) 7 SCC 569: 1999 SCC (L&S) 1357; Parashuram Detaram Shamdasani v. R., 1945 AC 264: 114 LJPC 95: 173 LT 400 (PC); D.C. Saxena (Dr.) v. Hon'ble the Chief Justice of India, (1996) 5 SCC 216, relied on

— S. 346 *See* Ss. 345 and 346

— S. 348 *See* Ss. 342, 345 and 348

— S. 353 *See also* S. 366, Criminal Procedure Code, 1898, p. 1170 in Vol. 2

— S. 353 *See* Ss. 354 and 353
See also Ss. 386 and 353
See also Ss. 397, 401 and 353

[3609] — S. 353 — Judgment — Application of mind — *Mistake in naming the accused who produced the knife — Misdescription of witness — On facts and in the circumstances of the case, mistakes committed by the court either taken individually or collectively do not have the effect of vitiating the conviction. Mehbub Samsuddin Malek* v. *State of Gujarat*, (1996) 10 SCC 480: 1996 SCC (Cri) 1353.

Bench Strength **2**. Coram: *G.N. Ray* and **G.T. Nanavati**, JJ. [Date of decision: 23-8-1996]

[3610] — S. 353 — Contents of judgment — Held, judicial decorum makes it imperative that court's judgments and orders are confined to facts and legal position involved in a case — *Court should not deviate from propriety, moderation and sobriety — CPC, 1908, S. 33 and Or. 20 R. 1* [Para 58(III)]. *V.K. Jain* v. *High Court of Delhi*, (2008) 17 SCC 538: (2008) 83 AIC 140 (SC).

Bench Strength **2**. Coram: **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision: 23-9-2008]

[3611] — Ss. 353 and 354 — Interpretation of judgment — Basic rules of interpretation of documents applicable — *Judgment to be read as a whole in case of doubt and stray sentences or casual expression not to be treated as decision — Where language is plain and unambiguous, it has to be understood in that sense without applying any rule of interpretation — Critical comments made in the judgment on certain statement, by itself do not indicate that the court held contrary to the statement — CPC, 1908 — S. 33 — Constitution of India, Arts. 141, 136, 133, 134, 226 and 32*

The basic rules of interpreting Court judgments are the same as those of construing other documents. The only difference is that the judges are presumed to know the tendency of parties concerned to interpret the language in the judgments differently to suit their purposes and the consequent importance that the words have to be chosen very carefully so as not to give room for controversy. The principle is that if the language in a judgment is plain and unambiguous and can be reasonably interpreted in only one way it has to be understood in that sense, and any involved principle of artificial construction has to be avoided. Further, if there be any doubt about the decision, the entire judgment has to be considered, and a stray sentence or a casual remark cannot be treated as a decision.

A critical comment made on a certain statement does not, in absence of an expression to that effect, necessarily lead to the inference that the converse is true. It may mean that the statement requires further consideration or that the grounds given in support of the statement are fallacious or inadequate or that the matter requires a fuller examination and until that is done, the assumed correctness of the statement cannot be accepted. *CWT* v. *Karan Singh (Dr.)*, 1993 Supp (4) SCC 500: (1993) 200 ITR 614: (1993) 2 MLJ 57 (SC).

Bench Strength **5**. Coram: **L.M. Sharma, C.J.** and *S. Ratnavel Pandian*, *S. Mohan*, *B.P. Jeevan Reddy* and *S.P. Bharucha*, JJ. [Date of decision: 4-2-1993]

[3612] — Ss. 353 and 354 — Judgment of civil court whether binding on criminal court or vice versa — Legal principles — *CPC, 1908, S. 33 & Or. 20 — Evidence Act, 1872, S. 43*

In *K.G. Premshanker case*, (2002) 8 SCC 87, the decision made in *Karam Chand Ganga Prasad case*, (1970) 3 SCC 694, wherein it was categorically held that the decisions of the civil courts will be binding on the criminal courts but the converse is not true, was overruled. Axiomatically, if judgment of a civil court is not binding on a criminal court, a judgment of a criminal court will certainly not be binding on a civil court. (Para 25). *Syed Askari Hadi Ali Augustine Imam* v. *State (Delhi Admn.)*, (2009) 5 SCC 528.

Bench Strength **3**. Coram: **S.B. Sinha**, *L.S. Panta* and *B. Sudershan Reddy*, JJ. [Date of decision: 3-3-2009]

K.G. Premshanker v. Inspector of Police, (2002) 8 SCC 87: 2003 SCC (Cri) 223, relied on

Karam Chand Ganga Prasad v. Union of India, (1970) 3 SCC 694, held overruled on this point

[3613] — S. 353 — Findings of fact recorded by civil court if binding in criminal trial or vice versa — Legal position summarised — General rule and exception thereto, restated — *CrPC, 1973, S. 353 — Evidence Act, 1872, Ss. 41 to 43*

The findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration — Civil Procedure Code, 1908, Ss. 33 and 9. (Para 18). *Kishan Singh* v. *Gurpal Singh*, (2010) 8 SCC 775.

Bench Strength 2. Coram : *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision : 12-8-2010]

M.S. Sheriff v. State of Madras, AIR 1954 SC 397: 1954 Cri LJ 1019; K.G. Premshanker v. Inspector of Police, (2002) 8 SCC 87: 2003 SCC (Cri) 223; P. Swaroopa Rani v. M. Hari Narayana, (2008) 5 SCC 765: (2008) 3 SCC (Cri) 79; Syed Askari Hadi Ali Augustine Imam v. State (Delhi Admn.), (2009) 5 SCC 528; Vishnu Dutt Sharma v. Daya Sapra, (2009) 13 SCC 729: (2010) 1 SCC (Cri) 1229, relied on

King Emperor v. Khwaja Nazir Ahmad, (1943-44) 71 IA 203: AIR 1945 PC 18; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, considered

Karam Chand Ganga Prasad v. Union of India, (1970) 3 SCC 694; V.M. Shah v. State of Maharashtra, (1995) 5 SCC 767: 1995 SCC (Cri) 1077, held, overruled

[3614] — Ss. 353 and 354 — Judgment/finding of criminal court — Whether binding on civil court — Extent of use of judgment of criminal court in civil proceeding — Relevance of previous judgment/finding in criminal proceedings in civil suit — Extent of application of judgment of criminal court in civil proceeding — *Held, a judgment/finding given in a criminal proceeding will not be binding in a civil proceeding — Judgment of a criminal court in a civil proceeding will only have limited application viz. inter alia, for ascertaining who was the accused and what was the result of the criminal proceedings — CPC, 1908, S. 33 & Or. 20 — Evidence Act, 1872, Ss. 40 and 43*

As regards the question as to whether previous judgment of a criminal proceeding would be relevant in a suit, the principle contained in Section 40 of the Evidence Act, 1872 would be applicable, inter alia, if the suit is found to be barred by the principle of res judicata or by reason of the provisions of any other statute. Section 40 does not lay down that a judgment of the criminal court would be admissible in the civil court for its relevance is limited. The judgment of a criminal court in a civil proceeding will only have limited application viz. inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings. Any finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding. If judgment of a civil court is not binding on a criminal court, it is incomprehensible that a judgment of a criminal court will be binding on a civil court. (Paras 23 and 28)

Further, Section 43 of the Evidence Act, 1872 categorically states that judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of the said Act, no other provisions of the Evidence Act or for that matter any other statute had been brought to the notice of the Supreme Court. (Para 28). *Vishnu Dutt Sharma* v. *Daya Sapra*, (2009) 13 SCC 729.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

Seth Ramdayal Jat v. Laxmi Prasad, (2009) 11 SCC 545; M.S. Sheriff v. State of Madras, AIR 1954 SC 397; K.G. Premshanker v. Inspector of Police, (2002) 8 SCC 87: 2003 SCC (Cri) 223; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101; P. Swaroopa Rani v. M. Hari Narayana, (2008) 5 SCC 765: (2008) 3 SCC (Cri) 79, relied on

Karam Chand Ganga Prasad v. Union of India, (1970) 3 SCC 694, held, overruled

[3615] — Ss. 353 and 354 — Judgment of criminal court is superseded by judgment of civil court — *CPC, 1908 — S. 33. V.M. Shah* v. *State of Maharashtra*, (1995) 5 SCC 767: 1995 SCC (Cri) 1077: AIR 1996 SC 339.

Bench Strength 2. Coram: *K. Ramaswamy* and *B.L. Hansaria*, JJ. [Date of decision: 25-8-1995]

Overruled in K.G. Premshanker v. Inspector of Police, (2002) 8 SCC 87

[3616] — S. 353 — Judgment written after the retirement of one of the members of the Bench of CEGAT — Validity of — *Held, such judgment/order cannot stand — Matter directed to be disposed of afresh by a new Bench — Customs Act, 1962 — S. 129-B — Central Excise Act, 1944 — S. 35-C — CPC, 1908 — S. 33 — Administrative Tribunals Act, 1985 — S. 22(2) — Administrative Tribunal Rules of Practice, 1993, R. 105. Toyo Engineering India Ltd.* v. *Collector of Customs*, (2001) 9 SCC 608.

Bench Strength 2. Coram: *S.P. Bharucha* and *V.N. Khare*, JJ. [Date of decision: 27-10-1999]

[3617] — S. 353 — Instead of trial Judge conveying result of the trial, Sheristedar translating to the accused the concluding part of the judgment *— Held, procedure introducing no infirmity in the instant case — CPC, 1898 — S. 366(1). Iqbal Ismail Sodawala* v. *State of Maharashtra*, (1975) 3 SCC 140: 1974 SCC (Cri) 764: AIR 1974 SC 1880: (1975) 1 SCR 710: 1974 Cri LJ 1291: (1975) 12 ACC 27.

Bench Strength 2. Coram: **H.R. Khanna** and *Y.V. Chandrachud*, JJ. [Date of decision: 13-8-1974]

[3618] — S. 353(1) — Delay in pronouncing judgment by High Court *— Unexplained long interval between conclusion of arguments and delivery of judgment shakes the confidence of the people in the judicial system and affects rights of the parties under Art. 21 — Detailed guidelines regarding expeditious pronouncement of judgments laid down by way of remedial measure — These guidelines have to be followed and implemented until more effective measures are evolved by High Courts or Parliament makes suitable enactment to deal with the problem — Inspiration to be drawn from S. 353(1) CrPC for pronouncement of judgment "immediately" after termination of trial — Constitution of India — Arts. 21 and 142 & 141 — Maxims — Actus curiae neminem gravabit*

In this case the Sessions Court convicted nine persons on different counts, including murder as per its judgment dated 4-5-1991. Thereupon all the convicted persons, while remaining in jail, filed appeals before the High Court of Patna. When the arguments before a Division Bench of the High Court concluded the judgment was reserved by it on 23-8-1995. In the meanwhile one of the convicted persons died in jail. It was only when one of the Judges of the Division Bench reached near the date of his superannuation that the Bench ultimately pronounced the judgment on 14-8-1997.

Held :

Per Sethi, J. (Thomas, J. concurring)

Justice should not only be done but should also appear to have been done. Similarly whereas justice delayed is justice denied, justice withheld is even worse than that. The inordinate, unexplained and negligent delay in pronouncing the judgment is alleged to have actually negatived the right of appeal conferred upon the convicts under the provisions of the Code of Criminal Procedure. Right of appeal in a criminal case culminating in conviction is the basis of the civilised jurisprudence. Conferment of right of appeal to meet the requirement of Article 21 of the Constitution cannot be made a fraud by protracting the pronouncement of judgment for reasons which are not attributable either to the litigant or to the State or to the legal profession. Delay in disposal of an appeal on account of inadequate number of Judges, insufficiency of infrastructure, strike of lawyers and circumstances attributable to the State is understandable but once the entire process of participation in the justice delivery system is over and the only thing to be done is the pronouncement of judgment, no excuse can be found to further delay for adjudication of the rights of the parties, particularly when it affects any of their rights conferred by the Constitution under Part III. (Paras 4 and 2)

The prevalence of such a practice and horrible situation in some of the High Courts in the country has necessitated the desirability of considering the effect of such delay on the rights of the litigant public. (Para 3)

Under the prevalent circumstances in some of the High Courts, it is appropriate to provide some guidelines regarding the pronouncement of judgments which, shall be followed by all concerned, being the mandate of the Supreme Court. Such guidelines, as for the present, are as under:

(*i*) The Chief Justices of the High Courts may issue appropriate directions to the Registry that in a case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause-title, date of reserving the judgment and date of pronouncing it be separately mentioned by the Court Officer concerned.

(*ii*) That Chief Justices of the High Courts, on their administrative side, should direct the Court Officers/Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month.

(*iii*) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the Chief Justice concerned shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the Judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.

(*iv*) Where a judgment is not pronounced within three months from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with a prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.

(*v*) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances. (Para 10)

Per Thomas, J. (supplementing)

The later years have shown slackness on the part of a few Judges of the superior courts in India with the result that once arguments in a lis concluded before them the records remain consigned to hibernation. Judges themselves normally forget the details of the facts and niceties of the legal points advanced. Sometimes the interval is so long that the Judges forget even the fact that such a case is pending with them expecting judicial verdict. Though it is an unpleasant fact, it is a stark reality. Many cases remain in the area of "judgment reserved" for long periods. It is disheartening that a few handful are unmindful of their obligation and the oath of office they have solemnly taken as they cause such inordinate delay in pronouncing judgments. (Paras 42 and 44)

It is in this background that I reiterate the remedial measures mentioned above in the judgment of Sethi, J. (para 10) as instructions. If the Chief Justice of a High Court thinks that more effective measures can be evolved by him for slashing down the interval between conclusion of arguments and delivery of judgment in that particular court, it is open to him to do so as a substitute for the measures suggested by us hereinbefore. But until such measures are evolved by the Chief Justice of the High Court concerned, we expect that the measures suggested above would hold the field. The above-enumerated measures are intended to remain only until such time as Parliament would enact measures to deal with this problem. (Paras 45 and 46). *Anil Rai* v. *State of Bihar*, (2001) 7 SCC 318: 2001 SCC (Cri) 1009: AIR 2001 SC 3173.

Bench Strength 2. Coram: **K.T. Thomas**^{2} and **R.P. Sethi**^{1}, JJ. [Date of decision: 6-8-2001]

Madhav Hayawadanrao Hoskot v. State of Maharashtra, (1978) 3 SCC 544: 1978 SCC (Cri) 468; R.C. Sharma v. Union of India, (1976) 3 SCC 574: 1976 SCC (L&S) 463; Bhagwandas Fatechand Daswani v. H.P.A. International, (2000) 2 SCC 13; Hussainara Khatoon (I) v. Home Secy., State of Bihar, (1980) 1 SCC 81: 1980 SCC (Cri) 23; Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98: 1980 SCC (Cri) 40; Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93; Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507: 1998 SCC (Cri) 1692; Raj Deo Sharma (II) v. State of Bihar, (1999) 7 SCC 604: 1999 SCC (Cri) 1324; Akhtari Bi v. State of M.P., (2001) 4 SCC 355: 2001 SCC (Cri) 714, relied on

[3619] — S. 353(1) — **Period subsequent for pronouncement of judgment when not pronounced immediately** — *Words "at some subsequent time" in S. 353(1), held, contemplate pronouncement of judgment without undue delay — Such period cannot extend beyond six weeks — CPC, 1908 — S. 33 and Or. 20 R. 1 — In civil matters judgment must be pronounced within two months of the close of the hearing of the case*

The intention of the legislature regarding pronouncement of judgments can be inferred from the provisions of the Code of Criminal Procedure. Sub-section (1) of Section 353 of the Code provides that the judgment in every trial in any criminal court of original jurisdiction, shall be pronounced in open court *immediately* after the conclusion of the trial or on some subsequent time for which due notice shall be given to the parties or their pleaders. The words "some subsequent time" mentioned in Section 353 contemplate the passing of the judgment without undue delay, as delay in the pronouncement of judgment is opposed to the principle of law. Such subsequent time can at the most be stretched to a period of six weeks and not beyond that time in any case. The pronouncement of judgments in the civil case should not be permitted to go beyond two months. (Para 8)

It is true, that for the High Courts, no period for pronouncement of judgment is contemplated either under the Civil Procedure Code or the Criminal Procedure Code, but as the pronouncement of the judgment is a part of the justice dispensation system, it has to be without delay. In a country like ours where people consider the Judges only second to God, efforts be made to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eyebrows, sometimes genuinely which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the rule of law. For the fault of a few, the glorious and glittering name of the judiciary cannot be permitted to be made ugly. It is the policy and purpose of law, to have speedy justice for which efforts are required to be made to come up to the expectation of the society of ensuring speedy, untainted and unpolluted justice. (Para 9). *Anil Rai* v. *State of Bihar*, (2001) 7 SCC 318: 2001 SCC (Cri) 1009: AIR 2001 SC 3173.

Bench Strength 2. Coram: **K.T. Thomas**^{2} and **R.P. Sethi**^{1}, JJ. [Date of decision: 6-8-2001]

— S. 354 *See also* Ss. 367 and 368, Criminal Procedure Code, 1898, pp. 1170 et seq. in Vol. 2

— **S. 354** *See* Ss. 320 and 354
See also Ss. 353 and 354
See also Ss. 368 and 354
See also Ss. 399, 401 and 354
See also Ss. 401 and 354
See also Ss. 401 & 399 and 354 & 235
See also Ss. 482 & 354

[3620] — S. 354 — Age — Appellant 55 at the time of offence now 70 — Conviction for Ss. 302/34, IPC upheld — *Murder bearing features of ruthlessness, unrelenting and determined vindictiveness — Retributive more than therapeutic approach in awarding punishment in the present facts essential — No interference with award of life imprisonment called for — Penology — Objects of punishment — Stephen's views relied on — Penal Code, 1860 — Ss. 302/34. Guvala China Venkatesu* v. *State of A.P.*, 1991 Supp (2) SCC 727: AIR 1991 SC 1926: 1991 Cri LJ 2326.

Bench Strength **2**. Coram: *K.N. Saikia* and *M.M. Punchhi*, JJ. [Date of decision: 5-12-1990]

Stephen: A History of the Criminal Law of England, (1883) pp 81-82, relied on

[3621] — Ss. 354 and 353 — Judgment — Considerations while rendering judgment — Held, while rendering judgments, courts should only deal with the subject-matter of the case and issues involved therein — *Courts should desist from issuing directions affecting executive or legislative policy, or general directions unconnected with the subject-matter of the case — A court may express its views on a particular issue in appropriate cases only where it is relevant to the subject-matter of the case — The subject-matter of an appeal, whether civil or criminal, is the correctness of the decision of the court below — There is no question of the appellate court travelling beyond and making observations alien to the case — Even when it becomes necessary for a court for whatsoever reason, to decide or comment upon an issue not raised by the parties, it may do so only after notifying parties concerned so that they can put forth their views on such issue — Herein, observations, recommendations and directions in the concurring judgment, do not relate to subject-matter of the criminal appeal and being the expression of an expectation or hope by only one of the Judges constituting the Bench and not agreed to by the other, is not a decision, order or direction of the Court — Hence, directions issued to Secretary General of the Supreme Court, State Governments and Union Territories, and recommendations to the Government of U.P. in the concurring judgment are not directions to be complied with — CPC, 1908 — S. 33*

The second issue involved the recommendations made to the Government of U.P. and directions issued to all States and Union Territories in the concurring judgment. The appeal related to the question whether the complaint against the appellant disclosed the ingredients of an offence under Section 25 of the Karnataka Shops and Commercial Establishments Act, 1961. The appeal did not relate to grant of anticipatory bail nor did it relate to rights of arrested persons. While rendering judgments, courts should only deal with the subject-matter of the case and issues involved therein. The courts should desist from issuing directions affecting executive or legislative policy, or general directions unconnected with the subject-matter of the case. A court may express its views on a particular issue in appropriate cases only where it is relevant to the subject-matter of the case. (Para 10)

The subject-matter of an appeal, whether civil or criminal, is the correctness of the decision of the court below. There is no question of the appellate court travelling beyond and making observations alien to the case. Any opinion, observation, comment or recommendation dehors the subject of the appeal, may lead to confusion in the minds of litigants, members of public and authorities as they will not know how to regulate their affairs, or whether to act upon it. Another aspect that requires to be kept in view is the fact that even when it becomes necessary for a court for whatsoever reason, to decide or comment upon an issue not raised by the parties, it may do so only after notifying the parties concerned so that they can put forth their views on such issue. (Para 11)

Insofar as the observations, recommendations, and directions in the concurring judgment are concerned, suffice it to say that they do not relate to the subject-matter of the criminal appeal and being the expression of an expectation or hope by only one of the Judges constituting the Bench and not agreed to by the other, is not a decision, order or direction of the court. That being so, the directions issued to the Secretary General of the Supreme Court, State Governments and Union Territories, and recommendations to the Government of U.P. in the concurring judgment are not directions to be complied with. (Para 13) . *Som Mittal* v. *Govt. of Karnataka*, (2008) 3 SCC 574: (2008) 1 SCC (L&S) 910: (2008) 2 SCC (Cri) 1: AIR 2008 SC 1528: 2008 Cri LJ 1927: (2008) 63 AIC 42 (SC).

Bench Strength **3**. Coram: **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision: 21-2-2008]

***Distinguished in** V. Sivamurthy v. State of A.P., (2008) 13 SCC 730*

[3622] — S. 354 — Judgment — How to be read and how its effect to be ascertained — *Held, a judgment is not to be read as a statute — It must be read reasonably and in its entirety — Effect of judgment must be found out from wordings used by it and attending circumstances in which they have been used* (Para 18). *Prem Singh* v. *State of Haryana*, (2009) 14 SCC 494: AIR 2009 SC 2573.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Jayaseelan v. State of T.N., (2009) 12 SCC 275; Mani v. State, (2009) 12 SCC 288, relied on

[3623] — S. 354 — Power of Judge to determine the appropriate sentence is based on the principle of proportionality so that punishment fits with the crime

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Punishment ought always to fit with the crime. (Para 54)

In view of the above facts and legal position, the accused-appellants deserve death sentence which has been awarded by the trial court. (Para 55). *Krishna Mochi* v. *State of Bihar*, (2002) 6 SCC 81: 2002 SCC (Cri) 1220: AIR 2002 SC 1965: 2002 Cri LJ 2645.

Bench Strength 3. Coram: **M.B. Shah**^{3}, **B.N. Agrawal**^{1} and **Arijit Pasayat**^{2}, JJ. [Date of decision: 15-4-2002]

[3624] — S. 354 — Factors required to be taken into consideration before awarding appropriate sentence to the accused, stated — *Penal Code, 1860, S. 53*

These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:

(*a*) Motive or previous enmity;

(*b*) Whether the incident had taken place on the spur of the moment;

(*c*) The intention/knowledge of the accused while inflicting the blow or injury;

(*d*) Whether the death ensued instantaneously or the victim died after several days;

(*e*) The gravity, dimension and nature of injury;

(*f*) The age and general health condition of the accused;

(*g*) Whether the injury was caused without premeditation in a sudden fight;

(*h*) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;

(*i*) The criminal background and adverse history of the accused;

(*j*) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;

(*k*) Number of other criminal cases pending against the accused;

(*l*) Incident occurred within the family members or close relations;

(*m*) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment? (Para 23). *Gurmukh Singh* v. *State of Haryana*, (2009) 15 SCC 635: (2009) 82 AIC 83 (SC).

Bench Strength 2. Coram: **Dalveer Bhandari** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-8-2009]

[3625] — S. 354 — FIR mentioning all necessary details about the assault including the role and weapon used by each accused — *Evidence of the brother of the deceased found reliable and no material brought out during cross-examination to discredit him — His evidence corroborated by his uncle who narrated the entire story in the same sequence without any omission or mistake — Held, in the circumstances of the case, the High Court was not justified in reversing conviction of all the four accused persons — Judgment and order passed by the trial court restored — However, in view of passage of time death sentence awarded to one of the accused commuted to imprisonment for life — Penal Code, 1860 — Ss. 302/34. State of U.P.* v. *Abdul*, (1997) 10 SCC 135: 1997 SCC (Cri) 804: AIR 1997 SC 2512: 1997 All LJ 1432: 1997 Cri LJ 2997.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 5-5-1997]

[3626] — S. 354 — Contents of judgment — *CrPC, 1898 — S. 367*

Where the High Court dealt with the case in a very superficial manner and statement of reasons was not elaborate enough, held, the judgment did not comply with S. 367 of CrPC, 1898. (Para 19). *Jamuna Chaudhary* v. *State of Bihar*, (1974) 3 SCC 774: 1974 SCC (Cri) 250: AIR 1974 SC 1822: (1974) 2 SCR 609: 1974 Cri LJ 890.

Bench Strength 2. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 7-12-1973]

[3627] — S. 354 — High Court's judgment acquitting all accused including those sentenced to death and life imprisonment — *In absence of proper formulation of points for decision, examination of evidence and specific pointwise findings, held, judgment not in accordance with S. 354 and not proper — Hence judgment set aside and case sent back to the High Court for decision in accordance with law. State of A.P.* v. *Gowthu Ranghunayakulu*, (1986) 4 SCC 764: 1986 SCC (Cri) 540: AIR 1987 SC 40.

Bench Strength **2**. Coram: *A.P. Sen* and **B.C. Ray**, JJ. [Date of decision: 19-11-1986]

[3628] — S. 354 — Judgment becomes complete and appealable only after conviction is recorded and also sentence is awarded

Under the Criminal Procedure Code there are two stages in a criminal trial before a Sessions Court, the stage up to the recording of a conviction and the stage post-conviction up to the imposition of sentence. After the conviction is recorded, Section 235(2) inter alia provides that the Judge shall hear the accused on the question of sentence and then pass sentence on him according to law. After the court records a conviction, the accused has to be heard on the question of sentence and it is only after the sentence is awarded that the judgment becomes complete and can be appealed against under Section 374 of the Code. (Paras 15, 12 and 13). *Rama Narang* v. *Ramesh Narang*, (1995) 2 SCC 513: (1995) 83 Comp Cas 194.

Bench Strength 3. Coram: **A.M. Ahmadi, C.J.** and *R.M. Sahai* and *K. Jayachandra Reddy*, JJ. [Date of decision: 19-1-1995]

[3629] — S. 354 — Observations and directions made outside the scope of the case — Legality — Expunging of adverse remarks — Making of disparaging remarks against the State and Police Department on matters beyond the scope of the case — Impropriety — *High Court while rejecting the State's petition for leave to appeal against acquittal in a case under S. 307 IPC, requiring the Home Secretary and Home Minister to express their reaction to the adverse remarks of High Court against poor investigation and insincere conduct of prosecution which resulted in acquittal in cases of murder, atrocities against women, harassment of young married women including bride-burning and molestation of women and rape — Said matters, held, were not germane to, and beyond the scope of, the case — Hence, such remarks were uncalled for — Therefore, the direction issued by High Court to the Secretary (Home) and Home Minister, set aside — CPC, 1908, Or. 20 R. 5*

Certain persons charged of various serious offences including the offence under Section 307 IPC were acquitted by the trial court which disbelieved the testimony of the prosecution witnesses and also criticised the delay in dispatching the FIR to the Magistrate. The State of Karnataka filed a petition for leave to appeal against the said order of acquittal. A Division Bench of the High Court, while refusing leave, required the Home Secretary and Home Minister to report to the High Court their reaction to the observations made by the Bench to the effect that poor investigation followed by a total lack of interest in the conduct of the prosecution had been resulting in acquittal in criminal cases. Referring to (*1*) murders committed with impunity, (2) increase in cases involving atrocities against women, (*3*) harassment inflicted on young married women including "bride-burning", and (*4*) molestation and rape of girls and young women, the Division Bench attributed the inefficiency of the police to recruitment of unfit persons on the basis of political considerations. The Division Bench also criticised the investigating agency's failure to ensure that the vital witnesses were present and that they produced the type of evidence expected of them. Allowing the State's appeal against the said directions

Held :

The problems posed by the High Court Judges have already engaged the attention of the Law Commission. On more than one occasion the Commission has submitted its report for consideration by Parliament. But putting the blame largely on the police force of the State for all the ills pointed out by the learned Judges, without data or material or evidence in the present case, is not a course which can meet the Supreme Court's approval. (Para 9)

None of the fields to which the Judges of the High Court pointed their fingers covered the present case. Thus, they dealt with subjects which were totally not germane and far beyond the scope of the present case as if it were presentation of a paper in a seminar. There is no reason for the Home Minister and the Home Secretary to react to the observations which were absolutely uncalled for, on the facts of the case. (Paras 9 and 10)

Judicial disposition is definitely different from a paper presented for seminar discussion. Nor can it be equated with a dissertation. Judicial decorum requires that judgments and orders should confine to the facts and legal points involved in the particular cases which Judges deal with. Maybe, sometimes Judges would, perhaps wittingly or even unwittingly, jut outside the contours of the litigation, but even such overlappings should be within the bounds of propriety and sobriety. But there is no justification for traversing so far beyond the canvass or to cover areas which are grossly extraneous to the subject-matter of the case. If the subordinate courts are also to be tempted and encouraged to follow suit by travelling far outside the scope of the lis, the consequences would be far too many. Demoralisation of departments would badly erode the already impaired efficiency of the forces. (Para 11). *State of Karnataka* v. *Registrar General, High Court of Karnataka*, (2000) 7 SCC 333: 2000 SCC (Cri) 1359: AIR 2000 SC 2626: 2000 Cri LJ 3958.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 10-8-2000]

State of U.P. v. Mohd. Naim, AIR 1964 SC 703: (1964) 2 SCR 363: (1964) 1 Cri LJ 549; R.K. Lakshmanan v. A.K. Srinivasan, (1975) 2 SCC 466: 1975 SCC (Cri) 654; Niranjan Patnaik v. Sashibhusan Kar, (1986) 2 SCC 569: 1986 SCC (Cri) 196; S.K. Viswambaran v. E. Koyakunju, (1987) 2 SCC 109: 1987 SCC (Cri) 289, followed

[3630] — **S. 354 — While acquitting an accused on benefit of doubt court cannot direct that he was not entitled to reinstatement in service and back wages** — *These matters to be considered by Government. Jagdish Prasad* v. *State of Rajasthan*, 1987 Supp SCC 163: 1988 SCC (L&S) 104: (1987) 5 ATC 245: 1987 SCC (Cri) 782.

Bench Strength **2**. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 11-2-1987]

[3631] — **Ss. 354, 355, 361, 264, 412 and 384(3) — Reasoned order — Necessity of** — *Held, reasons are the flesh and blood of judicial adjudication and such reasons must be shown in the orders which are liable to be challenged in the superior court — CPC, 1908 — S. 33 and Or. 20 Rr. 4 and 5 — Constitution of India — Art. 226 — Consumer Protection Act, 1986 — Ss. 14, 18 and 22 — Administrative Tribunals Act, 1985 — Ss. 19(3), 22 and 24. Notified Area Committee* v. *Addl. Director, Consolidation*, (2002) 10 SCC 87.

Bench Strength **2**. Coram: *K.T. Thomas* and *Y.K. Sabharwal*, JJ. [Date of decision: 4-5-2001]

[3632] — **Ss. 354 and 353 — Omission to mention S. 34 IPC in the judgment — Effect — Mention of this section in the judgment is not the requirement of law for conviction if the ingredients of the section are present** — *Penal Code, 1860 — S. 34* (Para 16). *Narinder Singh* v. *State of Punjab*, (2000) 4 SCC 603: 2000 SCC (Cri) 855: AIR 2000 SC 2212: 2000 Cri LJ 3462.

Bench Strength **2**. Coram: **D.P. Wadhwa** and *Ruma Pal*, JJ. [Date of decision: 6-4-2000]

[3633] — **Ss. 354 and 368 — Death sentence — When not justified** — *Appellants committing ghastly murders of a housewife and her two children and thereafter looting their ornaments, other valuable articles and cash — Held, in the circumstances of the case, offence does not come within "rarest of rare cases" — Death sentence converted to imprisonment for life — Penal Code, 1860 — Ss. 302/34, 394/397 and 449. Mukund* v. *State of M.P.*, (1997) 10 SCC 130: 1997 SCC (Cri) 799: AIR 1997 SC 2622: 1997 Cri LJ 3182.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S. Saghir Ahmad*, JJ. [Date of decision: 2-5-1997]

[3634] — **Ss. 354 and 465 — Non-compliance with procedural requirement the matter of signing of judgment** — *Sessions Judge failing to append his signature to the judgment because judgment had not till then been transcribed — Judgment ultimately transcribed and signed by Sessions Judge and copy of judgment thereafter, supplied to accused — Accused filing appeal against judgment of trial court — Appeal dismissed by High Court — Sessions Judge's failure to sign the judgment did not occasion failure to justice — CrPC, 1898 — Ss. 367(1) and 537. Iqbal Ismail Sodawala* v. *State of Maharashtra*, (1975) 3 SCC 140: 1974 SCC (Cri) 764: AIR 1974 SC 1880: (1975) 1 SCR 710: 1974 Cri LJ 1291: (1975) 12 ACC 27.

Bench Strength **2**. Coram: **H.R. Khanna** and *Y.V. Chandrachud*, JJ. [Date of decision: 13-8-1974]

[3635] — **Ss. 354 and 482 — Happenings in court — What transpired at the hearing in court** — *Statement recorded in the judgment in respect of, held, is conclusive and cannot be contradicted on affidavit or by other evidence — Party believing them to be erroneously recorded should promptly approach the judges who made the record while the matter is still fresh in their minds, for necessary rectification — That being the only remedy, it cannot challenge the same in appeal — CPC, 1908 — S. 33*

It was specifically recorded in the judgment of the High Court that only two points were raised before it. But, the accused-appellant raised several other issues also before the Supreme Court and contended that the High Court did not consider his arguments properly.

Dismissing the appeal,

Held :

The statement of, as to what transpired at the hearing, the record in the judgment of the court is conclusive of the facts so stated and no one can contradict such statement on affidavit or by other evidence. If a party thinks that the happenings in court have been erroneously recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges who have made the record, to make necessary rectification. That is the only way to have the record corrected. It is not open to the appellant to contend before the Supreme Court to the contrary. (Para 9). *Ram Bali* v. *State of U.P.*, (2004) 10 SCC 598: 2004 SCC (Cri) 2045: AIR 2004 SC 2329: 2004 Cri LJ 2490.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-4-2004]

State of Maharashtra v. Ramdas Shrinivas Nayak, (1982) 2 SCC 463: 1982 SCC (Cri) 478; Bhavnagar University v. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111; Roop Kumar v. Mohan Thedani, (2003) 6 SCC 595, relied on

[3636] — Ss. 354 and 482 — Disparaging remarks and strictures made by High Court against an Additional Sessions Judge directed to be expunged from the judgment — *Attributing improper motive to subordinate courts deprecated. K.P. Tiwari* v. *State of M.P.*, 1994 Supp (1) SCC 540: 1994 SCC (Cri) 712: AIR 1994 SC 1031: 1994 Cri LJ 1377: (1994) 31 ACC 27.

Bench Strength **2**. Coram: *P.B. Sawant* and *Yogeshwar Dayal*, JJ. [Date of decision: 29-10-1993]

[3637] — Ss. 354 and 482 — Remarks in judgments in nature of comments or criticism — Held, remarks must be relevant to subject-matter of adjudication — *Presence of persons against whom remarks made and opportunity to rebut imperative — Natural justice principles to be observed — Restraint to be exercised in respect of recalcitrant subordinate judicial officers to apply with equal force in case of persons not present before court — CPC, 1908, Or. 20 R. 4*

In these three appeals, certain observations made by the High Court are questioned by the appellants. According to them, the High Court has directly and/or at any rate indirectly cast aspersions on their credibility and bona fides in helping certain persons to approach the Supreme Court for redressal of their grievances. The case before the High Court related to an alleged communal carnage on 27-2-2002. According to the appellants, being human rights activists, they wanted to find out what the truth is and in the process, though after conclusion of the trial, it was reliably felt by them on the basis of verifications made that truth had been the resultant casualty. They made a detailed study of the situation and also met the riot-affected persons. They helped the victims in lodging FIRs, and setting up legal-aid clinics for the affected victims. They claimed to be anti-fundamentalists and public activists with the avowed object of helping victims of communal violence. Their main and sincere objective is to maintain and preserve the secular image of the nation, secured firmly under the Constitution, the supreme law of the land. Certain persons, who were not happy with the verdicts rendered by the trial court in the case commonly known as "*Best Bakery case*" also approached the appellants and they helped them in obtaining legal assistance. Unfortunately the High Court, while dealing with the appeal filed by the State of Gujarat against the acquittal of the accused persons and other connected cases made some caustic observations casting serious aspersions on their bona fides and used strong words like "super investigators", "anti-social" and "anti-national" elements.

Grievance is made that not only were the observations unnecessary and contrary to the truth but were also made against persons who were not even given an opportunity to justify their action. Principles of natural justice were said to have been grossly violated. Prayer is made, therefore, for deletion of the offending portions from the judgment.

Allowing the appeals to the extent indicated in the terms below,

Held :

Time and again the Supreme Court has deprecated the practice of making observations in judgments, unless the persons in respect of whom comments and criticisms were being made were parties to the proceedings, and further were granted an opportunity of having their say in the matter, unmindful of the serious repercussions they may entail on such persons. Apart from that, when there is no relevance to the subject-matter of adjudication, it is certainly not desirable for the courts to make any comments or observations reflecting on the bona fides or credibility of any person or their actions. Observations should not be made by courts against persons and authorities, unless they are essential or necessary for decision of the case. Rare should be the occasion and necessities alone should call for its resort. (Paras 7 and 9)

Even while dealing with recalcitrant subordinate judicial officers, the Supreme Court has advised restraint and observations of the Supreme Court in this regard apply with equal force to all such parties who were not before court and not merely could not be before the court in the proceedings concerned. (Paras 11 and 14)

The appellants were not parties in the case before the High Court. It is beyond comprehension as to how the learned Judges in the High Court could afford to overlook such a basic and vitally essential tenet of the "rule of law", that no one should be condemned unheard, and risk themselves to be criticised for injudicious approach and/or render their decisions vulnerable for challenge on account of violating judicial norms and ethics. The observations objected to by the appellants do not prima facie appear to have any relevance to the subject-matter of the dispute before the High Court. (Para 7)

It is therefore directed that the observations of the High Court as against the appellants shall stand expunged and deleted from the judgment of the High Court, and consequently must be treated as having never existed or been part of the High Court judgment. The decision in this case is confined to the claim of the above appellants only and has nothing to do with the claims of others before the High Court and the Supreme Court in the other related appeals. (Para 15). *Testa Setalvad* v. *State of Gujarat*, (2004) 10 SCC 88: 2004 SCC (Cri) 1675: AIR 2004 SC 1979: 2004 Cri LJ 2022.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Ishwari Prasad Misra v. Mohd. Isa, AIR 1963 SC 1728; K.P. Tiwari v. State of M.P., 1994 Supp (1) SCC 540: 1994 SCC (Cri) 712; Braj Kishore Thakur v. Union of India, (1997) 4 SCC 65: 1997 SCC (Cri) 514, relied on

[3638] — S. 354(1)(b) — Contents of judgment *— Trial court must notice, consider and discuss the evidences of the witnesses and arguments addressed at the bar — Judgment of trial court merely containing conclusions and not reasons for arriving at the conclusions is not sustainable — 'Decision' does not merely means 'conclusion' but includes 'reasons' — Since under S. 14 of Terrorist Affected Areas (Special Court) Act, 1984 first appeal lies to the Supreme Court, instead of itself determining the guilt or otherwise of the accused, the Supreme Court remanding the case to the trial court for fresh judgment in accordance with law — Terrorist Affected Areas (Special Courts) Act, 1984 — Ss. 10 and 14*

On the plainest requirement of justice and fair trial the least that was expected of the trial court was to notice, consider and discuss, howsoever briefly, the evidence of various witnesses as well as the arguments addressed at the bar. The trial court has not done so. The trial court apparently failed in the discharge of its essential duties. There is no mention in the judgment as to what various witnesses deposed at the trial, except for the evidence of the medical witness. The judgment does not disclose as to what was argued before it on behalf of the prosecution and the defence. The judgment of the trial court is truly speaking not a judgment in the eyes of the law. The trial court appears to have been blissfully ignorant of the requirements of Section 354(1)(*b*) CrPC. Since, the first appeal lay to the Supreme Court, the trial court should have reproduced and discussed at least the essential parts of the evidence of the witnesses besides recording the submissions made at the bar to enable the appellate court to know the basis on which the 'decision' is based. A 'decision' does not merely mean the 'conclusion' — it embraces within its fold the reasons which form the basis for arriving at the 'conclusions'. The judgment of the trial court contains only the 'conclusions' and nothing more. The judgment of the trial court cannot, therefore, be sustained. (Paras 10 and 4)

In the present case the occurrence took place more than a decade ago and the conviction was recorded almost 9 years ago. But, looking to the manner in which the judgment has been rendered by the trial court, it appears appropriate to remand the case to the trial court for writing a fresh judgment, after providing opportunities of hearing to both the parties, on the basis of the material which is already on the record. (Para 11). *Mukhtiar Singh* v. *State of Punjab*, (1995) 1 SCC 760: 1995 SCC (Cri) 296: AIR 1995 SC 686: (1995) 1 Crimes 293: (1995) 32 ACC 341.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *M.K. Mukherjee*, JJ. [Date of decision: 4-1-1995]

[3639] — S. 354(1)(b) — Contents of judgment — Reasons not rendered by High Court while giving order, indicating that they would be subsequently given — Propriety of *— Highlighted that such a practice on part of High Courts had been deprecated by the Supreme Court in several cases, and was impermissible — Explained why such a practice was permissible in the case of the Supreme Court and not the High Courts — CPC, 1908, Or. 20 R. 5*

The High Court after hearing the appeal directed its dismissal on 26-12-2003 indicating in the order that the reasons were to be subsequently given, because the Court was closing for winter holidays. This course was adopted "due to paucity of time". No perceivable reason for the hurry can be seen. The accused were not in custody. Even if they were in custody, the course adopted was not permissible. The Supreme Court has in several cases deprecated the practice adopted by the High Court in the present case. What is still more baffling is that written arguments of the State were filed on 29-12-2003 and by the accused persons on 1-1-2004. A grievance is made that when the petitioner in Criminal Revision No. 583 of 2003 wanted to file notes of arguments they were not accepted, making a departure from the cases of the State and the accused. If the written arguments were to be on record, it is not known as to why the High Court dismissed the appeal. If it had already arrived at a particular view, there was no question of filing written arguments. (Paras 80 and 82)

It may be thought that such orders are passed by the Supreme Court and, therefore, there is no reason why the High Courts should not do the same. In this regard it needs to be pointed out that orders passed by the Supreme Court are final and no further appeal lies against them. The Supreme Court is the final court in the hierarchy of our courts. Orders passed by the High Court are subject to the appellate jurisdiction of the Supreme Court under Article 136 of the Constitution and other provisions of statutes concerned. It is necessary to make these observations so that a practice which is not a very desirable one and which achieves no useful purpose may not grow out of and beyond its present infancy. (Para 82). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

State of Punjab v. Jagdev Singe Talwandi, (1984) 1 SCC 596: 1984 SCC (Cri) 135, relied on

***Followed** in Mangat Ram v. State of Haryana, (2008) 7 SCC 96*

[3640] — Ss. 354(1)(b) and (6) — Reasons for decision — Cardinality of recording of — Rationale for — Appeal against acquittal — Proper mode of disposal of — Duty of High Court — *CPC, 1908, Or. 20 Rr. 4(2) & 5 — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 18*

The subject matter of the challenge is the refusal to grant leave to question acquittal in terms of Section 378(3) of the Code of Criminal Procedure, 1973.

The respondent (hereinafter referred to as "the accused") faced trial for alleged commission of offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The trial court held that the prosecution version was entirely dependent upon the testimony of official witnesses and since no independent witness was involved, the prosecution version was vulnerable. The trial court therefore directed acquittal. The appellant State filed an appeal before the Punjab and Haryana High Court which refused to grant leave and disposed of the application for leave in the following manner:

> "Heard. No merit.
> Dismissed."

Allowing the appeal,

Held :

It was noted that the search and seizure was made at a thoroughfare and it is unbelievable that no independent witness was available. The trial court was required to carefully appraise the entire evidence and then come to a conclusion. If the trial court was at lapse in this regard the High Court was obliged to undertake such an exercise by entertaining the appeal. The trial court on the facts of this case did not perform its duties, as was enjoined on it by law. The questions involved were not trivial. The requirement of independent witnesses and discarding testimony of official witnesses even if it was reliable, cogent or trustworthy needed adjudication in appeal. The High Court ought to have in such circumstances granted leave and thereafter as a first court of appeal, reappreciated the entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused. It has failed to do so. (Para 5)

Reasons introduce clarity in an order. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. (Para 6)

The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal, and seems to have been completely oblivious to the fact that by such refusal, a close scrutiny of the order of acquittal by the appellate forum has been lost once and for all. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. (Para 5)

The requirement of indicating reasons in such cases has been judicially recognized as imperative. (Para 5)

Impugned judgment of the High Court is unsustainable and is set aside. Leave granted to the State to file the appeal. The High Court shall entertain the appeal and after formal notice to the respondents hear the appeal and dispose of it in accordance with law. (Para 7). *State of Punjab* v. *Bhag Singh*, (2004) 1 SCC 547: 2004 SCC (Cri) 341: AIR 2004 SC 1203: (2004) 164 ELT 137: 2004 Cri LJ 916.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-12-2003]

Breen v. Amalgamated Engg. Union, (1971) 1 All ER 1148: (1971) 2 QB 175: (1971) 2 WLR 742 (CA); Alexander Machinery (Dudley) Ltd. v. Crabtree, 1974 ICR 120 (NIRC); State of U.P. v. Battan, (2001) 10 SCC 607: 2003 SCC (Cri) 639; State of Maharashtra v. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129: 1981 SCC (Cri) 807; Jawahar Lal Singh v. Naresh Singh, (1987) 2 SCC 222: 1987 SCC (Cri) 347, relied on

***Applied in** State of H.P. v. Mushtaq Ahmad, (2007) 9 SCC 528: (2007) 3 SCC (Cri) 168: (2007) 53 AIC 112 (SC); State of H.P. v. Shish Ram, (2008) 11 SCC 311*

***Followed in** Jagtamba Devi v. Hem Ram, (2008) 3 SCC 509; State of H.P. v. Paras Ram, (2008) 3 SCC 655*

[**Ed.**: *See* generally in this regard *Complete Digest of Supreme Court Cases*, **Vol. 1**, Administrative Law — Duty to give reasons, pp. 307 et seq.]

[3641] — Ss. 354(1)(b) and 374 — Need for reasons to accompany final order — *No reasons assigned by the High Court while passing the order, stating that reasons would be given later on — Such practice, already deprecated by the Supreme Court in several cases — Case law discussed — Need for assigning reasons in support of final orders, re-emphasised — Why such practice is permissible in the case of the Supreme Court and not the High Courts, restated — CPC, 1908 — Ss. 107 and 109 and Or. 20 R. 5*

The criminal appeal was listed in the High Court in motion. The case was not placed for regular final hearing. It was, however, taken up for final hearing. One advocate was appointed as amicus curiae for the accused who was heard and the matter was disposed of. The order which was passed by the High Court stated as "*Dismissed, reasons to follow.*"

Allowing the appeal,

Held :

The High Court ought not to have disposed of the appeal without recording reasons. This Court has deprecated the practice of disposing of matters without recording reasons in support of such decision. It has been insisted that when the matter is decided by a court, reasons must be recorded in support of such decision. It is because the aggrieved party may make grievance in the superior court that the reasons recorded by the trial court were non-existent, extraneous, irrelevant, etc. The successful party, on the other hand, may support the reasons recorded by the court in his favour. Finally, the superior court may also consider whether reasons recorded by the court in support of the order passed by it were in consonance with law and whether interference is called for. If the final order is without any reason, several questions may arise and it will be difficult for the parties to the proceedings as well as the superior court to decide the matter one way or the other. (Para 5)

It would be appropriate and desirable if all courts including the High Courts keep in mind the principles laid down by the Supreme Court and pass final orders only after recording reasons in support of such orders. (Paras 7 to 10). *Mangat Ram* v. *State of Haryana*, (2008) 7 SCC 96.

Bench Strength **2**. Coram: *C.K. Thakker* and *D.K. Jain*, JJ. [Date of decision: 25-1-2008]

State of Punjab v. Jagdev Singh Talwandi, (1984) 1 SCC 596: 1984 SCC (Cri) 135; State of Punjab v. Surinder Kumar, (1992) 1 SCC 489: 1992 SCC (L&S) 345: (1992) 19 ATC 345; Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999, followed

[3642] — Ss. 354(2), 373 and 386 — Appeal against trial court's judgment awarding life imprisonment for offence of murder, if dismissed by High Court, held, must be by a reasoned judgment showing application of mind to the material questions of fact and law — *Otherwise judgment of High Court is liable to be set aside under Art. 136 — On facts, with a view to reduce the delay, Supreme Court after briefly hearing the parties and perusing the records, held, trial Court's judgment was not vitiated by any flaw in appreciation of evidence or assessment of probabilities — Constitution of India — Article 136 — Penal Code, 1860 — S. 302. Alijan Nanhe Pehalwan Qureshi* v. *State of Maharashtra*, (1981) 1 SCC 415: 1981 SCC (Cri) 164: AIR 1981 SC 645: (1981) 1 SCR 1194: 1981 Cri LJ 163.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and *A.D. Koshal*, JJ. [Date of decision: 10-11-1980]

— S. 354(3) *See* Ss. 28 & 29 and 354(3)

See also Ss. 235(2) and 354(3)

See also Ss. 366(1) and 354(3)

See also PENAL CODE, 1860, Ss 299-304 'D35(f) Death sentence pp. 616 et. seq. in **Vol**. **23** *Complete Digest of Supreme Court Cases*, 2nd Edn.

See also CRIMINAL TRIAL — 'Sentence' in Vol. 3

See also S. 235(2), above

[3643] — S. 354(3) — Procedure for award of death penalty in case there are "special reasons" — *Both held constitutional and not violative of Arts. 14, 19 & 21 — Jagmohan Singh case affirmed and propositions restated with necessary changes — Acceptance by India of the International Covenant on Civil and Political Rights does not affect constitutionality of death sentence*

Per Chandrachud, C.J., Sarkaria, Gupta and Untwalia JJ. (Bhagwati, J. dissenting)

There are several indications in the Constitution which show that the Constitution-makers were fully cognizant of the existence of death penalty for murder and certain other offences in the Indian Penal Code. The mention in the legislative list, right of Governor and President to suspend, commute or remit death sentence and right of appeal to the Supreme Court under Art. 134 show that death penalty or its execution cannot be regarded as an unreasonable, cruel or unusual punishment. Nor can it be said to defile "the dignity of the individual" within the preamble to the Constitution. On parity of reasoning, it cannot be said that death penalty violates the basic structure of the Constitution.

Though India has become a party to the International Covenant on Civil and Political Rights, its requirements do not exceed what is already provided in the Constitution of India, the Indian Penal Code and the Code of Criminal Procedure. Out penal laws accord with the international commitment, it does not outlaw capital punishment for murder, altogether. Neither the new interpretative dimensions given to Arts. 19 and 21 by this Court in *Maneka Gandhi* and *Charles Sobraj* v. *Superintendent, Central Jail, Tihar, New Delhi,* nor the acceptance by India of the International Covenant on Civil and Political Rights, makes any change in the prevailing standards of decency and human dignity by which counsel requires us to judge the constitutional validity of the impugned provisions.

Article 19, unlike Art. 21, does not deal with the right to life and personal liberty and is not applicable for judging the constitutionality of the provisions of S. 302, Indian Penal Code. The condition precedent for the applicability of Art. 19 is that the activity which the impugned law prohibits and penalises, must be within the purview and protection of Art. 19(1). Article 19 is attracted only to such laws, the provisions of which are capable of being tested under cls. (2) to (6) of Art. 19. To commit crime is not an activity guaranteed by Art. 19(1).

Applying the above test if applicability of Art. 19 to Ss. 299, 300 and 302, Indian Penal Code, it cannot, reasonably or rationally, be contended that any of the rights mentioned in Art. 19(1) of the Constitution confers the freedom to commit any offence whatsoever. hence laws which define offences and prescribe punishment for the commission of offences do not attract the application of Art. 19(1). However one cannot say that the object of penal laws is generally such as not to involve any violation of the rights conferred by Art. 19(1) because after the decision of this Court in the *Bank Nationalisation case* the theory, that the object and form of the State action alone determine the extent of protection that may be claimed by an individual and that the effect of the State action on the fundamental right of the individual is irrelevant, stands discredited. But the point of the matter is that, in pith and substance, penal laws do not deal with the subject-matter of rights enshrined in Art. 19(1). That again is not enough for the purpose of deciding upon the applicability of Art. 19 as shown by the test formulated above. If the direct and inevitable effect of the law is such as to abridge or abrogate any of those rights, Art. 19(1) shall have been attracted. It would then become necessary to test the validity of even a penal law on the touchstone of that article. On this latter aspect of the matter, the deprivation of freedom consequent upon an order of conviction and sentence is not a direct and inevitable consequence of the penal law but is merely incidental to the order of conviction and sentence which may or may not come into play, that is to say, which may or may not be passed. Considering therefore the above test in its dual aspect, S. 302 of the Penal Code does not have to stand the test of Art.19(1) of the Constitution.

In the instant case, the State has discharged its burden of satisfying test of reasonableness under Art.19 primarily by producing for the perusal of the court, the 35th Report of the Law Commission, 1967, and the judgments of the Supreme Court in *Jagmohan Singh,* (1973) 1 SCC 20 and in several subsequent cases, in which it has been recognised that death penalty serves as a deterrent. It is, therefore, for the petitioners to prove and establish that the death sentence for murder is so outmoded, unusual or excessive as to be devoid of any rational nexus with the purpose and object of the legislation. If, notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelised through the people's representatives in Parliament, has repeatedly in the last three decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilised countries in the world, if the framers of the Indian Constitution were fully aware of the existence of death penalty as punishment for murder, under the Indian Penal Code, if the 35th Report and subsequent reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Ss. 235(2) and 354(3) in that Code providing for pre-sentence hearing and sentencing procedure on conviction for murder and other capital offences were before the Parliament and presumably considered by it when in 1972-73 it took up revision of the Code of 1898 and replaced it by the Code of Criminal Procedure, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in S. 302, Penal Code is unreasonable and not in the public interest. Therefore, the impugned provision in S. 302, violates neither the letter nor the ethos of Art. 19.

The propositions stated in *Jagmohan Singh case* stand except that in view of the new provision in S. 354(3) of Criminal Procedure Code, 1973, award of death sentence is the exception to be made for "exceptional reasons" founded on grave circumstances of the particular case relating to the crime and the criminal.

Also the introduction of pre-sentence hearing to the accused by virtue of S. 235(2) of the new Criminal Procedure Code alters the *Jagmohan* proposition that the court is *primarily* concerned with the circumstances connected with crime. Now due consideration has to be given to the circumstances of the *criminal* as well.

But for the above, the other propositions in *Jagmohan,* and the premises on which they rest, are not affected by subsequent changes. On the contrary, these changes reinforce the reasons given in *Jagmohan* for holding that the impugned provisions of the Penal Code and the Criminal Procedure Code do not offend Arts. 14 and 21 of the Constitution. Now, Parliament has in S. 354(3) given a broad and clear guideline which is to serve the purpose of lodestar to the court in the exercise of its sentencing discretion.

Per Bhagwati, J.

Section 302 of the Indian Penal Code insofar as it provides for imposition of death penalty as an alternative to life sentence is ultra vires and void as being violative of Arts. 14 and 21 of the Constitution since it does not provide any legislative guidelines as to when life should be permitted to be extinguished by imposition of death sentence. *Bachan Singh* v. *State of Punjab (Majority judgment),* (1980) 2 SCC 684: 1980 SCC (Cri) 580: AIR 1980 SC 898: 1980 Cri LJ 636: 1980 MLJ (Cri) 827.

Bench Strength **5**. Coram: *Y.V. Chandrachud, C.J.*[1] and **P.N. Bhagwati**[2], **R.S. Sarkaria**[1], *A.C. Gupta*[1] and *N.L. Untwalia*[1], JJ. [Date of decision: 9-5-1980]

Followed in *Prajeet Kumar Singh v. State of Bihar, (2008) 4 SCC 434; Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767*

[3644] — S. 354(3) — Sentencing procedure under whether unconstitutional in that it invests the court with unguided discretion in imposing death penalty — *Standards and norms restricting the area of imposition of death penalty indicated — Aggravating and mitigating circumstances broadly indicated — Constitution of India — Arts. 21 & 14. Bachan Singh* v. *State of Punjab (Majority judgment),* (1980) 2 SCC 684: 1980 SCC (Cri) 580: AIR 1980 SC 898: 1980 Cri LJ 636: 1980 MLJ (Cri) 827.

Bench Strength **5**. Coram: *Y.V. Chandrachud, C.J.*[1] and **P.N. Bhagwati**[2], **R.S. Sarkaria**[1], *A.C. Gupta*[1] and *N.L. Untwalia*[1], JJ. [Date of decision: 9-5-1980]

[3645] — S. 354(3) — Arts. 21 and 14 permit imposition of death penalty — *Sentencing procedure under S. 354(3), Criminal Procedure Code, whether unconstitutional in that it invests the court with unguided discretion in imposing death penalty — Standards and norms restricting the area of imposition of death penalty indicated — Aggravating and mitigating circumstances broadly indicated — Death sentence to be awarded in the rarest of rare cases*

Per Chandrachud, C.J., Sarkaria, Gupta and Untwalia, JJ. (Bhagwati, J., dissenting)

The impugned provisions of the Penal Code and the Criminal Procedure Code do not offend Arts. 14 and 21 of the Constitution. Now, Parliament has in S. 354(3) given a broad and clear guideline which is to serve the purpose of lodestar to the court in the exercise of its sentencing discretion. Parliament has advisedly not restricted this sentencing discretion further, as, in its legislative judgment, it is neither possible nor desirable to do so. Cognizant of the past experience of the administration of death penalty in India, Parliament, in its wisdom, thought it best and safe to leave the imposition of this gravest punishment in gravest cases of murder, to the judicial discretion of the courts which are manned by persons of reason, experience and standing in the profession. The exercise of this sentencing discretion cannot be said to be untrammelled and unguided. It is exercised judicially in accordance with well-recognised principles crystallised by judicial decisions, directed along the broad contours of legislative policy towards the signposts enacted in S. 354(3).

Regarding the question of laying down standards and norms restricting the area of imposition of death penalty, if by "laying down standards", it is meant that 'murder' should be categorised beforehand according to the degrees of its culpability and all the aggravating and mitigating circumstances should be exhaustively and rigidly enumerated so as to exclude all free play of discretion, the argument merits rejection. Such standardisation is well-nigh impossible. Firstly, degree of culpability cannot be measured in each case; secondly, criminal cases cannot be categorised, there being infinite unpredictable and unforeseeable variations; thirdly, on such categorisation, the sentencing process will cease to be judicial; and fourthly, such standardisation or sentencing discretion is a policy-matter belonging to the legislature beyond the court's function.

Therefore though no rigid standards in this area can be laid down, some broad guidelines consistent with the policy indicated by the legislature in S. 354(3) can be stated.

One thing however stands clear that for making the choice of punishment or for ascertaining the existence or absence of "Special reasons" in that context, the court must pay due regard *both* to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments.

As to the aggravating circumstances, preplanned, calculated cold-blooded murder has always been regarded as one of an aggravated kind; so also a murder "diabolically conceived and cruelly executed" and the test of *Ediga Anamma* : "The weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim".

One cannot restrict the imposition of death penalty only to cases where the security of the State and Society, public order and the interests of the general public are threatened.

Aggravating circumstances suggested by one of the counsel for the petitioners (para 202) are acceptable indicators, though it is not preferable to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other. But this much can be said that in order to qualify for inclusion in the category of "aggravating circumstances" which may form the basis of 'special reason' in S. 354 (3), circumstances found on the facts of a particular case, must evidence aggravation of an abnormal or special degree.

Mitigating circumstances indicated by the same counsel (para 206) are undoubtedly relevant circumstances and must be given great weight in the determination of sentence. Factor like extreme youth of the accused can be of compelling importance. Post-murder remorse, penitence or repentance by the murderer are not irrelevant. There are several other mitigating circumstances. Nonetheless, it cannot be overemphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in S. 354(3). Judges should never be bloodthirsty. Hence courts aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the high road of legislative policy outlined in S. 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the *rarest of rare cases* when the alternative option is unquestionably foreclosed. *Bachan Singh* v. *State of Punjab (Majority judgment)*, (1980) 2 SCC 684: 1980 SCC (Cri) 580: AIR 1980 SC 898: 1980 Cri LJ 636: 1980 MLJ (Cri) 827.

Bench Strength 5. Coram: *Y.V. Chandrachud, C.J.*[1] and **P.N. Bhagwati**[2], **R.S. Sarkaria**[1], *A.C. Gupta*[1] and *N.L. Untwalia*[1], JJ. [Date of decision: 9-5-1980]

[3646] — S. 354(3) — Death sentence for murder is disproportionately excessive and therefore violative of Arts. 14, 19 and 21 of the Constitution — *(Per Bhagwati, J. dissenting)*. *Bachan Singh* v. *State of Punjab*, (1982) 3 SCC 24: 1982 SCC (Cri) 535: AIR 1982 SC 1325.

Bench Strength 5. Coram: *Y.V. Chandrachud, C.J.* and **P.N. Bhagwati**, *R.S. Sarkaria*, *A.C. Gupta* and *N.L. Untwalia*, JJ. [Date of decision: 9-5-1980]

See majority opinion at (1980) 2 SCC 684: 1980 SCC (Cri) 580

[3647] — S. 354(3) — Held, unconstitutional as discretion conferred on the court to award death sentence is unguided and arbitrary — *Constitution of India — Arts. 14 and 21 (Per Bhagwati, J. dissenting). Bachan Singh* v. *State of Punjab*, (1982) 3 SCC 24: 1982 SCC (Cri) 535: AIR 1982 SC 1325.

Bench Strength 5. Coram: *Y.V. Chandrachud, C.J.* and **P.N. Bhagwati**, *R.S. Sarkaria, A.C. Gupta* and *N.L. Untwalia*, JJ. [Date of decision: 9-5-1980]

See majority opinion at (1980) 2 SCC 684: 1980 SCC (Cri) 580

[3648] — S. 354(3) — Death penalty is barbaric, cruel and inhuman and opposed to civilised social norms and values — *Constitution of India — Arts. 14 and 21 (Per Bhagwati, J. dissenting). Bachan Singh* v. *State of Punjab*, (1982) 3 SCC 24: 1982 SCC (Cri) 535: AIR 1982 SC 1325.

Bench Strength 5. Coram: *Y.V. Chandrachud, C.J.* and **P.N. Bhagwati**, *R.S. Sarkaria, A.C. Gupta* and *N.L. Untwalia*, JJ. [Date of decision: 9-5-1980]

See majority opinion at (1980) 2 SCC 684: 1980 SCC (Cri) 580

[3649] — Ss. 354(3), 368 and 386 — Death sentence — 'Rarest of rare' case — Test to determine — Guidelines indicated — *On facts, application to cold-blooded, calculated and gruesome multiple murders as a reprisal in a family feud — Seventeen helpless, defenceless and innocent men, women and children, all related to the main opponent, mercilessly gunned down while asleep on the same night in quick succession in different neighbouring villages — Death sentence imposed by trial court and confirmed by High Court, on facts and circumstances, held, justified — Penal Code, 1860, S. 302*

The following questions may be asked and answered as a test to determine the 'rarest of rare' case in which death sentence can be inflicted:

(*a*) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(*b*) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

The following guidelines which emerge from *Bachan Singh case* will have to be applied to the facts of each individual case where the question of imposition of death sentence arises:

(*i*) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(*ii*) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(*iii*) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(*iv*) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

In rarest of rare cases when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-à-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare case, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.

In the present case as regards the three appellants (viz. Machhi Singh, Kashmir Singh and Jagir Singh), the rarest of rare case rule prescribed in *Bachan Singh case* is clearly attracted. They committed calculated and cold-blooded murders of innocent and defenceless women, children, veterans and newly married couples in an exceptionally depraved, heinous, horrendous and gruesome manner for reprisal as a result of family feud with a view to wipe out the entire family and relatives of the opponent. The murders were hair-raising to the society at large in the sequence in which it was committed, spreading horror of a killing spree. In the circumstances, only death sentence and not life imprisonment would be adequate. Accordingly, the death sentence imposed upon them is confirmed. *Machhi Singh* v. *State of Punjab*, (1983) 3 SCC 470: 1983 SCC (Cri) 681: AIR 1983 SC 957: 1983 Cri LJ 1457.

Bench Strength **3**. Coram: *S. Murtaza Fazal Ali*, *A. Varadarajan* and **M.P. Thakkar**, JJ. [Date of decision: 20-7-1983]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580: AIR 1980 SC 898: 1980 Cri LJ 636, explained

***Followed in** Prajeet Kumar Singh v. State of Bihar, (2008) 4 SCC 434*

***Applied in** Swamy Shraddananda v. State of Karnataka, (2007) 12 SCC 288*

***Considered and clarified in** Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767*

[3650] — S. 354(3) — When warranted — Principles restated — Socio-economic factors — Relevance — *Case law discussed — Consideration of aggravating and mitigating circumstances while imposing death penalty — Herein, aggravating circumstances against appellant-accused show that it was a case of cold-blooded murder of five innocent persons for ransom, despite fact that victims were poor villagers who were unable to pay ransom as demanded, accused being fully aware of victims' inability and poverty — Mitigating circumstances which could be taken into account are, length of incarceration already undergone, which is about 14 years and current age of one appellant being around 65 years — Again, socio-economic factors might not dilute guilt, but may lead to another related mitigating factor i.e. ability of guilty to reform — Criminal who commits crimes due to his economic backwardness is most likely to reform — This ability to reform amounts to a mitigating factor in cases of death penalty — Herein, appellants belonged to extremely poor background — They committed these heinous crimes for want of money — Hence, no reason why they cannot be reformed over a period of time — Therefore, taking into account all aggravating and mitigating circumstances, appellants' death sentence commuted to life imprisonment to extend to full term of life — Penal Code, 1860 — Ss. 302/149, 364-A, 365 and 148*

It is open for the court to grant a death penalty in an extremely narrow set of cases, which is signified by the phrase "rarest of the rare". This rarest of the rare test relates to "special reasons" under Section 354(3) CrPC. Importantly, this route is open to the court only when there is no other punishment which may be alternatively given. This results in the death penalty being an exception in sentencing, especially in the case where some other punishment can suffice. The brutality of the murders must be seen along with all the mitigating factors in order to come to a conclusion (for imposing death sentence). (Paras 64 to 70)

The test for the determination of the "rarest of the rare" category of crimes inviting the death sentence includes broad criteria i.e.

(*1*) the gruesome nature of the crime,

(*2*) the mitigating and aggravating circumstances in the case. These must take into consideration the position of the criminal, and

(*3*) whether any other punishment would be completely inadequate. This rule emerges from the dictum of the Supreme Court that life imprisonment is the rule and death penalty an exception. Therefore, the court must satisfy itself that death penalty would be the only punishment which can be meted out to the convict. (Paras 71, 77 to 81 and 87). *Mulla* v. *State of U.P.*, (2010) 3 SCC 508.

Bench Strength **2**. Coram : **P. Sathasivam** and *H.L. Dattu*, JJ. [Date of decision : 8-2-2010]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Asharfi Lal v. State of U.P., (1987) 3 SCC 224: 1987 SCC (Cri) 470; Ravji v. State of Rajasthan, (1996) 2 SCC 175: 1996 SCC (Cri) 225; Ram Singh v. Sonia, (2007) 3 SCC 1: (2007) 2 SCC (Cri) 1; Panchhi v. State of U.P., (1998) 7 SCC 177: 1998 SCC (Cri) 1561; Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767: (2009) 3 SCC (Cri) 113, relied on

[3651] — S. 354(3) — Death sentence — Constitutionality — *Capital punishment to be awarded in rarest of the rare cases — Procedure established by law for awarding death penalty is reasonable and hence provision for death sentence not violative of Art. 21 — Death sentence has a deterrent effect and serves a social purpose — In view of deteriorating and fast worsening law and order situation in the country, about which judicial notice can be taken, it is the most inopportune time to reconsider the law on the subject and to take the risk of abolishing death sentence — Question of mode of execution of death sentence having already been considered in detail and Supreme Court having found that hanging by neck was a scientific and one of the least painful method of execution, there is no good reason to take a different view. Shashi Nayar* v. *Union of India*, (1992) 1 SCC 96: 1992 SCC (Cri) 24: AIR 1992 SC 395: 1992 Cri LJ 514: (1992) 1 An WR 37 (SC).

Bench Strength 5. Coram: **K.N. Singh,** *P.B. Sawant, N.M. Kasliwal, B.P. Jeevan Reddy* and *G.N. Ray*, JJ. [Date of decision: 29-10-1991]

Jagmohan Singh v. State of U.P., (1973) 1 SCC 20: 1973 SCC (Cri) 169; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Deena v. Union of India, (1983) 4 SCC 645: 1983 SCC (Cri) 879, affirmed

[3652] — S. 354(3) — Death sentence — Constitutionality of, reaffirmed — Whether death sentence or life imprisonment to be imposed — Decision left on court and no norm can be laid down — *Penal Code, 1860 — Ss. 120-B, 121, 132, 302, 307 and 396*

Per majority:

In spite of the divergent trends in the various parts of the world there is a consistent thought of maintaining the sentence of death on the statute book for some offences and in certain circumstances where it may be thought necessary to award this extreme penalty. In our country although there is a shift from sentence of death to lesser sentence but there is also a clear intention of maintaining this sentence to meet the ends of justice in appropriate cases. In view of the principles laid down in *Bachan Singh* and *Machhi Singh cases* the death sentence is now awarded in the rarest of the rare cases. The circumstances in which the extreme penalty should be inflicted cannot be enumerated in view of complex situation in society and the possibilities in which the offence could be committed and in this context in ultimate analysis it is not doubted that the legislature was right in leaving it to the judicial decision as to what should be the sentence in particular circumstances of the case. But the legislature has put a further rider that when the extreme penalty is inflicted it is necessary for the court to give special reasons thereof.

Per Jagannatha Shetty, J. (concurring)

The legislature is aware of the contemporary social needs as is apparent from the legislative amendments brought about from time to time in the CrPC. It is now obligatory for the court to state reasons for the sentence awarded for the offence of murder. Death sentence could be awarded only in exceptional cases and not in the usual run of murders. We have got just six offences carrying death penalty and that too as an alternate sentence (Ss. 120-B, 121, 132, 302, 307 and 396 IPC). This is the need and notion of the present day society. Tomorrow's society and the atmosphere in which they live may be quite different. *Triveniben* v. *State of Gujarat*, (1989) 1 SCC 678: 1989 SCC (Cri) 248: AIR 1989 SC 1335.

Bench Strength 5. Coram: **G.L. Oza**[1], *M.M. Dutt*[1], *K.N. Singh*[1], **K. Jagannatha Shetty**[2] and *L.M. Sharma*[1], JJ. [Date of decision: 7-2-1989]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1982 SCC (Cri) 535 and Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, affirmed

[3653] — S. 354(3) — Death sentence — Held, constitutional — Majority view in *Bachan Singh case* reaffirmed and need not be reconsidered (Para 14). *Jumman Khan* v. *State of U.P.*, (1991) 1 SCC 752: 1991 SCC (Cri) 283: AIR 1991 SC 345: 1991 Cri LJ 439.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 30-11-1990]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, majority view affirmed

Allauddin Mian v. State of Bihar, (1989) 3 SCC 5: 1989 SCC (Cri) 490; Sher Singh v. State of Punjab, (1983) 2 SCC 344: 1983 SCC (Cri) 461; Triveniben (Smt) v. State of Gujarat, (1989) 1 SCC 678: 1989 SCC (Cri) 248, relied on

[3654] — S. 354(3) — Death sentence — Legislative changes effected since 1955

Before 1955 sentence of death was the rule, the alternative sentence had to be explained by reasons. Thereafter it was left to the discretion of the court to inflict either of the sentences and ultimately in the 1973 Code normal sentence is imprisonment for life except for the special reasons to be recorded sentence of death could be passed. It is therefore clear that this indicates a trend against sentence of death but this coupled with the decisions ultimately wherein sentence of death has been accepted as constitutional go to show that although there is a shift from sentence of death to lesser sentence but there is also a clear intention of maintaining this sentence to meet the ends of justice in appropriate cases. It is therefore clear that in spite of the divergent trends in the various parts of the world there is a consistent thought of maintaining the sentence of death on the statute book for some offences and in certain circumstances where it may be thought necessary to award this extreme penalty. As stated generally that it is awarded in the rarest of rare cases and in this accepted position of law, in our opinion, it is not necessary to go into the academic question about sociological and humane aspects of the sentence and detailed examination of the jurisprudential theories. *Triveniben* v. *State of Gujarat*, (1989) 1 SCC 678: 1989 SCC (Cri) 248: AIR 1989 SC 1335.

Bench Strength 5. Coram: **G.L. Oza**[1], *M.M. Dutt*[1], *K.N. Singh*[1], **K. Jagannatha Shetty**[2] and *L.M. Sharma*[1], JJ. [Date of decision: 7-2-1989]

[3655] — S. 354(3) — Death sentence — Provision for, not violative of Arts. 14, 19 and 21 — *Majority decision in Bachan Singh case affirmed and does not require reconsideration — Penal Code, 1860 — S. 302 — Constitution of India — Arts. 14, 19 and 21*

Since the legislature in its wisdom thought that in some rare cases it may still be necessary to impose the extreme punishment of death to deter others and to protect the society and in a given case the country, it left the choice of sentence to the judiciary with the rider in S. 354(3), CrPC that the judge may visit the convict with the extreme punishment provided there exist special reasons for so doing. In the face of this 'procedure established by law' which is consistent with Art. 21, the extreme submission of death in no case cannot be countenanced. The submission that the death penalty violates Arts. 14, 19 and 21 was negatived by the majority decision of the Supreme Court in *Bachan Singh case*. That decision does not require reconsideration on the ground that the Judges constituting the majority did not have the benefit of minority view of Bhagwati, J. (as he then was) as the reasons which prevailed with Bhagwati, J., could not have been unknown to the Judges constituting the majority. *Allauddin Mian* v. *State of Bihar*, (1989) 3 SCC 5: 1989 SCC (Cri) 490: AIR 1989 SC 1456: 1989 Cri LJ 1466.

Bench Strength 2. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 13-4-1989]

[3656] — S. 354(3) — Award of death penalty — ***Ediga Anamma, Rajendra Prasad*** **and** ***Bishnu Deo Shaw*** **cases, held, are binding under Art. 141 till overruled by a larger Bench —** *Court can order that life imprisonment should run for full life — On facts, death sentence, held, not justified*

In the present case the dispute arose out of sharing of irrigation water. The party of the prosecution witnesses were drinking in the afternoon at the house of one of them when one of the appellants went in. He was beaten up. He along with his friends retaliated in the evening and killed four persons. The trial Court awarded death penalty and the High Court affirmed it on the ground of killing unarmed persons recklessly and without provocation. Setting aside the sentence of death, the Supreme Court.

Held :

Per Krishna Iyer and Desai, JJ.

(*a*) After *Ediga Anamma case*, (1974) 4 SCC 443 the law of punishment under S. 302, Indian Penal Code, has been largely settled by the Supreme Court and the High Courts are bound thereby. *Rajendra Prasad case*, (1979) 3 SCC 646 and *Bishnu Deo Shaw case*, (1979) 3 SCC 714 have indubitably laid down the normative cynosure and until overruled by a larger Bench of this Court that is the law of the land under Art. 141. To discard it is to disobey the Constitution and such subversiveness of the rule of law, in a crucial area of life and death will spell judicial disorder. One thing is clear. Counting the casualties is not the main criterion for sentencing to death; nor recklessness in the act of murder. The sole focus on the crime and the total farewell to the criminal and his social-personal circumstances mutilate sentencing justice.

It may be realised that judicial error leading to innocent man being executed is not too recondite a reality. Evidence in court and assessment by judges have human limitations.

On facts, death penalty is unmerited. Here, the earlier provocation came from the deceased's side by beating up appellant 3. The parties, including the prosecution group, were tipsy. There had been antecedent irrigation irritation between them. There was no pre-planned well-laid attack, hell-bent on liquidating the enemy. A quarrel over turn of water; a pacification pro tempore; an afternoon exuberance with jocose and bellicose potions, beating up one appellant leading to a reprisal *vi et armis*.

(*b*) We may add a footnote to the ruling in *Rajendra Prasad case*. Taking the cue from the English legislation on abolition, we may suggest that life imprisonment which strictly means imprisonment for the whole of the man's life, but in practice amounts to incarceration for a period between 10 and 14 years may, at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large. This takes care of judicial apprehensions that unless physically liquidated the culprit may at some remote time repeat murder.

Per Sen, J. (dissenting)

(*a*) I do not see any reason to differ from the view expressed by me in my dissenting opinion in *Rajendra Prasad case.* I still adhere to the view that it is not within the province of this Court while dealing with an appeal confined to sentence under Art. 136, to curtail the scope of death sentence under S. 302, Indian Penal Code, 1860, nor is it constitutionally or legally permissible for this Court while hearing such an appeal to lay down that on grounds of compassion and humanism the sentence of death on a conviction for murder under S. 302, as a rule of universal application, be substituted by a sentence of imprisonment for life, irrespective of the gravity of the crime and the surrounding circumstances, i.e. virtually abolish the extreme penalty. The question whether the scope of death sentence should be curtailed or not is for Parliament to decide. The matter is essentially of political expediency and, as such, it is the concern of the statesmen and, therefore, the domain of the Legislature and not the Judiciary. That the special reason "must relate not to the crime as such but to the criminal" is unwarranted and contrary to S. 302, Indian Penal Code, read with S. 354(3), Criminal Procedure Code.

(*b*) The majority decision in *Rajendra Prasad case* does not lay down any legal principle of general applicability. One would find that in the decision in *Rajendra Prasad case,* there are no rationes decidendi, much less any ratio decidendi. There the majority themselves advocate the death penalty for certain classes of offenders, namely, (1) white-collar offenders, (2) anti-social offenders, and (3) hardened murderers. This shows that the majority was not against the capital punishment in principle. On the facts before them they commuted the sentence of death to a sentence of imprisonment for life, and the decision cannot, therefore, be construed as laying down a ratio decidendi. General observations made in the context of sentencing jurisprudence will have to be regarded as the view of the judge/judges concerned — and not 'law declared by this Court' under Art. 141 of the Constitution.

(*c*) On facts, though the dispute was over the 'turns of water', that would hardly furnish any justification for the commission of the pre-planned triple murder. The dastardly act of the appellants resulted in the loss of three precious lives. These were nothing but intentional, cold-blooded and brutal murders.

The High Court was justified in confirming the death sentences passed under S. 368(*a*) of the Code, being satisfied that there were "special reasons" within the meaning of S. 354, sub-section (3) of the Code of Criminal Procedure, 1973. For my part, I have no sympathy for these trigger-happy gentlemen and the sentence imposed on them is well merited. *Dalbir Singh* v. *State of Punjab*, (1979) 3 SCC 745: 1979 SCC (Cri) 848: AIR 1979 SC 1384: 1979 Cri LJ 1058.

Bench Strength 3. Coram: **V.R. Krishna Iyer**[1], *D.A. Desai*[1] and **A.P. Sen**[2], JJ. [Date of decision: 4-5-1979]

Followed in Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767

[3657] — S. 354(3) — Death penalty — Arguments against imposition of — *Validity and utility of the continuance of death penalty considered against the various theories of punishment — Held, it is against criminal justice itself — Discovery of the "special reasons" for imposing death penalty — Criteria and considerations* — Rajendra Prasad case *[(1979) 3 SCC 646] affirmed*

In the present case the appellant had earlier killed his wife on suspicion of infidelity and had undergone the punishment. He now killed his son, begotten by his late wife, suspecting that he was actually not his son. The trial Court awarded him death sentence and the High Court affirmed it on the ground that he deserved no mercy or remorse. Allowing his appeal and setting aside the sentence of death, the Supreme Court.

Held :

Per Chinnappa Reddy, J.

(*a*) The very nature of the penalty of death appears to make it imperative that at every suitable opportunity life imprisonment should be preferred to the death penalty. The different theories of punishment do not support or justify it. The reformative theory is irrelevant where death is the punishment since life and not death can reform. The preventive theory is unimportant where the choice is between death and life imprisonment as in India. The retributive theory is incongruous in an era of enlightenment. It is inadequate as a theory since it does not attempt to justify punishment by any beneficial results either to the society or to the persons punished. The denunciatory theory is as inadequate as the retributive theory since it does not justify punishment by its results. While considering the deterrent theory what is important is not whether the penalty of death has deterrent effect on potential murderers but whether it deters more effectively than other penalties say, a sentence of imprisonment for a long term. But all studies made on the subject appear to have led to the conclusion that the death penalty is inconsequential as a deterrent. Its efficacy as a deterrent is unproven.

Death sentence works against criminal justice. By its nature and irrevocability it is abhorrent to several judges who acquit the accused rather than convict and sentence him to death penalty. Moreover, it rejects the reformation and rehabilitation of offenders as among the most important objectives of criminal justice.

Experience shows that the burden of capital punishment falls more upon the ignorant, the impoverished and the underprivileged.

Death penalty is against human decency and has been abolished in several countries.

(*b*) In *Rajendra Prasad* v. *State of U.P.*, (1979) 3 SCC 646, several relevant principles have ben enunciated to guide the exercise of discretion in making the choice between the penalties of death and life imprisonment. I express my agreement with the elucidation of the principles in *Rajendra Prasad* v. *State of U.P.*

(*c*) Section 354(3) for the award of death penalty, read with S. 361 shows that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. A judge has to balance the personality of the offender with the circumstances, the situation and the reactions and choose the appropriate sentence to be imposed.

Special reasons, therefore, are reasons which are special with reference to the offender, with reference to constitutional and legislative directives and with reference to the times, that is, with reference to contemporary ideas in the fields of Criminology and connected sciences. Special reasons are those which lead inevitably to the conclusion that the offender is beyond redemption, having due regard to his personality and proclivity, to the legislative policy of reformation of the offender and to the advances made in the methods of treatment, etc.

(*d*) On facts, the Sessions Judge was wrong in imposing the sentence of death without even a reference to the reason why the appellant committed the murder. The observation of the High Court that the appellant deserved no mercy because he showed no mercy smacks very much of punishment by way of retribution. The appellant was a moody person who had for years been brooding over the suspected infidelity of his wife and the injustice of having a son foisted on him. We do not think that the mere use of adjectives like "cruel and brutal" supplies the special reasons contemplated by S. 354(3) Criminal Procedure Code. There are no "special reasons" justifying the imposition of the death penalty. *Bishnu Deo Shaw* v. *State of W.B.*, (1979) 3 SCC 714: 1979 SCC (Cri) 817: AIR 1979 SC 964: 1979 Cri LJ 841: (1979) 16 ACC 175: 1979 MLJ (Cri) 565.

Bench Strength **2**. Coram: **V.R. Krishna Iyer**^{2} and **O. Chinnappa Reddy**^{1}, JJ. [Date of decision: 22-2-1979]

Overruled in (1980) 2 SCC 684

Distinguished in Ila Vipin Pandya (3) v. Smita Ambalal Patel, (2008) 7 SCC 435

[3658] — Ss. 354(3), 360 and 361 — Death sentence — Imposition of — Considerations — Proportionality — Principle of just desert — Reiterated — *Penology — Crime and proportionality of punishment* (Paras 21 to 26). *Shivu* v. *Registrar General, High Court of Karnataka*, (2007) 4 SCC 713: (2007) 2 SCC (Cri) 686: 2007 Cri LJ 1806.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *L. S. Panta*, JJ. [Date of decision: 13-2-2007]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, relied on

Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, considered and relied on

[3659] — Ss. 354(3), 360 and 361 — Sentence — Imposition of — Considerations — Regard to other provisions of the Code providing for reform and rehabilitation — *Court to choose the appropriate punishment keeping in view personality of offender and circumstances, situations and reactions — Death sentence to be imposed only for special reasons — Penal Code, 1860 — S. 302*

Section 302 IPC prescribes death or life imprisonment as the penalty for murder. The changes which the Code has undergone in the last three decades clearly indicate that Parliament is taking note of contemporary criminological thought and movement. There is a definite swing towards life imprisonment. Death sentence is ordinarily ruled out and can only be imposed for "special reasons", as provided in Section 354(3) CrPC. Further, Section 361 CrPC which is a new provision in the Code makes it mandatory for the court to record "special reasons" for not applying the provisions of Section 360. In the context of Section 360 CrPC, the "special reasons" contemplated by Section 361 must be such as to compel the court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed.

This is some indication by the legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. Criminal justice deals with complex human problems and diverse human beings. A Judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed. (Para 19)

Before the amendment of Section 367(5) of the old Code by the Criminal Procedure (Amendment) Act, 1955 the former rule that the normal punishment for murder is death is no longer operative and it is now within the discretion of the court to pass either of the two sentences prescribed in this section; but whichever of the two sentences he passes, the Judge must give his reasons for imposing a particular sentence. The amendment of Section 367(5) of the old Code does not affect the law regulating punishment under IPC. This amendment relates to procedure and now courts are no longer required to elaborate the reasons for not awarding the death penalty; but they cannot depart from sound judicial considerations preferring the lesser punishment. (Para 20)

Section 354(3) of the Code marks a significant shift in the legislative policy underlying the old Code as in force immediately before 1-4-1974, according to which both the alternative sentences of death or imprisonment for life provided for murder were normal sentences. Now, under Section 354(3) of the Code the normal punishment for murder is imprisonment for life and death penalty is an exception. The court is required to state the reasons for the sentence awarded and in the case of death sentence "special reasons" are required to be stated, that is to say, only special facts and circumstances will warrant the passing of the death sentence. (Para 21)

A convict hovers between life and death when the question of gravity of the offence and award of adequate sentence comes up for consideration. Mankind has shifted from the state of nature towards a civilised society and it is no longer the physical opinion of the majority that takes away the liberty of a citizen by convicting him and making him suffer a sentence of imprisonment. Award of punishment following conviction at a trial in a system wedded to the rule of law is the outcome of cool deliberation in the courtroom after adequate hearing is afforded to the parties, accusations are brought against the accused, the prosecuted is given an opportunity of meeting the accusations by establishing his innocence. It is the outcome of cool deliberations and the screening of the material by the informed man i.e. the Judge that leads to determination of the lis. (Para 28)

The principle of proportion between crime and punishment is a principle of just desert that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment not be disproportionately great, which is a corollary of just desert, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt. (Para 29)

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the terrific results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread. (Para 30). *Bablu* v. *State of Rajasthan*, (2006) 13 SCC 116: (2007) 2 SCC (Cri) 590: AIR 2007 SC 697: (2007) 50 AIC 89 (SC): 2007 Cri LJ 1160.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-12-2006]

Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Ediga Anamma v. State of A.P., (1974) 4 SCC 443: 1974 SCC (Cri) 479, relied on

[3660] — S. 354(3) — Nature of, and its relevance to Art. 21 of Constitution — *Death sentence — Case, if rarest of rare — Determination of — Doctrine of rehabilitation — Applicability — Manner of murder and disposal of body — Extent of weightage to be given — Mitigating circumstances — Nature of evidence and background of accused taken into consideration — Case exclusively based on evidence of approver or circumstantial evidence — Doctrine of prudence — Applicability — Held, not only doctrine of proportionality but also doctrine of rehabilitation should be taken into consideration, particularly in view of S. 354(3) CrPC, which must be r/w Art. 21 of the Constitution*

— Where there was nothing to show that the appellant-accused could not be reformed and rehabilitated, the mere manner of disposal of the body of deceased, howsoever abhorrent, held, not by itself sufficient to bring the case in the rarest of rare category — In the present case, all the accused including the appellant were unemployed young men in search of job — They were not criminals — In execution of a plan proposed by the appellant and accepted by them, they kidnapped a friend of theirs with the motive of procuring ransom from his family but later murdered him and after cutting his body into pieces disposed of the same at different places — One of the other accused turning approver and prosecution case based exclusively on his evidence — Appellant-accused contradicting the approver's version in respect of appellant's role — In such a case, statement of approver regarding manner of murder and role of accused and that of approver himself therein, held, should be tested on the basis of prudence doctrine taking into consideration inter alia, evidence produced by accused for imposition of lesser punishment — Hence, death penalty awarded by courts below, in the absence of any special reasons to support the same, substituted by penalty of rigorous imprisonment for life — Evidence Act, 1872, Ss. 133 and 30. Santosh Kumar Satishbhushan Bariyar v. *State of Maharashtra,* (2009) 6 SCC 498.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph,* JJ. [Date of decision: 13-5-2009]

[3661] — Ss. 354(3) and 235(2) — Imposition of death sentence — Detailed discussion of law made — Constitutional safeguards against being (i) Justice based on principled reasoning, (ii) Equal protection under Art. 14 i.e. similar sentencing to similarly situated convicts, (iii) Due process protection under Art. 21 i.e. assessment of relative propriety, greater reliability and fairness of the sentence, and (iv) Proportionality under Art. 21 — Principled approach, held, necessary — Factors required to be taken into consideration restated in detail — Public opinion not included — Procedure under Ss. 354(3) and 235(2) CrPC for award of death penalty — Nature of — Duty of court at the stage of pre-sentence hearing — Death penalty or life imprisonment — Rule and exception — Case when falls under exception — Discretion of court to determine — Importance of — *Held, equal protection clause ingrained under Art. 14 applies to the judicial process at the sentencing stage — Arts. 14 and 21 of Constitution would require a fair distribution of punishment among similarly situated convicts and an appropriate criteria for determining the same — This would require identification of a pool of capital defendants equally circumstanced in respect of gravity and nature of, and motive for, the crime — Besides including various aspects of the crime and quality of evidence, such information must include aspects relating to characteristics and socio-economic background of the offender — The equality clause applies to the sentencing process rather than to the outcome — Therefore, the object of comparative review would be not to channel the discretion of the court but to bring in consistency in identification of various relevant circumstances — Aggravating and mitigating circumstances have to be separately identified strictly — However, no such comparative review would be necessary for awarding life imprisonment — Due process requires from courts greater reliability and fairness for capital sentence than for other sentences — Proportionality requirement is that the punishment should cause minimum impairment to right to life under Art. 21 — Therefore, during sentencing process, court should reach a finding of a rational and objective connection between capital punishment and its purpose — "Special reasons" required to be stated in terms of S. 354(3) CrPC should satisfy the comparative utility of capital sentence over life imprisonment — If two opinions are possible, "rule" of "life imprisonment" should be preferred to the "exception" of death penalty — Life imprisonment is the rule and death penalty is the exception — Aggravating and mitigating circumstances relating both to crime and criminal must be analysed with open mind irrespective of gravity of crime — Rigour and fairness should be given primacy over sentiments and emotions — Moreover, there must be clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme — Constitution of India, Arts. 14 and 21*

Held :

Constitutional landscape on capital sentencing: minimum safeguards

Right to life is the essential content of all rights under the Constitution. If life is taken away, all other rights cease to exist. Articles 14 and 21 are constitutional safeguards and define the framework for the State in its functions, including penal functions. They introduce values of institutional propriety, in terms of fairness, reasonableness and equal treatment challenge with respect to procedure to be invoked by the State in its dealings with people in various capacities, including as a convict. The position is, if the State is precariously placed to administer a policy within the confines of Articles

21 and 14, it should be applied most sparingly. The Supreme Court has acknowledged death punishment to be the most extraordinary penalty in various decisions. Therefore, in the context of punishments, the protections emanating from Article 14 and Article 21 have to be applied in the strictest possible terms. The threshold of the *rarest of rare* cases is informed by Articles 14 and 21, owing to the inherent nature of death penalty. Post-*Bachan Singh case*, capital sentencing has come into the folds of constitutional adjudication. This is by virtue of the safeguards entrenched in Articles 14 and 21 of our Constitution. (Paras 82, 89, 135, 137 and 138)

The arguments which may be relevant for sentencing with respect to various other punishments may cease to apply in light of the constitutional safeguards which come into operation when the question relates to extinguishment of life. If there are two considerations, the one which has a constitutional origin shall be favoured. (Para 83)

The constitutional role of the judiciary also mandates taking a perspective on individual rights at a higher pedestal than majoritarian aspirations. To that extent we play a counter-majoritarian role. And this part of debate is not only relevant in the annals of judicial review, but also to criminal jurisprudence. (Para 86)

In *Bachan Singh case*, (1980) 2 SCC 684 the Court was operating under two fundamental constraints while dealing with the constitutionality challenge:

Firstly, death penalty is mentioned in the Constitution [for instance under Article 161 and Article 72(1)(*c*)]. Constitutional recognition was taken to be a primary signal for the legitimacy for Section 302.

Secondly, owing to separation of power doctrine, the Court took a deferential view towards Section 354(3) CrPC which was brought in to discipline the courts on death penalty by making life imprisonment the rule and death penalty exception.

Labouring under the said constraints, the death penalty was held constitutional. (Paras 116, 43 and 44)

"Justice" in capital sentencing

Justice must be the first virtue of the law of sentencing. A sentencing court must consider itself to be a "forum of principle". The central idea of such a forum is its continuing commitment to inhere a doctrinal approach around a core normative idea. "Principled reasoning" flowing from judicial precedent or legislation is the premise from which the courts derive the power. The movement to preserve substantial judicial discretion to individualise sentences within a range of punishments also has its basis in the court's ability to give principled reasoning. (Para 118)

There is a fundamental relationship between the legitimacy of sentence belonging to a particular potency and the reasons accorded by the court to justify the same. This flows from the inherent nature of punishment which can be understood as a coercive force invoked by the State for a legitimate purpose. (Para 120)

Article 14 — Applicability of equal protection clause in death sentencing

Equal protection clause ingrained under Article 14 applies to the judicial process at the sentencing stage. A capital sentencing system which results in differential treatment of similarly situated capital convicts effectively classifies similar convicts differently with respect to their right to life under Article 21. Therefore, an equal protection analysis of this problem is appropriate. In the ultimate analysis, it serves as an alarm bell because if capital sentences cannot be rationally distinguished from a significant number of cases where the result was a life sentence, it is more than an acknowledgement of an imperfect sentencing system. In a capital sentencing system if this happens with some frequency there is a lurking conclusion as regards the capital sentencing system becoming constitutionally arbitrary. (Para 130)

Frequent findings as to arbitrariness in sentencing under Section 302 may violate the idea of equal protection clause implicit under Article 14 and may also fall foul of the due process requirement under Article 21. The reasons which are accorded by the court to justify the punishment should be able to address the questions relating to fair distribution of punishment amongst similarly situated convicts. This may be called the problem of distributive justice in capital sentence. In this context, the inquiry under Article 14 becomes significant. Fairness in this context has two aspects: first refers to fair distribution amongst like offenders, and the second relates to the appropriate criteria for the punishment. (Paras 127, 121 and 123)

Thus, when the court is faced with a capital sentencing case, a comparative analysis of the case before it with other purportedly similar cases would be in the fitness of the scheme of the Constitution. Comparison will presuppose an identification of a pool of equivalently circumstanced capital defendants. The gravity, nature and motive relating to crime will play a role in this analysis. (Para 131)

Next step would be to deal with the subjectivity involved in capital cases. The imprecision of the identification of aggravating and mitigating circumstances has to be minimised. The mandate of equality clause applies to the sentencing process rather than the outcome. The comparative review must be undertaken not to channel the sentencing discretion available to the courts but to bring in consistency in identification of various relevant circumstances. The aggravating and mitigating circumstances have to be separately identified under a rigorous measure. (Para 132)

Bachan Singh case when mandates principled precedent-based sentencing, compels careful scrutiny of mitigating circumstances and aggravating circumstances and then factoring in a process by which aggravating and mitigating circumstances appearing from the pool of comparable cases can be compared. The weight which is accorded by the court to particular aggravating and mitigating circumstances may vary from case to case in the name of individualised sentencing, but at the same time reasons for apportionment of weights shall be forthcoming. Such a comparison may point out excessiveness as also will help repel arbitrariness objections in future. A sentencing hearing, comparative review of cases and similarly aggravating and mitigating circumstances analysis can only be given a go-by if the sentencing court opts for life imprisonment. (Para 133)

To translate the principle in sentencing terms, firstly, it may be necessary to establish general pool of rare capital cases. Once this general pool is established, a smaller pool of rare cases may have to be established to compare and arrive at a finding of the *rarest of the rare* case. (Para 134)

Article 21 — Due process

Fairness to any capitally sentenced convict requires an assessment of the relative propriety of the sentence. Because of their irrevocability and severity, the Constitution requires greater reliability and fairness from sentencing courts for capital sentences than for non-capital sentences. (Paras 142 and 140)

Article 21 — Proportionality requirement

During the sentencing process, the sentencing court or the appellate court for that matter, has to reach to a finding of a rational and objective connection between capital punishment and the purpose for which it is prescribed. In sentencing terms, "special reasons" as envisaged under Section 354(3) CrPC have to satisfy the comparative utility which capital sentence would serve over life imprisonment in the particular case. The question is whether the punishment granted impairs the right to life under Article 21 as little as possible. (Para 145)

The courts have not fully resolved the dilemma arising from the fact that the Constitution prohibits excessive punishment borne out of undue process, but also permits, and contemplates that there will be capital punishment arising out of an exercise of extremely wide discretion. That dilemma is inherently difficult to resolve. While choosing for one option or the other, the said constitutional principles must be borne in mind. The nature of capital sentencing is such that it is important that court should ask the right questions. (Para 147)

Bachan Singh case treated death penalty as an exceptional penalty, different from any other punishment, and did lay down a policy prescription on sentencing. The *rarest of rare* dictum takes its colour from constitutional guarantees. The court has therefore to be mindful that the true import of *rarest of rare* doctrine speaks of an extraordinary and exceptional case. Principle of prudence, enunciated by *Bachan Singh case* is sound counsel on that count. Whenever in the given circumstances, there is difference of opinion with respect to any sentencing prop (*sic*)/rationale, or subjectivity involved in the determining factors, or lack of thoroughness in complying with the sentencing procedure, it would be advisable to fall in favour of the "rule" of life imprisonment rather than invoking the "exception" of death punishment. (Paras 116, 117, 130 and 149)

Broad values emerging from Bachan Singh case

There are three broad values emerging from *Bachan Singh case*: viz. (1) individualised sentencing, (2) threshold of rarest of rare, and (3) principled sentencing. (Para 45)

Individualised sentencing

For an effective compliance of sentencing procedure under Section 354(3) and Section 235(2) CrPC, sufficient discretion is a precondition. Strict channelling of discretion would also go against the founding principles of sentencing as it will prevent the sentencing court to identify and weigh various factors relating to the crime and the criminal such as culpability, impact on the society, gravity of offence, motive behind the crime, etc. (Para 46)

Threshold of rarest of rare — sentencing procedure

Sentencing process should be so complied with, that enough information is generated to objectively inform the selection of penalty. The selection of penalty must not require a judge to reflect on his/her personal perception of crime. (Para 53)

Pre-sentence hearing and "special reasons"

Under Sections 235(2) and 354(3) CrPC, there is a mandate as to a full-fledged bifurcated hearing and recording of "special reasons" if the court inclines to award death penalty. A scrupulous compliance with both provisions is necessary such that an informed selection of sentence could be based on the information collected and collated at this stage. (Para 55)

Nature of information to be collated at pre-sentence hearing

The court must play a proactive role to record all relevant information at this stage. Some of the information relating to crime can be culled out from the phase prior to sentencing hearing. This information would include aspects relating to the nature, motive and impact of crime, culpability of convict, etc. Quality of evidence adduced is also a relevant factor. For instance, extent of reliance on circumstantial evidence or child witness plays an important role in the sentencing analysis. But what is sorely lacking, in most capital sentencing cases, is information relating to characteristics and socio-economic background of the offender. (Para 56)

Circumstances which may not have been pertinent in conviction can also play an important role in the selection of sentence. Objective analysis of the probability that the accused can be reformed and rehabilitated can be one such illustration. (Para 57)

Nature of content of the rarest of rare dictum

The *rarest of rare* dictum breathes life into the "special reasons" under Section 354(3). The *rarest of rare* dictum imposes a wide-ranging embargo on award of death punishment, which can only be revoked if the facts of the case successfully satisfy double qualification enumerated below:

(i) that the case belongs to the *rarest of rare* category, and

(ii) the alternative option of life imprisonment will just not suffice in the facts of the case. (Paras 58 and 59)

The *rarest of rare* dictum serves as a guideline in enforcing Section 354(3) and entrenches the policy that life imprisonment is the rule and death punishment is an exception. It is a settled law of interpretation that exceptions are to be construed narrowly. Therefore, the *rarest of rare* dictum places an extraordinary burden on the court, in case it selects death punishment as the favoured penalty, to carry out an objective assessment of facts to satisfy the exceptions ingrained in the *rarest of rare* dictum. (Para 60)

The background analysis leading to the conclusion that the case belongs to the *rarest of rare* category must conform to highest standards of judicial rigor and thoroughness as the norm under analysis is an exceptionally narrow exception. Such a conclusion shall entail identification of aggravating and mitigating circumstances relating both to the crime and the criminal. (Para 61)

Alternative option is foreclosed

By laying down that taking a life through law's instrumentality "ought not to be done save in the *rarest of rare* cases when the *alternative option is unquestionably foreclosed*" *Bachan Singh case* has suggested selection of death punishment as the penalty of last resort when, alternative punishment of life imprisonment will be futile and serves no purpose. (Para 64)

Death punishment stands on a very different footing from other types of punishments. It is unique in its total irrevocability. Incarceration, life or otherwise, potentially serves more than one sentencing aims. Deterrence, incapacitation, rehabilitation and retribution-all ends are capable to be furthered in different degrees, by calibrating this punishment in light of the overarching penal policy. But the same does not hold true for the death penalty. (Para 65)

Therefore, for satisfying the second exception to the *rarest of rare* doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the court focuses on the circumstances relating to the criminal, along with other circumstances. (Para 66)

Role and responsibility of courts

Bachan Singh case while enunciating the *rarest of rare* doctrine, did not deal with the role and responsibility of sentencing court and the appellate court separately. In that event, all courts, be it the trial court, the High Court or the Supreme Court, are duty-bound to ensure that the ratio laid down therein is scrupulously followed. Same standard of rigour and fairness are to be followed by the courts. (Paras 69 and 53)

Sentencing justifications in heinous crimes

In most cases of heinous crimes, courts have only been considering the brutality of crime index. There may be other factors which may not have been recorded. There is no consensus in the Court on the use of "social necessity" as a sole justification in death punishment matters. The test which emanates from *Bachan Singh case* in clear terms is that the courts must engage in an analysis of aggravating and mitigating circumstances with an open mind, relating both to crime and the criminal, irrespective of the gravity or nature of crime under consideration. A dispassionate analysis, on the said counts, is a must. The courts while adjudging on life and death must ensure that rigour and fairness are given primacy over sentiments and emotions. (Paras 71 and 72)

Whether primacy should be accorded to aggravating circumstances or mitigating circumstances is not the question. Court is duty-bound by virtue of *Bachan Singh case* to equally consider both and then to arrive at a conclusion as to respective weights to be accorded. The court is also bound by the spirit of Article 14 and Article 21 which forces the Court to adopt a principled approach to sentencing. (Para 79)

Public opinion in capital sentencing

Public opinion is difficult to fit in the *rarest of rare* matrix. People's perception of crime is neither an objective circumstance relating to crime nor to the criminal. Perception of public is extraneous to conviction as also sentencing, at least in capital sentencing according to the mandate of *Bachan Singh case*. Public opinion may also run counter to the rule of law and constitutionalism. There is also the danger of capital sentencing becoming a spectacle in media. If media trial is a possibility, sentencing by media cannot be ruled out. (Paras 80, 81, 87 and 89). *Santosh Kumar Satishbhushan Bariyar* v. *State of Maharashtra*, (2009) 6 SCC 498.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, explained and followed

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, explained

'Lethal Lottery, The Death Penalty in India' compiled jointly by Amnesty International India and People's Union for Civil Liberties, Tamil Nadu & Puducherry, cited

Furman v. Georgia, 33 L Ed 2d 346: 408 US 238 (1971); Gregg v. Georgia, 49 L Ed 2d 859: 428 US 153; Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600: (1961) 3 SCR 440; Maneka Gandhi v. Union of India, (1978) 1 SCC 248, cited

Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580, explained and relied on

S. v. MakwanyaneEn' N Ander, (1994) 3 SA 868 (A); Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCC 35: 1981 SCC (Cri) 315; Furman v. Georgia, 33 L Ed 2d 346: 408 US 238 (1971) (dissenting opinion); West Virginia State Board of Education v. Barnette, 87 L Ed 1628: 319 US 624 (1942); Khatri (II) v. State of Bihar, (1981) 1 SCC 627: 1981 SCC (Cri) 228; Sanjay Dutt v. State (II), (1994) 5 SCC 410: 1994 SCC (Cri) 1433; Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767; Woodson v. North Carolina, 49 L Ed 2d 944: 428 US 280 (1976); Lockett v. Ohio, 57 L Ed 2d 973: 438 US 586 (1978); Rummel v. Estelle, 63 L Ed 2d 382: 445 US 263 (1980); R. v. Oakes, (1986) 1 SCR 103; R. v. Chaulk, (1990) 3 SCR 1303; Santa Singh v. State of Punjab, AIR 1956 SC 256; Malkiat Singh v. State of Punjab, (1991) 4 SCC 341: 1991 SCC (Cri) 976; Allauddin Mian v. State of Bihar, (1989) 3 SCC 5: 1989 SCC (Cri) 490; Muniappan v. State of T.N., (1981) 3 SCC 11: 1981 SCC (Cri) 617; Jumman Khan v. State of U.P., (1991) 1 SCC 752: 1991 SCC (Cri) 283; Anshad v. State of Karnataka, (1994) 4 SCC 381: 1994 SCC (Cri) 1204; Mithu v. State of Punjab, (1983) 2 SCC 277: 1983 SCC (Cri) 405; Panchhi v. State of U.P., (1998) 7 SCC 177: 1998 SCC (Cri) 1561; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; State of Maharashtra v. Sindhi, (1975) 1 SCC 647: 1975 SCC (Cri) 283; Vashram Narshibhai Rajpara v. State of Gujarat, (2002) 9 SCC 168: 2003 SCC (Cri) 1112; Om Prakash v. State of Haryana, (1999) 3 SCC 19: 1999 SCC (Cri) 334; Dharmendrasinh v. State of Gujarat, (2002) 4 SCC 679: 2002 SCC (Cri) 859; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, relied on

Andrew Ashworth & Michael Hough: Sentencing and the Climate of Opinion (1996 CRIM. L. REV.); Ronald Dworkin: "The Forum of Principle", 56 NYU L. REV. 469 (1981); Von Hirsch and Andrew Ashworth: The Sentencing Theory Debate: Convergence in Outcomes, Divergence in Reasoning Proportionate Sentencing: Exploring The Principles, Oxford University Press, 2005; Jeremy Bentham: "An Introduction to the Principles of Morals and Legislation" in A Fragment of Government with An Introduction to the Principles of Morals and Legislation 281 (1948); Marvin E. Frankel: "Lawlessness in Sentencing", 41 U. CIN. L. REV. 1 (1972); Anthony Bottoms: "The Philosophy and Politics of Punishment and Sentencing", in The Politics of Sentencing Reform 20 (C.M.V. Clarkson & R. Morgan Eds., 1995), referred to

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, followed

State of Punjab v. Prem Sagar, (2008) 7 SCC 550: (2008) 3 SCC (Cri) 183, criticised

Saibanna v. State of Karnataka, (2005) 4 SCC 165: 2005 SCC (Cri) 1094, held, not good law on this point

Ravji v. State of Rajasthan, (1996) 2 SCC 175: 1996 SCC (Cri) 225, held, per incuriam

Shivaji v. State of Maharashtra, (2008) 15 SCC 269; Mohan Anna Chavan v. State of Maharashtra, (2008) 7 SCC 561: (2008) 3 SCC (Cri) 193; Bantu v. State of U.P., (2008) 11 SCC 113: (2009) 1 SCC (Cri) 353; Surja Ram v. State of Rajasthan, (1996) 6 SCC 271: 1996 SCC (Cri) 1314; Dayanidhi Bisoi v. State of Orissa, (2003) 9 SCC 310: 2003 SCC (Cri) 1798; State of U.P. v. Sattan, (2009) 4 SCC 736, considered and doubted on this point

[**Ed.**: As per at least two 5-Judge Constitution Benches and one 9-Judge Bench, "State" under Art. 12 does not include the Judiciary, though certainly it would seem that it may be desirable to have Art. 14 applicable to the Judiciary, as held in this case in the case of imposition of the death penalty. *See* §§ [1574], [1575] and [1576], at p. 587 in **Vol. 4**, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

[3662] — S. 354(3) — Crime in modern urban society — Impact of film and T.V. exhibiting scenes of sex, violence, bootlegging, drug trafficking, etc. — *Censor Board required to take firm steps in this regard — Likelihood of films having remotely influenced the mind of the offender not a mitigating circumstance — Death sentence not unjustified merely because crime itself cannot be eradicated — Penology — Press and Media Laws — Cinematograph Act, 1952 — Ss. 5-A and 5-B*

There cannot be any dispute that modernisation is an important factor and needed very much in a developing country; but this makes us ponder over whether the voyage we have undertaken on the basis of the principles enshrined in the Constitution, is being carried on right lines, for it is not the distance we have travelled that matters, but it is the direction in which we have travelled that really matters. Are we merely moving or truly advancing? Are we merely changing or effectively progressing and whether we are aware of the significant difference between moving and advancing and between changing and progressing? These are all aspects of great importance and wider amplitude involving socio-political issues to be considered at a different level.

Is it an irrevocable convention that the violence unleashed by the wicked or the evil-minded villain or the hero's valour in punishing those wicked and the villain must only be shown in such a cruel, gruesome and diabolical manner. When promotion of art and culture is the primary underlying object, how can obscenity, cruelty and many such wicked things be depicted and shown in such blown-up and magnified manner leaving an impression that the film is meant only to depict such things. It is here that the Censor Board should step in firmly and insist that the film being released has a message meant to improve the values of life and should see that the film contains only such scenes which do not affect the values of life. By exhibiting scenes of violence, sex, rape, bootlegging and drug trafficking etc. in such a manner or manners which have the propensities of disturbing or corrupting the minds of some viewers like children and particularly of those who are weak-minded, wayward, indisciplined, frustrated and likewise, who are very likely to become wicked and evil-minded and ultimately end up as criminals indulging in organised crime, the avowed object gets frustrated. The films should be of educative value and then only they can play an important role in subserving the interests of the society. No doubt, entertainment is one of the important underlying objects but it is mainly meant to make the viewers mentally relaxed and enjoy and not to render them heavy-hearted, sensually aroused and mentally disturbed which may lead them to indulge in frivolities, perversions and dangerous addictions, which ultimately are likely to pave the way to end themselves up as criminals.

In the last decade mass media has grown worldwide to be more larger, more influential and more powerful. The TV media is the most powerful. Quite a few films are shown on TV. The constraints that are applicable to film media equally apply to TV media also and the authorities concerned must exercise proper discretion in selecting the films to be telecast. Therefore among the available sources movie and TV have key roles in modifying human behaviour and one can easily observe the effect of movie and TV that day-to-day affects all children, adolescents and youths in dress, action and expression etc. and even the modus operandi adopted by some criminals to commit the crime has been found to be akin to that of the hero or villain in a particular movie. It cannot be said that all films are of that nature but in the context some of that nature are enough to cause the damage and the Censor Board is dutifully expected to stop such films from being released in an earnest manner.

In the instant case it cannot be held that likelihood of the films having remotely influenced the mind of the accused can be a mitigating circumstance particularly when he had already become a hardened criminal and committed the murders in such cruel, gruesome and diabolical manner without any compunction or any regard for the value of human life. It cannot be held that since it may not be possible to eradicate the crime itself, the criminals cannot be awarded death sentence though warranted by law. *Shankar* v. *State of T.N.*, (1994) 4 SCC 478: 1994 SCC (Cri) 1252: 1994 Cri LJ 3071: (1994) 2 Crimes 1: (1994) 2 An LT(Cri) 429.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 4-4-1994]

[3663] — S. 354(3) — Deterrent theory of punishment — *Doubt as to the efficacy of — Case of murder most foul — Death sentence not awarded for dowry death even where the murder was caused in the most atrocious and despicable manner and loathsome and revolting methods had been employed to dispose of the body — Constitution of India — Art. 21. Ravindra Trimbak Chouthmal* v. *State of Maharashtra*, (1996) 4 SCC 148.

Bench Strength 2. Coram: *G.N. Ray* and **B.L. Hansaria**, JJ. [Date of decision: 23-2-1996]

[3664] — S. 354(3) — Measure of punishment — *Factors to be taken into consideration — Retributive aspect of punishment stressed — Penal Code, 1860 — S. 53*

In recent years, the rising crime rate — particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility.

Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

The measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment. *Dhananjoy Chatterjee* v. *State of W.B.*, (1994) 2 SCC 220: 1994 SCC (Cri) 358.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *N.P. Singh*, JJ. [Date of decision: 11-1-1994]

[3665] — S. 354(3) — Sentence — Proportionality of — Principle of just deserts — Caution to trial Judges against departure from this principle when determining sentence based on other considerations

The principle of proportion between crime and punishment is a principle of just desert that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment not be disproportionately great, which is a corollary of just desert, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt. (Para 29)

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the terrific results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread. (Para 30). *Bablu* v. *State of Rajasthan*, (2006) 13 SCC 116: (2007) 2 SCC (Cri) 590: AIR 2007 SC 697: (2007) 50 AIC 89 (SC): 2007 Cri LJ 1160.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-12-2006]

[3666] — S. 354(3) — Award of death sentence — Reasons for, must be given — *Change in law effected by the new Code — Occurrence taking place after the coming into force of the new Code — Failure to record special reasons for the award of death sentence in preference to life imprisonment vitiating the award of sentence — Application of rule of absence of extenuating circumstances evolved under the old Code improper — CrPC, 1898 — S. 367(5)*

Under S. 354(3) of the new Code the Court is required to state the reasons for the sentence awarded and in the case of sentence of death, special reasons are required to be stated. Awarding of the sentence other than the sentence of death is the general rule now and only special reasons, that is to say, special facts and circumstances in a given case, will warrant the passing of the death sentence. Such special circumstances, for example, are whether the crime has been committed by a professional or hardened criminal, or it has been committed in a very brutal manner or on a helpless child or a woman or the like. *Balwant Singh* v. *State of Punjab*, (1976) 1 SCC 425: 1976 SCC (Cri) 43: AIR 1976 SC 230: (1976) 2 SCR 684: 1976 Cri LJ 291.

Bench Strength 2. Coram: *P.K. Goswami* and **N.L. Untwalia**, JJ. [Date of decision: 11-11-1975]

[3667] — S. 354(3) — Award of death sentence — Statement of special reasons for awarding death sentence essential — In the absence of such reasons death sentence must be commuted to life imprisonment. *Ambaram* v. *State of M.P.*, (1976) 4 SCC 298: 1976 SCC (Cri) 610: AIR 1976 SC 2196: 1976 Cri LJ 1716.

Bench Strength 2. Coram: **R.S. Sarkaria** and *N.L. Untwalia*, JJ. [Date of decision: 8-3-1976]

[3668] — S. 354(3) — Choice of sentence, death or life imprisonment — *Court can award sentence of death only in the rarest of the rare cases and must give special reasons for the same — Obligation of court to take into account aggravating and mitigating circumstances even if no argument addressed with regard to the sentence — Number of victims and motive of the crime are not the only considerations for imposing death penalty — An eye for an eye approach not proper — Penology*

Section 354(3) of Criminal Procedure Code, 1973 makes it *obligatory* in cases of conviction for offences punishable with death or with imprisonment for life *to assign* reasons in support of the sentence awarded to the convict and further ordains that in case the Judge awards the death penalty "*special reasons*" for such sentence shall be stated in the judgment. (Para 9)

After the High Court arrived at the conclusion that the appellants along with "some others" had set the shop on fire, it was not proper for it to have ignored that factor, which is a mitigating circumstance, while considering the question of sentence. Though the appellants, or at least some of them, were alleged to be armed with bombs and firearms, they had not used these weapons against their victims. This factor also deserved notice while considering whether the extreme penalty of death was called for in the case or not. That the appellants intended that the person inside the shop should be burnt alive is established beyond doubt but there is no material to show that the appellants knew or had reason to believe that there were three persons inside the shop at the relevant time. Therefore, the number of victims alone would not make the case "rarest of the rare". The imposition of proper sentence is an obligation on the court and even if no argument had been addressed on behalf of the appellants, the court was expected to take note of the legislative intendment relating to the award of capital punishment as manifest from the provisions of Section 354(3) CrPC and award an appropriate sentence, after taking into account the aggravating as well as the mitigating circumstances. The sentencing court has to make an endeavour to see that all relevant factors and circumstances bearing on the question of sentence, are taken note of and only after giving due weight to the same, it should proceed to impose the capital sentence. Some of the mitigating circumstances noticed above make it imperative to say that the present case in spite of the fact that three persons lost their lives, is not one of the "rarest of the rare cases" in which four appellants deserved to be sentenced to death. An eye for an eye approach is neither proper nor desirable. The mandate of Section 354(3) CrPC does not approve of it. The courts must be conscious of the change brought about in the matter of award of capital punishment by the legislature by enacting Section 354(3) CrPC limiting the award the sentence of death only in the "rarest of the rare cases" and that too after recording "special reasons" for awarding the same, keeping in view the guidelines given by this Court in various judgments. Neither of the two courts below have given any *special reasons* for awarding the sentence of death. *Sk. Ishaque* v. *State of Bihar*, (1995) 3 SCC 392: 1995 SCC (Cri) 534: 1995 Cri LJ 2682.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *K.S. Paripoornan*, JJ. [Date of decision: 10-3-1995]

Jashubha Bharatsinh Gohil v. State of Gujarat, (1994) 4 SCC 353: 1994 SCC (Cri) 1193: Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580: Anshad v. State of Karnataka, (1994) 4 SCC 381: 1994 SCC (Cri) 1204, followed

[3669] — S. 354(3) — Choice of sentence, death or life imprisonment — Court's discretion — How to be exercised — Factors to be considered — *Standardisation of sentencing process unwarranted — Degree of gravity of offence to be seen — Decision to be taken having regard to the punitive, deterrent and protective purposes of sentencing, the social context and the circumstances — Death sentence is justified only in rarest of the rare cases — Penal Code, 1860 — Ss. 302 and 304-B*

In order that the sentences may be properly graded to fit the degree of gravity of each case, it is necessary that the maximum sentence prescribed by law should be reserved for 'the rarest of rare' cases which are of an exceptional nature. Sentences of severity are imposed to reflect the seriousness of the crime, to promote respect for the law, to provide just punishment for the offence, to afford adequate deterrent to criminal conduct and to protect the community from further similar conduct. It serves a threefold purpose (*i*) punitive (*ii*) deterrent and (*iii*) protective. The court must not only look to the crime and the victim but also the circumstances of the criminal and the impact of the crime on the community. Unless the nature of the crime and the circumstances of the offender reveal that the criminal is a menace to the society and the sentence of life imprisonment would be altogether inadequate, the court should ordinarily impose the lesser punishment. Only in those exceptional cases in which the crime is so brutal, diabolical and revolting as to shock the collective conscience of the community, would it be permissible to award the death sentence. Where the incidence of a certain crime is rapidly growing and is assuming menacing proportions, for example, acid pouring or bride burning, it may be necessary for the courts to award exemplary punishments to protect the community and to deter others from committing such crimes.

In *Bachan Singh* only the broad guidelines consistent with S. 354(3), CrPC were indicated without attempting to formulate rigid standards because standardisation of the sentencing process would leave little room for judicial discretion to take account of variations in culpability even within the same category of cases. In the subsequent decision in *Machhi Singh*, the court tried to indicate the type of cases which may fall within the exceptional class without attempting to introduce rigidity. It would not be fair to read the decision as an attempt to fetter judicial discretion. Even in cases of the type indicated in that case, circumstances may vary, which would necessitate a different approach. *Allauddin Mian* v. *State of Bihar*, (1989) 3 SCC 5: 1989 SCC (Cri) 490: AIR 1989 SC 1456: 1989 Cri LJ 1466.

Bench Strength **2**. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 13-4-1989]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, explained and affirmed

[3670] — S. 354(3) — Choice of sentence, death or life imprisonment — Guidelines indicated in sub-section (3) for determining — *In absence of adequate explanation for the extreme penalty, choice should be for lower sentence*

In choosing between the sentence of death and life imprisonment under S. 302, IPC, court must show a high degree of concern and sensitiveness and decide having regard to the guideline provided by the legislature in the form of sub-section (3) of S. 354 CrPC. Sub-section (3) obliges the court to explain its choice of sentence. The 'special reasons clause' in that sub-section is a sufficient safeguard against arbitrary imposition of the extreme penalty. Unless there are special reasons, special to the facts of the particular case, which can be catalogued as justifying a severe punishment the judge should not award the death sentence. If a judge finds that he is unable to explain with reasonable accuracy the basis for selecting the higher of the two sentences his choice should fall on the lower sentence. In all such cases the law casts an obligation on the judge to make his choice after carefully examining the pros and cons of each case. *Allauddin Mian* v. *State of Bihar*, (1989) 3 SCC 5: 1989 SCC (Cri) 490: AIR 1989 SC 1456: 1989 Cri LJ 1466.

Bench Strength **2**. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 13-4-1989]

[3671] — S. 354(3) — Death sentence — Rarest of rare cases — Choice between sentence of death and life imprisonment — Factors to be considered — *Balancing of aggravating and mitigating circumstances — Duty of court to give special reasons for awarding death sentence — Penal Code, 1860 — Ss. 302/34 and 379/34*

Courts are expected to exhibit sensitiveness in the matter of award of sentence particularly, the sentence of death because life once lost cannot be brought back. For determining the proper sentence while the court should take into account the aggravating circumstances it should not overlook or ignore the mitigating circumstances. The manner in which the crime was committed, the weapons used and the brutality or the lack of it are some of the considerations which must be present to the mind of the court. Of course, the High Court has the power and jurisdiction to enhance the sentence of life imprisonment to death but that power has to be sparingly exercised, in "rarest of the rare cases" for 'special reasons' to be recorded. The courts must be alive to the legislative changes introduced in 1973 through S. 354(3) CrPC. Death sentence, being an exception to the general rule, should be awarded in the "rarest of the rare cases" for 'special reasons' to be recorded after balancing the aggravating and the mitigating circumstances, in the facts and circumstances of a given case. The number of persons murdered is a consideration but that is not the only consideration for imposing death penalty unless the case falls in the category of "rarest of the rare cases". The courts must keep in view the nature of the crime, the brutality with which it was executed, the antecedents of the criminal, the weapons used etc. It is neither possible nor desirable to catalogue all such factors and they depend upon case to case.

The reasons given by the High Court to enhance the sentence of life imprisonment to death, without taking into account all circumstances and balancing the aggravating and the mitigating circumstances are neither 'special reasons' nor otherwise adequate and sufficient to impose the sentence of death on either of the three convicts. *Anshad* v. *State of Karnataka*, (1994) 4 SCC 381: 1994 SCC (Cri) 1204.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 22-4-1994]

[3672] — S. 354(3) — Death sentence and life imprisonment — Award of

In India the subject of capital punishment has abortively come before Parliament earlier, although our social scientists have not made any sociological or statistical study in depth yet. On the statutory side there has been a significant change since India became free. Under S. 367(5) of the Criminal Procedure Code, as it stood before its amendment by

Act 26 of 1955, the normal rule was to sentence to death a person convicted for murder and to impose the lesser sentence for reasons to be recorded in writing. By amendment, this provision was deleted with the result that the court is now free to award either death sentence or life imprisonment, unlike formerly when death was the rule and life term the exception, for recorded reasons. In the new Criminal Procedure Code, 1973 a great change has overtaken the law, i.e., S. 354(3).

The unmistakable shift in legislative emphasis is that life imprisonment for murder is the rule and capital sentence the exception to be resorted to for reasons to be stated. *Ediga Anamma* v. *State of A.P.*, (1974) 4 SCC 443: 1974 SCC (Cri) 479: AIR 1974 SC 799: 1974 Cri LJ 683: (1974) 3 SCR 329.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *R.S. Sarkaria*, JJ. [Date of decision: 11-2-1974]

[3673] — S. 354(3) — Death sentence is an exception — Special reasons must be assigned for clearly stating why any punishment other than capital punishment will not suffice

Per Sinha, J.

There is a clear and discernible necessity of caution to set the maximum punishment in an offence. And also by implication there must be intensive and exhaustive inquiry into *accused-related* parameters before employing the maximum sentence by a court of law. Therefore, discretion to the judiciary in this respect (to declare the maximum punishment) is of utmost critical and seminal value. Reasons must be detailed setting clearly why any punishment other than the maximum punishment will not suffice. This is a general and age-old rule of sentencing which has been statutorily recognised under Section 354(3) CrPC, which mandates that for imposing death sentence, special reasons are to be assigned. Imposition of death punishment is an exception in terms of Section 354(3). Whereas for commission of other offences, one or other theory, justly or otherwise may be taken recourse to, a large number of factors are required to be borne in mind for awarding death penalty. (Paras 66 and 73)

We do not have a sentencing policy, unlike some other countries. England has the concept of "guideline judgments" which is considered as a judge managed sentencing model rather than a statute induced one. We have no practice of referring such matters to superior courts for laying down the guidelines relating to imposition of sentence under various situations. Section 354(3) suggests that Indian law furthers statute induced sentencing guidance in part. Therefore it has to be given full colour. In our country, therefore, each case may have to be considered on its own merit. (Paras 57 to 59). *Swamy Shraddananda* v. *State of Karnataka*, (2007) 12 SCC 288: (2008) 2 SCC (Cri) 322: AIR 2007 SC 2531.

Bench Strength 2. Coram: **S.B. Sinha**[1] and *Markandey Katju*[2], JJ. [Date of decision: 18-5-2007]

[3674] — S. 354(3) — Death sentence is now an exception — *But award of death sentence on potent grounds by trial Court is not interfered with by appellate Courts*

It is true that in the present Code, the unmistakable shift in legislative emphasis is on life imprisonment for murder as the rule and capital sentence an exception, to be resorted to even so, the discretion is limited. If the offence has been perpetrated with attendant aggravating circumstances, if the perpetrator discloses an extremely depraved state of mind and diabolical trickery in committing the homicide, accompanied by brutal dealing with the cadaver, the Court can hardly help in the present state of the law, avoiding infliction of the death penalty. When discretion has been exercised by the trial Court and it is difficult to fault that Court on any ground, statutory or precedential, an appellate review and even referral action become too narrow to demolish the discretionary exercise of power by the inferior Court. *Joseph Peter* v. *State of Goa, Daman and Diu*, (1977) 3 SCC 280: 1977 SCC (Cri) 486: AIR 1977 SC 1812: 1977 Cri LJ 1449.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision: 4-5-1977]

[3675] — S. 354(3) — Justification for death sentence — *Held, under the new CrPC normal punishment for murder is imprisonment for life and death penalty is an exception — Only special facts and circumstances will warrant the passing of the death sentence — A just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised — Historical developments since 1955 traced — CrPC, 1898 — S. 367(5) — CrPC (Amendment) Act, 1955*

Section 302 IPC prescribes death or life imprisonment as the penalty for murder. While doing so, the Code of Criminal Procedure instructs the court as to its application. The changes which the Code has undergone in the last three decades clearly indicate that Parliament is taking note of contemporary criminological thought and movement. It is not difficult to discern that in the Code there is a definite swing towards life imprisonment. Death sentence is ordinarily ruled out and can only be imposed for "special reasons", as provided in Section 354(3). (Para 6)

Before the amendment of Section 367(5) of the old Code, by the Criminal Procedure Code (Amendment) Act, 1955 (26 of 1955) which came into force on 1-1-1956, on a conviction for an offence punishable with death, if the court sentenced the accused to any punishment other than death, the reason why sentence of death was not passed had to be stated in the judgment. But after the said amendment, it is clear that the normal penalty is imprisonment for life. It can be awarded in the presence of extenuating circumstances which reduce the gravity of the offence. The matter is left, after the amendment, to the discretion of the court. The court must, however, take into account all the circumstances, and state its reasons for whichever of the two sentences it imposes in its discretion. Therefore, the former rule that the normal punishment for murder is death is no longer operative and it is now within the discretion of the court to pass either of the two sentences prescribed in this section; but whichever of the two sentences he passes the judge must give his reasons for imposing a particular sentence. The amendment of Section 367(5) of the old Code does not affect the law regulating punishment under IPC. This amendment relates to procedure and now courts are no longer required to elaborate the reasons for not awarding the death penalty; but they cannot depart from sound judicial considerations preferring the lesser punishment. (Para 7)

Section 354(3) of the new Code marks a significant shift in the legislative policy underlying the old Code as in force immediately before 1-4-1974, according to which both the alternative sentences of death or imprisonment for life provided for murder were normal sentences. Now, under Section 354(3) of the new Code the normal punishment for murder is imprisonment for life and death penalty is an exception. The court is required to state the reasons for the sentence awarded and in the case of death sentence "special reasons" are required to be stated, that is to say, only special facts and circumstances will warrant the passing of the death sentence. A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. (Paras 8 and 11). *Sushil Murmu* v. *State of Jharkhand*, (2004) 2 SCC 338: 2004 SCC (Cri) 529: AIR 2004 SC 394: 2004 Cri LJ 658.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-12-2003]

Ediga Anamma v. State of A.P., (1974) 4 SCC 443: 1974 SCC (Cri) 479; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

[3676] — S. 354(3) — Death sentence or life imprisonment — Choice between — Considerations — Depends upon particular circumstances of each case — *Relevancy of part played by individual accused and quality of incriminating evidence in weighing mitigating and aggravating circumstances — Cold-blooded and gruesome murder of six persons committed in an organised manner — Victims undefended and helpless — Death sentence justified — Supposed mitigating factors rejected — Penal Code, 1860 — S. 302*

The choice as to which one of the two punishments provided for murder is the proper one in a given case will depend upon the particular circumstances of that case and the Court has to exercise its discretion judicially and on well-recognised principles after balancing all the mitigating and aggravating circumstances of the crime. The Court also should see whether there is something uncommon about the crime which renders sentence of imprisonment of life inadequate and calls for death sentence. The nature of the crime and the circumstances of the offender should be so revealing that the criminal is a menace to the society and the sentence of imprisonment of life would be inadequate. The sentence of death should be reserved for the rarest of rare cases after a due consideration of both mitigating and aggravating circumstances. What circumstances bring a particular case under the category of rarest of rare cases vary from case to case depending upon the nature of the crime, weapons used and the manner in which it is perpetrated etc.

Individual part played by the accused may assume some importance in some cases, but in an organised crime that kind of enquiry may not be relevant for the purpose of finding out the special reasons. However, under the facts and circumstances of the present case the part played by the individual accused i.e. A-1 to A-3 may be relevant in weighing mitigating and aggravating circumstances in awarding death sentence, particularly in view of the fact that A-4 to A-6 who were also the associates of A-1 and who also participated in committing the murders of D-4 to D-6 are awarded only imprisonment for life and also in view of the fact that the case mainly rests on the evidence of the approver.

A-1 was the leader of the gang which indulged in illicit arrack and brothel business. He was responsible for spoiling the life of many girls. He used to be very cruel to them. He brutally murdered six persons. The crime indulged was gruesome, cold-blooded, heinous, atrocious and cruel and he has proved to be an ardent criminal and thus a menace to the society. It is an exceptional case where the crime committed by him is so gruesome, diabolical and revolting which shocks the collective conscience of the community. There cannot be any doubt that his case is one of the rarest of rare cases fully warranting the imposition of death sentence. That A-1 contributed his ill-gotten gains to social organisations is not a mitigating circumstance. Nor can the reasons for his entry into organised crime have a mitigating effect nor his plea of repentance made to evade the death sentence. A-2 throughout had been actively associated with A-1. He participated in every crime and was close associate of A-1 in every unlawful business activity. The reasons given in respect of A-1 for awarding death sentence equally apply to the case A-2 also.

It is not possible to agree that since it may not be possible to eradicate the crime itself, the criminals cannot be awarded death sentence though warranted by law.

So far as A-3 is concerned, the quality of evidence is not of such high degree in respect of the nature of participation by him to which the Court can give that high value to impose death sentence. His death sentence is modified to life imprisonment. *Shankar* v. *State of T.N.*, (1994) 4 SCC 478: 1994 SCC (Cri) 1252: 1994 Cri LJ 3071: (1994) 2 Crimes 1: (1994) 2 An LT(Cri) 429.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 4-4-1994]

Dudh Nath Pandey v. State of U.P., (1981) 2 SCC 166: 1981 SCC (Cri) 379; Suresh v. State of U.P., (1981) 2 SCC 569: 1981 SCC (Cri) 559; Ummilal v. State of M.P., (1981) 3 SCC 574: 1981 SCC (Cri) 760, distinguished

[3677] — S. 354(3) — Sentence — Determination of — *Standardisation as per degree of culpability, the aggravating or mitigating circumstances, held, not possible — Penology*

Regarding the question of laying down standards and norms restricting the area of imposition of death penalty, if by "laying down standards", it is meant that "murder" should be categorised beforehand according to the degrees of its culpability and all the aggravating and mitigating circumstances should be exhaustively and rigidly enumerated so as to exclude all free play of discretion, the argument merits rejection. Such standardisation is well-nigh impossible. Firstly, degree of culpability cannot be measured in each case; secondly, criminal cases cannot be categorised, there being infinite, unpredictable and unforeseeable variations; thirdly, on such categorisation, the sentencing process will cease to be judicial; and fourthly, such standardisation or sentencing discretion is a policy-matter belonging to the legislature beyond the court's function. Only broad guidelines consistent with the policy indicated by the legislature in Section 354(3) can be laid down. (Paras 10 and 12). *Mohd. Chaman* v. *State (NCT of Delhi)*, (2001) 2 SCC 28: 2001 SCC (Cri) 278: 2001 Cri LJ 725.

Bench Strength **2**. Coram: *K.T. Thomas* and **D.P. Mohapatra**, JJ. [Date of decision: 11-12-2000]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580: AIR 1980 SC 898; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Nirmal Singh v. State of Haryana, (1999) 3 SCC 670: 1999 SCC (Cri) 472; Anshad v. State of Karnataka, (1994) 4 SCC 381: 1994 SCC (Cri) 1204, relied on

[3678] — S. 354(3) — Sentencing procedure under — Legal obligation of court to explain choice of sentence — *All facts and circumstances bearing on the question of sentence must be brought on record and both mitigating and aggravating circumstances must be considered — "Special reasons" for award of death sentence to be stated — Penology — Objects of punishment*

The courts are constantly faced with the situation where they are required to answer to new challenges and mould the sentencing system to meet those challenges. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing appropriate sentence. The change in the legislative intendment relating to award of capital punishment notwithstanding, the opposition by the protagonist of abolition of capital sentence, shows that it is expected of the courts to so operate the sentencing system as to impose such sentence which reflects the social conscience of the society. The sentencing process has to be stern where it should be.

Section 354(3) of the Code of Criminal Procedure, 1973, as amended, makes it obligatory in cases of conviction for offences punishable with death or with imprisonment for life to assign reasons in support of the sentence awarded to the convict and further ordains that in case the Judge awards death penalty, "special reasons" for such sentence shall be stated in the judgment. Thus, the Judge is under a legal obligation to explain his choice of the sentence. The legislature in its supreme wisdom thought that in some "rare cases" for "special reasons" to be recorded it will be necessary to impose the extreme penalty of death to deter others and to protect the society and in a given case even the sovereignty and security of the State or country. It, however, left the choice of sentence to the judiciary with the rider that the court may impose the extreme punishment of death for "special reasons". The sentencing court has, therefore, to approach the question seriously and make an endeavour to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. It is only after giving due weight to the mitigating as well as the aggravating circumstances, that it must proceed to impose the appropriate sentence. *Jashubha Bharatsinh Gohil* v. *State of Gujarat*, (1994) 4 SCC 353: 1994 SCC (Cri) 1193.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **Dr. A.S. Anand**, JJ. [Date of decision: 13-4-1994]

[3679] — S. 354(3) — Death sentence — When not warranted — No rigid standards and norms can be laid down — *Rape of child aged 11/2 years by appellant aged 30 years — In the process of committing rape, injuries inflicted on liver, apart from other injuries which resulting in death of the child — Held, case does not fall within the rarest of the rare category — Hence death sentence not justified — Penal Code, 1860 — Ss. 376 and 302*

In the present case the crime committed is undoubtedly serious and heinous and the conduct of the appellant is reprehensible. It reveals a dirty and perverted mind of a human being who has no control over his carnal desires. But treating the case on the touchstone of the guidelines laid down in *Bachan Singh*, *Machhi Singh* and other decisions and balancing the aggravating and mitigating circumstances emerging from the evidence on record, the case cannot be appropriately called one of the rarest of the rare cases. The appellant cannot be said to be such a dangerous person that to spare his life will endanger the community. It cannot be held that the circumstances of the crime are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances in favour of the offender. The case is one in which a humanist approach should be taken in the matter of awarding punishment. Accordingly, the capital sentence imposed against the appellant by the courts below is set aside. Instead the appellant shall suffer rigorous imprisonment for life. (Paras 25 and 26). *Mohd. Chaman* v. *State (NCT of Delhi)*, (2001) 2 SCC 28: 2001 SCC (Cri) 278: 2001 Cri LJ 725.

Bench Strength **2**. Coram: *K.T. Thomas* and **D.P. Mohapatra**, JJ. [Date of decision: 11-12-2000]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580: AIR 1980 SC 898; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Nirmal Singh v. State of Haryana, (1999) 3 SCC 670: 1999 SCC (Cri) 472; Anshad v. State of Karnataka, (1994) 4 SCC 381: 1994 SCC (Cri) 1204, relied on

[3680] — S. 354(3) — Special reasons for death sentence

The normal sentence for murder is now imprisonment for life and not sentence of death. The court must give special reasons for awarding death sentence in any given case. Special reasons mean special facts and circumstances obtained in the case justifying the extreme penalty. *Lichhamadevi* v. *State of Rajasthan*, (1988) 4 SCC 456: 1988 SCC (Cri) 978: AIR 1988 SC 1785.

Bench Strength **2**. Coram: *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision: 2-8-1988]

[3681] — S. 354(3) — Special reasons for death sentence — Factors relevant to constitute the special reasons

In the Criminal Procedure Code, there is a definite swing towards life imprisonment. Death sentence is ordinarily ruled out and can only be imposed for "special reasons", as provided in Section 354(3). The personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. Criminal justice deals with complex human problems and diverse human beings. A Judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed. (Para 14). *Lehna* v. *State of Haryana*, (2002) 3 SCC 76: 2002 SCC (Cri) 526.

Bench Strength **3**. Coram: *M.B. Shah*, *B.N. Agrawal* and **Arijit Pasayat**, JJ. [Date of decision: 22-1-2002]

[3682] — S. 354(3) — Special reasons for the award of death sentence for conviction under S. 302, Indian Penal Code — *Rajendra Prasad case on "special reasons" dissented from — Matter should be referred to a larger Bench*

Per Sarkaria, J.

While reserving my own opinion on the various questions raised in this case including the one with regard to the scope, amplification and application of S. 354(3) of the Code of Criminal Procedure, 1973, I would, in agreement with my learned brother, direct that the records of this case be submitted to the Hon'ble the Chief Justice, for constituting a larger Bench which would resolve the doubts, difficulties and inconsistencies pointed out by my learned brother in his order, particularly in its last paragraph.

Per Kailasam, J.

As a result of the change introduced by S. 354(3) of the new Criminal Procedure Code, 1973, the awarding of sentence other than the sentence of death is the general rule now and only special reasons, that is to say, special facts and circumstances in a given case will warrant the passing of the death sentence. The Criminal Procedure Code requires the courts to take into account the circumstances in which the crime was committed, the particulars about the criminal and all relevant circumstances relating to the commission of the crime by the criminal. The trial Court is required to give reasons and they are to be scrutinised by the High Court. The High Court also has to satisfy itself that there are special reasons for inflicting the extreme penalty.

However, the further guidelines and restrictions on the discretion of the court to award death sentence or imprisonment spelt out in *Rajendra Prasad case* (1979) 3 SCC 646 are contrary to the decision of the Constitution Bench in *Jagmohan Singh case* (1973) 1 SCC 20 upholding death penalty, and that the Court has no power to legislate and to frame rules to guide the infliction of death penalty and the view of the learned Judges that in awarding a sentence the criminal is more important than the crime is not warranted by the law as it stands today.

It is for Parliament to clarify the circumstances under which a sentence of death could be awarded. It is for the court to administer the law as it stands. In awarding sentence of death, the court has to take into consideration the various aspects regarding the crime and the person that committed the crime and pass an appropriate sentence; and if it is death sentence, to give special reasons as required by the Criminal Procedure Code. If in deciding a case on particular facts a principle is stated it may be binding as a precedent. If the courts resort to rule-making, it will not be binding as a precedent. If the courts are to embark on rule-making, the question arises whether the responsibility can be undertaken by a Bench of 3 Judges with a majority of 2 to 1. Is it permissible for another Bench to proceed to make laws and prescribe an entirely different set of rules? There is no machinery by which the court could ascertain the views of the various cross-sections of the society which is a prerequisite before any law-making is resorted to.

The controversy over capital punishment is not new. For several centuries the debate is going on. I am conscious that it is a highly controversial subject on which much can be said on both sides. Fortunately, for the judges it is neither necessary nor desirable to subscribe to one of the two views. All that the judges are expected to do is to administer the law as it stands. It is not for them to say what it should be.

So, if I am satisfied that the trial Judge and the High Court have given special reasons as required under the law it is my duty to confirm the sentence of death.

Hence, in the result I find myself unable to agree with the reasoning or conclusion arrived at by this Court in *Rajendra Prasad case* mainly on the ground that it is not in conformity with the decision of the Constitution Bench of this Court in *Jagmohan case* and that the propositions laid down are not within the competence of the court. Though the decision cannot be treated as a binding precedent yet as it is a decision of a Bench of this Court I direct the matter be placed before the Hon'ble the Chief Justice for constituting a larger Bench to decide the case. *Bachan Singh* v. *State of Punjab*, (1979) 3 SCC 727: 1979 SCC (Cri) 830.

Bench Strength 2. Coram: **P.S. Kailasam** and *R.S. Sarkaria*, JJ. [Date of decision: 4-5-1979]

[3683] — Ss. 354(3) and 235(2) — Death sentence or life imprisonment — Test of rarest of the rare case — Court has to take into account both the crime and the criminal as also aggravating as well as mitigating circumstances — Special reasons for awarding death sentence has to be determined having regard to the facts and circumstances of each case — *Rajiv Gandhi assassination case* — *Having regard to all the relevant aspects, held (per majority) four out of seven accused must be sentenced to death — Though one of the four sentenced to death was a woman and mother of a child (born during captivity) but having regard to the active role played by her in the crime no special consideration need be shown to her — Penal Code, 1860 — S. 302 r/w S. 120-B*

The award of sentence of death to all the 26 appellants by the Designated Court was stated by the defence counsel as amounting to judicial massacre. A fervent appeal was made to the Court that the high profile of the celebrity dimension of the targeted victim should not colour the Court's judicial vision in determining the sentencing extent. But the other side of the picture was etched by pleading that the Court cannot adopt a Nelson's eye to the stark reality that the target of the dastardly intrigue was a leader who represented a bulk of the nation's population in whom the nation had reposed its faith and trust for a full term.

Held :

Per Thomas, J.

The Constitution Bench of the Supreme Court in *Bachan Singh case* made it impermissible to award death sentence except in rarest of the rare cases wherein the lesser alternative is unquestionably foreclosed. The court must pay due regard *both* to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. Three such circumstances which the Supreme Court was told about are the following:

(*1*) The age of the accused — if the accused is young or old the sentence of death should be avoided.

(*2*) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(*3*) That the accused acted under duress or domination of another person. (Paras 344 and 346)

Bearing the above principle in mind it has to be determined whether the death sentence passed by the trial court should be confirmed or not in respect of the seven accused whose conviction of the offence under Section 302 read with Section 120-B have been confirmed. There can be no two opinions that looking at the crime conspectus of what was perpetrated at Sriperumbudur it was most dastardly to the superlative degree. Those who machinated to bring about such a horrendous crime cannot normally escape the extreme penalty of law. (Para 347)

Apart from the nature of crime, the Court is duty-bound to look at the criminals also. The conspirators in the Rajiv Gandhi assassination case can be vivisected into four broad categories:

First, those who formed the hard-core nucleus which took the decision to assassinate Rajiv Gandhi.

Second, those who induced others to join the ring and played active as well as supervisory roles in the conspiracy.

Third, those who joined the conspiracy by inducement whether through indoctrination or otherwise.

Fourth, those among the conspirators who participated in the actual commission of murder. (Para 348)

Persons who fall within the first category cannot normally escape from capital punishment if their case ends in conviction. Veluppillai Prabhakaran, Pottu Omman, Akila, Sivarasan and Trichy Santhan have been described as persons falling within the radius of the first category. As they were not tried for the offences so far it is not necessary to observe anything concerning them in the sphere of sentencing exercise. (Para 349)

However, A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) belonged to the second category even if they slip out of the first. They were not merely carrying out the orders of the first category personnel but they made others work according to their directions in order to achieve the target. The role played by them was prominently direct and active. They were in the leadership layer among the conspirators. There is nothing extenuating as for the said three persons in their activities for implementation of the decisions of the cabal. (Para 350)

A-1 (Nalini) belongs to the fourth category. In the normal spectrum of consideration, death penalty is the first priority to be chosen for her. She is an elderly and educated woman. One gets the impression, on reading her confession, that she was led into the conspiracy by playing on her feminine sentiments. She became an obedient participant without doing any dominating role. She was persistently brainwashed by A-3 (Murugan) who became her husband and then the father of her child. Suba and Dhanu would certainly have etched a woeful picture regarding the atrocities committed by IPKF on women and girls of Tamil origin in Sri Lanka. By such indoctrinative exercises she would have honestly believed in the virtue of offering her help to the task undertaken by the conspirators. In the confessional statement made by her brother A-20 (Bhagyanathan) he revealed one fact i.e. A-1 (Nalini) had confided to him on 23-5-1991 itself that as a matter of fact she realised only at Sriperumbudur that Dhanu was going to kill Rajiv Gandhi. Perhaps that may be a true fact. But she would not have dared to retreat from the scene as she was tucked into the tentacles of the conspiracy octopus from where it was impossible for a woman like A-1 (Nalini) to get herself extricated. She knew how Sivarasan and Santhan had liquidated those who did not stand by them. Considering the fact that she belongs to the weaker sex and her helplessness in escaping from the cobweb of Sivarasan and company, the mere fact that she became obedient to all the instructions of Sivarasan need not be used for treating her conduct as amounting to "rarest of the rare cases" indicated in *Bachan Singh case*, (1980) 2 SCC 684: 1980 SCC (Cri) 580. (Para 352)

Another consideration which it is difficult to overlook is — she is the mother of a little female child who would not have even experienced maternal huddling as that little one was born in captivity. Of course the maxim "*justitia non novit patrem nec* *matrem*" (justice knows no father nor mother) is a pristine doctrine. But it cannot be allowed to reign with its rigour in the sphere of sentence determination. As the death sentence passed on the father of that small child is confirmed, an effort to save its mother from the gallows may not militate against *jus gladii* so that an innocent child can be saved from imposed orphanhood. (Para 353)

Thus, on an evaluation of the plus and minus, pros and cons it is decided to save A-1 (Nalini) from the gallows. Hence the sentence passed on her is altered to one of imprisonment for life. (Para 354)

What remains is the case of A-9 (Robert Payas), A-10 (Jayakumar), and A-16 (Ravichandran). They do not belong to the first or even to the second category. They were LTTE followers and they just obeyed the commands of leaders like Sivarasan who had the capacity to dominate over them. Their sentence has to be altered from death penalty to imprisonment for life. (Para 355)

Per Wadhwa, J.

It is not that Nalini (A-1) did not understand the nature of the crime and her participation. She was a willing party to the crime. Both the crime and the criminal have to be seen. Nalini (A-1) in her association with Murugan (A-3) and others developed great hatred towards Rajiv Gandhi and wanted to have revenge. Merely because Nalini (A-1) is a woman and a mother of the child who was born while she was in custody cannot be the ground not to award the extreme penalty to her. She is an educated woman and was working as a stenographer in a private firm. She was living alone away from her mother, sister and brother since April 1990 and had started living in a rented apartment from October 1990. She became friendly to Murugan (A-3) when she was introduced to him in her office by her sister Kalyani and Bharathi (PW 233). Before this date also she was close to some of the LTTE activists. She developed fondness towards Murugan (A-3) and in fact wanted to marry him. He, however, declined as he said he was a committed LTTE activist and as per code of LTTE he could not marry. They were, however, having sexual relations and when they returned from their trip to Tirupathi after the assassination of Rajiv Gandhi it was found that Nalini (A-1) was pregnant. Subsequently while both of them were in custody they were married from earlier date. It was in July 1991 that she gave birth to the girl child. (Para 636)

As regards the crime, it was found that along with Rajiv Gandhi, 15 others had also lost their lives. It is not disputed that these persons died on account of the bomb blast and others suffered grievous and simple injuries on that account. What about their families, one may ask. Cruelty of the crime committed has known no bounds. The crime sent shock waves in the country. General elections had to be postponed. It was submitted more than once that principal perpetrators in the present case are already dead but then for the support which Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) afforded for commission of the crime it could not have been committed. Each one of these four accused had a role to play. Crime was ommitted after previous planning and executed with extreme brutality. There were as many as two dry runs as to how to reach Rajiv Gandhi after penetrating the security cordon. A former Prime Minister of the country was targeted because this country had entered an agreement with a foreign country in exercise of its sovereign powers. Rajiv Gandhi being the head of the Government at that time was signatory to the Accord which was also signed by the head of the Government of Sri Lanka. The Accord had the approval of Parliament. It was not that Rajiv Gandhi had entered into the Accord in his personal capacity or for his own benefit. Though it has been held that object of the conspiracy was not to commit any terrorist act or any disruptive activity, nevertheless murder of a former Prime Minister for what he did in the interest of the country was an act of exceptional depravity on the part of the accused, an unparalleled act in the annals of crimes committed in this country. In a mindless fashion not only was Rajiv Gandhi killed but along with him others died and many suffered grievous and simple injuries. It is not that intensity of the belt bomb strapped on the waist of Dhanu was not known to the conspirators as after switching on the first switch on her belt bomb Dhanu asked Sivarasan to move away. Haribabu was so keen to have close-up pictures of the crime that he met his fate in the blast itself. It is not possible to find any mitigating circumstance to upset the award of sentence of death on the accused. (Para 636)

This is a case where all these — Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) deserve extreme penalty. Award of sentence of death on them is confirmed. (Para 637)

Per Quadri, J.

Discretion of the court in awarding punishment when conviction is for an offence punishable with death or with imprisonment for life is controlled by Section 354(3) CrPC; so if the court proposes to impose capital punishment it must record "special reasons" for so doing. What constitutes special reasons cannot be stated with any precision and that has to be determined having regard to the facts and circumstances of each case. If a case falls in the category of "rarest of the rare case" it would justify the requirement of special reasons. But again in deciding whether a case falls within "rarest of the rare case", the court has to consider both aggravating as well as the mitigating circumstances in each case. (Para 716)

It ill behoves a person to order the death of another. He who gives life alone has the authority to take life. In dispensing justice a Judge is not only discharging a sovereign function but he is also doing a divine function. Even so the most difficult task for a Judge is to choose the punishment of death in preference to the punishment of life imprisonment for he is conscious of the fact that once the life of a person is taken away by a judicial order it cannot be restored by another judicial order of the highest authority in this world. Having taken upon himself the onerous responsibility of doing justice according to the Constitution and the laws, the Judge must become independent of his conviction and ideology to maintain the balance of scales of justice. A-1 is a woman and is the mother of a small girl who was born during the period of her confinement in jail. She is very young. She has also subsequently regretted her act and her participation was the result of indoctrination by A-3. She did not play any major role. These are indisputably the mitigating circumstances. Surely in our culture a woman has to be treated with beneficence and kindness. But then in this case the person Dhanu who opted to become a human bomb was a woman. Suba who gave moral support to sacrifice her life on the anvil of some ideology and to end up by annihilating others' lives, was also a woman. About the role of A-1 (Nalini), it is not a case where she was caught up in a sudden situation and became a mute comrade, the mind not towing the body. It was indeed the other way round. Facts strongly suggest that her participation was not the result of helplessness but a well-designed action with her free will to make her part of the contribution to the unholy plan and wicked conspiracy, the facts of this case are uncommon. A crime committed on Indian soil against the popular national leader, a former Prime Minister of India, for a political decision taken by him in his capacity as the head of the executive and which met with the approval of Parliament, by persons running political organisation in a foreign country and their agents in concert with some Indians for the reason that it did not suit their political objectives and of their organisation, cannot but be a "rarest of the rare" case. In such a case the part played by A-1 (Nalini) is a candid participation in the crime of conspiracy to assassinate Shri Rajiv Gandhi who was himself a young and popular leader so much loved and respected by his fellow citizens and had been the Prime Minister of India. The conspirators including A-1 (Nalini) had nothing personal against him but he was targeted for the political decision taken by him as the Prime Minister of India. She in spite of being an Indian citizen joined the gang of conspirators and engaged herself in pursuit of common intention to commit the crime only because she was infatuated by the love and affection developed for A-3 (Murugan), and thus played her part in the execution of the conspiracy which resulted in the assassination of Shri Rajiv Gandhi and death of many police officers and innocent citizens including a small girl. For a person like A-1, taking into consideration all the mitigating circumstances, in my view, there is no room for any leniency, kindness and beneficence. On the facts of this case, once A-1 (Nalini) is found to fall in the rarest of the rare case, declining to confirm the death sentence will, in my view, stultify the course of law and justice. The sentence of imprisonment for life is inadequate and there is no alternative but to confirm the death sentence awarded by the Designated Court to A-1 (Nalini). Therefore, with respect I concur with brother Wadhwa, J. in confirming the death sentence of the first appellant A-1 (Nalini) awarded by the Designated Court. (Paras 719, 720, 723 to 725, 727)

In the result I agree with brother Thomas, J. and set aside the conviction of all the appellants recorded by the Designated Court for offences under the TADA Act and also the conviction of A-4 (Shankar @ Koneswaran), A-5 (D. Vijayanandan @ Hari Ayya), A-6 (Sivaruban @ Suresh @ Suresh Kumar @ Ruban), A-7 (S. Kanagasabapathy @ Radhayya), A-8 (A. Chandralekha @ Athirai @ Sonia @ Gauri), A-11 (J. Shanthi), A-12 (S. Vijayan @ Perumal Vijayan Veedu), A-13 (V. Selvaluxmi), A-14 (S. Bhaskaran @ Velayudam), A-15 (S. Shanmugavadivelu @ Thambi Anna), A-17 (M. Suseendran @ Mahesh), A-19 (S. Irumborai @ Duraisingam), A-20 (S. Bhagyanathan), A-21 (S. Padma), A-22 (A. Sundaram), A-23 (K. Dhanasekaran @ Raju @ K. Prakash), A-24 (N. Rajasuriya @ Rangan), A-25 (T. Vigneswaran @ Vicky), A-26 (J. Ranganath) for the offences under Section 120-B read with Section 302 IPC. Their appeals are accordingly allowed. Agreeing with brother Thomas, J. I confirm the conviction of A-1 (Nalini), A-2 (Santhan) and A-3 (Murugan), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu) finding them guilty of offences under Section 120-B read with Section 302 IPC. On the facts and in the circumstances, I am also of the same view as expressed by brother

Thomas, J. that it is not a fit case to confirm the death sentence awarded to A-9 (Robert Payas), A-10 (Jayakumar) and A-16 (Ravichandran) and their death sentence is commuted to life imprisonment and their appeals are allowed to this extent. The death sentence awarded to A-1 (Nalini), A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) is confirmed — the death sentence of A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) agreeing with Thomas, J. as well as Wadhwa, J. and the death sentence of A-1 (Nalini) agreeing with Wadhwa, J. Their appeals are dismissed and Death Reference is accordingly answered. (Paras 728 to 731). *State* v. *Nalini*, (1999) 5 SCC 253: 1999 SCC (Cri) 691: AIR 1999 SC 2640: 1999 Cri LJ 3124.

Bench Strength 3. Coram: **K.T. Thomas**[1], **D.P. Wadhwa**[2] and **S.S.M. Quadri**[3], JJ. [Date of decision: 11-5-1999]

[3684] — Ss. 354(3) and 361 & 360 — Death sentence — Imposition of — "Special reasons" for — *Relevant factors in relation to which special reasons to be given — Indication of new legislative policy from Ss. 360 and 361 CrPC, namely, one of reformation and rehabilitation of offenders and not mere deterrence — Penology — Penal Code, 1860 — S. 302*

Death sentence is ordinarily ruled out and can only be imposed for "special reasons", as provided in Section 354(3). There is another provision in the Code which also uses the significant expression "special reason". It is Section 361. Section 361 which is a new provision in the Code makes it mandatory for the court to record "special reasons" for not applying the provisions of Section 360. Section 361 thus casts a duty upon the court to apply the provisions of Section 360 wherever it is possible to do so and to state "special reasons" if it does not do so. In the context of Section 360, the "special reasons" contemplated by Section 361 must be such as to compel the court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. (Para 6). *Sushil Murmu* v. *State of Jharkhand*, (2004) 2 SCC 338: 2004 SCC (Cri) 529: AIR 2004 SC 394: 2004 Cri LJ 658.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-12-2003]

[3685] — Ss. 354(3) and 361 & 360 — Death sentence — Imposition of — "Special reasons" for — Relevant factors in relation to which special reasons to be given — *Indication of new legislative policy from Ss. 360 and 361 CrPC, namely, one of reformation and rehabilitation of offenders and not mere deterrence — Penology — Reformation versus deterrence — New trend in legislative policy*

Death sentence is ordinarily ruled out and can only be imposed for "special reasons", as provided in Section 354(3). There is another provision in the Code which also uses the significant expression "special reasons". It is Section 361. Section 361 which is a new provision in the Code makes it mandatory for the court to record "special reasons" for not applying the provisions of Section 360. Section 361 thus casts a duty upon the court to apply the provisions of Section 360 wherever it is possible to do so and to state "special reasons" if it does not do so. In the context of Section 360, the "special reasons" contemplated by Section 361 must be such as to compel the court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. (Para 26)

Section 361 and Section 354(3) have both entered the statute-book at the same time and they are part of the emerging picture of acceptance by the legislature of the new trends in criminology. It would not, therefore, be wrong to assume that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. Criminal justice deals with complex human problems and diverse human beings. A Judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed. (Para 26). *State of Rajasthan* v. *Kheraj Ram*, (2003) 8 SCC 224: 2003 SCC (Cri) 1979.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 22-8-2003]

[3686] — S. 354(3) — Death sentence — Justification for — *Held, under the new CrPC normal punishment for murder is imprisonment for life and death penalty is an exception — Only special facts and circumstances will warrant the passing of the death sentence — A just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised — Historical developments since 1955 traced — CrPC, 1898 — S. 367(5) — CrPC (Amendment) Act, 1955*

Section 302 IPC prescribes death or life imprisonment as the penalty for murder. While doing so, the Code instructs the court as to its application. The changes which the Code has undergone in the last three decades clearly indicate that Parliament is taking note of contemporary criminological thought and movement. It is not difficult to discern that in the Code, there is a definite swing towards life imprisonment. Death sentence is ordinarily ruled out and can only be imposed for "special reasons", as provided in Section 354(3) CrPC. (Para 26)

Before the amendment of Section 367(5) of the old Code of 1898, by the Criminal Procedure Code (Amendment) Act, 1955 (26 of 1955) which came into force on 1-1-1956, on a conviction for an offence punishable with death, if the court sentenced the accused to any punishment other than death, the reason why sentence of death was not passed had to be stated in the judgment. After the amendment it is not correct to hold that the normal penalty of imprisonment for life cannot be awarded in the absence of extenuating circumstances which reduce the gravity of the offence. The matter is left, after the amendment, to the discretion of the court. The court must, however, take into account all the circumstances, and state its reasons for whichever of the two sentences it imposes in its discretion. Therefore, the former rule that the normal punishment for murder is death sentence is no longer operative and it is now within the discretion of the court to pass either of the two sentences prescribed in this section; but whichever of the two sentences he passes, the Judge must give his reasons for imposing a particular sentence. The amendment of Section 367(5) of the old Code does not affect the law regulating punishment under IPC. This amendment relates to procedure and now courts are no longer required to elaborate the reasons for not awarding the death penalty; but they cannot depart from sound judicial considerations preferring the lesser punishment. (Para 27)

Section 354(3) of the new Code marks a significant shift in the legislative policy underlying the old Code as in force immediately before 1-4-1974, according to which both the alternative sentences of death or imprisonment for life provided for murder were normal sentences. Now, under Section 354(3) of the new Code the normal punishment for murder is imprisonment for life and death penalty is an exception. The court is required to state the reasons for the sentence awarded and in the case of death sentence "special reasons" are required to be stated, that is to say, only special facts and circumstances will warrant the passing of the death sentence. A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. (Paras 28 and 31). *State of Rajasthan* v. *Kheraj Ram*, (2003) 8 SCC 224: 2003 SCC (Cri) 1979.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 22-8-2003]

Ediga Anamma v. State of A.P., (1974) 4 SCC 443: 1974 SCC (Cri) 479; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

[3687] — S. 354(3) — When not proper — Factors to be considered — If rarest of rare cases — Court must balance the mitigating and aggravating circumstances of the crime — Mental condition of accused — *Dispute over a small house between two neighbours resulting in murder of seven persons — Murder premeditated and in a well-thought-out manner — Accused under extreme mental disturbance caused by constant harassment of his family members by the deceased party who were rich and influential — Despite repeated written prayer accused not getting protection from authorities concerned — Accused a disciplined member of paramilitary force, aged 23, having no criminal antecedents — Held, in the circumstances of the case, case does not fall within the category of 'rarest of rare' cases*

It is true that the court must respond to the cry of the society and to settle what would be a deterrent punishment for an abominable crime. It is equally true that a large number of criminals go unpunished thereby increasing criminals in the society and law losing its deterrent effect. It is also true that the exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case often results in miscarriage of justice and makes the justice delivery system a suspect; in the ultimate analysis, the society suffers and a criminal gets encouraged. Sometimes it is stated that only rights of the criminals are kept in mind, the victims are forgotten. Despite this it should be kept in mind that while imposing the rarest of rare punishment, i.e., death penalty, the court must balance the mitigating and aggravating circumstances of the crime and it would depend upon particular and peculiar facts and circumstances of each case.

In the present case, from the applications to the authorities concerned it appears that the accused was all throughout feeling that he and his family members were humiliated by the other party who were rich and influential and who were intending to grab the plot/ghar belonging to them. For a period of more than three months the appellant was requesting the authorities to take action so that he and his family members could live in peace. It was his allegation that the SHO of the police station was conniving with the other side and had demanded five thousand rupees as a ransom which their family members were unable to pay, therefore, no action was taken against the other party.

Even though this is a gruesome act on the part of the appellant, yet it is a result of the human mind going astray because of constant harassment of the family members of the appellant. It could be termed as a case of retribution or act of taking revenge. No doubt, it would not be a justifiable act at all, but the accused was feeling morally justifiable on his part. Hence, it would be difficult to term it as the "rarest of the rare" cases. Further, this was not a crime committed because of lust for wealth or women, that is to say, murders were neither for money such as extortion, dacoity or robbery, nor even for lust and rape; it was not an act of anti-social element kidnapping and trafficking in minor girls or of an anti-social element dealing in dangerous drugs which affects the entire moral fibre of the society and kills a number of persons; nor was it a crime committed for power or political ambitions or part of organised criminal activities. It was a crime committed by the accused who had a cause to feel aggrieved by the injustice meted out to his family members at the hands of the family of the other party who according to him were strong enough physically as well as economically and having influence with the authority which was required to protect him and his family. The bitterness increased to a boiling point and because of the agony suffered by him and his family members at the hands of the other party and for not getting protection from the police officers concerned or total inaction despite repeated written prayers goaded or compelled the accused to take the law in his own hands which culminated in the gruesome murders; maybe that his mind got derailed off the track and went astray or beyond control because of extreme mental disturbances caused by the constant harassment and disputes. Further considering the facts and circumstances, it cannot be said that he would be a menace to the society; there is no reason to believe that he cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. He was working in BSF as a disciplined member of the armed forces aged about 23 at the relevant time, having no criminal antecedents.

Therefore, this case cannot be treated as one of the rarest of rare cases where lesser sentence of imprisonment of life would not at all be adequate. *Om Prakash* v. *State of Haryana*, (1999) 3 SCC 19: 1999 SCC (Cri) 334: AIR 1999 SC 1332: 1999 Cri LJ 2044.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 22-2-1999]

State of M.P. v. Shyamsunder Trivedi, (1995) 4 SCC 262, 273: 1995 SCC (Cri) 715; Shankar v. State of T.N., (1994) 4 SCC 478, para 50: 1994 SCC (Cri) 1252; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, relied on

[3688] — S. 354(3) — Sentence — Choice of sentence, death or life imprisonment — Court's discretion — Capital punishment justified only in rarest of rare cases

Section 302 of the Indian Penal Code authorises the court to punish the offender of murder with death or imprisonment for life — the statute therefore has provided a discretion to the court to sentence the offender either with death or with imprisonment for life: obviously, a serious decision and a heavy burden imposed on the court. This discretion conferred, however, shall have to be thus exercised in a manner and in consonance with the concept of law so as to subserve the ends of justice. The award of death sentence though within the ambit of jurisdiction of the courts, does not clothe the courts to exercise the same in a manner indiscriminate. It is only in the rarest of the rare cases that this discretion as regards capital punishment ought to be exercised. Ours is a civilised society — a tooth for a tooth and an eye for an eye ought not to be the criterion; civilisation and the due process of law coupled with social order ought not to permit the courts to be hasty in regard to the award of capital punishment and as a matter of fact the courts ought to be rather slow in that direction. (Para 12). *Jai Kumar* v. *State of M.P.*, (1999) 5 SCC 1: 1999 SCC (Cri) 638: AIR 1999 SC 1860.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *M. Srinivasan* and **U.C. Banerjee**, JJ. [Date of decision: 11-5-1999]

[3689] — S. 354(3) — Death sentence — Special reasons — Factors to be considered for deciding whether death sentence would be proper — *Per Sinha, J although death penalty is not abolished in India, growing demand in international fora for abolition of death sentence should be taken into account — Court should exercise its jurisdiction to award death sentence only in the rarest of the rare case — No fixed criteria or incidences can be laid down for determining the rarest of the rare case — Doctrine of proportionality not applicable — Where conviction is solely based on circumstantial evidence, while imposing death sentence which is unique in its irrevocability, it should be borne in mind that circumstantial evidence cannot be presumed to be full proof of the incidences — Nature of crime is also an important factor which has two pointers viz. was it a case of diabolical murder and was there any planning preceding commission of murder; if answer is in the negative, death sentence would not be warranted — However, character of the criminal is immaterial at the sentencing stage — Fact that accused made a confession accepting at least a part of the offence at the stage of hearing before High Court under S. 235(3) CrPC can be considered as a factor against death sentence — Long custody of accused also to be considered as a mitigating factor — Appellant-accused gained confidence of deceased who had large properties and assets and after deceased started depending on him for looking after her property matters, she brought him in her house where they were married — Deceased executed a will and a power of attorney in favour of accused and opened several bank accounts and lockers in joint names — Accused thereafter murdered her after administering some drugs, put the dead body in wooden box and buried it at the backyard of the house — Held, murder of wife for usurping her properties may be a rare case but it is not a rarest of the rare case — Normally in cases where murder committed of a large number of persons or by more than one person in a brutal and systematic manner, death sentence is upheld — In this case death sentence not warranted, having regard to facts and circumstances of the case — Per Katju, J., despite growing demand in international fora, death sentence in India has not been abolished as indicated in Arts. 72(1)(c) and 72(3) of the Constitution and Court has no power to abolish the same — There is no such absolute rule that where conviction is based on circumstantial evidence, death sentence cannot be awarded — Nor is there any such principle that merely because of long lapse of time between commission of murder and final conviction by court, death sentence cannot be imposed — On facts and circumstances of the case, held, appellant-accused who was in a dominating position or position of trust committed murder of the woman for gains in a cold-blooded, calculated, diabolical, depraved, malevolent and most condemnable manner, taking advantage of the lady's innocence — It fell within first, second and fifth illustrations given in* Machhi Singh *case for "the rarest of the rare" case — Hence death sentence is warranted — Penal Code, 1860 — Ss. 302 and 201 — Constitution of India, Arts. 72(i)(c) and 72(3)*

Per Sinha, J.

Abolition of death penalty is not being and, in fact, cannot be advocated, but what requires serious consideration is as to whether the jurisdiction should not be invoked unless there exists an extraordinary situation to find that it comes within the purview of "the rarest of rare" cases. The approach of the courts should not be to confine its thought process to the identification of a "rare" case. The expression "the rarest of rare" cases demands a meaningful application. (Para 50)

There is a growing demand in the international fora and in particular the second Optional Protocol to the International Covenants on Civil and Political Rights and the Protocol to the American Constitution on Human Rights that death penalty should be abolished. Reference to the decision of other jurisdictions and/or the recent trend in the international fora has not been made by way of precedents or even a persuasive value but the court in this age cannot afford to put down blinkers on its window to the outside world. (Paras 48 and 67)

The doctrine of proportionality which is often referred to in the judicial pronouncements in regard to the sentencing policy required to be judicially adopted should not apply in a case of imposition of capital punishment. Precedent should not be contrary to parliamentary law; far less the decision of a Constitution Bench of the Supreme Court. (Para 81)

However, cases where death penalty is upheld are those where murder was committed of a large number of persons or by more than one person in a brutal or systematic manner. (Para 79)

It has been a fundamental point in numerous studies in the field of death penalty jurisprudence that cases, where the sole basis of conviction is circumstantial evidence, have far greater chances of turning out to be wrongful convictions, later on, in comparison to ones which are based on fitter sources of proof. Convictions based on *seemingly conclusive circumstantial evidence* should not be presumed as foolproof incidences and the fact that the same are based on *circumstantial evidence* must be a definite factor at the sentencing stage deliberations, considering that capital punishment is *unique in its total irrevocability*. Any characteristic of trial, such as conviction solely resting on circumstantial evidence, which contributes to the uncertainty in the *culpability calculus*, must attract negative attention while deciding maximum penalty for murder. However, no universal rule is meant to be laid down. There may be cases and cases where even on circumstantial evidence a death penalty may be imposed. (Paras 87 and 84)

Another aspects which needs to be considered is that sentencing should involve analysis about the nature of crime. In this context, the effect of two pointers relating to the nature of crime should be considered. Firstly, the case does not seem to be an instance of what is called a *diabolical* murder. Second point relates to planning which went into committing the murder. It is agreed that the accused deliberately came close to the beautiful and wealthy lady. He must have had his intentions and calculations in that regard. To that extent intention behind the marriage can be imputed. But to infer from that that the murder was a pre-planned murder will be going a bit too far as he did not know the opportune date when the servants would be leaving the house. Without their leaving the place, the plan, if there was any, could not have been executed. This is one weak link in the hypothesis that the murder was *meticulously planned*. (Paras 92 and 93)

Question is whether this instance can be categorised as a "rarest of rare" murder. The question is whether murder of wife for the purpose of usurping property is a rarest of rare crime statistically. It is not to say that rarest of rare doctrine only has a statistical dimension i.e. incidence of particular type of murder in a given sample; rarest of rare benchmark can also be used in the context of other parameters such as brutality, planning, society's reaction et al. It cannot be conclusively said that murder of wife for usurping property is a particularly *rarest of rare* incident. It could, of course, be a rare incident. (Para 95)

In criminal cases character of the accused is immaterial by the mandate of Sections 53 and 54 of the Evidence Act. The same should not factor in the discussions at the sentencing stage. If that be so, bad character of the accused by itself should not be a determinative factor. (Para 96)

The stage of hearing an accused under Section 235(2) CrPC is after the judgment of conviction is pronounced and not prior thereto. The appellant herein made a confession before the High Court. The High Court took the same into consideration in the main judgment which could not be done. He had been brought before the High Court only for purpose of fulfilling the requirement of Section 235(2). His statement was taken during midst of hearing. He knew the implications thereof. Despite the same, he made a categorical statement that he was responsible for burying the dead body. He gave an explanation, which might not have found favour with the High Court, but the fact that he had made a confession at least accepting a part of the offence could not have been ignored at least for the purpose of imposition of punishment. He is more than 64 years' old. He is in custody for a period of 16 years. The death sentence was awarded to him by the trial court in terms of its judgment dated 20-5-2005. In a situation of this nature, imposition of a life imprisonment for commission of the crime under Section 302 shall serve the ends of justice. (Para 97)

However, while saying so, it is directed that in a case of this nature "life sentence" must be meant to be "life sentence". Such a direction can be given, as would appear from some precedents. (Para 98)

Per Katju, J.

No doubt there has been a growing demand in the international fora that the death penalty should be abolished. However, in India the death penalty cannot be abolished by a judicial verdict as death sentence is contemplated by the Constitution and IPC. Article 72(1)(*c*) of the Constitution specifically mentions that the President of India has the power to grant pardons, reprieves or suspension of any *death sentence*. Similarly Article 72(3) also contemplates the power in the Governor of the State to suspend, remit or commute a *death sentence*. Hence if it is held that the courts have no power to impose a death sentence the Court will really be amending the Constitution by a judicial verdict. Again, if it is held that the courts have no power to impose death sentence merely because the death sentence has been abolished in some foreign countries in Europe or because there is a demand in the international fora that death sentence should be abolished, the Court will be really amending the Constitution by a judicial verdict. Moreover, what has happened in foreign countries cannot be automatically applied to our country where the situation is different. (Para 108)

The Court has no power to amend the Constitution by a judicial verdict. The Constitution can only be amended by Parliament in the manner prescribed by Article 368 of the Constitution. The Supreme Court cannot arrogate to itself the power of Parliament under the Constitution and must maintain self-restraint. No doubt Parliament can abolish the death sentence by deleting it as one of the punishments prescribed in IPC or other statutes, but the

Supreme Court cannot do so. The Court cannot legislate or amend the law. There is broad separation of powers under the Constitution and the Supreme Court must not ordinarily encroach into the legislative or executive domain. (Paras 108 and 109)

There cannot be an absolute principle of law that merely because there has been a long lapse of time from the commission of the offence and the final conviction and sentence by the Supreme Court the death penalty can never be imposed. It all depends on the facts of each case. It is well known that now a days a long interval of time frequently occurs between the commission of the offence and the final conviction by the Supreme Court (because of the delays in the trial, appeals, etc.), and hence if the Court lays down any absolute principle of law that merely because of this long interval death penalty cannot be imposed then in all such cases merely because of lapse of time death penalty cannot be imposed even though the murder was cold-blooded, diabolical and heinous. This again would be amending the Constitution by a judicial verdict. Moreover this would give encouragement to the accused and their lawyers to delay proceedings in court (by unnecessary adjournments, interlocutory applications, etc.) to avoid the death penalty. Therefore, it is not possible to agree with the view that merely because a long lapse of time has occurred between the commission of the offence and the final decision of the Supreme Court death penalty cannot be imposed. (Para 111)

The observations in para 173 of *Aloke Nath Dutta case* that in cases of circumstantial evidence ordinarily the death penalty should not be awarded cannot also be accepted. No such absolute proposition of the law can be laid down. It all depends on the facts of each case. Criminals have been hanged even on the basis of circumstantial evidence. There is no principle of law that only direct evidence is strong and reliable while circumstantial evidence is weak and unreliable. Circumstantial evidence can be as strong and reliable as direct evidence, but the only requirement is that the prosecution must establish beyond reasonable doubt that there is a chain of links which connects the accused with the crime. Both kinds of evidence can be strong in a given situation. (Paras 112 and 125)

A murder diabolically conceived and cruelly executed would justify the imposition of the death penalty on the murderer. (Para 106)

The facts of the present case clearly show the diabolical, cold-blooded, evil mind of the appellant who has acted in a most depraved, malevolent and condemnable manner, taking advantage of a lady's innocence. (Paras 113 and 128)

The accused is cold-blooded, a scallywag and a rascal who had no proper qualification or profession. Such diabolical and cunning rogues are to be found in abundance nowadays. It is the total commercialisation of society which is responsible for this recent phenomenon. People have become greedy and wish to amass wealth by short cuts, even by committing heinous crimes. The appellant had changed his name and had become a "Swamy". The accused pretended to be a very simple and innocent person and this made the deceased start depending on him, particularly for looking after her property matters. The deceased brought the accused to her house in Bangalore where the deceased married him and thereafter he determined to grab all her property after killing her. During this period the deceased is alleged to have executed a will and a general power of attorney in favour of the accused, and a large number of bank accounts in different banks were opened in joint names of the accused and the deceased. The bank lockers were also in the joint names. They started a private firm of which they were the only shareholders. All these facts establish the strong motive of the accused who wanted to grab the property of the deceased. (Paras 130 and 125)

The argument that there was no reason for the appellant to murder the deceased since the deceased had executed a will in his favour is not tenable because it is well settled that a will comes into operation only on the death of the testator. The deceased was only in her forties, and her natural death may have occurred several decades later. The appellant was obviously not willing to wait for so long before he could grab her property and hence he decided to murder her. No doubt no poisonous substance was detected in the skeleton of the deceased and hence the prosecution case that the accused mixed poison in her tea could not be firmly established. However, even if the exact method of murder has not been established by the prosecution, there is no manner of doubt that it was the appellant who murdered the deceased. (Para 129)

The accused is an unmitigated and diabolical rogue who could go to any extent, including murder, to achieve his object of grabbing huge amount of property of the deceased. He was in a dominating position over the deceased who had become dependent on him, and he took full advantage of this situation. He had motive and opportunity for committing this ghastly crime. (Para 130)

In *Machhi Singh* v. *State of Punjab* (vide paras 33 to 37) a three-Judge Bench of the Supreme Court gave certain illustrations of murders which fall within the category of "the rarest of rare cases" and hence deserve death penalty: (SCC pp. 488-89). The first, second and fifth illustrations were as follows:

(*i*) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.

(*ii*) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course of betrayal of the motherland.

(*v*) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-à-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

The facts of the present case clearly fall within the principle of the first, second and fifth category mentioned above and thus this case falls within the category of the rarest of rare cases. It is a case of a pre-planned and cold-blooded murder diabolically conceived and cruelly executed. (Para 110)

As this case clearly comes within the category of the rarest of rare cases, there will be gross travesty of justice if the death sentence is not affirmed. (Paras 131 and 132). *Swamy Shraddananda* v. *State of Karnataka*, (2007) 12 SCC 288: (2008) 2 SCC (Cri) 322: AIR 2007 SC 2531.

Bench Strength 2. Coram: **S.B. Sinha**[1] and *Markandey Katju*[2], JJ. [Date of decision: 18-5-2007]

Bachan Singh v. State of Punjab, (1982) 3 SCC 24: 1982 SCC (Cri) 535; Queen v. Julie McGinley and Michael Monaghan, 2003 NICC 1; Ram Singh v. Sonia, (2007) 3 SCC 1: (2007) 2 SCC (Cri) 1; Acharaparambath Pradeepan v. State of Kerala, (2006) 13 SCC 643; Bishnu Prasad Sinha v. State of Assam, (2007) 11 SCC 467; Amrit Singh v. State of Punjab, (2006) 12 SCC 79: (2007) 2 SCC (Cri) 397: 2006; Sahdeo v. State of U.P., (2004) 10 SCC 682: 2004 SCC (Cri) 1873; Raju v. State of Haryana, (2001) 9 SCC 50: 2002 SCC (Cri) 408; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580 ; Simon v. State of Karnataka, (2004) 2 SCC 694: 2004 SCC (Cri) 646; Kashmir Singh v. State of H.P., 1990 Supp SCC 133: 1990 SCC (Cri) 535; Subash Chander v. Krishan Lal, (2001) 4 SCC 458: 2001 SCC (Cri) 735; Anup Singh v. State of Bihar, (2002) 6 SCC 686: 2002 SCC (Cri) 1466; Prakash Dhawal Khairnar (Patil) v. State of Maharashtra, (2002) 2 SCC 35: 2002 SCC (Cri) 281; Shri Bhagwan v. State of Rajasthan, (2001) 6 SCC 296: 2001 SCC (Cri) 1095; Mohd. Munna v. Union of India, (2005) 7 SCC 417: 2005 SCC (Cri) 1688; Indian Drugs & Pharmaceuticals Ltd. v. Workmen, (2007) 1 SCC 408: (2007) 1 SCC (L&S) 270; Holiram Bordoloi v. State of Assam, (2005) 3 SCC 793: 2005 SCC (Cri) 915, relied on

Aloke Nath Dutta v. State of W.B., (2007) 12 SCC 230, dissented from

Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, applied

[**Ed.**: In view of the difference of opinion on award of death sentence, matter referred to larger Bench.]

[3690] — S. 354(3) — Death penalty or life imprisonment — Difference between the nature of, pointed out — Objects which incarceration serves, restated. *Santosh Kumar Satishbhushan Bariyar* v. *State of Maharashtra*, (2009) 6 SCC 498.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

[3691] — Ss. 354(3) and 235(2) — Death penalty or life imprisonment — *Rarest of rare doctrine enunciated by Constitution Bench in* Bachan Singh case, *(1980) 2 SCC 684 — Courts bound by held, trial Court, High Court and even Supreme Court are duty bound to follow it. Santosh Kumar Satishbhushan Bariyar* v. *State of Maharashtra*, (2009) 6 SCC 498.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

[3692] — Ss. 354(3) and 235(2) — Death penalty or life imprisonment — Global trend — Global move away from death penalty noticed — Number of countries abolishing or not enforcing and number of those retaining death penalty mentioned

One has to observe the global move away from the death penalty. Latest statistics show that 138 nations have now abolished the death penalty in either law or practice (no executions for 10 years). (Para 111)

Further, on 18-12-2007, the UN General Assembly adopted Resolution 62/149 calling upon countries that retain the death penalty to establish a worldwide moratorium on executions with a view to abolishing the death penalty. India is, however, one of the 59 nations that retain the death penalty. (Para 112). *Santosh Kumar Satishbhushan Bariyar* v. *State of Maharashtra*, (2009) 6 SCC 498.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

[3693] — Ss. 354(3) and 235(2) — Sentencing — Death penalty or life imprisonment — Prosecution case based exclusively on the basis of evidence of approver — Accused contradicting the prosecution — Manner of application of prudence doctrine in such a case at the stage of sentencing — *At sentencing stage, court although cannot evaluate the evidence and has to depend on the findings arrived at for recording judgment of conviction, held, it has to keep in view the evidence brought on record on behalf of the accused for imposition of a lesser punishment. Santosh Kumar Satishbhushan Bariyar* v. *State of Maharashtra*, (2009) 6 SCC 498.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Reyes v. R., (2002) 2 AC 235: (2002) 2 WLR 1034: 2002 UKPC 11: 12 BHRC 219 (PC); Swamy Shraddananda (1) v. State of Karnataka, (2007) 12 SCC 288: (2008) 2 SCC (Cri) 322; Kennedy v. Louisiana, 128 S Ct 2641, relied on

Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358; Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767, considered

Mohan v. State of T.N., (1998) 5 SCC 336: 1998 SCC (Cri) 1308, distinguished

Ravindra Trimbak Chouthmal v. State of Maharashtra, (1996) 4 SCC 148: 1996 SCC (Cri) 608, followed

Law Commission Report of 1967, cited

Roger Hood: The Death Penalty: A Worldwide Perspective, Oxford, Clarendon Press, 3rd Edn., 2002, p. 230, referred to

[3694] — Ss. 354(3) and 235(2) — Sentencing — Punishment for murder — Death penalty or life imprisonment — Value of precedents in determining — *Constitution Bench view in* Bachan Singh case, *(1980) 2 SCC 684 — Held, while barring one-time enunciation of minute guidelines through judicial verdict,* Bachan Singh *did not bar organic evolution of set of principles on sentencing through judicial pronouncements*

Principled application of the *rarest of rare* dictum does not come in the way of individualised sentencing. With necessary room for sentencing, consistency has to be achieved in the manner in which the *rarest of rare* dictum has to be applied by courts. *Bachan Singh* expressly barred one-time enunciation of minute guidelines through a judicial verdict. But at the same time, it actively relied on judicial precedent in disciplining sentencing discretion to repel the argument of arbitrariness and Article 14 challenge. An embargo on introduction of judicial guidelines was put therein but organic evolution of set of principles on sentencing through judicial pronouncements was not ruled out. Sentencing discretion is also a kind of discretion and it shall be exercised judicially in the light of the precedents. (Paras 90 to 92)

The *Bachan Singh* threshold of "the *rarest of rare* cases" has been most variedly and inconsistently applied by the various High Courts as also the Supreme Court. This extremely uneven application of *Bachan Singh* has given rise to a state of uncertainty in capital sentencing law which clearly falls foul of constitutional due process and equality principle. The situation is unviable as legal discretion which is conferred on the executive or the judiciary is only sustainable in law if there is any indication, either through law or precedent, as to the scope of the discretion and the manner of its exercise. There should also be sufficient clarity having regard to the legitimate aim of the measure in question. The Constitution provides for safeguards to give the individual adequate protection against arbitrary imposition of criminal punishment. (Paras 104, 109 and 110). *Santosh Kumar Satishbhushan Bariyar* v. *State of Maharashtra*, (2009) 6 SCC 498.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, explained and reiterated

Jagmohan Singh v. State of U.P., (1973) 1 SCC 20: 1973 SCC (Cri) 169, relied on

Ram Singh v. Sonia, (2007) 3 SCC 1: (2007) 2 SCC (Cri) 1; Prajeet Kumar Singh v. State of Bihar, (2008) 4 SCC 434: (2008) 2 SCC (Cri) 416; Mohan Anna Chavan v. State of Maharashtra, (2008) 7 SCC 561: (2008) 3 SCC (Cri) 193; Bantu v. State of U.P., (2008) 11 SCC 113: (2009) 1 SCC (Cri) 353; Shivaji v. State of Maharashtra, (2008) 15 SCC 269; State of U.P. v. Sattan, (2009) 4 SCC 736; Ujjagar Singh v. State of Punjab, (2007) 13 SCC 90: (2009) 1 SCC (Cri) 272; Amrit Singh v. State of Punjab, (2006) 12 SCC 79: (2007) 2 SCC (Cri) 397; Bishnu Prasad Sinha v. State of Assam, (2007) 11 SCC 467: (2008) 1 SCC (Cri) 766: (2007) 2 Scale 42; State of Maharashtra v. Prakash Sakha Vasave, (2009) 11 SCC 193: (2009) 1 Scale 713; Aloke Nath Dutta v. State of W.B., (2007) 12 SCC 230: (2008) 2 SCC (Cri) 264; Swamy Shraddananda (1) v. State of Karnataka, (2007) 12 SCC 288: (2008) 2 SCC (Cri) 322; Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767, referred to

Journal of the Indian Law Institute, 1979; Lethal Lottery: The Death Penalty in India, A Study of Supreme Court Judgments in Death Penalty Cases, 1950-2006, compiled jointly by Amnesty International India and People's Union for Civil Liberties, referred to

[**Ed.**: It would seem that the observation requiring that "legal discretion" conferred on the *judiciary* is "only sustainable in law if there is any indication, either through law or precedent, as to the scope of the discretion and the manner of its exercise", has been made only in the context of specific conferral of discretion by a statute, and would be limited to such a context. This observation if interpreted more broadly it would seem would run afoul of the doctrine of separation of powers and independence of the judiciary, both of which are parts of the basic structure of the Constitution. Moreover, the said observation if interpreted broadly would also not be consistent with the powers conferred on the Supreme Court and High Courts under Arts. 32, 136, 142 and 226, quite apart from their inherent powers as Courts of Record.]

[3695] — S. 354(3) — Review of death sentence — Per Thomas J., (Quadri, J., contra) when one of the Judges comprising a three-Judge Bench of the Court does not award death sentence to a convict and instead awards sentence of life imprisonment, it should not be treated as a rarest of the rare cases and it should be a proper ground to review the sentence of death awarded by the majority Judges — *Constitution of India, Arts. 137 and 21 — Penal Code, 1860 — S. 302 — Supreme Court Rules, 1966, Or. 40 R. 1*

Per Thomas, J.

It would be a sound proposition to make a precedent that when one of the three Judges constituting the Bench refrains from awarding death penalty to an accused on stated reasons in preference to the sentence of life imprisonment that fact can be regarded sufficient to treat the case as not falling within the narrowed ambit of "rarest of rare cases when the alternative option is unquestionably foreclosed" and where a Bench of three Judges delivered judgment in which the opinion of at least one Judge is in favour of preferring imprisonment for life to death penalty as for any particular accused. It would be a proper premise for the Bench to review the order of sentence of death in respect of that accused. Such an approach is consistent with Article 21 of the Constitution as it helps saving a human life from the gallows and at the same time putting the guilty accused behind the bars for life. (Para 18)

However, the reasoning is not to be understood as a suggestion that a minority opinion in the judgment can supersede the majority view therein. In the realm of making a choice between life imprisonment and death penalty the above consideration is germane when the scope for awarding death penalty has now shrunk to the narrowest circle and that too only when the alternative option is "unquestionably foreclosed". In a special situation where one of the three deciding Judges held the view that sentence of life imprisonment is sufficient to meet the ends of justice it is a very relevant consideration for the court to finally pronounce that the prisoner can be saved from death as the lesser option is not "unquestionably foreclosed" in respect of that prisoner. (Para 19)

Per Quadri, J. (dissenting)

By the process of interpretation Rule 1 of Or. XL cannot be stretched to embrace the premise indicated by my learned brother as a ground for review. That apart there are two difficulties in the way. The first is that the acceptance of the said proposition would result in equating the opinion of the majority to a ground analogous to "an error apparent on the face of the record" and secondly in a Bench of three Judges or of greater strength if a learned Judge is not inclined to confirm the death sentence imposed on a convict, the majority will be precluded from confirming the death sentence as that per se would become open to review. (Para 22). *Suthendraraja* v. *State*, (1999) 9 SCC 323: 2000 SCC (C ri) 463: AIR 1999 SC 3700.

Bench Strength 3. Coram: **K.T. Thomas**[2], **D.P. Wadhwa**[1] and **S.S.M. Quadri**[3], JJ. [Date of decision: 8-10-1999]

[3696] — S. 354(3) — Constitutionality of the discretionary power in courts to award death sentence or life imprisonment — Criteria and considerations for the award of death sentence — *Regard to latest trends world over in this area — Effect of changes made by new S. 354(3), Criminal Procedure Code, 1973 and the earlier change in S. 367, Criminal Procedure Code, 1898 — The "special reasons" necessary for award of death sentence in the light of fundamental rights in Arts. 14, 19 and 21 — Exceptional situations where death sentence may still be justified, pointed out — Procedure for awarding sentence in accordance with S. 235(2), Criminal Procedure Code, 1973 elaborated upon — Stress on the criminal and not his crimes — Fact that the appellants were not a public menace but were activated by overpowering feelings against the victims only, held, relevant — Number of deaths caused, in the totality of facts, held, not decisive — Constitution of India — Article 136 — Penal Code, 1860 — S. 302. Rajendra Prasad* v. *State of U.P.*, (1979) 3 SCC 646: 1979 SCC (Cri) 749: AIR 1979 SC 916: 1979 Cri LJ 792.

Bench Strength 3. Coram: **V.R. Krishna Iyer**[1], *D.A. Desai*[1] and **A.P. Sen**[2], JJ. [Date of decision: 9-2-1979]

See also (1979) 3 SCC 714: 1979 SCC (Cri) 817; (1979) 3 SCC 727: 1979 SCC (Cri) 830 and (1979) 3 SCC 745: 1979 SCC (Cri) 848

See comment at (1980) 2 SCC 684, 749

[3697] — S. 354(3) — Circumstantial evidence — Circumstances establishing guilt of the accused — Kidnapping and murder of three persons — *Direct evidence establishing kidnapping of the victims by the two appellants and six others — Evidence further establishing that while kidnapping the accused were armed with deadly weapons and both the appellants had given threats to the witnesses — Absence of direct evidence of murder — Medical evidence showing that death of the victims took place shortly after their kidnapping leading to an inference that the kidnappers killed them — But in absence of any evidence to show that any of the appellants had himself killed any of the victims they are liable to be convicted under Ss. 302/34 and not S. 302 simpliciter — However in view of absence of any evidence as regards motive and as regards the accused who actually caused their deaths and the manner and circumstances in which they were caused death sentence could not be imposed — Circumstantial Evidence, Ss. 302/34 and 364. Gurnam Singh* v. *State of Punjab*, (1998) 7 SCC 722: AIR 1998 SC 2673: 1998 Cri LJ 4024.

Bench Strength 2. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 28-7-1998]

[3698] — **S. 354(3) — Alteration of death sentence to imprisonment for life — Relevant factor — Long lapse of time — Murder case** — *Incident took place in 1991 (about 13 years ago) — Held, since there was a long lapse of time, sentence of death imposed upon accused by Sessions Court was not justified in the circumstances — Hence, altered to imprisonment for life — Penal Code, 1860 — S. 302* (Para 39). *State of M.P.* v. *Paltan Mallah*, (2005) 3 SCC 169: 2005 SCC (Cri) 674: AIR 2005 SC 733: 2005 Cri LJ 918.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 20-1-2005]

[3699] — **S. 354(3) — Award of death sentence to appellant — Held on facts justified — Cold-blooded murder case — Presence of several aggravating circumstances — No mitigating circumstance** — *Offence committed in pre-planned manner in broad daylight — Two victims (including a boy, aged six years) burnt to death by locking the house from outside — Third victim cut into pieces — Offence committed in most barbaric manner to deter others from challenging the supremacy of the appellant in the village — Absence of any strong motive — Victims did not provoke or contribute to the incident — Appellant was leading the gang — He had no repentance for the ghastly act he committed — The entire incident shocked the collective conscience of the community — Held, there was no mitigating circumstance to refrain from imposing death penalty — Hence, death sentence upheld — Penal Code, 1860 — S. 302 r/w S. 149*

On the date of the incident in question, the deceased *N* was present at his house along with his wife, three children and brother PW 2. The appellant and the other accused persons, who were armed with "lathi", "dao", "jathi", "jong" and various other weapons, came to the house of *N* and started pelting stones on the bamboo wall of the said house. Thereafter, they closed the door from outside and set the house on fire. PW 2, *ND* (son of *N*), *C* (daughter of *N*) and PW 1 (wife of *N*) managed to come out from the house. But, when *NY*, the other son of *N*, came out from the house, the appellant and another accused caught hold of him and threw him into the fire again. *N* and *NY* were completely burnt and died on the spot. Thereafter *NG*, the elder brother of *N* who was staying in another house at some distance from the house of *N*, was caught and dragged to the courtyard of the appellant, where the appellant cut him into pieces.

During trial, *N's wife (PW 1), his brother (PW 2), daughter C* and son *ND* were examined as prosecution witnesses. Another important witness examined was PW 5 (wife of *NG*). The trial court convicted the appellant and awarded capital punishment. The High Court confirmed the findings of the trial court. Hence, the present appeal by the accused.

The Supreme Court had to determine the propriety of conviction and sentence imposed on the appellant by the courts below.

Dismissing the appeal,

Held :

On question relating to imposition of capital punishment

In the present case the aggravating circumstances against the accused are that: (*a*) this is a case of cold-blooded murder; (*b*) the accused was leading the gang; (*c*) the victims did not provoke or contribute to the incident; (*d*) two victims were burnt to death by locking the house from outside; (*e*) one of the victims was a young boy, aged about 6 years, who, somehow, managed to come out of the burning house, but he was mercilessly thrown back into the fire by the appellant; (*f*) the appellant dragged *NG* to his house and then cut him into pieces in broad daylight in the presence of bystanders; (*g*) the entire incident took place in broad daylight and the crime was committed in the most barbaric manner to deter others from challenging the supremacy of the appellant in the village; (*h*) the entire incident was pre-planned by the accused-appellant. (Para 15)

In the case on hand, there is nothing to show that there was repentance by the accused at any point of time or an explanation for the occurrence. Even when questioned under Section 235(2) CrPC, the accused stated that he had nothing to say on the point of sentence. The fact that the appellant remained silent would show that he has no repentance for the ghastly act he committed. The appellant was in service and he should have been a model to the society as very few people from his community get opportunity to work in government service. But the appellant, instead of setting an example to others, organised a gang and instigated them to join his heinous activities. There was no spark of any kindness or compassion and his mind was brutal and the entire incident would have certainly shocked the collective conscience of the community. There is no mitigating circumstance to refrain from imposing the death penalty on the appellant. (Para 18). *Holiram Bordoloi* v. *State of Assam*, (2005) 3 SCC 793: AIR 2005 SC 2059: 2005 Cri LJ 2174.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 8-4-2005]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, relied on

Ashok Kumar Pandey v. State of Delhi, (2002) 4 SCC 76: 2002 SCC (Cri) 728; Ram Pal v. State of U.P., (2003) 7 SCC 141: 2003 SCC (Cri) 1595; Ram Anup Singh v. State of Bihar, (2002) 6 SCC 686: 2002 SCC (Cri) 1466, considered and distinguished on facts

[3700] — S. 354(3) — Dowry death — Sentence — Held, dowry death does not fall within the category of "rarest of rare" cases — Case of a murder most foul — *Head of the deceased severed and her body cut into nine pieces for causing disappearance of the evidence relating to her murder — Sentence of death commuted to RI for life imprisonment — But in view of loathsome, revolting and dreaded device to cause disappearance of dead body maximum sentence of 7 years' RI for offence under Ss. 201/34 maintained and directed to run consecutively, and not concurrently, after the sentence of life imprisonment had run its course — Penal Code, 1860 — Ss. 304-B/34, 302/120-B, 201/34, 498-A/34 and 316*

The present case cannot be placed in that category which could be regarded as the "rarest of the rare" type. This is so because dowry death has ceased to belong to *that* species of killing. The increasing number of dowry deaths would bear this.

But it is a fit case where, for the offence under Sections 201/34, the sentence awarded, which is RI for seven years being the maximum for a case of the present type, should be sustained, in view of what had been done to cause disappearance of the evidence relating to the commission of murder — the atrocious way in which the head was severed and the body was cut into nine pieces. These cry for maximum sentence under Sections 201/34. Not only this, the sentence has to run consecutively, and not concurrently. To show the courts strong disapproval of the loathsome, revolting and dreaded device adopted to cause disappearance of the dead body. *Ravindra Trimbak Chouthmal* v. *State of Maharashtra*, (1996) 4 SCC 148.

Bench Strength 2. Coram: *G.N. Ray* and **B.L. Hansaria**, JJ. [Date of decision: 23-2-1996]

[3701] — S. 354(3) — Rape and murder — Sentence — Death sentence justified — Rarest of rare cases — *Jail officer sending to his quarter a guard and a prisoner to work in the house and in the garden attached thereto, respectively — 16-year-old daughter of the said officer was at that time alone in the quarter and was preparing for her Class 10th examination — Taking advantage of her loneliness, both the guard and the prisoner committing rape on her, strangulating and then stabbing her, removing her cycle and throwing her dead body in septic tank — In such circumstances sentence of death, held, was the only proper punishment — Penal Code, 1860 — Ss. 376(2)(g), 302/34 and 201* (Para 36). *Molai* v. *State of M.P.*, (1999) 9 SCC 581: AIR 2000 SC 177.

Bench Strength 3. Coram: **S.P. Kurdukar**, *K.T. Thomas* and *N. Santosh Hegde*, JJ. [Date of decision: 26-10-1999]

State of M.P. v. Molai, 1999 Cri LJ 2698 (MP), affirmed

[3702] — S. 354(3) — Dacoity with murder — Death sentence — When not justified — *Trial court holding the appellant individually responsible for the death of only one of the two deceased persons — High Court wrongly proceeding on the basis that the trial court held the appellant individually responsible for killing two innocent persons — Judgment of the High Court to that extent vitiated — Finding of the trial court that the appellant was leader of the dacoits not supported by evidence on record — Held, in the circumstances of the case, courts below not justified in differentiating the case of the appellant from that of other accused — Death sentence reduced to imprisonment for life — Penal Code, 1860 — Ss. 396 and 302* (Para 5). *Jagdish Yadav* v. *State of Bihar*, (1999) 9 SCC 99: 1999 SCC (Cri) 464.

Bench Strength 2. Coram: **G.T. Nanavati** and *N. Santosh Hegde*, JJ. [Date of decision: 27-1-1999]

[3703] — S. 354(3) — Death sentence — If justified on facts — Gruesome murder — *Deliberately planned and meticulously executed — Accused killing his two innocent children, wife and brother-in-law when they were sleeping at night — He acted in most cruel and inhuman manner — There was no remorse for such gruesome act — On the contrary, he was satisfied with what he had done — On facts, death sentence imposed by the trial court, held, was justified*

The factual matrix as described by the prosecution and established by the evidence on record shows the cruel and diabolic manner in which the killings were conceived and executed. The accused did not act on any spur-of-the-moment provocation. It was deliberately planned and meticulously executed. There was not even any remorse for such gruesome act. On the contrary, after the killings the accused tried to divert attention and used PW 9 as the cat's paw. He went on taking diversive tactics to suit his purpose. The calmness with which he smoked "*chilam*" was an indication of the fact that the gruesome act did not even arouse any human touch in him. On the contrary, he was satisfied with what he had done. In a given case, a person having seen a ghastly crime may act in a different way. That itself in another case may not constitute a suspicious circumstance. But when the entire chain of events and circumstances are comprehended, the inevitable conclusion is that the accused acted in the most cruel and inhuman manner and the murder was committed in an extremely brutal, grotesque, diabolical, revolting and dastardly manner. The victims were two innocent children and a helpless woman. Taking note of these factors, the death sentence imposed by the trial court is most appropriate. (Para 39). *State of Rajasthan* v. *Kheraj Ram*, (2003) 8 SCC 224: 2003 SCC (Cri) 1979.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 22-8-2003]

Ediga Anamma v. State of A.P., (1974) 4 SCC 443: 1974 SCC (Cri) 479; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

[3704] — S. 354(3) — Death sentence — When not justified — Mitigating factors — *Murder of four Army Officers by two appellants — Delay of more than 3 1/2 years in disposal of appellants' petition under S. 164(1) & (2) of the Army Act — Appellants committing the murders under threat, command and influence of their superiors who instigated the appellants to commit the murders by exploiting their religious feelings — Abettor, who masterminded two of the murders awarded only life imprisonment — Post-murder repentance of the appellants — Held, notwithstanding the fact that two of the murders were diabolically planned and committed in cold blood the appellants do not deserve the extreme penalty of death — Army Act, 1950 — S. 69*

In the instant case the appellants committed 4 murders. Two of them were diabolically planned and committed in cold blood but the appellants did not commit those two murders on their own volition prompted by any motive or greed much less, evincing total depravity and meanness. Indeed, the main accused, who was Major in the Army, along with other officers of the Unit of the appellants instigated and compelled them to commit the above two murders by exploiting their religious feelings. Initially the appellants declined to take any step towards the commission of the offences but ultimately they succumbed to the "threat, command and influence" of their superiors.

Another mitigating factor which calls for commutation of sentence is that the said Major who along with another officer masterminded the two murders were awarded life imprisonment whereas the appellants who carried out their orders have been sentenced to death. In a case of the present nature which relates to a disciplined force as the Army, the offence committed by the officers who conceived the plan, was more heinous than that of the appellants who executed the plan as per their orders and directions. It is of course true that those orders being not lawful the appellants, even as disciplined soldiers, were not bound to comply with the same nor their carrying out such order minimised the offences but certainly this is a factor which cannot be ignored while deciding the question of sentence. Another factor which persuades to commute the sentence is the post-murder repentance of the appellants who not only surrendered before the authorities within two days but also spoke out the truth in their confessional statements. In fact, but for their confessional statements the officers, who were the masterminds, could not have been brought to book. *R.S. Budhwar* v. *Union of India*, (1996) 9 SCC 502: 1996 SCC (Cri) 1072: AIR 1996 SC 2000.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 8-5-1996]

[3705] — S. 354(3) — Death sentence — Special reasons, held, should be recorded by the court in case of capital punishment — *No rigid formula or standards can be fixed and only a broad guideline consistent with the legislative policy indicated in S. 354(3) CrPC, held, alone should be considered for invoking the extreme penalty of death sentence — Aggravating circumstances vis-à-vis mitigating circumstances — Consideration of, to determine if on facts death sentence imposed on appellants was justified — Appellants along with others causing death of fifteen persons (which included a seven-year-old child and three others at the threshold of their lives), besides causing grievous injuries to eight others — The acts of murder committed by the appellants were so gruesome, merciless and brutal that the aggravating circumstances outweighed the mitigating circumstances — Further, the death sentence of other two accused involved in the said incident, already confirmed by the Supreme Court — Hence, death sentence of appellants, held, not liable to be interfered with — Penal Code, 1860 — Ss. 302/149*

The appellants, who were awarded death sentence by the courts below, contended before the Supreme Court that there were many mitigating circumstances to award lesser sentence which the Sessions Court and the High Court had not taken into consideration. It was contended that the appellants were young at the time of the commission of the crime and no motive whatsoever was proved against them. It was further contended that the appellants followed the dictate of their father, who, in all possibility, must have instigated them. The appellants submitted that they had no criminal antecedents and there was nothing on record to show that they would be a menace to the society or that they were beyond the pale of any reformation.

Confirming the death sentence

Held :

As per Section 354(3) CrPC, in every case where the court finds that the capital punishment is the inevitable consequence, the court should give special reasons. (Para 16)

Further, no rigid formula or standards can be fixed and only a broad guideline consistent with the legislative policy indicated by the legislature in Section 354(3) CrPC alone shall be considered for invoking the extreme penalty of death sentence. (Para 19)

The aggravating circumstances of the case are that the appellants, having known that on the next day a marriage was to take place in the house of the complainant and there would be lots of relatives present in her house, came there on the evening of 21-11-1991 when a feast was going on and started firing on the innocent persons. Thirteen persons were killed on the spot and eight others were seriously injured. The appellants thereafter went to another place and killed the father and brother of PW 15. Out of the thirteen persons, one of them was a seven-year-old child, three others were at the threshold of their lives. The post-mortem reports show that their ages ranged between 15 and 17 years. They had also their right to live in this world peaceably and these appellants had no grievance or enmity against any one of them. (Para 29)

It is true that it cannot be said that the appellants would be a menace to the society or not as "we live as creatures saddled with an imperfect ability to predict the future". Nevertheless, the law prescribes for future, based upon its knowledge of the past and is being forced to deal with tomorrow's problems with yesterday's tools. The entire incident is extremely revolting and shocks the collective conscience of the community. The acts of murder committed by the appellants are so gruesome, merciless and brutal that the aggravating circumstances far outweigh the mitigating circumstances. Moreover, the two accused who were earlier tried are already sentenced to death and their SLP was finally disposed of by the Supreme Court. (Para 29)

Thus, having regard to the facts of the case, the death sentence of the appellants is confirmed. (Para 30). *Gurdev Singh* v. *State of Punjab*, (2003) 7 SCC 258: 2003 SCC (Cri) 1616 AIR 2003 SC 4187: 2003 Cri LJ 3764.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 1-8-2003]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Allauddin Mian v. State of Bihar, (1989) 3 SCC 5: 1989 SCC (Cri) 490; Janki Dass v. State (Delhi Admn.), 1994 Supp (3) SCC 143: 1994 SCC (Cri) 1673; Sk. Ishaque v. State of Bihar, (1995) 3 SCC 392: 1995 SCC (Cri) 534; A Devendran v. State of T.N., (1997) 11 SCC 720: 1998 SCC (Cri) 220; Kumudi Lal v. State of U.P., (1999) 4 SCC 108: 1999 SCC (Cri) 491; Om Prakash v. State of Haryana, (1999) 3 SCC 19: 1999 SCC (Cri) 334; Mohd. Chaman v. State (NCT of Delhi), (2001) 2 SCC 28: 2001 SCC (Cri) 278; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Lehna v. State of Haryana, (2002) 3 SCC 76: 2002 SCC (Cri) 526, relied on

[3706] — S. 354(3) — Death sentence — Mitigating circumstances — *Offence committed under influence of extreme mental or emotional disturbance — Indiscriminate firing by accused party resulting in death of 10 persons — Case arising out of acute factionalism — Tension created by provocative acts of complainant party — Death of one person of accused party by police firing but accused party showing self-restraint and not attacking the police party — In the facts and circumstances of the case death sentence not called for — Large number of deaths on one side cannot ipso facto bring the case into the category of "rarest of rare cases" — Fact that one of the accused was Pradhan and in a commanding position does not aggravate his case — Penal Code, 1860 — S. 302* (Paras 29 to 40). *Shamshul Kanwar* v. *State of U.P.*, (1995) 4 SCC 430: 1995 SCC (Cri) 753: AIR 1995 SC 1748.

Bench Strength **2**. Coram: *M.M. Punchhi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 4-5-1995]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Allauddin Mian v. State of Bihar, (1989) 3 SCC 5: 1989 SCC (Cri) 490; Francis v. State of Kerala, (1975) 3 SCC 825: 1975 SCC (Cri) 244: AIR 1974 SC 2281; Bhoor Singh v. State of Punjab, (1974) 4 SCC 754: 1974 SCC (Cri) 664: AIR 1974 SC 1256, relied on

[3707] — S. 354(3) — Death sentence — When not justified — Mitigating factors — *Murder of brother, his two children and their friend — Offence committed under the influence of extreme mental and emotional disturbance and reasonable apprehension that his brother and his brother's wife wanted to kill him — Innocents also killed but murders neither cold-blooded nor for any personal gain — Absence of direct evidence connecting the accused with murder of his brother and his friend — Held, in circumstances, not safe to award death sentence*

It is true that the accused attacked the members of family of his brother but in awarding death sentence the court has to take into consideration the mental condition of the accused. The brother of the accused had been harassing the accused in respect of the opening of the shop and had been making undue demands and even raised a dispute regarding supply of electricity. The accused had an apprehension that his brother and wife wanted to do away with him so that he may not be an obstacle. This is one of the important circumstances which should be given weight in determination of sentence. On the facts and circumstances of this case it cannot be said that the accused would be a menace to the society if allowed to live. It is not a case where he committed these murders merely for personal gain but on the other hand committed the same under the influence of extreme mental and emotional disturbance and also having a reasonable apprehension that his life was in danger. No doubt, two innocent kids also received injuries in the occurrence but when once there is material to show that the accused acted in a highly disturbed mental condition, the murders cannot be said to be cold-blooded. The accused seemed to have acted in a frenzied manner in such a disturbed mental condition. Further, there is no direct evidence connecting the accused with the murders of his brother and his friend. Under these circumstances it would not be safe to award death sentence and therefore, sentence of death reduced to imprisonment for life. *Balraj* v. *State of U.P.*, (1994) 4 SCC 29: 1994 SCC (Cri) 823: AIR 1995 SC 1935.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *Dr. A.S. Anand*, JJ. [Date of decision: 12-4-1994]

[3708] — S. 354(3) — Death sentence — Mitigating factors — *Murder of beloved's mother committed by inflicting knife blows on the spur of the moment thinking her as an obstructor — Death sentence awarded by trial court reduced to sentence of life imprisonment by High Court — In the circumstances held, death sentence not called for — Penal Code, 1860 — S. 302. R.N. Aggarwal* v. *Dharam Pal*, 1989 Supp (1) SCC 386: 1989 SCC (Cri) 451.

Bench Strength 2. Coram: *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision: 11-8-1988]

[3709] — S. 354(3) — Death sentence — When not called for — Double murder by successively stabbing on chest by knife — *Death sentence confirmed by High Court under S. 354(3), CrPC on the special reason that it was a cold-blooded brutal murder — Held, the act does not fall within 'rarest of the rare' category even though it was a crime against society and shocked the judicial conscience — Hence sentence of death commuted to that of life imprisonment — Bachan Singh decision laid down a sentencing pattern which failed to take due account of gravity of offence. Amrik Singh* v. *State of Punjab*, 1988 Supp SCC 685: 1989 SCC (Cri) 41.

Bench Strength 2. Coram: *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision: 18-1-1988]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, commented upon but followed

Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

Earabhadrappa v. State of Karnataka, (1983) 2 SCC 330: 1983 SCC (Cri) 447, affirmed

[3710] — S. 354(3) — Final disposal of appeal by Supreme Court twenty-one months after award of death sentence by trial court — Also consideration for S. 354(3), CrPC, 1973 making life imprisonment the rule and capital sentence an exception — *Death sentence commuted to one of life imprisonment. Hardayal* v. *State of U.P.*, (1976) 2 SCC 812: 1976 SCC (Cri) 317: AIR 1976 SC 2055: 1976 Cri LJ 1578.

Bench Strength 2. Coram: **R.S. Sarkaria** and *P.N. Shinghal*, JJ. [Date of decision: 23-3-1976]

[3711] — S. 354(3) — Circumstantial evidence — Murder of wife and four daughters by setting them on fire while they were fast asleep — *Trial court and High Court concurrently finding that the incriminating circumstances proved the guilt of the accused-appellant beyond reasonable doubt and accordingly convicting him under S. 302 and sentencing him to death considering it to be rarest of rare cases — On facts held, Supreme Court's interference with concurrent findings of fact of the courts below on the guilt of the appellant not called for hence conviction under S. 302 justified — However, keeping in view all the aspects, sentence of life imprisonment instead of sentence of death would meet the requirements of the case — Penal Code, 1860 — S. 302*

The appellant, a fruit vendor, purchased a house and started living in the new house along with his family consisting of his wife, four daughters and a son aged 5 years, though a portion of the price (Rs 40,000) remained yet to be paid. However the appellant's wife and daughters did not like the house and started pressurising him to sell and purchase another house in some other locality. This caused annoyance in the mind of the appellant. He purchased five litres of petrol in a plastic can and kept it in the kitchen. According to the prosecution case, on the day of occurrence, after dinner at about 9 p.m. the appellant and his son had gone to sleep on the terrace of the house and other members slept in the rear room of the size 9' x 10' on the ground floor. At about 3 a.m. early next morning, the appellant collected the petrol in a steel bowl and sprinkled the same on his wife and daughters who were sleeping and by lighting a match set them on fire and in the process was said to have also sustained burn injuries on his left ear, left shoulder and right thumb. There was a huge fire in the room in which the deceased members of the family were sleeping and apprehending that he may also get burnt, the appellant ran away from the room by closing the door from outside and went to the police chowki where he stated that when he was lighting a lamp of petrol he sustained burn injuries and his wife and daughters seriously got caught in a big fire in the house and that they should be saved. On the direction of the chowkidar to go to the hospital for treatment he went by an auto-rickshaw to the hospital and got examined by the doctor PW 9 at around 3.30 a.m. and the statement then made by him was that he sustained burn injury while preparing tea at his house. Neighbours gathered and the brother of the appellant PW 13 brought the dead bodies to the hospital and identified them to be that of the wife and daughters of the appellant. The appellant, after his discharge from the hospital, was arrested and a case was registered against him under Section 302 IPC. At the trial, the stand of the appellant was one of denial. However, the trial court specifically found the following incriminating circumstances against the appellant, which proved the guilt of the appellant beyond reasonable doubt: the existence of misunderstandings and disputes over the purchase of the house where they were residing among the appellant and the wife and daughters; the purchase of five litres of petrol in a plastic can and keeping it in the kitchen, though he had no vehicle for its use; presence of the appellant alone in the house besides the deceased members at 3 a.m. when the incident had taken place; pouring of petrol by the appellant alone on the deceased members when they were asleep and setting them on fire resulting in their deaths; placing in a safe place on the terrace his son to save his life; that due to the highly inflammable nature of petrol — five litres poured on the bodies of the deceased ladies they were engulfed in a huge fire and got roasted without any chance to escape from the interior room where they were sleeping; the appellant's failure to make any attempt to save the ladies and himself alone running away from the house and going to the hospital and giving there a false version that he had sustained burn injuries due to the flames of a kerosene stove while preparing tea; the appellant not informing about the fire incident involving the lady members or the injuries sustained by them, due to sprinkling or spilling, as the appellant would like to claim, of petrol on their bodies, the report of the Forensic Science Laboratory and the panchnama of the place of occurrence — the details of the place of incident, the bowl, half-burnt pieces of quilt and coired thread of wooden cots on which also the presence of petrol was detected, the plea raised as in the written reply was not probable or believable and was not only false and got up and belied by the fact that no petrol was detected on his body; the fact that the theory of fire taking place due to electric short-circuit was also completely ruled out and found raised merely to mislead the court. All these circumstances found amply proved only led to the inevitable conclusion of the trial court that the appellant alone was the culprit. The High Court after going into the merits at great length and detail, not only affirmed the incriminating circumstances found established by the trial court but also held that the false plea set up by the appellant also militated against his innocence and the absence of proper or reasonable explanation and/or a false explanation given regarding the incriminating circumstances strengthened and completed the chain and further held that the prosecution had proved the charge beyond any reasonable doubt and the guilt of the accused conclusively. The case was considered to be one of the "rarest of rare cases" justifying the imposition of death sentence and thus the sentence also was confirmed by the High Court.

Dismissing the accused's appeal except in respect of the sentence,

Held :

The entire case against the appellant rests only on circumstantial evidence, and having regard to the manner, place and time of occurrence it was difficult for the prosecution to gather or produce any direct or ocular evidence for the commission of the murder. The area of controversy is very limited and even the indisputable facts placed on record, some of which by the very admission of the appellant, would provide sufficient basis for legitimately inferring the actual role played by the appellant and it is in this context only both the courts below have chosen to appreciate and highlight the varying as well as the falsity of the plea of the very appellant. Every one of the circumstances found established in this case definitely forms a chain of evidence so complete and definite as not to leave any doubt that the appellant had been carefully planning and meticulously preparing at every stage to get rid of the wife and the daughters as a whole lot. On the evidence on record it could not be properly contended that the courts below found the appellant guilty solely on the basis of the falsity of the stand or explanation given by him of the occurrence. The circumstances held proved in this case by cogent and convincing materials brought on record are sufficient to substantiate the homicidal crime committed by the appellant beyond reasonable doubt and bring home the guilt of the accused with reasonable and positive definiteness. The false nature of the varying explanations and the narration in the written statement of events as to how the incident took place has been highlighted by the courts below more in the process of finding out the reasonableness of the explanation and plausibility of its acceptance, more as an additional circumstance to reinforce the conclusions arrived at and not to use such reasoning as a substitute for the ordinary proof normally expected of the prosecution to substantiate the guilt of the accused. The reliance placed by the courts below on the deposition of the PWs and the facts noticed in the panchnama relating to the place of the incident to arrive at the conclusions cannot be said to be either inappropriate, unreasonable or unjustified. Both the courts below have analysed the materials carefully and in their proper perspective and the manner of appreciation of evidence by them cannot be said to be either perverse or suffer from any glaring infirmities. It cannot also be legitimately contended that improper and wrong inferences have been drawn from the materials placed on record or facts proved. Therefore, there is no reason to interfere with the concurrent findings of facts recorded by the courts below on the guilt of the appellant. (Para 8)

However, as regards the quantum of sentence, as to what category a particular case would fall depends, invariably on varying facts of each case and no absolute rule for invariable application or yardstick as a ready reckoner can be formulated. In this case it is on evidence that despite his economic condition and earnest attempt to purchase a house for the family after raising loans, the wife and daughters were stated to be not pleased and were engaging in quarrels constantly with the appellant. Though they were all living together, the continuous harassment and constant nagging could have very well affected his mental balance and such sustained provocation could have reached a boiling point resulting in the dastardly act. The appellant, though hailing from a poor family, had no criminal background and it could not be reasonably postulated that he will not get rehabilitated or that he would be a menace to the society. The boy of tender age would also once for all be deprived of the parental protection. Keeping in view all these aspects, it could not be said that the imposition of life imprisonment would not adequately meet the requirements of the case or that an imposition of the extreme punishment alone would do real or effective justice. Consequently, the sentence of death is directed to be modified into one of rigorous imprisonment for life. (Paras 9 and 10) . *Vashram Narshibhai Rajpara* v. *State of Gujarat*, (2002) 9 SCC 168: AIR 2002 SC 2211: 2002 Cri LJ 2930.

Bench Strength **2**. Coram: **Doraiswamy Raju** and *Brijesh Kumar*, JJ. [Date of decision: 24-4-2002]

Panchhi v. State of U.P., (1998) 7 SCC 177: 1998 SCC (Cri) 1561; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Om Prakash v. State of Haryana, (1999) 3 SCC 19: 1999 SCC (Cri) 334, relied on

[3712] — S. 354(3) — Death sentence — Rarest of rare case — *Conviction of two accused under Ss. 302, 302/149, 380 and 460 for committing dacoity and murder of all the six male members of a family including two minor children — A-1 awarded death sentence with the aid of Section 149 IPC as also on the basis of a general statement made by the four eyewitnesses that the miscreants had gunned down the six persons during the incident — While evidence showing that A-1 had also exhorted that no male member of the family should be kept alive, one of the eyewitnesses admitting that A-1 was not having any firearm in his hands at the time of the incident — But all the eyewitnesses consistently deposing that A-2 had fired from his firearm on all the six persons who died instantaneously — A-2 having animosity against the family members of the deceased as he believed that one of them was responsible for causing murder of his brother and nephew — But A-1 not related to A-2 — Held, case of A-1 would not fall within the rarest of rare category — But the case of A-2 would fall within that category*

In the face of this evidence, a distinction based on the degree of complicity and brutality will have to be drawn which has got a vital impact in awarding the sentence. It is well settled that while awarding the sentence, the court has to bear in mind the crime and the criminal.

A-2 was the principal offender/miscreant who fired from his firearm on all the six persons including the two innocent children. He had a deep-rooted desire for revenge based upon suspicion about the murders of his brother and nephew by one of the family members of the deceased persons which prompted him to take revenge against the deceased and had gone to the extent of killing the six deceased in a most brutal, heinous and barbaric manner. Nothing was suggested to the eyewitnesses on behalf of A-2 that any of these deceased persons had played any role in committing the murders of his brother and nephew and at any rate having regard to the ages of two minor children (10 years and 8 years) it could not be even remotely suspected that they could be the assailants. A-2 wanted not only to teach a lesson to the family members of the person against whom he had grudge but also to create terror in the minds of the family members to satisfy his ego and muscle power. A-2 exhibited most inhuman conduct while rejoicing in his victory after commission of the crime. In this background the trial court as well as the High Court have committed no error in awarding death sentence to him.

But A-1 who was not related to A-2 might not be suffering from the same degree of revenge and brutality as A-2 had. Keeping this distinction in mind the case of A-1 will not fall in the category of rarest of rare cases. Therefore, death sentence awarded to him was not justified having regard to the facts and circumstances of the case. The death sentence awarded to him by the courts below is altered to one of life imprisonment. *Shobhit Chamar* v. *State of Bihar*, (1998) 3 SCC 455: 1998 SCC (Cri) 790: AIR 1998 SC 1693.

Bench Strength 2. Coram: *G.T. Nanavati* and **S.P. Kurdukar**, JJ. [Date of decision: 4-3-1998]

Shiv Ram v. State of U.P., (1998) 1 SCC 149: 1998 SCC (Cri) 278, relied on

[3713] — S. 354(3) — Death sentence — When not called for — Merciless killing of three brothers with a big knife by appellant — Incident aftermath of assassination of the then Prime Minister Smt Indira Gandhi — Incident not an organised activity but result of temporary mob frenzy — *Held, case cannot be called a rarest of the rare cases — Hence imposition of maximum punishment of capital sentence not warranted — Sentence reduced to that of life imprisonment.* *Kishori* v. *State (NCT of Delhi)*, (2000) 2 SCC 83: 2000 SCC (Cri) 324: AIR 2000 SC 562: 2000 Cri LJ 756.

Bench Strength 2. Coram: *K.T. Thomas* and **D.P. Mohapatra**, JJ. [Date of decision: 17-12-1999]

Kishori v. State of Delhi, (1999) 1 SCC 148: 1999 SCC (Cri) 1, applied

Jagmohan Singh v. State of U.P., (1973) 1 SCC 20: 1973 SCC (Cri) 169; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, relied on

State v. Kishori, (1998) 76 Delhi LJ 209, partly reversed

[3714] — S. 354(3) — Death sentence — When not justified — Pre-planned murder — *Poisoning of four persons of a family viz. parents and grandparents of accused's paramour S, who was his student to start with — Initially accused wanted to kill only the mother of S, since she objected to S getting familiar with him, but when accused thought he was seen by father of S and grandparents were also coming to that place he gave sweets mixed with poison to them also out of confusion and fright — Thus the subsequent events of murdering the other members of the family occurred unexpectedly — In the circumstances held, it was not a fit case in which death sentence could be regarded as appropriate sentence — Hence sentence reduced to that of life imprisonment* (Paras 10 and 11). *Ranadhir Basu* v. *State of W.B.*, (2000) 3 SCC 161: 2000 SCC (Cri) 587: AIR 2000 SC 908: 2000 Cri LJ 1417.

Bench Strength 2. Coram: **G.T. Nanavati** and *S.N. Phukan*, JJ. [Date of decision: 7-2-2000]

[3715] — S. 354(3) — Death sentence — Whether a rarest of rare case — Court has to balance aggravating and mitigating factors and exercise its discretionary judgment — It has not only to keep in view rights of the criminal but also rights of the victim and the society at large — *Cold-blooded barbaric murder of brother, his two minor sons and aged aunt and attempt to murder brother's wife and daughter with a view to wipe out entire family of his brother in a calculated manner when they were fast asleep by cutting their necks with a sharp-cutting weapon — Dispute between the brothers relating to respective shares of land already settled with mediation of Sarpanch and only a minor quarrel relating to deceased brother's objection to accused's attempt to put barbed wire fencing taking place few days prior to the incident — No provocation nor any immediate or even proximate cause of resentment shown — No remorse shown by accused — In the circumstances held, death sentence concurrently awarded by courts below justified — Penology — Retributive and deterrent aspects of punishment considered in award of death sentence*

The accused-appellant, his deceased brother and his another brother were living in one compound (Ahata) in their respective residential unit pursuant to partition of the joint lands which had taken place long ago. There was an occasion for difference and dispute between the accused and the deceased in respect of only one killa of land but such dispute had been sorted out at the intervention of the Sarpanch of the village about eight to ten months before the incident. After that no fresh incident had taken place in recent past for which there was any occasion for the accused to feel aggrieved concerning his landed property. A few days before the incident, there was a quarrel between the accused and the deceased when the accused intended to put a barbed fencing on a portion of their residential complex but the deceased objected to such course of action. On the fateful night when the deceased brother and his family members were fast asleep, the appellant murdered his deceased brother, his two minor sons and aged aunt (bua) by cutting their necks with a sharp-cutting weapon (kassi). He also attempted to murder his brother's wife and daughter in the same manner thereby critically injuring them though they survived after hovering between life and death for a number of days in hospital. The Sessions Judge sentenced him to death and in appeal the High Court confirmed the sentence. Dismissing the accused's further appeal

Held :

For deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced in a dispassionate manner and discretionary judgment has to be exercised by the court in the particular circumstances of the case. Punishment must also respond to the society's cry for justice against the criminal. While considering the punishment to be given to the accused, the Court should be alive not only to the right of the criminal to be awarded just and fair punishment by administering justice tempered with such mercy as the criminal may justly deserve, but also to the rights of the victims of the crime to have the assailant appropriately punished and the society's reasonable expectation from the court for the appropriate deterrent punishment conforming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused.

In the instant case, there was absence of any provocation. There is no material on record from which it can be reasonably held that the accused had any occasion to reasonably feel aggrieved for any unjust and improper conduct on the part of the deceased brother. The incident such as the quarrel relating to putting the barbed wire fencing cannot be reasonably held to be a cause for being temperamentally upset and for entertaining so much wrath and spirit of vengeance as may impel a man of normal composure and frame of mind to run amok and perpetrate ghastly murders of such magnitude. There is no evidence to indicate that in view of such quarrel happening a few days prior to the incident there had been any aftermath and further dispute and resentment between the deceased and the accused either immediately before or even proximately before the incident of murders and attempts to commit murders. The accused, in a cool and calculated manner intended to wipe out the entire family of his brother. With that end in view, he selected the most opportune moment, namely, the dead of night when his brother and other members of his family would remain asleep so that they would be absolutely helpless and not capable of giving any defence to save themselves. In order to ensure death, the accused chose to cut vital part of the body, namely, the neck by a sharp-cutting weapon (kassi) when his victims were asleep. The murders had been committed very brutally and mercilessly of absolutely innocent persons, namely, the *Bua* and two minor sons of his brother with whom there was no occasion to come in conflict and to entertain any grudge or ill-feeling. The accused was in full senses and had committed the murders of four close relatives one after the other and also attempted to commit murder of his brother's wife and daughter in a cool and calculated manner. He did not even feel remorse and being quite alive to the enormity of the crime committed by him he escaped from the place of occurrence. Such murders and attempt to commit murders in a cool and calculated manner without provocation cannot but shock the conscience of the society which must abhor such heinous crime committed on helpless innocent persons. In the facts and circumstances of the case, the crime committed by the accused falls in the category of rarest of rare cases for which extreme penalty of death is fully justified. It is true that the appellant was not convicted for any other offence on any previous occasion. Such fact can hardly be considered as a mitigating factor in favour of the appellant that will outweigh all the aggravating factors and circumstances in which the crime of the murders had been committed. Therefore, there is no reason to interfere with the sentence of death awarded against the appellant since confirmed by the High Court. *Surja Ram* v. *State of Rajasthan*, (1996) 6 SCC 271: 1996 SCC (Cri) 1314: AIR 1997 SC 18.

Bench Strength **2**. Coram: **G.N. Ray** and *G.T. Nanavati*, JJ. [Date of decision: 25-9-1996]

Dennis Councle McGautha v. State of California, 402 US 183: 28 L Ed 2d 711 (1971); Shankar v. State of T.N., (1994) 4 SCC 478: 1994 SCC (Cri) 1252; Jashubha Bharatsinh Gohil v. State of Gujarat, (1994) 4 SCC 353: 1994 SCC (Cri) 1193; Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358; Ravji v. State of Rajasthan, (1996) 2 SCC 175: 1996 SCC (Cri) 225, relied on

[3716] — S. 354(3) — Sentence — Death sentence — Murder of 5 persons — Appellant wiping out the entire family of his uncle to grab his properties — Victims unarmed and killed during the course of their sleep — No extenuating or mitigating circumstances in favour of the appellant found — *Held, in the circumstances of the case, capital punishment imposed by the High Court proper — Case falls under the "rarest of rare" cases. Govindaswami* v. *State of T.N.*, (1998) 4 SCC 531: 1998 SCC (Cri) 1092: AIR 1998 SC 2889.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 22-4-1998]

Mahesh v. State of M.P., (1987) 3 SCC 80: 1987 SCC (Cri) 379, relied on

[3717] — S. 354(3) — When not justified — Murder of an undertrial prisoner in jail by a life convict — *Held, felonious propensity of an offender can be taken into consideration but cannot be made the sole basis for awarding extreme penalty of death — In the circumstances of the case death sentence imposed upon the appellant reduced to imprisonment for life — Penology*

In the instant case the principal reason which weighed with the courts below to hold that the extreme penalty of death was called for, was that earlier the appellant had committed a murder for which he was serving the sentence of life imprisonment at the material time and that he committed another murder while he was released on parole. Undoubtedly, felonious propensity of an offender is a factor which requires consideration while dealing with the question of imposition of the sentence of death but that cannot be made the sole basis for such sentence as all other factors relating to the commission of the crime including motive, manner and magnitude have also to be taken into consideration. Taking an overall view of the attending facts and circumstances of the case death sentence imposed upon the appellant reduced to life imprisonment. *Krishan* v. *State of Haryana*, (2000) 10 SCC 451: 1997 SCC (Cri) 648: AIR 1997 SC 2598: 1997 Cri LJ 3180.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *K. Venkataswami*, JJ. [Date of decision: 1-5-1997]

[**Ed.**: Under Section 303 IPC murder by a life convict was mandatorily punishable with death. But Section 303 was declared unconstitutional in *Mithu* v. *State of Haryana*, (1983) 2 SCC 277. Hence it seems the trial was conducted under Section 302 IPC.]

[3718] — S. 354(3) — Death sentence — 'Rarest of rare' case — Murder and robbery — Number of victims large — Effect — *Appellants putting a bus on fire for robbing the passengers resulting in death of 23 passengers and serious burns to a number of other passengers — Held, in the circumstances of the case, appellants deserved the extreme penalty of death sentence — Number of the victims, held, not an extraneous consideration in award of death sentence — Penal Code, 1860 — Ss. 302, 307, 341, 440 and 120-B. Gentela Vijayavardhan Rao* v. *State of A.P.*, (1996) 6 SCC 241: 1996 SCC (Cri) 1290: AIR 1996 SC 2791.

Bench Strength **2**. Coram: *Dr A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 28-8-1996]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358; Bheru Singh v. State of Rajasthan, (1994) 2 SCC 467: 1994 SCC (Cri) 555; Sk Ishaque v. State of Bihar, (1995) 3 SCC 392: 1995 SCC (Cri) 534, followed

[3719] — S. 354(3) — Death sentence — When not justified — Murder for gain — *Nothing exceptionally gruesome about manner of committing the murder — Held, murder by its very nature is shocking but that per se does not justify death penalty — Penal Code, 1860 — Ss. 302, 307 and 394 r/w S. 397. State of H.P.* v. *Manohar Singh Thakur*, (1998) 6 SCC 158: 1998 SCC (Cri) 1426: AIR 1998 SC 2941: 1998 Cri LJ 3630.

Bench Strength **2**. Coram: *M.M. Punchhi, C.J.* and **Sujata V. Manohar**, J. [Date of decision: 28-7-1998]

[3720] — S. 354(3) — Death sentence — Rarest of rare case — Rape and murder of a 7 years' old girl — *Appellant kidnapping the deceased, committing rape on her, strangulating her to death and throwing the dead body in a well — Held, in the circumstances of the case appellant deserved death sentence — Penology — Deterrent and retributive aspects of punishment considered while awarding — Penal Code, 1860 — Ss. 302, 363, 376 and 201*

The evidence on record clearly establishes that the appellant was close to the family of father of the deceased and the deceased and the siblings used to call him 'Uncle'. Obviously her closeness with the appellant encouraged her to go to his shop, which was near the saloon where she had gone for a haircut with her father and brother, and ask for some biscuits. The appellant readily responded to the request by taking her to the nearby grocery shop and handing over a packet of biscuits apparently as a prelude to his sinister design which unfolded in her kidnapping, brutal rape and gruesome murder — as the numerous injuries on her person testify; and the finale was the dumping of her dead body in a well. When an innocent hapless girl of 7 years was subjected to such barbaric treatment by a person who was in a position of her trust his culpability assumes the proportion of extreme depravity and arouses a sense of revulsion in the mind of the common man. In fine, the motivation of the perpetrator, the vulnerability of the victim, the enormity of the crime, the execution thereof persuade us to hold that this is a "rarest of rare" cases where the sentence of death is eminently desirable not only to deter others from committing such atrocious crimes but also to give emphatic expression to society's abhorrence of such crimes. *Kamta Tiwari* v. *State of M.P.*, (1996) 6 SCC 250: 1996 SCC (Cri) 1298: AIR 1996 SC 2800.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 4-9-1996]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, followed

[3721] — S. 354(3) — Death sentence — If justified on facts — *Gruesome killing of a nine-year-old child — Accused sacrificing a child of another person before Goddess Kali in a most brutal and diabolic manner for personal gain and to promote his fortunes by pretending to appease the deity — Accused also facing trial in another case involving similar accusations — Held, the present one was an illustrative and most exemplary case to be treated as the "rarest of rare cases" in which death sentence is and should be the rule, with no exception whatsoever — Superstition cannot and does not provide justification for any killing, much less a planned and deliberate one — Penal Code, 1860 — Ss. 302 and 201*

The fact situation of this case shows that the accused-appellant was not possessed of the basic humanness and he completely lacks the psyche or mindset which can be amenable for any reformation. He had at the time of occurrence a child of the same age as the victim and yet he diabolically designed in a most dastardly and revolting manner to sacrifice a very hapless and helpless child of another for personal gain and to promote his fortunes by pretending to appease the deity. The brutality of the act is amplified by the grotesque and revolting manner in which the helpless child's head was severed. Even if the helpless and imploring face and voice of the innocent child did not arouse any trace of kindness in the heart of the accused, the nonchalant way in which he carried the severed head in a gunny bag and threw it in the pond unerringly shows that the act was diabolic of the most superlative degree in conception, and cruel in execution. The tendency in the accused and for that matter in anyone who entertains such revolting ideas cannot be placed on a par with even an intention to kill someone but really borders on a crime against humanity indicative of the greatest depravity shocking the conscience of not only any right-thinking person but of the courts of law, as well. The socially abhorrent nature of the crime committed also ought not to be ignored in this case. If this act is not revolting or dastardly, it is beyond comprehension as to what other act can be so described, is the question. Superstition is a belief or notion, not based on reason or knowledge, in or of the ominous significance of a particular thing or circumstance, occurrence or the like but mainly triggered by thoughts of self-aggrandizement and barbaric at times as in the present case. Superstition cannot and does not provide justification for any killing, much less a planned and deliberate one. No amount of superstitious colour can wash away the sin and offence of an unprovoked killing, more so in the case of an innocent and defenceless child. (Para 22)

Criminal propensities of the accused are clearly spelt out from the fact that similar accusations involving human sacrifice existed at the time of trial. Though the result could not be brought on record, yet the fact that similar accusation was made against the accused-appellant for which he was facing trial cannot also be lost sight of. (Para 23)

Thus, in view of the above facts, this is an illustrative and most exemplary case to be treated as the "rarest of rare cases" in which death sentence is and should be the rule, with no exception whatsoever. (Para 23). *Sushil Murmu* v. *State of Jharkhand*, (2004) 2 SCC 338: 2004 SCC (Cri) 529: AIR 2004 SC 394: 2004 Cri LJ 658.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-12-2003]

Bhola Singh v. State of Jharkhand, 2003 Cri LJ 262 (Jhar), affirmed

Ediga Anamma v. State of A.P., (1974) 4 SCC 443: 1974 SCC (Cri) 479; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

[3722] — S. 354(3) — Death sentence — 'Rarest of rare' cases — Factors to be considered — Kidnapping for ransom and brutal murder of a young boy aged 10 years — *A-1 and A-4 actually committing the murder — Aggravating circumstances demonstrating their depraved state of mind and the brutality with which they killed the boy — Even after disposing of the dead body of the boy A-1 not losing his lust for money and getting the ransom amount — Death sentence to A-1 and A-4 imposed by the trial court and confirmed by the High Court upheld — However, in view of mitigating circumstances death sentence of A-2 and A-3 commuted to imprisonment for life — Penology — Penal Code, 1860 — Ss. 302 and 365 & 364-A*

It is true, that the extreme penalty of death should not be imposed in all cases of conviction under Section 302 and should be awarded only in rarest of rare cases where the court finds that murder has been committed in a premeditated and calculated manner with extreme cruelty and brutality and the aggravating circumstances would justify such extreme penalty. While considering the question whether in a given case the extreme penalty of death should be imposed or not the court should try to find out any mitigating circumstances and on being satisfied about the existence of such mitigating circumstances, the court would be justified in imposing the lesser sentence of imprisonment for life. *Mohan* v. *State of T.N.*, (1998) 5 SCC 336: 1998 SCC (Cri) 1308: AIR 1998 SC 2238.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **G.B. Pattanaik**, JJ. [Date of decision: 12-5-1998]

Bachan Singh v. *State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh* v. *State of Punjab, (1983) 3 SCC 470 1983 SCC (Cri) 681; Suresh* v. *State of U.P., (1981) 2 SCC 569. 1981 SCC (Cri) 559; A. Devendran* v. *State of T.N., (1997) 11 SCC 720: 1998 SCC (Cri) 220; State of U.P.* v. *Bhoora, (1998) 1 SCC 128: 1998 SCC (Cri) 265, followed*

[3723] — S. 354(3) — Death sentence — When not justified — Rape and murder of a young girl aged 14 years — Circumstances indicating that she willingly allowed the appellant to have some liberty with her — Death sentence reduced to imprisonment for life — *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(ii)(v) — Penal Code, 1860 — Ss. 302 and 376*

The prosecution case was that the victim, aged about 14 years, had gone to ease herself in a field near her house and that while she was so doing, the appellant pounced upon her, pinned her down on the ground, committed rape and when she started resisting and raising shouts, strangulated and killed her by tying her salwar around her neck. The trial court imposed death sentence upon the appellant which was confirmed by the High Court. On appeal, reducing the sentence to life imprisonment,

Held :

The circumstances indicate that probably the prosecutrix was not unwilling initially to allow the appellant to have some liberty with her. The appellant not being able to resist his urge for sex went ahead in spite of her unwillingness for a sexual intercourse who offered some resistance and started raising shouts at that stage. In order to prevent her from raising shouts the appellant tied the salwar around her neck which resulted in strangulation and her death. Therefore, this is not a fit case in which the extreme penalty of death deserves to be imposed upon the appellant. The High Court erred in not considering all the aspects disclosed by the evidence on record. (Para 6). *Kumudi Lal* v. *State of U.P.*, (1999) 4 SCC 108: 1999 SCC (Cri) 491: AIR 1999 SC 1699: 1999 All LJ 1262.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 31-3-1999]

[3724] — S. 354(3) — Death sentence — When not justified — If rarest of rare cases — Fake encounter — *Police personnel committing murder of three innocent persons — Absence of aggravating circumstances — Merely because firing took place from a very close range or that the trial is a sensational one extreme penalty of death cannot be awarded — On facts, courts below not justified in awarding death sentence to two of the appellants merely because they happened to be police officers and the constables at their command might have resorted to fire from their rifles — Penal Code, 1860 — Ss. 302/34.* **Brijlala Pd. Sinha** v. **State of Bihar**, (1998) 5 SCC 699: 1998 SCC (Cri) 1382: AIR 1998 SC 2443: 1998 Cri LJ 3611.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **G.B. Pattanaik**, JJ. [Date of decision: 13-7-1998]

[3725] — S. 354(3) — Death sentence — Rarest of rare cases — Absence of mitigating factors — Murder of brother's wife and her daughter aged 8 years — *Accused trying to commit rape on his brother's wife and on failing committing her brutal murder, severing her head from the body and hanging her head on the tree — Accused also committing murder of her 8-year-old daughter who had witnessed the incident — Mother of the accused testifying about the bad characteristics and reputation of the accused — Character of accused beyond redemption or reformation — Facts establishing depravity and criminality of the accused in no uncertain terms — Held, in the circumstances, accused deserves death sentence — Plea that the accused was a young man of about 22 years of age not a mitigating factor — Penology — Penal Code, 1860 — S. 302*

The accused was charged for committing the murder of his brother's wife and her 8-year-old daughter. The prosecution case was that the accused entered the house and bolted from outside the mother's room and thereafter removed certain bricks from the wall and "choukat" thus facilitating the entry into the room where the deceased sister-in-law was sleeping with the child. The accused committed the murder of his sister-in-law at about 11.00 p.m. by parsul-blows and then kulhadi (tanga)-blows on her neck severing her head from the body and taking away her eight-year-old daughter and killing her in a jungle by axe-blows said to be by offering sacrifice to Mahua Maharaj and burying her in the sand covered with stones and it is thereafter that the accused came back home and carried the body of his deceased sister-in-law tied in a cloth to the jungle and hung the head tied on a branch with the hair and put the body on the trunk of the mahua tree. It was contended by the accused's counsel that the age of the accused is 22 years and he did not have any past criminal history and this is not such a case in which the accused may be awarded the maximum sentence, i.e., sentence of death. The trial Judge passed death sentence in the matter which was confirmed by the High Court. Dismissing the appeal by special leave,

Held :

Corelation of aggravating and mitigating circumstances and a balance be struck on the basis of the factual matrix of the matter in issue, before the exercise of discretion in terms of the provisions of Section 302. In the matter in issue, however, there is no balancing factor so as to strike a balance. As a matter of fact aggravating factors there are aplenty and galore without any mitigating circumstances. The age of the accused being 22 years cannot, in the factual matrix of the matter under consideration, be said to be a mitigating factor. The accused is 22 years of age while the victim was aged 30 years and at the time of the unfortunate death, she was under pregnancy between 22 to 30 weeks — the other victim was an innocent girl — a child of 8 years; the murders were cold-blooded while the two victims were in a helpless and hapless situation. No amount of perversity would prompt a person to break open the door by removing the bricks from the wall and commit such gruesome murders on failure to satisfy the lust — the human lust ought to know its limits. Imaginations shall have to run wild to consider existence of any mitigating factors in the matter of sentence, having due regard to even the subsequent conduct of the accused in the matter of disposal of the bodies. (Para 21)

Can there be any mitigating circumstances on account of such a ghastly act — the answer cannot but be in the negative. The mother of the accused was bolted inside the room and she watched as a bewildered spectator from the creeks of the window and it is the mother who had given evidence about the bad characteristics and the reputation of the accused in the locality; the sister-in-law has been murdered along with an innocent child. Is this a man who deserves any sympathy from the society? Is this a man who can correct himself and the law courts ought to permit him to lead a decent life after he serves the sentence? The mother's evidence becomes material and it is on this score that it cannot be said that there are some mitigating circumstances and there is likelihood of the accused being reformed or rehabilitated. (Para 22)

The facts establish the depravity and criminality of the accused in no uncertain terms — no regard being had for the precious life of the young child also. The compassionate ground of the accused being 22 years of age cannot in the facts of the matter be termed to be at all relevant. (Para 24)

The murder was cold-blooded and brutal without any provocation. It certainly makes it a rarest of the rare cases in which there are no extenuating or mitigating circumstances. (Para 25). *Jai Kumar* v. *State of M.P.*, (1999) 5 SCC 1: 1999 SCC (Cri) 638: AIR 1999 SC 1860.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *M. Srinivasan* and **U.C. Banerjee**, JJ. [Date of decision: 11-5-1999]

Kamta Tiwari v. State of M.P., (1996) 6 SCC 250: 1996 SCC (Cri) 1298; Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358, relied on

[3726] — S. 354(3) — Death sentence — Rarest of rare cases — *Conspiracy hatched by the husband with his two associates to kill his wife and two children simply to gain control over the property — Murder of wife committed in an extremely brutal, gruesome, diabolical, revolting and dastardly manner — Victim's body truncated into two parts in a devilish style — Death of the two children caused by inflicting severe injuries on neck and other parts of body — Held, the case of accused husband falls within the category of 'rarest of rare cases' — Death sentence awarded by courts below justified — However, in the facts and circumstances of the case, death sentence awarded to his two associates commuted to imprisonment for life — Penal Code, 1860 — Ss. 302, 302/120-B and 201*

The main accused had entertained some grievances against his wife because she had made up her mind to dispose of her house and migrate to America along with her children with the sale proceeds against the wishes of her husband and, therefore, to put an end to her life he planned a long drawn plot and hatched a conspiracy with the other two accused for execution of this plan. Her murder was committed in an extremely, brutal, gruesome, diabolical, revolting and dastardly manner so as to arouse intense and extreme indignation of the society. The victim was subjected to inhuman acts of torture and cruelty while causing her murder as her body was truncated into two parts in a devilish style evincing total depravity simply to gain control over the property. Having been not satisfied with the killing of his wife the accused was further determined to kill his two innocent children making them believe that they were being taken on a pleasure trip to the farm and then after they were done to death by inflicting severe injuries on neck and other parts of the body he threw their dead bodies in the river having no consideration for the human life and that too for his own flesh and blood. The accused may be having some differences with his wife with regard to the sale of house and her idea about settlement with the children at America but he certainly had no grievance or even any remote cause against his innocent minor children who could never conceive that their father who was their guardian of the first degree was taking them for committing their murder. (Para 104)

The cold blooded cruel murder of the innocent children by none else but by their own real father shows the enormous proportion of depravity with which it was committed eliminating almost all members of the family. The question is whether there could be still a worse case than this where a husband could hatch a conspiracy and kill his wife in a most callous and ghastly fashion as in the present case only on a trifling matter which could have been sorted out in an amicable manner for which no effort was made by the accused. Not only this but the accused became thirsty of the blood of his own children for absolutely no fault of theirs. In the facts and circumstances of the case, so far as the main accused is concerned, the rule of the rarest of rare cases has to be applied as his case falls within the category of the said rule and for the perpetration of the crime of the nature discussed above there could be no other proper and adequate sentence except the sentence of death as there are no mitigating circumstances whatsoever. Therefore, the death sentence awarded to the main accused is confirmed. But in the facts and circumstances of the case death sentence awarded to the other two accused is converted to imprisonment for life. (Para 105). *Suresh Chandra Bahri* v. *State of Bihar*, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60: AIR 1994 SC 2420: 1994 Cri LJ 3271.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 13-7-1994]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358, followed

[3727] — S. 354(3) — **Death sentence — Rarest of rare cases** — *Rape and murder of a helpless and defenceless school-going girl of 18 years by a security guard — Death sentence imposed by trial court and confirmed by High Court upheld — Penal Code, 1860 — Ss. 302, 376 and 380*

The sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartment, should have subjected the deceased, a resident of one of the flats, to gratify his lust and murder her in retaliation for his transfer on her complaint, makes the crime even more heinous. Keeping in view the medical evidence and the state in which the body of the deceased was found, it is obvious that a most heinous type of barbaric rape and murder was committed on a helpless and defenceless school-going girl of 18 years. The faith of the society by such a barbaric act of the guard, gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman and barbaric but it was a totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society. The savage nature of the crime has shocked our judicial conscience. There are no extenuating or mitigating circumstances whatsoever in the case. A real and abiding concern for the dignity of human life is required to be kept in mind by the courts while considering the confirmation of the sentence of death but a cold blooded preplanned brutal murder, without any provocation, after committing rape on an innocent and defenceless young girl of 18 years, by the security guard certainly makes this case a "rarest of the rare" cases which calls for no punishment other than the capital punishment. *Dhananjoy Chatterjee* v. *State of W.B.*, (1994) 2 SCC 220: 1994 SCC (Cri) 358.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *N.P. Singh*, JJ. [Date of decision: 11-1-1994]

[3728] — S. 354(3) — Charge of assassination of Prime Minister of India — *Conviction of one of the accused (Satwant Singh) upheld on the basis of direct evidence and clinching circumstances apart from his confession — Criminal conspiracy by another accused (Kehar Singh) with the co-accused having been proved, his conviction also upheld — But criminal conspiracy by the third accused (Balbir Singh) with co-accused having not been proved on facts, his conviction set aside — Death sentence to the accused who actually committed the murder as well as to the accused who conspired and inspired for commission of the murder, held, justified — Penal Code, 1860 — S. 302 r/w Ss. 120-B, 109 and 34*

On October 31, 1984 at about 9 a.m. when Smt Indira Gandhi, the then Prime Minister of India, left her residence and proceeded towards her office through the connected pathway, Beant Singh, SI, a security guard of the Prime Minister who was then standing on the left side, opened fire at her from his service revolver. He fired five rounds. At the same time Satwant Singh, Constable, on security duty who was on the right side, also started firing from his carbine releasing about 25 bullets at Smt Gandhi. The Indo-Tibetan Border Police personnel secured both the assassins. They were then taken to guard room where they sustained gunshot injuries as a result of which Beant Singh died and Satwant Singh suffered grievous injuries but recovered later on. Smt Gandhi was immediately rushed to hospital where she died.

Apart from Satwant Singh, Kehar Singh, who was uncle of deceased Beant Singh's wife, and Balbir Singh, an SI posted on the security duty at the residence of the Prime Minister, were also held on charge of criminal conspiracy. The prosecution case against Kehar Singh was that he was a religious fanatic. He had intense hate against Smt Indira Gandhi for causing damage to the Akal Takht in Golden Temple, Amritsar by "Operation Bluestar". He was in a position to influence Beant Singh, being related to Beant Singh's wife. He converted Beant Singh and through him Satwant Singh to religious bigotry. He made them to undergo "Amrit Chakhna Ceremony" on October 14 and 24, 1984 respectively. He also took Beant Singh to Golden Temple, Amritsar on October 20, 1984.

On October 31, 1984 Balbir Singh's duty was to commence in the evening. When he reported for duty in the normal course he was asked to go to the Security Police Lines. At about 3 a.m. on November 1, 1984 he was awakened from his sleep and his house was searched but nothing except a printed book on Sant Bhindranwala was recovered. It is alleged that about 4 a.m. he was taken to Yamuna Velodrome. He was kept there till late in the evening when he was reported to have been released. This custody in Yamuna Velodrome was described as 'de facto custody'. But there was no evidence nor any police officer was examined to say that he had allowed this accused to go in the evening on November 1, 1984. Thereafter he is alleged to have been arrested on December 3, 1984 at Najafgarh bus-stand when his personal search was taken and certain articles were recovered from his possession including a piece of paper containing certain entries said to have been written by him.

After investigation, charge-sheet was filed against the accused-appellants Satwant Singh, Kehar Singh and Balbir Singh. They were accused of offences under Ss. 120-B, 109 and 34 r/w S. 302 and also of substantive offences under Ss. 302 and 307 of the IPC and Ss. 27, 54 and 59 of the Arms Act.

In due course, the accused were committed to take their trial in the Court of Session. In the meanwhile, the High Court of Delhi issued two notifications. By one notification, the High Court directed that the trial of the case shall be held in the Central Jail, Tihar according to law. By another notification, the High Court directed that "the case be tried by Shri Mahesh Chandra, Additional Sessions Judge, New Delhi". In pursuance of the above notifications, the accused were tried in Central Jail, Tihar. The trial Judge found the accused guilty of all the charges framed against them and sentenced them to death.

On appeal the High Court confirmed the order of conviction and sentence passed by the trial court against all the three accused. On further appeal the Supreme Court confirmed the conviction and sentence against Kehar Singh and Satwant Singh but acquitted Balbir Singh in absence of sufficient evidence. As regards sentence of death imposed on Satwant Singh and Kehar Singh

Held :

Per Oza, J.

The act of the accused not only took away the life of a popular leader of the country but also undermines the democratic system which has been working in the country so well for the last forty years. There is yet another serious consideration. Two of the accused (viz. the deceased Beant Singh and Satwant Singh) were posted on the security duty of the Prime Minister to protect her from any intruder or from any attack from outside and therefore if they themselves resort to this kind of offence, there appears to be no reasons or no mitigating circumstance for consideration on the question of sentence. Additionally, an unarmed lady was attacked by these two persons with a series of bullets and it has been found that a number of bullets entered her body. The manner in which mercilessly she was attacked by these two persons on whom the confidence was reposed to give her protection repels any consideration of reduction of sentence. In this view of the matter, even the conspirator who inspired the persons who actually acted does not deserve any leniency in the matter of sentence. The death sentence awarded by the trial court and maintained by the High Court appears to be just and proper.

Per Ray J. (concurring)

It was a gruesome murder committed by the accused who was employed as a security guard to protect the Prime Minister. It was one of the rarest of rare cases in which extreme penalty of death was called for.

Per Shetty, J. (concurring)

Section 354(3) of the Code, 1973 marks a significant shift in the legislative policy of awarding death sentence. Now the normal sentence for murder is imprisonment for life and not sentence of death. The court is required to give special reasons for awarding death sentence. Special reasons means specific facts and circumstances obtained in the case justifying the extreme penalty.

In this case the crime charged was not simply murder of a human being, but it was the crime of assassination of the duly elected Prime Minister of the country. The motive for the crime was not personal, but the consequence of the action taken by the Government in the exercise of constitutional powers and duties. In our democratic republic, no person who is duly constituted shall be eliminated by privy conspiracies. The security guards who were duty-bound to protect the Prime Minister at the cost of their lives, themselves became the assassins. It was a betrayal of the worst order. It was the most foul and senseless assassination. The preparations for execution of this egregious crime do deserve the dread sentence of the law. *Kehar Singh* v. *State (Delhi Admn.)*, (1988) 3 SCC 609: 1988 SCC (Cri) 711: AIR 1988 SC 1883.

Bench Strength 3. Coram: **G.L. Oza**[1], **B.C. Ray**[2] and **K. Jagannatha Shetty**[3], JJ. [Date of decision: 3-8-1988]

[3729] — **S. 354(3) — Conviction under TADA Act and S. 302 r/w S. 149 IPC — Death sentence — Award of, if on facts was justified — Whether the instant case falling within the realm of the "rarest of the rare cases"** — *Caste war — Appellants along with many others, all members of the Maoist Community Centre (MCC), a militant organisation, attacking members of a particular community in a village in Bihar and setting fire to their houses — Murder of 35 persons and injuries sustained by several others as a result of the said gruesome acts — Charge-sheet submitted against 119 accused persons, but only 13 persons put on trial — Designated Court acquitting 4 persons and convicting the remaining 9 — Appellants sentenced to life imprisonment for the offence under S. 302 r/w S. 149 IPC and awarded death sentence for the offence under TADA Act — Affirming the death sentence, held (per majority), where 35 persons were killed in an extremely diabolic, revolting and dastardly manner, the crime affecting the normal tempo of life of the community in locality was not only ghastly but enormous in proportion — Considering the guidelines stated by the Supreme Court regarding the imposition of death penalty, held on facts, it would be a mockery of justice if death sentence is not imposed in the present case — Penal Code, 1860 — S. 302 r/w S. 149 — TADA, 1987 — S. 3(1)*

The appellants, who were members of the Maoist Community Centre (MCC), a militant organisation, came in a group along with other members of MCC and attacked the members of a particular community in a village in Bihar. The accused persons also set fire to the houses of the members of the said community. Several persons were injured in this incident. Some of the villagers were done to death by firearms whereas a vast majority were massacred by slitting their throats with *pasuli* which resulted in 35 casualties. Upon completion of investigation, charge-sheet was submitted against 119 accused persons, but only 13 persons were put on trial. The Designated Court acquitted 4 accused persons and convicted the remaining accused under Sections 302/149 IPC as well as the TADA Act. The appellants, who were sentenced to death as well as life imprisonment by the Designated Court, submitted that the prosecution had failed to prove the participation of the appellants in the crime by credible evidence. It was further submitted that the benefit of doubt should be given to the appellants as the informant was not examined, as such the FIR cannot be used as substantive evidence. The appellants challenged their conviction and sentence on the grounds (*i*) that their names were not mentioned in the confessional statement said to be made by co-accused *B*, (*ii*) that no incriminating articles had been recovered from the appellants, (*iii*) that the identification of the appellants was not possible in the dead of night, and (*iv*) that the appellants were not the assailants, but mere sightseers. It was further contended that in any view of the matter, it was not a fit case for awarding the extreme penalty of death. On the other hand, the State filed the death reference and submitted that the prosecution had succeeded in proving its case and complicity of the appellants in the crime by unimpeachable evidence and there was no infirmity in their convictions. Thus, the State contended that the sentence of death awarded against the appellants was in accordance with law as the present case fell within the ambit of "rarest of the rare cases".

Dismissing the appeal and accepting the death reference,

Held :

Per B.N. Agrawal, J.

In the case of *Machhi Singh* v. *State of Punjab*, a three-Judge Bench of the Supreme Court following the decision in *Bachan Singh* observed that in rarest of rare cases when the collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such a sentiment in the following circumstances:

I. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.

II. When the murder is committed for a motive which evinces total depravity and meanness.

III. When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath.

IV. When the crime is enormous in proportion.

V. When the victim of murder is (*a*) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder, (*b*) a helpless woman or a person rendered helpless by old age or infirmity, (*c*) when the victim is a person vis-à-vis whom the murderer is in a position of domination or trust, or (*d*) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons. (Para 42)

The Supreme Court in *Machhi Singh case* held that where the question of imposing death sentence arises, the following propositions emerge from the case of *Bachan Singh*:

(*i*) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(*ii*) Before opting for the death penalty the circumstances of the "offender" also require to be taken into consideration along with the circumstances of the "crime".

(*iii*) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(*iv*) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. (Para 43)

Further, in order to apply the aforesaid guidelines, it was laid down in *Machhi Singh case* that the following questions may be answered:

(*a*) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(*b*) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender? (Para 44)

From the evidence adduced, it has been amply proved that the accused persons, who belonged to a militant group (Maoist Community Centre), hatched up a conspiracy to massacre members of one particular community in the village in question. Pursuant to the conspiracy hatched up, the militants formed different groups and went to different localities in the village in police uniforms armed with firearms and explosive substances, broke open the doors of houses of members of that particular community, took out the entire family members after tying their hands, had taken some of them to the temple and thereafter to the canal whereas others were directly taken to the canal after tying their hands where their legs were also tied and after surrounding them from all sides, when they were in the most helpless condition and could not take recourse to save their lives, some of them were done to death by firearms but a vast majority were massacred by slitting their throats with *pasuli* which resulted in 35 casualties and several others were injured including prosecution witnesses. (Para 46)

There cannot be any manner of doubt that the villagers were done to death in an extremely diabolic, revolting and dastardly manner which had affected the normal tempo of life of the community in the locality. The crime in the present case is not only ghastly, but also enormous in proportion as 35 persons, all of whom belonged to one community, were massacred. Thus, after taking into consideration the balance sheet of aggravating and mitigating circumstances, the court has no doubt in holding that culpability of the accused persons assumes the proportion of extreme depravity that a special reason can legitimately be said to exist within the meaning of Section 354(3) CrPC in the case at hand and it would be a mockery of justice if extreme penalty of death is not imposed. The trial court was quite justified in upholding the convictions of the appellants and awarding the extreme penalty of death, which punishment alone was called for in the facts of the present case. (Para 46)

Per Arijit Pasayat, J. (concurring)

The factual scenario highlighted and established by the prosecution shows how gruesome and macabre acts were perpetrated by the accused persons. Thirty-five people lost their lives and several others have been seriously injured because of caste war. The gruesome acts were diabolic in their conception and cruel in execution. There was deliberate and planned destruction of extensive properties and annihilation of a large number of persons. All this happened on account of caste war. In a country like ours where discrimination on the ground of caste or religion is a taboo, taking lives of persons belonging to another caste or religion is bound to have a dangerous and reactive effect on the society at large. It strikes at the very root of the orderly society which the founding fathers of our Constitution dreamt of. It has been conclusively held that the accused persons were not innocent bystanders or onlookers. Chain of evidence clearly shows what their object was. (Para 52)

The guidelines which emerge from *Bachan Singh case* have to be applied to the facts of each individual case where the question of imposition of death sentence arises. In the case at hand, in the minimum, guidelines (*1*) and (*4*) as laid down in *Machhi Singh case* are clearly applicable. (Para 53)

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Punishment ought always to fit with the crime. (Para 54)

In view of the above facts and legal position, the accused-appellants deserve death sentence which has been awarded by the trial court. (Para 55)

Shah, J. (dissenting)

It requires to be stated that this case illustrates how faulty, delayed, casual, unscientific investigation and lapse of long period in trial affects the administration of justice which in turn certainly shakes the public confidence in the system. Is it not possible for the authorities to find out ways and means for speedy, efficient, scientific investigation in at least heinous brutal carnage and for trying the case within a few months of the occurrence? If this is not done, it is of no use to complain that the accused are not punished in such cases. In any case, for deciding such criminal case, it is the bounden duty of the court to appreciate the evidence brought on record, as it is, in accordance with established law without being influenced by the allegations levelled by the prosecuting agency or by the incident. (Para 56)

Having regard to the evidence, it can be stated as under:

(*1*) The investigation in the present case is totally defective. The investigating officers have not taken any care and caution in recording the statement of witnesses immediately. No identification parade of the accused was held. The investigating officer is not examined.

(*2*) When the accused are charged with heinous brutal murders punishable to the highest penalty prescribed by the Penal Code, the judicial approach in dealing with such cases has to be cautious, circumspect and careful. In case of defective investigation, the court can rely upon the evidence led by the prosecution and connect the accused with the crime, if found reliable and trustworthy.

(*3*) In the present case almost all the witnesses have exaggerated to a large extent by naming a number of persons as accused but they could identify only one or two accused. This would clearly reveal that for one or the other reason, witnesses were naming a number of persons as accused who were not known to them or whom they had not seen at the time of incident. In that set of circumstances, their evidence to a large extent becomes doubtful and/or tutored.

(*4*) Nowhere the witnesses assigned any specific role to the accused, except their presence in the mob at the time of offence.

(*5*) The witnesses nowhere stated that the identified accused were having any weapon of offence.

(*6*) Investigating officers have not recovered any weapon of offence or any incriminating article from the possession of any of the accused. (Para 96)

Thus, in view of the aforesaid shortcomings in the investigation and the evidence which only proves the presence of the accused at the scene of offence, this would not be a fit case for imposing the death penalty. (Para 97). *Krishna Mochi* v. *State of Bihar*, (2002) 6 SCC 81: 2002 SCC (Cri) 1220: AIR 2002 SC 1965: 2002 Cri LJ 2645.

Bench Strength **3**. Coram: **M.B. Shah**[3], **B.N. Agrawal**[1] and **Arijit Pasayat**[2], JJ. [Date of decision: 15-4-2002]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Ram Deo Chauhan v. State of Assam, (2000) 7 SCC 455: 2000 SCC (Cri) 1392, relied on

Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, applied

[3730] — S. 354(3) — Choice of sentence, death or life imprisonment — Considerations — *Delhi riot of 1984 following assassination of Prime Minister of India — Mob attack resulting in death of three persons — Absence of evidence to establish that the death was caused only on account of injuries inflicted by the appellant — Appellant neither leader of the mob nor exhorting others to do any particular act — Murder of several persons having taken place in a chain of events occurring on one night and day the appellant cannot be said to have indulged in criminal activities one after another — Acts attributed to the said mob only the result of temporary frenzy and not any organized systematic activity — Riotous mob not expected to follow high ideals of secularism in such situation — In the circumstances death sentence passed by the trial court and confirmed by the High Court converted to sentence for life imprisonment — Penal Code, 1860 — S. 302 [Ss. 302/149 and 148]*

In the year 1984 a riot in Delhi broke out as a result of assassination of the Prime Minister of India, Mrs Indira Gandhi. The appellant was held responsible as a member of the riotous mob for the death of three persons and, therefore, he was convicted under Sections 148 and 302/149 IPC. The trial court passed sentence of death on the appellant which was confirmed by the High Court. On appeal by special leave reducing the sentence from that of capital punishment to life imprisonment,

Held :

The law is well settled that capital punishment can be imposed in the rarest of the rare cases and if there are any aggravating circumstances such as the accused having any criminal record in the past, the manner of committing the crime, delay in imposing the sentence and so on. It is common experience that when people congregate in crowds, normal defences are lowered so that the crowd instinct assaults on the sense of individuality or transcends one's individual boundaries by offering a release from inhibitions from personal doubts and anxiety. In such a situation, one can well imagine that a member of such a group loses one's self and the normal standard or sense of judgment and reality. The primary motivational factor in the assembly of a violent mob may result in the murder of several persons. Experts in criminology often express that when there is a collective action, as in the case of a mob, there is a diminished individual responsibility unless there are special circumstances to indicate that a particular individual had acted with any predetermination such as by use of a weapon not normally found. If, however, a member of such a crowd picks up an article or a weapon which is close by and joins the mob, either on his own volition or at the instigation of the mob responding to the exhortation of the mob, playing no role of leadership, it can be said that such a person did not intend to commit all the acts which a mob would commit left to himself, but did so under the influence of collective fury. In the instant case though the appellant is stated to be responsible for inflicting certain knife injuries, yet it is not clear whether those injuries of themselves would have been sufficient to result in the death of the deceased. In the absence of any medical evidence in these cases, it has become very difficult to draw any inference as to the injuries inflicted by the appellant. There is no doubt that when an accused person is charged with an offence not only under Section 302 but also read with Section 34 or Section 149 IPC, the culpability of such an accused resulting in the death of the person will not be less than that of homicide amounting to murder. But in the present case the question was whether such culpability was of such a nature which should result in capital punishment to the accused.

Though the appellant had been charged with offences in seven cases and he had been convicted in all those cases, on appeal he had been acquitted in four cases and it is only in three cases that his conviction has been affirmed. Therefore, the basis upon which the Sessions Court concluded that he had been convicted in a number of cases, thereby indicating that the appellant is a hard-boiled criminal, may not stand to reason. On the other hand, what could be seen is that all these killings had taken place in a chain of events occurring on one night and day and, therefore, pertained to one incident. Looked from that angle, it could not be stated that the appellant was indulging in criminal activities one after another. None of the witnesses has stated that the appellant was the leader of the mob or he exhorted the members thereof to do any particular act. His role appears was only as a member of the mob.

It is no doubt true that the high ideals of the Constitution have to be borne in mind, but when normal life breaks down and groups of people go berserk losing balance of mind, the rationale that the ideals of the Constitution should be upheld or followed, may not appeal to them in such circumstances, nor can one expect such loose heterogeneous group of persons like a mob to be alive to such high ideals. Therefore, to import the ideas of idealism to a mob in such a situation may not be realistic. It is no doubt true that courts must be alive and in tune with the notions prevalent in the society and punishment imposed upon an accused must be commensurate with the heinousness of the crime.

The acts attributed to the mob of which the appellant was a member at the relevant time cannot be stated to be a result of any organized systematic activity leading to genocide. To the extent there was unlawful assembly and to the extent that the mob wanted to teach a stern lesson to the Sikhs, there was some organisation; but in that design, that they did not consider that women and children should be annihilated which is a redeeming feature. When an amorphous group of persons come together, it cannot be said that they indulge in any systematic or organized activity. Such group may indulge in activities and may remain cohesive only for a temporary period and thereafter would disintegrate. The acts of the mob of which the appellant was a member cannot be stated to be the result of any organisation or any group indulging in violent activities formed with any purpose or scheme so as to call an organised activity. The acts of the mob of which the appellant was a member was only the result of a temporary frenzy. He did not play the role of a leader of the mob.

On totality of circumstances this is not a case where the courts below should have imposed capital punishment. Therefore, the sentence reduced from that of capital punishment to life imprisonment. *Kishori* v. *State of Delhi*, (1999) 1 SCC 148: 1999 SCC (Cri) 1: AIR 1999 SC 382.

Bench Strength 2. Coram: *G.T. Nanavati* and **S. Rajendra Babu**, JJ. [Date of decision: 1-12-1998]

[**Ed.**: In the realm of grave and sudden provocation it has been held by the Supreme Court in the celebrated case of *K.M. Nanavati*, AIR 1962 SC 605 that such a defence would not be available if the accused had "sufficient time to regain self-control" or "after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation". [See also (1972) 4 SCC 819 where accused was held to have got sufficient time to cool down while fetching his gun a furlong away.] Should not a similar consideration of opportunity for tempers to cool down or realization of acts done or being done be applied to actions done out of mob frenzy or mob fury. Here the "killing had taken place in a chain of events occurring on one night and day". Was it really one long continuous incident where the accused participant never attended to calls of nature of hunger or ablution, etc. and never got a moment with himself to regain self-control? The Court itself has recognized (para 13) that such amorphous group of persons "may remain cohesive only for a temporary period and thereafter disintegrate". So, on facts, if there was any opportunity to further plan the attacks or arm oneself for further acts of violence, would it be justified to extend to such further acts the cover of acts done out of mob frenzy or mob fury. Mob violence is on the increase throughout the country and can be easily activated even on misplaced notions of propriety or public morality or for perceived attack upon cultural values or religious sentiments. It would be unfortunate if this ruling serves as a precedent to mitigate offences committed by such mobs.]

[3731] — S. 354(3) — Choice of sentence, death or life imprisonment — Principles restated — Rarest of rare cases — *Appellant amputating hand of the deceased, severing his head from the body, carrying it through the road to the police station by holding it in one hand and the blood-dripping weapon in the other hand — Held, in the circumstances, case falls within the category of rarest of rare cases — In view of aggravating circumstances of the case the fact that the appellant was a young man having three unmarried sisters and aged parents would not justify lesser punishment — Penal Code, 1860 — S. 302*

The deceased was taking his morning cup of tea on the corner tea stall of the road. The appellant arrived at the scene with a sword-like weapon and with it dealt blows on the deceased who fell down on the ground. The appellant amputated the right hand and thereafter severed the head of the deceased. With the head of the deceased in one hand and the blood-dripping weapon in the other hand, he moved majestically towards the Police Outpost. The trial Judge sentenced the appellant to death which was confirmed by the High Court. Dismissing the appeal by special leave

Held :

On conviction under Section 302 IPC the normal rule is to award punishment of life imprisonment and the punishment of death should be reserved only for the rarest of rare cases. Whether a case falls within "the rarest of rare" cases has to be examined with reference to the facts and circumstances of each case. The court has to take note of the aggravating as well as the mitigating circumstances and conclude whether there was something uncommon about the crime which renders the sentence of imprisonment for life inadequate and calls for a death sentence. The court is also expected to consider whether the circumstances of the crime are such that there is no alternative but to impose death sentence after according maximum weightage to the mitigating circumstances which speak in favour of the offender. (Para 8)

In the instant case the murder committed was extremely gruesome, heinous, cold-blooded and cruel. The manner in which the murder was committed was atrocious and shocking. After giving blows with a sword to the deceased when he fell down the appellant amputated his hand, severed his head from the body, carried it through the road to the police station by holding it in one hand and the blood-dripping weapon in the other hand. This depict the extreme depravity of the appellant. (Para 14)

It was contended that the appellant is a young man of 33 years and is having three unmarried sisters and aged parents and he was not well at that time. These circumstances when weighed against the aggravating circumstances leave one in no doubt that this case falls within the category of rarest of rare cases. The trial court has correctly applied the principles in awarding the death sentence and the High Court has committed no error of law in confirming the same. (Para 15). *Mahendra Nath Das* v. *State of Assam*, (1999) 5 SCC 102: 1999 SCC (Cri) 664: AIR 1999 SC 1926: 1999 Cri LJ 2873.

Bench Strength 2. Coram: **S.S.M. Quadri** and *D.P. Mohapatra*, JJ. [Date of decision: 14-5-1999]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Kehar Singh v. State (Delhi Admn.), (1988) 3 SCC 609: 1988 SCC (Cri) 711; Shankar v. State of T.N., (1994) 4 SCC 478: 1994 SCC (Cri) 1252; Govindaswami v. State of T.N., (1998) 4 SCC 531: 1998 SCC (Cri) 1092, followed

Raja Ram Yadav v. State of Bihar, (1996) 9 SCC 287: 1996 SCC (Cri) 1004; Ronny v. State of Maharashtra, (1998) 3 SCC 625: 1998 SCC (Cri) 859; State of H.P. v. Manohar Singh Thakur, (1998) 6 SCC 158: 1998 SCC (Cri) 1426; Allauddin Mian v. State of Bihar, (1989) 3 SCC 5: 1989 SCC (Cri) 490, distinguished

[3732] — S. 354(3) — Consideration in award of sentence — *Individualisation of sentence where more than one accused involved. Shobhit Chamar* v. *State of Bihar,* (1998) 3 SCC 455: 1998 SCC (Cri) 790: AIR 1998 SC 1693.

Bench Strength **2**. Coram: *G.T. Nanavati* and **S.P. Kurdukar**, JJ. [Date of decision: 4-3-1998]

[3733] — S. 354(3) — Death caused while suffering under a hallucination — *Case based on circumstantial evidence — Nature and extent of injuries not known — Special reasons for the award of death sentence being absent, death penalty commuted to life imprisonment. Ashok Laxman Sohoni* v. *State of Maharashtra*, (1977) 2 SCC 103: 1977 SCC (Cri) 243: AIR 1977 SC 1319: 1977 Cri LJ 829.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 17-2-1977]

[3734] — S. 354(3) — Death sentence — Double murder by a matured man of 60 years of his daughter and son-in-law living with him — *Blows inflicted by axe on vital parts of body with such a great intensity that head almost severed from trunk — Murders not only pre-planned and coldblooded but acts of treachery of worst kind — High Court cannot be held to have erred in taking the view that there were special reasons which it had recorded for imposing death sentence. Rau Chima Chougule* v. *State of Maharashtra*, (1977) 4 SCC 518: 1977 SCC (Cri) 651: AIR 1977 SC 2407: 1978 Cri LJ 14.

Bench Strength **3**. Coram: *P.K. Goswami*, **P.N. Shinghal** and *Jaswant Singh*, JJ. [Date of decision: 28-9-1977]

[3735] — S. 354(3) — Death sentence — Mitigating circumstances — Expectation of survival entertained by convict after High Court altered sentence of death awarded by trial court to that of life imprisonment — *Held, such expectation cannot be a mitigating factor to interfere in State's appeal before Supreme Court for enhancement of sentence, if such enhancement on facts is called for — Penal Code, 1860 — S. 302*

There is no legal basis for the argument that after the High Court refused to confirm the death sentence, the respondents have entertained a just expectation of survival and, therefore, the Supreme Court should not interfere with the said judgment. In a judicial system like ours where there is a hierarchy of courts, the possibility of reversal of judgments is inevitable; therefore, expectations of an accused cannot be a mitigating factor to interfere in an appeal for enhancement of sentence if the same is otherwise called for in law. (Para 25). *State of U.P.* v. *Dharmendra Singh*, (1999) 8 SCC 325: 1999 SCC (Cri) 1425: AIR 1999 SC 3789.

Bench Strength **2**. Coram: *S.S.M. Quadri* and **N. Santosh Hegde**, JJ. [Date of decision: 21-9-1999]

Triveniben v. State of Gujarat, (1988) 4 SCC 574: 1989 SCC (Cri) 25, relied on

Ronny v. State of Maharashtra, (1998) 3 SCC 625: 1998 SCC (Cri) 859, distinguished

[3736] — S. 354(3) — Death sentence — Rarest of rare cases — Sentence — Death sentence — When not justified — *Brutality not the sole criterion for awarding capital punishment — Murder of four persons of a family by four assailants which included two ladies — Incidents between the members of the two rival families happening on earlier occasions also indicating the intensity of the bitterness which prevailed between them — Attacks and counter-attacks between them being frequent events during the preceding days — Six days before the occurrence a young female member of accused family attacked by two elderly persons of the deceased family — Held, in the circumstances of the case, death sentence not justified — Penal Code, 1860 — Ss. 302/34*

Brutality of the manner in which a murder was perpetrated may be a ground but not the sole criterion for judging whether the case is one of the "rarest of rare cases". In a way, every murder is brutal, and the difference between one from the other may be on account of mitigating or aggravating features surrounding the murder.

In the instant case the incidents which happened on earlier occasions between members of the two rival families are indicative of the intensity of the bitterness which prevailed between them. It was a thirst for retaliation which became the motivating factor. Attacks and counter-attacks between them were frequent events during the preceding days. Six days before the occurrence, two elderly persons of the deceased family attacked a young female member of the accused family. The brutality with which the murders were committed by the assailants which include two ladies makes one think that more skirmishes would have happened prior to the incident which would have escalated the simmering thirst for vengeance to reach a boiling point.

Therefore, this case cannot be treated as one of the "rarest of rare cases" where the lesser sentence is not at all adequate. *Panchhi* v. *State of U.P.*, (1998) 7 SCC 177: 1998 SCC (Cri) 1561: AIR 1998 SC 2726.

Bench Strength **3**. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas** and *S.S.M. Quadri*, JJ. [Date of decision: 19-8-1998]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Allauddin Mian v. State of Bihar, (1989) 3 SCC 5: 1989 SCC (Cri) 490, followed

[3737] — S. 354(3) — Death sentence — Rarest of rare cases — Aggravating factors — *Murder of wife and 2 children and causing grievous injuries to the remaining 3 children in the course of attempt to kill them — Accused causing 64 injuries to all the 6 persons — Absence of provocation or any quarrel between the accused and his wife or among any one of the family members — Manner of committing crime indicating that it was a premeditated one and not on account of sudden provocation or any mental derangement — Offence committed by the accused found to be gruesome, cold-blooded, heinous, atrocious and cruel — Held, there being no mitigating circumstances but only aggravating circumstances capital sentence justified — Penology — Penal Code, 1860 — S. 302*

The accused, his wife and all the five children took their dinner together before going to bed and had also viewed the programme on the television. The accused along with his family members slept in a room. At about 12 midnight or 1 a.m. the accused started to kill his wife with the help of a sword and on hearing the shoutings the children woke up. The wife questioned the accused why he was trying to kill her and the accused without giving any answer inflicted more injuries on her head, hand and foot. By that time, the eldest daughter tried to save her mother and instead of leaving his wife from attack, he started inflicting wounds on his first daughter with the same sword. Not satisfied with that, he also inflicted injuries with the same sword to another daughter and finding that the sword he had used had been bent, he left that sword and took out another big sword, kept in a box in the room, and with the help of the second sword, he inflicted injuries to the other children. All the injured persons fell down; the wife and two children succumbed to the injuries and the other three children escaped death. The accused after committing the crime confessed to a witness: "I had slaughtered all of them, how the three left alive?". The above attitude of the accused clearly revealed that he had caused injuries with a view to liquidate all the members of his family and he was not happy to find that in spite of his act his three children had escaped from death.

The accused had caused in all 64 sword injuries to all the six persons including the three deceased persons and those injuries speak for themselves about the gruesome nature of the crime committed by the accused. There was no provocation and there is nothing to suggest that there was any quarrel between the accused and his wife or among any one of the family members. The way in which the crime was executed clearly shows that it was a premeditated one and not on account of sudden provocation or any "mental derangement". The motive suggested in the course of cross-examination of the prosecution witnesses is also not helpful to the accused inasmuch as he has pleaded alibi in his statement (under Section 313 CrPC) and that has also been taken note of by the trial court as well as by the High Court. The crime indulged by the accused is undoubtedly gruesome, cold-blooded, heinous, atrocious and cruel. On the facts established on the record, there appears to be no mitigating circumstances whatsoever, but only aggravating circumstances which justify the imposition of death sentence. Looking into the manner in which the crime was committed, the weapon used, the brutality of the crime, number of persons murdered and the helplessness of the victims there can be no any other conclusion except the one, the Sessions Judge and the High Court arrived at to award the capital sentence to the accused. *Umashankar Panda* v. *State of M.P.*, (1996) 8 SCC 110: 1996 SCC (Cri) 543: AIR 1996 SC 3011.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K. Venkataswami**, JJ. [Date of decision: 28-2-1996]

[3738] — S. 354(3) — Death sentence — Rarest of the rare cases — *Murder of 5 persons, an old man of 75 years, a woman aged 32 years, two boys aged 12 years and a girl aged 15 years, at night when they were asleep by inflicting multiple injuries to wreak vengeance — Lower part of the body of the girl denuded — Held, the ghastly and barbaric murder can be termed as rarest of the rare cases — Penal Code, 1860 — S. 302. State of U.P.* v. *Dharmendra Singh*, (1999) 8 SCC 325: 1999 SCC (Cri) 1425: AIR 1999 SC 3789.

Bench Strength **2**. Coram: *S.S.M. Quadri* and **N. Santosh Hegde**, JJ. [Date of decision: 21-9-1999]

Triveniben v. State of Gujarat, (1988) 4 SCC 574: 1989 SCC (Cri) 25, relied on

Ronny v. State of Maharashtra, (1998) 3 SCC 625: 1998 SCC (Cri) 859, distinguished

Dharmendra Singh v. State of U.P., 1998 All LJ 477, reversed

[3739] — S. 354(3) — Death sentence — Special reasons — Rarest of the rare case — Determination of, on facts — *Rape, murder and robbery committed in a cold-blooded and pre-planned way — All the three inmates of the house viz. husband, wife and their son aged 17 years brutally murdered by throttling after committing rape on the lady aged over 45 years and the ornaments and valuables looted by three appellants, one of them (A-1) being* *a close relative (nephew) — Mitigating and aggravating circumstances considered — From the facts and circumstances of the case what particular role was played by each of the appellants and whose case fell with the rarest of the rare category not ascertainable — Possibility of reform and rehabilitation cannot be ruled out — In the circumstances held, sentence of death should be reduced to sentence of life imprisonment — Penal Code, 1860 — S. 302*

With regard to the quantum of punishment to be awarded to persons found guilty of offences dealt with in the Indian Penal Code, the scheme of the Code is that it confers a wide discretion on the court in the matter of awarding appropriate punishment by prescribing the maximum punishment and in some cases both the maximum as well as the minimum punishment for the offence. Though no general guidelines are laid down in the Code for the purpose of awarding punishment, generally the judicial discretion of the court is guided by the principle that the punishment should be commensurate with the gravity of the offence having regard to the aggravating and mitigating circumstances vis-à-vis an accused in each case. The obligation of the court in making the choice of death sentence for the person who is found guilty of murder is onerous indeed. But by sentencing a person to death, the court is giving effect to the command of law which is in public interest whereas in committing the murder or being privy to commit murder, even if it be a vengeance for another murder, the convict is violating the law which is against public interest. However, on the question of awarding the sentence for the offences for which life imprisonment as well as the death sentence is prescribed, sub-section (3) of Section 354 CrPC enjoins that in the case of sentence of death, special reasons for such sentence shall be stated. Whether the case is one of the rarest of the rare cases is a question which has to be determined on the facts of each case. The choice of the death sentence has to be made only in the rarest of the rare cases and where culpability of the accused has assumed depravity or where the accused is found to be an ardent criminal and menace to the society and; where the crime is committed in an organised manner and is gruesome, cold-blooded, heinous and atrocious; where innocent and unarmed persons are attacked and murdered without any provocation, the case would present special reason for purposes of sub-section (3) of Section 354 of the Criminal Procedure Code.

In the present case the mitigating circumstances in favour of the appellants are that A-1 is a qualified civil engineer and a married person having a son of four years' old, his parents are serving at Spiritual Life Centre, Narsapur for the last thirty-six years; A-2 is "Thaneshri" and "Vasaishri", titles conferred on him for his body-building; his marriage is a love marriage performed against the will of his parents as well as the volition of the parents of the wife and there is nobody to look after his wife and their two daughters and two sons of whom one is 1 1/2 years' old; A-3 pleaded that he is having a sick father and that he is only 27 years' old and an unmarried person. They are having no adverse antecedents in the sense of being habitual criminals. The aggravating circumstances are that A-1 is no other than the nephew (sister's son) of the deceased. Because of the relationship he gained access inside the house for himself and for his friends; they enjoyed the hospitality of the deceaseds' family as it was found that there were five used plates in the sink which indicate that the five had food; maybe, all the three appellants and the couple or two of them. The victims were unarmed; the heinous crime was committed for gain, namely to rob the valuables of the deceaseds' family; to give effect to their nefarious plans the unholy alliance of the appellants not merely robbed the family of valuables but killed all the three members of the family then in the house and above all committed sexual assault on the lady. It cannot but be a dastardly act for A-1 to commit rape on the lady who is none other than the wife of his maternal uncle and perhaps as old as his mother.

Considering the cumulative effect of all the factors, it cannot be said that the offences were committed under the influence of extreme mental or emotional disturbance for the whole thing was done in a pre-planned way; having regard to the nature of offences and circumstances in which they were committed, it is not possible for the Court to predict that the appellant would not commit criminal act of violence or would not be a threat to the society. A-1 is 35 years' old, A-2 is 35 years' old and A-3 is 27 years' old. The appellants cannot be said to be too young or too old. The possibility of reform and rehabilitation, however, cannot be ruled out. From the facts and circumstances, it is not possible to predict as to who among the three played which part. It may be that the role of one has been more culpable in degree than that of the others and vice versa. Where in a case like this it is not possible to say as to whose case falls within the "rarest of the rare" cases, it would serve the ends of justice if the capital punishment is commuted into life imprisonment. Accordingly, the sentence awarded by the courts below under Section 302 read with Section 34 is modified from death to life imprisonment. The sentences for the offences for which the appellants are convicted, except under Section 376(2)(*g*) IPC, shall run concurrently; they shall serve sentence under Section 376(2)(*g*) IPC consecutively, after serving sentence for the other offences. *Ronny* v. *State of Maharashtra*, (1998) 3 SCC 625: 1998 SCC (Cri) 859: AIR 1998 SC 1251.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.S.M. Quadri**, JJ. [Date of decision: 5-3-1998]

[3740] — S. 354(3) — Death sentence — Trial court giving cogent reasons for awarding sentence of death — High Court while agreeing with those reasons reducing the sentence to that of life imprisonment on ground that the convicts were languishing in death cell for more than 3 years — *Held, High Court erred both in law and in fact in doing so — There is no law which entitles a convict to commutation of death sentence if he is in custody for 3 years or more — Factually also the convicts were not in death cell for 3 years or more — Penal Code, 1860 — S. 302*

The complainant had purchased a part of the family house and some other land belonging to the family of Respondent 1 from the latter's grandfather and started living with his family in that part of the residential building. Respondent 1 resented this purchase as he himself was intending to purchase the same. Respondent 2, then a student of LLB. was harbouring evil designs on the complainant's niece aged about 15 years who was also residing there and in furtherance thereof he was constantly teasing her when she used to be on her way to school. It is stated by the prosecution that in order to fulfil his lust, about 4-5 days prior to the occurrence, he had tried to molest her and also threatened her with dire consequences should she dare to complain against him. It is stated that in spite of the threat the girl did complain to her uncle, the complainant, about the misdemeanours of Respondent 2 as a sequel to which the complainant and his nephew gave a thrashing to him. In this background of hatred entertained by the two respondents for their own causes they along with their four friends caused death of 5 members of the family — an old man aged 75 years, a woman aged 32, two boys aged 12 years and the said girl aged 15 years — at about 3 a.m. in the night while they were asleep by inflicting multiple (53) injuries on them. They also denuded the lower part of the body of the said girl. The Sessions Judge on considering the material placed by the prosecution before him, came to the conclusion that the prosecution had proved the charges against the accused persons and held them guilty of the said charges, and while convicting the said persons awarded life sentence in regard to the 4 accused persons, the friends of the respondents. But the Sessions Judge held that the respondents committed a crime which could be termed as "rarest of the rare cases" and hence after assigning reasons awarded them death sentence. In appeal the High Court upheld the conviction of all the accused persons and while confirming the sentence awarded on the other accused persons, came to the conclusion that the sentence of death was not called for in view of the fact that the two respondents were languishing in the death cell since 3-6-1994 and 28-5-1994 respectively which is for a period of more than 3 years and consequently, reduced the sentence to that of imprisonment for life. Against the judgment of the High Court confirming the conviction and awarding of sentence, the accused had preferred SLPs before the Supreme Court which came to be dismissed on 23-1-1998. Against the order of the High Court refusing to confirm the sentence of death awarded to the respondents herein, the State preferred the present appeals and the complainant also preferred a companion petition. On the other hand, on behalf of the respondents it was contended that this is not a fit case even for conviction; much less a case for extreme penalty of death. It was contended that both the courts below had based the conviction on conjectures and surmises against all probabilities. At any rate, the prosecution has failed to establish who amongst the 6 accused persons had actually dealt the blows i.e. individual overt acts have not been established. Therefore, even if the conviction is to be upheld, capital punishment should not be granted. It was also argued that even otherwise the facts of the case do not warrant imposition of death sentence and these two respondents having reconciled themselves to the judgment of the High Court, have an expectation of survival and which expectation of theirs should not be destroyed. Limited question for consideration in the present appeals was whether it is a case which could be termed as rarest of the rare cases so as to invoke the extreme penalty of death.

Allowing the appeals of the State,

Held :

In refusing to confirm the sentence of death awarded by the trial court the High Court erred in its conclusion both factually as well as inferentially. First of all these respondents were not in the death cell for 3 years nor is there a law which says that a person in the death cell for 3 years ipso facto is entitled to commutation of death sentence. While it is true that prolonged trial or execution of the death sentence beyond all reasonable period may be a ground for commuting the death sentence in a given case, it will be highly erroneous to lay down as a principle in law or draw an inference on the fact that awarding of death sentence is improper in cases where the accused persons are in custody for 3 years or more, even though the facts of the case otherwise call for a death sentence. If the view taken by the High Court in this case is to be accepted as a correct principle then practically in no murder case death sentence can be awarded, since in this country normally a murder trial and confirmation of death sentence takes more than 3 years. (Para 16)

The Supreme Court would not ordinarily interfere in the sentence unless there is any illegality or it involves any question of principle. Further, the question of sentence is a matter of discretion and that it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere to the detriment of an accused except for very strong and cogent reasons. The basis of the High Court's judgment to the extent that it has refused to confirm the death sentence awarded by the trial court is factually incorrect and opposed to accepted legal principles. Consequently, it has failed to exercise its discretion along accepted judicial lines. (Para 17)

The trial court has given cogent reasons for awarding the extreme penalty of death in regard to these respondents. The High Court has, as a matter of fact, concurred with the conclusions arrived at by the trial court in this regard. It is not possible to accept the argument that the findings of the courts below even in regard to the commission of the offence, are contrary to facts and hence at least, in regard to the awarding of sentence, the Supreme Court should not interfere in these appeals. So far as the commission of the offence is concerned, the special leave petition filed by the respondents was dismissed by this Court and the findings of the courts below have become final. (Paras 19 and 21)

The case of the prosecution shows that these two persons (respondents) in furtherance of their diabolic motive conspired to teach a lesson to the complainant by killing such of those members of the family who were vulnerable and helpless. This is clear from the timing of the attack which was when other able members of the family were away from the house and only the aged and the weak remained alone in the house. Also the fact that they solicited the help of four of their friends (other accused) shows that the intention was to kill as many members of the complainant family as possible, irrespective of the fact whether the victims were the cause of their vengeance or not. The ghastly manner of attack on the deceased, which is evident from the post-mortem report, shows that the act in question was premeditated, senseless, dastardly and beyond all human reasoning inasmuch as 53 wounds were inflicted on the 5 deceased persons; each one suffering at least 10 wounds on an average. The attacks were aimed at such parts of the body in succession where even a single stab would have, in the ordinary course, sufficed to cause death. The denuding of the lower part of the body of the girl showed an element of perversity which could be attributed to the mind of frustrated men who totally lacked human sensitivity. A holistic examination of the material on record shows that the barbaric offence in question could only be termed as a "rarest of the rare" case. (Para 22)

There is no legal basis for the argument that after the High Court refused to confirm the death sentence, the respondents have entertained a just expectation of survival and, therefore, the Supreme Court should not interfere with the said judgment. In a judicial system like ours where there is a hierarchy of courts, the possibility of reversal of judgments is inevitable; therefore, expectations of an accused cannot be a mitigating factor to interfere in an appeal for enhancement of sentence if the same is otherwise called for in law. (Para 25)

Taking into consideration the brutality of the attack, the number of persons murdered, the age and infirmity of the victims, their vulnerability and the diabolic motive, acts of perversion on the person of the girl, cumulatively the sentence awarded by the trial court was just and proper. On examination of the case carefully and giving anxious thought to the facts, it must be held that there are no mitigating circumstances in favour of the respondents herein. (Para 26). *State of U.P.* v. *Dharmendra Singh*, (1999) 8 SCC 325: 1999 SCC (Cri) 1425: AIR 1999 SC 3789.

Bench Strength **2**. Coram: *S.S.M. Quadri* and **N. Santosh Hegde**, JJ. [Date of decision: 21-9-1999]

Triveniben v. State of Gujarat, (1988) 4 SCC 574: 1989 SCC (Cri) 25, relied on

Ronny v. State of Maharashtra, (1998) 3 SCC 625: 1998 SCC (Cri) 859, distinguished

Dharmendra Singh v. State of U.P., 1998 All LJ 477, reversed

[3741] — Ss. 354(3), 377 and 386 — Supreme Court would not ordinarily interfere in the sentence unless there are very strong reasons, there is any illegality or it involves any question of principle — *Constitution of India — Art. 136. State of U.P.* v. *Dharmendra Singh*, (1999) 8 SCC 325: 1999 SCC (Cri) 1425: AIR 1999 SC 3789.

Bench Strength **2**. Coram: *S.S.M. Quadri* and **N. Santosh Hegde**, JJ. [Date of decision: 21-9-1999]

[3742] — S. 354(3) — Death sentence — When called for — Factors to be considered — Murders of innocent boys committed for gain as a means of living — *Held on facts, death sentence justified*

The accused indulged in illegal business of purchase and sale of ganja. They conspired to entice innocent boys from affluent families, took them to far flung places where the dead body could not be identified. Letters were written to the parents purporting to be by the deceased to delude the parents that the missing boys would one day come home alive and that they would not give any report to the police and the crime would go undetected. Four murders in a span of five years were committed for gain in cold-blooded, premeditated and planned way. One of the deceased was the nephew (elder sister's son) of the first accused. In each case the Sessions Court convicted the accused persons under Ss. 120-B, 364, 392 r/w S. 397; S. 302 r/w S. 34 IPC and sentenced them to death. The High Court confirmed the conviction and sentence of the appellants. Dismissing the appeals of the accused

Held :

There is no infirmity in the sentence awarded by the Sessions Court and confirmed by the High Court warranting interference. The facts would establish depravity and hardened criminality of the accused. No regard for precious lives of innocent young boys was shown. They adopted the crime of murder for gain as a means of living. The compassionate grounds such as the accused are youngmen and breadwinners of their family consisting of a young wife, minor child and aged parents would always be present in most cases and are not relevant for interference. (Paras 12 and 11). *Sevaka Perumal* v. *State of T.N.*, (1991) 3 SCC 471: 1991 SCC (Cri) 724: AIR 1991 SC 1463: 1991 Cri LJ 1845.

Bench Strength **2**. Coram: *B.C. Ray* and **K. Ramaswamy**, JJ. [Date of decision: 7-5-1991]

[3743] — S. 354(3) — Death sentence — When not called for — Whether a rarest of the rare cases — Mob violence — *Breaking open the house and cutting the deceased into pieces — Acts attributed by the prosecution to the accused-appellants not any different from rest of the accused persons — Held, murder, as it is, is though liable for the sentence befitting the crime, but the present case cannot be brought under the maxim "rarest of the rare cases" so as to award death sentence — Penal Code, 1860 — S. 302* (Paras 14 and 15). *Ramji Rai* v. *State of Bihar*, (1999) 8 SCC 389: 1999 SCC (Cri) 1446: AIR 1999 SC 3857.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **N. Santosh Hegde**, JJ. [Date of decision: 13-10-1999]

[3744] — S. 354(3) — Death sentence — When not justified — Dacoity — *Death of 4 persons — Appellants, armed with firearms, remaining outside the house and causing death of two persons outside the house — Occurrence taking place more then a decade ago — Held, death sentence not warranted*

The two appellants who are alleged to be armed with firearms, did not even enter the house to commit the dacoity and remained outside the house and caused the death of two persons outside the house, it was only the other accused persons who went inside the house differently armed, the number of injuries inflicted by them on the deceased inside the house and the weapons used in causing those injuries, while committing dacoity and not keeping or using the firearms, which were otherwise available, it is not possible to say that it is the "rarest of the rare cases" which may warrant the imposition of the sentence of death for the occurrence which occurred more than a decade ago. *Brij Mohan* v. *State of Rajasthan*, (1994) 1 SCC 413: 1994 SCC (Cri) 527: AIR 1994 SC 739: 1994 Cri LJ 922: (1994) 1 Crimes 288.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 16-12-1993]

[3745] — S. 354(3) — Death sentence whether in circumstances proper — High Court confirming death sentence on ground that accused a professional hired killer — *Held, on facts no evidence on record to justify findings of trial court as confirmed by High Court — Not a case in the 'rarest of rare' category — Penal Code, 1860 — S. 302. Bullu Das* v. *State of Bihar*, (1998) 8 SCC 130.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 3-11-1998]

[3746] — S. 354(3) — Deviation from normal rule of sentence of life imprisonment if justified — *Young college-going boy and the only male member of the family murdered — Considering the factors of unrest prevailing in the mind of the accused, on being despised due to his low social status and probability of an altercation taking place between the accused and the deceased before the murder, held, confirmation of death sentence not justified — Hence sentence reduced to life imprisonment — Penology. Dudh Nath Pandey* v. *State of U.P.*, (1981) 2 SCC 166: 1981 SCC (Cri) 379: AIR 1981 SC 911: (1981) 2 SCR 771: 1981 Cri LJ 618: 1981 ALJ 228.

Bench Strength **2**. Coram: **Y.V. Chandrachud**, **C.J.** and *A.P. Sen*, J. [Date of decision: 11-2-1981]

[3747] — S. 354(3) — Family dispute over property — *Death caused of five unarmed persons by the three accused — "Special reasons" existed on facts to justify death sentence — However on facts the sentence of one appellant deserved to be commuted to life imprisonment. Dalip Singh* v. *State of Punjab*, (1979) 4 SCC 332: 1979 SCC (Cri) 968: AIR 1979 SC 1173: 1979 Cri LJ 700.

Bench Strength **2**. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 12-1-1979]

[3748] — S. 354(3) — Special reasons for death sentence — Absence of — Death sentence — Commutation of — *Murder of wife and her two children by the husband and his friend — Motive being to grab the property — Murder not proved to have been committed in a cold-blooded manner — Absence of evidence to show how the murder had taken place — In the absence of such evidence, the case does not fall within the category of rarest of rare cases — Death sentence commuted to life imprisonment — Penal Code, 1860 — Ss. 302/34*

Under sub-section (3) of Section 354 CrPC when the conviction is for an offence punishable with death or in the alternative, with an imprisonment for life, the Court is required to state reasons for sentence awarded, and in case of sentence of death, the special reasons for such sentence are to be given. Thus, under the provisions of Code of Criminal Procedure, life imprisonment for the offence of murder is the rule and death sentence is an exception to be resorted to for special reasons to be recorded by the Court.

In the instant case the special reasons given by the trial court in awarding death sentence to the appellants and confirmed by the High Court, were that it was such a cruel act where the appellants have not even spared the innocent child and the motive being to grab the property. It was not pointed out by the prosecution that it was a cold-blooded murder. There is nothing on record to show how the murder has taken place. In the absence of such evidence, the case does not fall within the category of rarest of rare cases. *Sk. Abdul Hamid* v. *State of M.P.*, (1998) 3 SCC 188: 1998 SCC (Cri) 726: AIR 1998 SC 942.

Bench Strength **2**. Coram: *G.T. Nanavati* and **V.N. Khare**, JJ. [Date of decision: 4-2-1998]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, followed

[3749] — Ss. 354(3), 366 and 368 — Award of death sentence — Whether the present case was one of the rarest of the rare cases warranting death sentence — *Wife, along with her husband, murdering not only her stepbrother and his whole family including three tiny tots of 45 days, 2½ years and 4 years, but also her own father, mother and sister so as to deprive her father from giving property to her stepbrother and his family — Murders committed in a cruel and diabolic manner while victims were sleeping, without any provocation from victims' side — This indicating cold- blooded and premeditated approach of accused to cause death of victims — Accused not possessing basic humanness and completely lacking the psyche or mindset amenable to any reformation — Their act was revolting and dastardly — Hence held, the present case clearly fell within the category of the rarest of the rare cases — High Court was not justified in commuting death sentence to life imprisonment — Penal Code, 1860 — S. 302*

Accused *SA* and her husband *SJ* were tried and convicted in relation to various offences including murder. The accused were sentenced to death. The order of convictions and sentences gave rise to a murder reference by the trial court. Appeals were preferred by *SA* and *SJ* before the High Court. By the impugned judgment, while upholding their convictions under Section 302 read with Section 34 and Section 120-B IPC and other provisions, the High Court commuted the sentence of death to life imprisonment. Hence these appeals by special leave.

Before the Supreme Court, two appeals were preferred on behalf of the prosecution for enhancement of sentence from life imprisonment to death and one appeal was filed by the accused assailing the impugned judgment of their convictions and sentences.

Dismissing the appeal filed by the accused persons but allowing the appeals preferred by the prosecution,

Held :

The accused *SA*, along with the accused *SJ* (her husband) has not only put an end to the lives of her stepbrother and his whole family, which included three tiny tots of 45 days, 2 1/2 years and 4 years, but also her own father, mother and sister in a very diabolic manner so as to deprive her father from giving the property to her stepbrother and his family. The fact that murders in question were committed in such a diabolic manner while the victims were sleeping, without any provocation whatsoever from the victims' side indicates the cold-blooded and premeditated approach of the accused to cause death of the victims. The brutality of the act is amplified by the grotesque and revolting manner in which the helpless victims have been murdered which is indicative of the fact that the act was diabolic of the most superlative degree in conception and cruel in execution and that both the accused persons are not possessed of the basic humanness and completely lack the psyche or mindset which can be amenable to any reformation. If this act is not revolting or dastardly, it is beyond comprehension as to what other act can be so. In view of these facts, there would be failure of justice in case death sentence is not awarded in the present case as the same undoubtedly falls within the category of the rarest of the rare cases and the High Court was not justified in commuting death sentence to life imprisonment. (Para 66). *Ram Singh* v. *Sonia*, (2007) 3 SCC 1: (2007) 2 SCC (Cri) 1: AIR 2007 SC 1218: 2007 Cri LJ 1642.

Bench Strength 2. Coram: **B.N. Agrawal** and *P.P. Naolekar*, JJ. [Date of decision: 15-2-2007]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, followed

[3750] — Ss. 354(3), 366 and 368 — Death sentence — Award of — When warranted — *"The rarest of the rare" case — Multiple murders — Brutal execution — Murder of defenceless children — Accused not amenable to reformation, inferred from facts — Accused brutally murdering three innocent defenceless children aged 8, 15 and 16 years and causing injuries to all other helpless inmates of the house — Accused staying as a paying guest (for a sum of Rs 500 for food and meals) for a continuous period of 4 years — No provocation or reason for committing this ghastly act at a time when children would have been sleeping and would not have been in a position to defend themselves — Medical evidence indicating brutality — Several incised wounds (muscle-deep or bone-deep) were caused to the deceased persons — Considering the brutality, diabolic, inhuman nature and enormity of the crime (i.e. multiple murders and attacks), held, the mindset of the accused could not be said to be amenable to any reformation — Therefore, it came under the rarest of rare case where not awarding a death sentence would have caused a failure of justice — Death penalty confirmed*

The appellant-accused was charged under Section 302 of the Penal Code, 1860 (IPC) for committing the murder of informant's son *D*, aged about 16 years, daughter *K*, aged about 15 years and niece *P*, aged about 8 years, and further under Section 307 IPC for attempting to commit the murder of the informant (PW 3) and his wife (PW 2). The Sessions Court found him guilty of the offence under Section 302 IPC and sentenced him to death. He was also found guilty of the offence under Section 307 IPC. The High Court accepted the death reference and dismissed the appeal filed by the appellant-accused.

Dismissing the appeal,

Held :

The case falls in the category of the rarest of rare cases. The Sessions Court and the High Court were justified in imposing death sentence on the appellant-accused. There would be failure of justice in case death sentence is not awarded in the present case. The enormity of the crime is writ large. The appellant-accused caused multiple murders and attacked three witnesses. The brutality of the act was amplified by the manner in which the attacks had been made on all the inmates of the house in which the helpless victims had been murdered, which was indicative of the fact that the act was diabolic of the superlative degree in conception and cruel in execution and did not fall within any comprehension of the basic humanness which indicates the mindset which could not be said to be amenable to any reformation. The appellant-accused was living as a family member of PW 3 and PW 2 and was provided with shelter and meals, although for a sum of Rs 500 per month, being a friend of PW 1. He lived with the family not for a month or two, but for a continuous period of four years. There does not appear to be any apparent provocation or reason for committing the ghastly brutal murder of three innocent defenceless children who were aged 8, 15 and 16 years. It can safely be assumed that the time at which the incident happened, the children must have been asleep and were not in a position to defend themselves. It came in the evidence of PW 1, PW 2 and PW 3 that the appellant-accused had assaulted them when they were running here and there to save themselves. The medical evidence led by the prosecution indicates the brutality in the commission of crime. Several incised wounds (muscle-deep and bone-deep) were caused to the deceased persons. The victims apparently did not have any weapon with them. (Paras 28, 27 and 26)

The statements of PWs 1, 2 & 3 fully prove the guilt of the appellant-accused in the commission of murder of three persons and causing grievous injuries to the witnesses. These statements implicating the appellant-accused in the commission of crime and the injuries caused to them and the deceased persons were fully supported by the medical evidence. PW 1, PW 2 and PW 3 having been the residents of the same house, their presence at the place of occurrence in the dead hours of night and they having witnessed the incident, could not be ruled out. These witnesses were close and direct relations of the deceased children and, therefore, implicating a false person, leaving out the actual culprit, was highly improbable and unacceptable. These witnesses corroborated each other in the material particulars and the manner in which the incident happened. PW 3 and PW 2 at the relevant time were in their room on the 3rd floor and came down on hearing the noise to the 2nd floor where they watched the drastic act being committed. When they tried to intervene, they were also attacked. PW 1 was in the adjoining room where the incident happened and he came to the place of incident immediately after hearing the noise. Nothing had been brought about in the cross-examination to disbelieve the ocular version of the witnesses. Two courts below on detailed scrutiny of the evidence of these witnesses, did not find any infirmity in the evidence pointing finger towards the appellant-accused. (Para 21). *Prajeet Kumar Singh* v. *State of Bihar*, (2008) 4 SCC 434: (2008) 2 SCC (Cri) 416: 2008 Cri LJ 3596.

Bench Strength 2. Coram: **P.P. Naolekar** and *L.S. Panta*, JJ. [Date of decision: 2-4-2008]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, followed

[3751] — Ss. 354(3), 366 and 433-A — Death sentence should be imposed in very extreme cases — *Accused-appellant, not a habitual criminal, committing murder of a young boy as a result of a land dispute — In the circumstances, held, life imprisonment and not death sentence would be justified — But government will not, save for weighty reasons, reduce or commute the sentence to less than 14 years as contemplated in S. 433-A. Shidagouda Ningappa Ghandavar* v. *State of Karnataka*, (1981) 1 SCC 164: 1981 SCC (Cri) 163: AIR 1981 SC 764: (1981) 1 SCR 1269: 1981 Cri LJ 324.

Bench Strength 2. Coram: *Y.V. Chandrachud, C.J.* and *A.C. Gupta*, J. [Date of decision: 11-11-1980]

[3752] — Ss. 354(3), 368 and 235(2) — 'Special reasons' for death sentence — Vague reason such as 'terrific' double murder is not sufficient — *Court must make genuine efforts under S. 235(2) to elicit relevant information from the accused — While confirming the sentence High Court must scrutinize the case carefully and decide in the light of different aspects having important bearing on the issue — In view of infirmities in the case which High Court failed to appreciate properly and in absence of any 'special reasons' shown, held, High Court not justified in confirming the death sentence by merely calling the murders 'cold-blooded'*

All murders are terrific and therefore, the fact of the murder being "terrific" cannot be an adequate reason for imposing death sentence, otherwise death sentence will become the rule, not an exception and S. 354(3) will become a dead letter.

The obligation to hear the accused on the question of sentence under S. 235(2) is not discharged by putting a formal question to the accused as to what he has to say on the question of the sentence. The judge must make a genuine effort to elicit from the accused all information which will eventually bear on the question of sentence. It is the bounden duty of the judge to cast aside the formalities of the court scene and approach the question of sentence from a broad, sociological point of view. Questions which the judge can put to the accused under S. 235(2) and the answers which the accused makes to those questions are beyond the narrow constraints of the Evidence Act. The court, while on the question of sentence, is in an altogether different domain in which facts and factors which operate are of an entirely different order than those which come into play on the question of conviction. In the present case the Sessions Court complied with the form and letter of the obligation imposed under S. 235(2) and not with its spirit and substance as it made no serious effort to elicit from the accused what he wanted to say on the question of sentence.

The High Court's condemnation of the murders by calling them as 'cold-blooded' without seeing the failings of the Sessions Court in the matter of sentencing led to an unexamined confirmation of the death sentence. *Muniappan* v. *State of T.N.*, (1981) 3 SCC 11: 1981 SCC (Cri) 617: AIR 1981 SC 1220: (1981) 3 SCR 270: (1982) 1 MLJ (SC) 1: 1981 Cri LJ 726.

Bench Strength 2. Coram: **Y.V. Chandrachud, C.J.** and *A.P. Sen*, J. [Date of decision: 18-3-1981]

[3753] — Ss. 354(3), 374 and 384 — Appeal against conviction for murder and sentence of imprisonment for life should not be dismissed by High Court in limine by a single word 'dismissed' — *Speaking order essential for dealing with SLP under Art. 136*

Summary dismissal of appeal against conviction for murder and sentence of life imprisonment or death by High Court is not proper. Whenever a further right to question the judgment of a court or tribunal is provided by the Constitution or statute, the court or tribunal should make a speaking order when finally adjudicating the case. If a speaking order, however brief, is made by the High Court while dismissing an appeal or writ petition under Art. 226, it will be most useful to Supreme Court in dealing with applications under Art. 136. *Raghunath Laxman Makadwada* v. *State of Maharashtra*, (1986) 2 SCC 90: 1986 SCC (Cri) 108: AIR 1986 SC 1070: 1986 Cri LJ 858.

Bench Strength 2. Coram: **O. Chinnappa Reddy** and *V. Khalid*, JJ. [Date of decision: 12-2-1986]

[3754] — Ss. 354(3) and 253(2) — Death sentence — Rarest of rare cases — Calculated, cold-blooded and brutal murder of a seven years old girl by her own uncle after committing rape on her — *Victim totally helpless — Death sentence imposed by trial court and confirmed by High Court, on facts and circumstances, held, justified — Penal Code, 1860 — Ss. 302 and 376*

The extreme penalty can be inflicted only in gravest cases of the extreme culpability and in making choice of the sentence, in addition to the circumstances of the offender also. Having regard to these principles with regard to the imposition of the extreme penalty it may be noticed that there are absolutely no mitigating circumstances in the present case. On the contrary the facts of the case disclose only aggravating circumstances against the appellant.

The hard facts of the present case are that the appellant is the uncle of the deceased and almost occupied the status and position that of a guardian. Consequently the victim who was aged about 7 years must have reposed complete confidence in the appellant and while reposing such faith and confidence in the appellant must have believed in his bona fides and it was on account of such a faith and belief that she acted upon the command of the appellant in accompanying him under the impression that she was being taken to her village unmindful of the preplanned unholy designs of the appellant. The victim was a totally helpless child there being no one to protect her in the desert where she was taken by the appellant misusing her confidence to fulfil his lust. It appears that the appellant had preplanned to commit the crime by resorting to diabolical methods and it was with that object that he took the girl to a lonely place to execute his dastardly act.

The appellant seems to have acted in a beastly manner as after satisfying his lust he thought that the victim might expose him for the commission of the offence of forcible rape on her to the family members and others, the appellant with a view to screen the evidence of his crime also put an end to the life of innocent girl who had seen only seven summers. The evidence on record is indicative of the fact as to how diabolically the appellant had conceived of his plan and brutally executed it and such a calculated, cold-blooded and brutal murder of a girl of a very tender age after committing rape on her would undoubtedly fall in the category of rarest of the rare cases attracting no punishment other than the capital punishment and consequently the sentence of death imposed upon the appellant for the offence under S. 302 must be confirmed. *Laxman Naik* v. *State of Orissa*, (1994) 3 SCC 381: 1994 SCC (Cri) 656: AIR 1995 SC 1387.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 22-2-1994]

[3755] — Ss. 354(3) and 386 — Death sentence — Motivated and planned murder of innocent children by professional killers — *Held, on facts, sentence proper. Kuljeet Singh* v. *Union of India*, (1981) 3 SCC 324: 1981 SCC (Cri) 726: AIR 1981 SC 1572: (1981) 3 SCR 512: 1981 Cri LJ 1045.

Bench Strength 3. Coram: **Y.V. Chandrachud, C.J.** and *A.P. Sen* and *Baharul Islam*, JJ. [Date of decision: 21-4-1981]

[3756] — S. 354(5) — Constitutionality of, open to judicial review

It will be legislating if the court directs that since, if at all, the provision contained in S. 354(5) is unconstitutional, the death sentence imposed upon the petitioners should be executed by the method of electrocution or gas-chamber or lethal injection or shooting or guillotine and the like. *Deena* v. *Union of India*, (1983) 4 SCC 645: 1983 SCC (Cri) 879: AIR 1983 SC 1155: 1983 Cri LJ 1602.

Bench Strength 3. Coram: **Y.V. Chandrachud, C.J.** and *R.S. Pathak* and *Sabyasachi Mukharji*, JJ. [Date of decision: 23-9-1983]

[3757] — S. 354(5) — Execution of death sentence on the command of a judicial verdict not interdicted by Art. 21

Article 21 has as much relevance on the passing of a sentence, as on the manner of executing it and therefore, a two-fold consideration has to be kept in mind in the area of sentencing. Substantively, the sentence has to meet the constitutional prescription contained, especially, in Arts. 14 and 21. Procedurally, the method by which the sentence is required by law to be executed has to meet the mandate of Art. 21, which is not that the death sentence shall not be executed but that it shall not be executed in a cruel, barbarous or degrading manner.

When *Bachan Singh case* has declared it to be lawful to execute death sentence in appropriate cases, it would be lawful to execute that sentence in an appropriate manner, unaccompanied by torture or degradation of any kind. It is not unlawful in the abstract and in the absolute, to execute a lawful order.

The argument, it carried to its logical conclusion will make it impossible to execute any sentence whatsoever, particularly of imprisonment, because every sentence of imprisonment necessarily involves pain and suffering to a lesser or greater degree. A Constitution so carefully conceived as ours cannot be construed to produce such a startling result.

No sustenance can be derived from the Eighth Amendment to the United States Constitution. *Deena* v. *Union of India*, (1983) 4 SCC 645: 1983 SCC (Cri) 879: AIR 1983 SC 1155: 1983 Cri LJ 1602.

Bench Strength 3. Coram: **Y.V. Chandrachud, C.J.** and *R.S. Pathak* and *Sabyasachi Mukharji*, JJ. [Date of decision: 23-9-1983]

[3758] — S. 354(5) — Hanging by rope for executing death sentence, held, not violative of Art. 21 — *Constitution of India — Article 21*

The method prescribed by S. 354(5) for executing the death sentence by hanging does not violate Art. 21.

To the present challenge the State has discharged the heavy burden which lay upon it to prove constitutionality of the method of hanging described in S. 354(5). The system of hanging is as painless as is possible in the circumstances, it causes no greater pain than other known method of executing the death sentence and it involves no barbarity, torture or degradation. This conclusion is based on reason, supported by expert evidence and the findings of modern medicine. This system is in operation in a large part of the civilised world. It was in operation when our Constitution was framed.

The system of hanging which is now in vogue consists of a mechanism which is easy to assemble. The preliminaries to the act of hanging are quick and simple and they are free from anything that would unnecessarily sharpen the poignancy of the prisoner's apprehension. The chances of an accident during the course of hanging can safely be excluded. The method is a quick and certain means of executing the death penalty. It eliminates the possibility of a lingering death. Unconsciousness supervenes almost instantaneously after the process is set in motion and the death follows as a result of the dislocation of the cervical vertebrae. The chances of strangulation which results on account of too short a drop or of decapitation which results on account of too long a drop are now remote. The system is consistent with the obligation of the State to ensure that the process of execution is conducted with decency and decorum without involving degradation or brutality of any kind.

On the question of pain involved in a punishment the concern of law has to be to ensure that the various steps which are attendant upon or incidental to the execution of any sentence, more so the death sentence, do not constitute punishment by themselves. If a prisoner is sentenced to death, it is lawful to execute that punishment and that only. Torture, brutality, barbarity, humiliation and degradation of any kind, even as necessary steps in the execution of sentence, is impermissible. The process of hanging does not involve any of these, directly, indirectly or incidentally. At the moment of final impact when life becomes extinct, some physical pain would be implicit in the very process of the ebbing out of life. But, the act of hanging causes the least pain imaginable on account of the fact that death supervenes instantaneously.

Neither electrocution, nor lethal gas, nor shooting, nor even the lethal injection has any distinct or demonstrable advantage over the system of hanging, and therefore, it is impossible to conclude with any degree of certainty that the method of hanging should be replaced by any of these methods. *Deena* v. *Union of India*, (1983) 4 SCC 645: 1983 SCC (Cri) 879: AIR 1983 SC 1155: 1983 Cri LJ 1602.

Bench Strength 3. Coram: **Y.V. Chandrachud, C.J.** and *R.S. Pathak* and *Sabyasachi Mukharji*, JJ. [Date of decision: 23-9-1983]

[3759] — S. 354(5) — Where constitutionality of method of execution of death sentence under, is involved, court can allow arguments beyond the scope of the averments without asking the petitioner to amend his petition. *Deena* v. *Union of India*, (1983) 4 SCC 645: 1983 SCC (Cri) 879: AIR 1983 SC 1155: 1983 Cri LJ 1602.

Bench Strength 3. Coram: **Y.V. Chandrachud, C.J.** and *R.S. Pathak* and *Sabyasachi Mukharji*, JJ. [Date of decision: 23-9-1983]

[3760] — S. 354(5) — Where validity of challenged on ground of violation of Art. 21, held, burden lies on State to prove that the procedure for execution of death sentence provided therein is constitutional being just, fair and reasonable — *Constitution of India — Article 21. Deena* v. *Union of India*, (1983) 4 SCC 645: 1983 SCC (Cri) 879: AIR 1983 SC 1155: 1983 Cri LJ 1602.

Bench Strength 3. Coram: **Y.V. Chandrachud, C.J.** and *R.S. Pathak* and *Sabyasachi Mukharji*, JJ. [Date of decision: 23-9-1983]

[3761] — Ss. 354(5), 413, 414 — Public hanging — *Order for execution of death sentence by public hanging, held, violative of Art. 21 being barbaric — Any Jail Manual providing for public hanging would be unconstitutional — Constitution of India — Article 21*. *Attorney-General of India* v. *Lachma Devi*, 1989 Supp (1) SCC 264: 1989 SCC (Cri) 413: AIR 1986 SC 467.

Bench Strength 3. Coram: *P.N. Bhagwati, C.J.* and *D.P. Madon* and *G.L. Oza*, JJ. [Date of decision: 13-12-1985]

— **S. 354(6)** *See* Ss. 125 and 354(6)

See also Ss. 354(1)(b) and (6)

— **S. 355** *See* Ss. 354, 355, 361, 264, 412 and 384(3)

— **S. 357** *See* Ss. 29(2), 5, 4(2), 325(1) and 357

See also Ss. 235(2), 248(2) and 357

See also Ss. 320 and 357

See also Ss. 357(1)(b) and 357(3), below

See also Ss. 401(2) and 357

See also Ss. 421(1) proviso and 357

See also Ss. 482, 148(3), 342, 359, 357, 358 and 227

See also Ss. 482 & 357

[3762] — **Ss. 357 and 421 & 431 and 374 and 389 & 387 — Suspension of payment of compensation till period of presenting appeal thereagainst has elapsed or pending decision of the appeal — Applicability of mandate of S. 357(2) and S. 357(3)** — *Recoverability of compensation as fine under S. 421 r/w S. 431 — Fundamental right of appeal of convict under S. 374 r/w Art. 21 — Effect of — Conditions that may be imposed for hearing of appeal against order of compensation — Situation distinguished from that obtaining under S. 389 r/w S. 387 — Interpretation of S. 357 in the context of S. 138, Negotiable Instruments Act, 1881 — Held, if under S. 357(2) realisation of fine is to be stayed automatically, there is no reason why the legislative intent cannot apply in relation to compensation directed to be paid under S. 357(3) — In absence of any express provision, as in the present case, the question must be considered having regard to the overall object of the statute — In such a case, court must invoke doctrine of purposive construction — Compensation awarded under S. 357(3) may be recoverable as fine under S. 421 r/w S. 431, but it would not therefore become automatically recoverable — The said provisions would be subject to S. 357(2) — Thus, S. 357(2) would be attracted even when appellant-accused had been directed to pay compensation under S. 357(3) — It will be for the appellate court to stay the direction for payment of compensation, which would necessarily mean that some conditions may be imposed therefor — A part of the compensation may be directed to be deposited, but the same must be a reasonable amount — An order may not be passed which the appellant cannot comply with, resulting in him being sent to prison — S. 421 may be taken recourse to, but therefor appellant-accused cannot be remanded to custody — This is especially the case in case of offences under S. 138, Negotiable Instruments Act, 1881 since bail will ordinarily be granted in case of such offences*

Accused 1, Goodvalue Marketing Co. Ltd., a company registered and incorporated under the Companies Act, 1956 and Accused 2, the appellant, were convicted under Section 138 of the Negotiable Instruments Act (the Act). The Company was sentenced to a fine of Rs 25,000 while Accused 2, the Chairman was sentenced to suffer SI for one month and directed to pay compensation of Rs 15 lakhs to the complainant.

An appeal was preferred thereagainst. The appellate court while admitting the appeal, directed Accused 1 and 2 to deposit a sum of Rs 5 lakhs each within four weeks from the said date. A writ petition was filed by the appellants questioning the legality of the said order which had been dismissed by reason of the impugned judgment.

The appellants were before the Supreme Court thereagainst by special leave.

Partly allowing the appeals,

Held :

Fine for an offence under Section 138 of the Act can be imposed only in terms of the provisions of the Act. When fine is not imposed, compensation can be directed to be paid for loss or injury caused to the complainant by reason of commission of such offence. Section 357(1)(*b*) CrPC provides for payment of compensation out of the fine, which may be in respect of the entire amount or in respect of a part of the fine. Section 357(3) seeks to achieve the same purpose, the difference being that whereas under Section 357(1) fine imposed forms a part of the sentence, under Section 357(3) compensation can be directed to be paid when fine does not form a part of the sentence. (Paras 30 and 29)

A statute must be read harmoniously. Section 357(1)(*b*) and Section 357(3) seek to achieve the same purpose. What is necessary is to find out the intention of the lawmaker and the object sought to be achieved. Section 357(2) uses the word "fine". It does not say that what would be stayed i.e. application of fine. Section 357(2) does not contemplate any other interpretation. If under Section 357(2), realisation of fine, at least in respect of the factor(s) enumerated in Section 357(1) is to be stayed automatically, there is no reason as to why the legislative intent cannot be held to apply in relation to the amount of compensation directed to be paid in terms of Section 357(3). Unfortunately, the legislature has not made any express provision in this behalf. In absence of any express provision, the question must be considered having regard to the overall object of a statute. A penal statute, in the event different meanings are possible to be given, must be construed liberally in favour of an accused.

While the court shall give due weight to the need of the victim, it cannot ignore the right of an accused. In a case of conflict, construction which favours the accused shall prevail. It must be cautioned however that the right of an accused unnecessarily need not be enlarged but it is the court's duty to duly protect his right. In a case of this nature, the court must invoke the doctrine of purposive construction. Section 357(2) was enacted for a definite purpose. It must be given its full effect. It cannot be the case that although a compensation payable out of the quantum of fine under Section 357(1)(*b*) would remain stayed under Section 357(2), if a compensation is directed to be paid under Section 357(3), the same would not attract the said provision. Thus, Section 357(2) would be attracted even when the appellant had been directed to pay compensation without imposition of any fine under Section 357(3). [Paras 11, 32, 43, 45, 52, 53, 55, 58 to 60, 70 and 72(*i*)]

A legal fiction, it is well settled, must be construed having regard to the purport of the statute. (Para 47)

When a direction is issued for payment of compensation, having regard to Section 357(2), the application thereof should ordinarily be directed to be stayed. It will, therefore, be for the court to stay the operation of that part of the judgment whereby and whereunder compensation has been directed to be paid, which would necessarily mean that some conditions therefor may also be imposed. A fortiori a part of the amount of compensation may be directed to be deposited, but the same must be a reasonable amount. (Para 55)

The appellate court while suspending the sentence, is entitled to put the appellant on terms. However, an order may not be passed which the appellant cannot comply with, resulting in him being sent to prison. The appellate court, in such cases, must make an endeavour to strike a balance. Section 421 CrPC may be taken recourse to, but therefor the appellant-accused cannot be remanded to custody. The matter has to be considered from another angle as well. An accused for commission of an offence under Section 138 of the Negotiable Instruments Act would ordinarily be granted bail, in view of the fact that the offence is a bailable one. Thus, while exercising the appellate power, ordinarily, a person should not suffer imprisonment only because the conditions imposed for suspending the sentence are harsh. The amount of compensation must not only be reasonable one, the conditions for suspending the sentence should also be reasonable. [Paras 56, 65, 68, 69 and 72(*ii*)]

Section 389 does not deal with exactly a similar situation. Section 389 is to be read with Section 387 thereof. Suspension of a sentence and enlarging an appellant who is convicted on bail, and realisation of fine have been dealt with by Parliament under different provisions. The power of the court, thus, to suspend a sentence in regard to realisation of compensation may be different from that of a direction in realisation of fine. Parliament has dealt with the imposition of substantive sentence and a sentence of fine vis-à-vis payment of compensation differently. (Paras 51 and 57)

Prima facie (without going into the merit of the appeal) the direction of the trial Judge appears to be somewhat unreasonable. The appellant has been sentenced to imprisonment. Only a fine has been imposed on the Company. Thus, for all intent and purpose, the trial Judge has invoked both Sections 357(1) and (3). The liability of the appellant was a vicarious one in terms of Section 141 of the Negotiable Instruments Act. The question may also have to be considered from the angle that the trial Judge thought it fit to impose a fine of Rs 25,000 only upon the Company. If that be so, an amount of compensation for a sum of Rs 15 lakhs should not have been directed to be paid by the Chairman of the Company. In the facts and circumstances of the case it would be reasonable to direct the appellant to deposit a sum of Rs 1 lakh within a period of four weeks, from date. (Paras 71 and 74). *Dilip S. Dahanukar* v. *Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528: (2007) 3 SCC (Cri) 209: (2007) 137 Comp Cas 1: (2007) 2 KLT 488: 2007 Cri LJ 2417: (2007) 55 AIC 244 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-4-2007]

Sadashiv Dada Patil v. Purushottam Onkar Patil, (2006) 11 SCC 161; M.P. SEB v. Union of India, (2006) 10 SCC 736; Maruti Udyog Ltd. v. Ram Lal, (2005) 2 SCC 638: 2005 SCC (L&S) 308; Bharat Petroleum Corpn. Ltd. v. P. Kesavan, (2004) 9 SCC 772; P. Suresh Kumar v. R. Shankar, (2007) 4 SCC 752: (2007) 2 SCC (Cri) 696; Maruti Udyog Ltd. v. Ram Lal, (2005) 2 SCC 638: 2005 SCC (L&S) 308; R (Haw) v. Secy. of State for the Home Deptt., (2006) 3 All ER 428; K.L. Gupte v. Municipal Corpn. of Greater Bombay, AIR 1968 SC 303: (1968) 1 SCR 274; Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, (1990) 3 SCC 682: 1991 SCC (L&S) 71; Balram Kumawat v. Union of India, (2003) 7 SCC 628; Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551: 2005 SCC (Cri) 742; National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700: (2007) 2 SCC (Cri) 142; Balraj v. State of U.P., (1994) 4 SCC 29: 1994 SCC (Cri) 823; Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540; Babu Rajirao Shinde v. State of Maharashtra, (1971) 3 SCC 337: 1971 SCC (Cri) 616; Siddanna Apparao Patil v. State of Maharashtra, (1970) 1 SCC 547: 1970 SCC (Cri) 224; State of Gujarat v. Salimbhai Abdulgaffar Shaikh, (2003) 8 SCC 50: 2003 SCC (Cri) 2006; Madhav Hayawadanrao Hoskot v. State of Maharashtra, (1978) 3 SCC 544: 1978 SCC (Cri) 468;

Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311; Transmission Corpn. of A.P. v. Ch. Prabhakar, (2004) 5 SCC 551: 2004 SCC (Cri) 1681; Jolly George Varghese v. Bank of Cochin, (1980) 2 SCC 360; Dadu v. State of Maharashtra, (2000) 8 SCC 437: 2000 SCC (Cri) 1528, relied on

Stanny Felix Pinto v. Jangid Builders (P) Ltd., (2001) 2 SCC 416: 2001 SCC (Cri) 345, distinguished

V. Prasada Rao v. State of A.P., 2002 Cri LJ 395: (2001) 3 APLJ 79 (AP), broadly approved

Dilip S. Dhanukar v. Kotak Mahindra Co. Ltd., (2006) 133 Comp Cas 727: 2006 Cri LJ 3653, modified

[3763] — Ss. 357, 421 and 431 — Fine and compensation — *Difference between and recoverability of*

Section 357(2) was enacted for a definite purpose. It must be given its full effect. It cannot be the case that although a compensation payable out of the quantum of fine under Section 357(1)(*b*) would remain stayed under Section 357(2), if a compensation is directed to be paid under Section 357(3), the same would not attract the said provision. Thus, Section 357(2) would be attracted even when the appellant had been directed to pay compensation without imposition of any fine under Section 357(3). (Paras 11, 32)

There exists a distinction between fine and compensation, although, in a way it seeks to achieve the same purpose. An amount of compensation can be directed to be recovered as a "fine" but the legal fiction raised is in relation to recovery of fine only, it is in that sense "fine" stands on a higher footing than compensation awarded by the court. The amount of compensation, in view of the legal fiction, may be recovered under Section 421 CrPC. But the amount of compensation, having regard to Section 357(2) cannot be recovered forthwith unless the period of appeal expires. Section 421 only provides for a mode of recovery of fine. Section 424 provides for an enabling clause so as to enable the court to take recourse to either of the situations provided for therein. The said provisions, however, would be subject to Section 357(2). Section 431 provides for a legal fiction in terms whereof any money other than a fine shall be recoverable as if it were a fine. Section 357(2) would be attracted in such a situation. There does not appear to be any reason as to why the amount of compensation should be held to be automatically payable, although the same is only to be recovered as if a fine has been imposed. (Paras 31, 11, 46 and 48). *Dilip S. Dahanukar* v. *Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528: (2007) 3 SCC (Cri) 209: (2007) 137 Comp Cas 1: (2007) 2 KLT 488: 2007 Cri LJ 2417: (2007) 55 AIC 244 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-4-2007]

[3764] — Ss. 357 and 29 — There is no limit on the award of compensation under S. 357

The method usually adopted by Parliament for conferring special jurisdiction or powers on Magistrates of the First Class in the matter of awarding sentences, obviating the limitation stipulated in Section 29(2) of the Code can be illustratively seen in Section 12 of the Essential Commodities Act or Section 36 of the Drugs and Cosmetics Act or Section 21 of the Prevention of Food Adulteration Act. In the absence of any such provision in the Negotiable Instruments Act it is not possible to read any special power into it as having conferred on a Magistrate of the First Class in the matter of imposition of sentence. (Paras 12 and 14)

If a Magistrate of the First Class thinks that the fact-situation in a particular case warrants imposition of a sentence more severe than the limit fixed under Section 29 of the Code, the legislature has taken care of such a situation also under Section 325(1) CrPC. Even that apart, a Magistrate who thinks it fit that the complainant must be compensated with his loss he can resort to the course indicated in Section 357 of the Code. He can, after imposing a term of imprisonment, award compensation to the complainant for which no limit is prescribed in Section 357 of the Code. (Paras 15, 17 and 18). *Pankajbhai Nagjibhai Patel* v. *State of Gujarat*, (2001) 2 SCC 595: 2001 SCC (Cri) 369: AIR 2001 SC 567: (2001) 104 Comp Cas 418: (2001) 1 KLT 517.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 12-1-2001]

[3765] — Ss. 357, 29(2) to (4) and 28 — "Compensation" and "fine" — Power to pass order in respect of — Necessary considerations — *Held, consideration for payment of compensation is somewhat different from payment of fine — Purpose of imposition of fine and/or compensation must be considered having regard to relevant factors as envisaged under S. 357 CrPC* (Para 16). *P. Suresh Kumar* v. *R. Shankar*, (2007) 4 SCC 752: (2007) 2 SCC (Cri) 696: AIR 2007 SC 1774: (2007) 52 AIC 24 (SC): 2007 Cri LJ 2951.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 8-3-2007]

[3766] — S. 357 — Sentence of fine — Purpose and object of — Quantum of compensation to be awarded to deceased's dependant — *Depends upon facts and circumstances of the case — Woman, deserted by her husband, dying while undergoing operation for abortion with her consent — Her minor son born prior to her desertion, becoming destitute — On the other hand, doctor responsible for causing the death having a roaring* *practice — Held, these facts relevant for enhancing the amount of fine awarded by High Court from Rs 5000 to Rs 1 lakh and issuing suitable directions for maintenance of the child with the interest earned from that amount by depositing the same in bank*

Section 357 of the Code of Criminal Procedure has a message of its own. The power of imposing fine is intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is to some extent a constructive approach to crimes and a step forward in a criminal justice system. It is because of this that it was recommended that all criminal courts should exercise this power liberally so as to meet the ends of justice, by cautioning that the amount of compensation to be awarded must be reasonable. What is reasonable has to depend upon the facts and circumstances of each case. *Jacob George (Dr.)* v. *State of Kerala*, (1994) 3 SCC 430: 1994 SCC (Cri) 774: (1994) 2 An LT (Cri) 1: (1994) 1 KLT 872: (1994) 2 Crimes 100.

Bench Strength 2. Coram: *R.M. Sahai* and **B.L. Hansaria**, JJ. [Date of decision: 13-4-1994]

Hari Singh v. Sukhbir Singh, (1988) 4 SCC 551: 1988 SCC (Cri) 984, relied on

[3767] — S. 357 — Fitness of a case deserving compensation, and determination of a reasonable compensation — Nature of the crime, injury suffered and capacity of convict to pay, are relevant

In awarding compensation, it is necessary for the court to decide if the case is a fit one in which compensation deserves to be awarded. If the court is convinced that compensation should be paid, then the quantum of compensation is to be determined by taking into consideration the nature of the crime, the injury suffered and the capacity of the convict to pay compensation, etc. It goes without saying that the amount of compensation has to be reasonable, which the person concerned is able to pay. If the accused is not in a position to pay the compensation to the injured or his dependents to which they are held to be entitled to, there could be no reason for the court to direct such compensation. (Para 14). *Manish Jalan* v. *State of Karnataka*, (2008) 8 SCC 225: (2008) 3 SCC (Cri) 456: AIR 2008 SC 3074: (2008) 3 KLT 390: (2008) 68 AIC 124 (SC): 2008 Cri LJ 3941.

Bench Strength 2. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 11-7-2008]

Sarwan Singh v. State of Punjab, (1978) 4 SCC 111: 1978 SCC (Cri) 549; Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd., (2007) 6 SCC 528: (2007) 3 SCC (Cri) 209, relied on

[3768] — S. 357 — Compensation — Quantum — Adequacy — *Compensation should be commensurate with the capacity of the accused to pay as also other facts and circumstances of the case like the gravity of the offence, needs of the victim's family — Where material on record is scanty, court will have to assess the quantum from the material available and also take into consideration the facts, judicial notice of which the court can take note of — Though High Court in the instant case did not have sufficient material before it to correctly assess the capacity of the accused to pay the compensation but keeping the object of S. 357 in mind as seen from the reasoning of the High Court, held, it was a fit case in which the Court was justified in invoking the provision — Fact that the accused owned agricultural land, tractor and trolley and a Maruti car indicated that the accused were reasonably affluent and on that basis it would be reasonable to conclude that they were capable of paying at least Rs 1 lakh per head, as compensation — Therefore, order of High Court reducing the compensation of Rs 2 lakhs each modified to Rs 1 lakh. Rachhpal Singh* v. *State of Punjab*, (2002) 6 SCC 462: 2002 SCC (Cri) 1362: AIR 2002 SC 2710.

Bench Strength 2. Coram: **N. Santosh Hegde** and *D.M. Dharmadhikari*, JJ. [Date of decision: 23-7-2002]

[3769] — S. 357 — Compensation granted by court under — Nature of liability of accused in respect of — *Held, although the amount which is awarded provides for a criminal liability, the same is considered to be a recourse of the victim in the same manner which may be granted in a civil suit*

Compensation is awarded towards sufferance of any loss or injury by reason of an act for which an accused person is sentenced. Although it provides for a criminal liability, the amount which is awarded as compensation is considered to be recourse of the victim in the same manner which may be granted in a civil suit. (Para 27). *Dilip S. Dahanukar* v. *Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528: (2007) 3 SCC (Cri) 209: (2007) 137 Comp Cas 1: (2007) 2 KLT 488: 2007 Cri LJ 2417: (2007) 55 AIC 244 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-4-2007]

Rachhpal Singh v. State of Punjab, (2002) 6 SCC 462: 2002 SCC (Cri) 1362; State of Punjab v. Gurmej Singh, (2002) 6 SCC 663: 2002 SCC (Cri) 1460; Hari Singh v. Sukhbir Singh, (1988) 4 SCC 551: 1988 SCC (Cri) 984; Sarwan Singh v. State of Punjab, (1978) 4 SCC 111: 1978 SCC (Cri) 549; Sube Singh v. State of Haryana, (2006) 3 SCC 178: (2006) 2 SCC (Cri) 54, relied on

[3770] — S. 357 — Restorative and reparative theories — Appropriating a portion of wages earned by prisoner for the victims of his crime — *Emerging form and pattern of deserves serious* *consideration — Amends by offender to victim or victims generally — Victim of the crime or his family members should be compensated from the wages earned in prison by the perpetrator of the crime by doing hard work pursuant to sentence of RI awarded by court — Appropriate legislation/rules should be made in that behalf to disburse through a fund keeping in view the sensibilities of victims and provisions of Art. 300-A — Constitution of India, Art. 300-A*

Per Thomas, J.

The practice followed in many States, either by virtue of the jail rules or by convention, is that a portion of the money earned by the prisoner is sent to the dependants of the prisoner himself and the balance, after deducting the amount expended by him for his extra expenses, is preserved to be disbursed to him at the time of his release. One area which is totally overlooked in the above practice is the plight of the victims. It is a recent trend in the sentencing policy to listen to the wailings of the victims. Rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A glimpse at the field of victimology reveals two types of victims. The first type consists of direct victims, i.e., those who are alive and suffering on account of the harm inflicted by the prisoner while committing the crime. The second type comprises of indirect victims who are dependants of the direct victims of crimes who undergo sufferings due to deprivation of their breadwinner. Restorative and reparative theories have developed from the aforesaid thinking. (Paras 45 to 47)

Per Wadhwa J.

Fixing wages for the prisoners the State has to show equal concern for the victim and the victim's family. To this end, the subject of victimology has gained ground these days. In the efforts to look after and protect the human rights of the convict, court cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of the criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguard of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime. A victim of crime cannot be a "forgotten man" in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc. An honour which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace. (Paras 91 and 99)

Reparation is taken to mean the making of amends by an offender to his victim, or to victims of crime generally, and may take the form of compensation, the performance of some service or the return of stolen property (restitution), these being types of reparation which might be described as practical or material. The term can also be used to describe more intangible outcomes, as where an offender makes an apology to a victim and provides some reassurance that the offence will not be repeated, thus repairing the psychological harm suffered by the victim as a result of the crime. (Para 101). *State of Gujarat* v. *Hon'ble High Court of Gujarat*, (1998) 7 SCC 392: 1998 SCC (Cri) 1640: AIR 1998 SC 3164.

Bench Strength **3**. Coram: **M.M. Punchhi, C.J.**[1] and **K.T. Thomas**[2] and **D.P. Wadhwa**[3], JJ. [Date of decision: 24-9-1998]

Palaniappa Gounder v. State of T.N., (1977) 2 SCC 634: 1977 SCC (Cri) 397, limited

[3771] — S. 357 — Compensation — Principles to be followed for fixation of — Compensation fixed on conjectures and surmises — Unsustainability — *Compensation for prolonged custody of the seized vehicle even after deposit of value of the vehicle and amount of compensation as assessed by the authorities for its release — When a very low value of the vehicle was fixed by the authorities on the basis of prayer of the owner himself for reducing the valuation considering that the vehicle was quite old, held, trial court erred in decreeing the money suit of the owner for a much higher amount by assessing per day income from that vehicle in absence of any issue framed and evidence adduced regarding loss of income of the owner — High Court also erred in dismissing the appeal by arriving at an abrupt conclusion being unmindful of the fact that it was deciding an appeal in a money suit — However, instead of sending back the matter to trial court for fresh decision in view of long lapse of time and limited nature of controversy, Supreme Court fixing an amount to be paid to plaintiff by defendant in full and final settlement of the claim — Indian Forest (Tripura Second Amendm ent) Act, 1985 — S. 52-A — CPC, 1908, Or. 20 R. 10 and Or. 41 R. 33*

A truck carrying illegal timber was seized by the forest authorities. A show-cause notice was issued to the owner of the vehicle as to why the vehicle should not be confiscated under Section 52-A of the Indian Forest (Tripura Second Amendment) Act, 1986. In response the truck owner pleaded guilty and prayed for compounding the offence. The Chief Conservator of Forests directed the case to be compounded on realisation of Rs 25,000 as valuation of the truck and Rs 5000 as compensation. The owner prayed for reassessment and reduction of the value of the truck as the same was old. The Chief Conservator reduced the value to Rs 10,000 and the compensation to Rs 2000. The owner deposited the value and the compensation within the stipulated time. In the meanwhile, gearbox of the truck was stolen and an FIR was lodged by the authorities. Consequently, the vehicle could not be returned to the owner.

The owner filed money suit praying for compensation of Rs 1,68,000 (which was subsequently amended to Rs 15,54,000) with interest @ 18% p.a. The trial court assessing that income of the owner from the truck would be roughly Rs 600 per day, decreed the suit for Rs 2,03,364 and Rs 252 per day after a specified date. The High Court in appeal observed that in case of such nature, accurate assessment to ascertain the actual net income of an old vehicle like one in hand would be very difficult and that the trial rightly applied a rough assessment on approximate calculation with which no interference was called for. Accordingly, the High Court dismissed the appeal.

Allowing the present appeal,

Held:

There was no specific issue framed regarding the income of the vehicle. The trial court itself noticed that the plaintiff had made an exorbitant claim and that the claim of the plaintiff, that the vehicle operated daily was an absurd claim. All the estimates made by the trial court were without any evidence. No evidence was led on the questions of loss of income. It is further relevant to note that the original claim was Rs 1,68,000 which was subsequently amended to Rs 15,54,000. No averments were made about the income or about the loss in the plaint. The judgment and decree of the trial court and the impugned order of the High Court have no legal basis. (Para 18)

In normal course, the Supreme Court would have set aside the impugned order and directed the trial court to rehear and decide the matter afresh. Considering the long passage of time and the limited nature of controversy, it is directed that in full and final settlement of the claim, the plaintiff shall be paid Rs 35,000 by the defendant within two months from the date of this judgment. (Para 19). *State of Tripura* v. *Bina Choudhary*, (2007) 7 SCC 52: (2007) 3 SCC (Cri) 300: AIR 2007 SC 2169: (2007) 56 AIC 237 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 22-5-2007]

[3772] — S. 357 — Compensation to victim of crime — Rationale and importance, emphasised

Though a comprehensive provision enabling the court to direct payment of compensation has been in existence all through but experience has shown that the provision has rarely attracted the attention of the courts. Time and again the courts have been reminded that the provision is aimed at serving the social purpose and should be exercised liberally yet the results are not very heartening. (Para 12). *Manish Jalan* v. *State of Karnataka*, (2008) 8 SCC 225: (2008) 3 SCC (Cri) 456: AIR 2008 SC 3074: (2008) 3 KLT 390: (2008) 68 AIC 124 (SC): 2008 Cri LJ 3941.

Bench Strength 2. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 11-7-2008]

Hari Singh v. Sukhbir Singh, (1988) 4 SCC 551: 1988 SCC (Cri) 984, relied on

[3773] — S. 357 — Court may substitute fine payable to the widow of the deceased instead of imprisonment. *Fatta* v. *State of U.P.*, 1980 Supp SCC 159: 1979 SCC (Cri) 629: AIR 1979 SC 1504: 1980 Cri LJ 829: 1979 ALJ 901.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *O. Chinnappa Reddy*, JJ. [Date of decision: 28-2-1979]

[3774] — S. 357 — Imposition of fine — Necessity of — *Case involving theft and murder — All the accused acquitted of the charge of murder — Considering (i) that accused-respondents were responsible for theft of Rs 8000 belonging to the deceased P and ear-studs of PW 1 (wife of P), and (ii) that in the incident in question PW 1 lost her husband who was the main earning member, held, in addition to the sentence imposed by the High Court, fine of amount of Rs 10,000 should also be imposed on each of the three respondents* (Para 9). *Pamula Saraswathi* v. *State of A.P.*, (2003) 3 SCC 317: 2003 SCC (Cri) 610: AIR 2003 SC 2416.

Bench Strength 2. Coram: **S.N. Variava** and *Arun Kumar*, JJ. [Date of decision: 18-2-2003]

[3775] — S. 357 — Acid-attack causing disfigurement — Assault with iron rods, kicks, blows and pouring of acid — Applicability of S. 307 — Sentence warranted — *On facts, PWs 1 to 3 suffered injuries on account of acid pouring by appellant-accused — Doctor indicated that each of the injured persons suffered more than 50% burn injuries caused due to acid, sufficient to cause death if not attended by medical aid at appropriate time — Held, analysis of evidence on record shows a clear application of S. 307 r/w S. 34 — Acid burns had caused disfigurement — However, considering the nature of dispute, custodial sentence of appellants reduced to 5 years' from 10 years' RI imposed by courts below — But, each of the appellants directed to pay a fine of Rs 25,000 — Out of each* *deposit, Rs 10,000 to be paid to each of the victims PWs 1 to 3 — In case of non-deposit of fine imposed, default custodial sentence of one year each, imposed — Penal Code, 1860 — Ss. 307 and 34* (Paras 9 to 13). *Sachin Jana* v. *State of W.B.*, (2008) 3 SCC 390: (2008) 2 SCC (Cri) 45: 2008 Cri LJ 1596: (2008) 64 AIC 187 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 25-1-2008]

Girija Shankar v. State of U.P., (2004) 3 SCC 793: 2004 SCC (Cri) 863; State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28: 1983 SCC (Cri) 320, relied on

[3776] — S. 357 — Compensation for vexations/take proceedings — Complainant made to pay compensatory costs — Cheating or civil dispute — Agreement for sale of land — *Earnest money paid to the appellant as part-consideration — Possession of land transferred to the complainants — Complaint laid on the basis that the appellant cheated them of the earnest money as he was not willing to complete the bargain — Held, in the circumstances of the case, liability of the appellant, if any, is of civil nature and not criminal — Entire proceedings quashed and the complainant directed to pay Rs 10,000 to the appellant as compensatory costs — Penal Code, 1860 — Ss. 415 Ill. (g) and 420. Nageshwar Prasad Singh* v. *Narayan Singh*, (1998) 5 SCC 694: 1998 SCC (Cri) 1378: AIR 1999 SC 1480.

Bench Strength 3. Coram: *M.M. Punchhi, C.J.* and *K.T. Thomas* and *S. Rajendra Babu*, JJ. [Date of decision: 2-4-1998]

[3777] — S. 357 — Orders passed by magistrates in respect of persons running motor vehicles unauthorisedly on notified routes levying fines to be paid over to SRTC — Propriety — *Prima facie SRTC not entitled to be paid such compensation under S. 357 CrPC — Motor Vehicles Act, 1939 — S. 123*

Prima facie the Corporation is not entitled to be paid any compensation under S. 357 Criminal Procedure Code, 1973 by orders of Magistrates in cases of unauthorised running of motor vehicles on the notified routes. It can be paid such compensation only when it is open to the Corporation to file a suit and recover damages in law for such unauthorised operation of stage carriages. The question whether such unauthorised running will give rise to a claim for damages in a civil court is not free from doubt. However, no opinion is expressed on this question. This is a matter in which the State is also interests. It was, therefore, hoped that the magistrates before whom such cases are filed hereafter will, before passing an order under S. 357 Criminal Procedure Code in favour of the Corporation, examine and decide the question in accordance with law. *Ishwar Singh Bagga* v. *State of Rajasthan*, (1987) 1 SCC 101: AIR 1987 SC 628.

Bench Strength 2. Coram: **E.S. Venkataramiah** and *M.M. Dutt*, JJ. [Date of decision: 19-11-1986]

[3778] — S. 357 — Compensation for loss of interest — *Robbery of Rs 40,000 committed 15 years before — Almost entire amount (Rs 39,170) recovered from accused — Sentence reduced to fine but direction made to pay Rs 10,000 out of fine, if realised, as compensation for loss of interest. Suryamoorthi* v. *Govindaswamy*, (1989) 3 SCC 221: 1989 SCC (Cri) 537: (1989) 2 Crimes 265.

Bench Strength 2. Coram : *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision : 5-5-1989]

[3779] — S. 357 — Appropriateness of fine under, to reimburse the victims of white-collar crimes

The social abhorrence of the crime is an input, since the emphatic denunciation of a crime by the community must be reflected in the punishment. The unconscionable exploitation of unfortunately unemployed young men by heartless deception, compounded by pretension to political influence, calls for punitive severity to serve as deterrent. The crime here is doubly bad and throws light on how gullible young men part with hard money in the hope that political influence, indirectly purchased through money, can secure jobs obliquely. But then the victims of the crime must be commiserated with and in such white-collar offences it is proper to insist upon reparation of the victims, apart from any other sentence. In the present case, four young men have been wheedled out of their little fortunes by two convicts and so, to drive home a sense of moral responsibility to repair the injury inflicted, it is right to direct the appellant to pay a fine of Rs 1200 which will be made over by the trial Court under S. 357 of the Code. *Mohd. Giasuddin* v. *State of A.P.*, (1977) 3 SCC 287: 1977 SCC (Cri) 496: AIR 1977 SC 1926: 1977 Cri LJ 1557.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision: 6-5-1977]

[3780] — S. 357 — Award of compensation by High Court — *Trial court awarding death sentence and a fine of Rs 5000 in respect of offence under S. 302 IPC — High Court altering sentence of death to life imprisonment, without awarding any fine or confirming the fine awarded by the trial court — Held, in such cases where court does not award a fine along with a substantive sentence, S. 357(3) comes into play and it is open to the court to award compensation to the victim or his family — High Court*

therefore, had power to award compensation (Para 12). *Rachhpal Singh* v. *State of Punjab*, (2002) 6 SCC 462: 2002 SCC (Cri) 1362: AIR 2002 SC 2710.
Bench Strength 2. Coram: **N. Santosh Hegde** and *D.M. Dharmadhikari*, JJ. [Date of decision: 23-7-2002]

[3781] — S. 357 — Single blow causing death — Appellant-accused gave hammer-blow on head of deceased, resulting in his death — *Compensation to widow — High Court converting appellant's conviction under S. 302 to S. 307 IPC and sentencing him to 7 years' RI with fine — Sustainability — Held, guilt of appellant amply established — Considering medical evidence and established facts and circumstances, held, appellant can be clothed with the knowledge that injury caused by him with a hammer on the head of deceased, a vital part of the body, was likely to cause his death, though without any intention to cause death or such injury as was likely to cause his death — Appellant gave a single blow on the head — Offence would, therefore, squarely fall under S. 304 Pt. II — He, accordingly, convicted for the said offence — Sentence for the offence under S. 304 Pt. II reduced to the period already undergone — But, in addition, he directed to pay a fine of Rs 20,000 by way of compensation under S. 357 CrPC, to widow of deceased — Penal Code, 1860, S. 307 or S. 304 Pt. II* (Paras 4 to 7). *Sarup Singh* v. *State of Haryana*, (2009) 16 SCC 479.
Bench Strength 2. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 10-3-1995]

[3782] — S. 357 — Award of compensation to victim of offence (rape in this case) to be paid by State — Direction by trial court in respect of — Confirmation of, by High Court in appeal against conviction — Propriety of — *Held, it was not open to State to challenge the said part of High Court's order against it in the appeal filed by accused — Hence, the said challenge rejected as meritless — Penal Code, 1860 — S. 376(2)(f)* (Para 16). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.
Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[3783] — S. 357 — Compensation — Offence under S. 326 r/w S. 34 — Fine collected payable as compensation — *Held, out of the fine amount, if realised, a sum of Rs 4000 be paid to each of the injured as compensation — Penal Code, 1860 — S. 326 r/w S. 34* (Para 16). *Bankat* v. *State of Maharashtra*, (2005) 1 SCC 343: 2005 SCC (Cri) 316: AIR 2005 SC 368: 2005 Cri LJ 646: (2005) 2 Mah LJ 707.
Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 25-11-2004]

[3784] — S. 357 — Compensation awarded to the victim lady against the person found guilty of offences under Ss. 354 and 509 IPC — Disposal of amount on refusal of victim to accept the same — *The victim lady refusing to accept the amount of compensation and requesting the same to be given to any women's organisation engaged in doing service for the cause of women — Relief — Since the amount was lying in the court deposit with the High Court, the matter left to the Chief Justice of High Court to deal with that amount in an appropriate manner as requested by the said lady — Penal Code, 1860 — Ss. 354 and 509* (Para 7). *Kanwar Pal Singh Gill* v. *State*, (2005) 6 SCC 161: 2005 SCC (Cri) 1420: AIR 2005 SC 3104: 2005 Cri LJ 3443.
Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 27-7-2005]

[3785] — S. 357 — Ingredients for exercising right of private defence, restated — Exceeding of said right — Murder trial — Payment of fine — *High Court altering conviction of appellant-accused by trial court to that under S. 304 Pt. I r/w Ss. 109 and 34, sentencing him to five years' imprisonment and fine of Rs 20,000 with default stipulation — Before Supreme Court appellant contending that he was protected as he was exercising right of private defence — Sustainability — Held, on facts, as appellant exceeded his exercise of right of private defence, hence, High Court rightly found him guilty under S. 304 Pt. I IPC — Penal Code, 1860 — Ss. 304 Pt. I, 109, 34, 96, 97 and 100*

In the present case the High Court has rightly held that even if it is accepted that at some point of time the appellant was exercising the right of private defence, the same was exceeded and has rightly found him guilty under Section 304 Part I IPC and sentenced him to undergo imprisonment for five years. The sentence as imposed cannot be considered to be harsh. On payment of fine of Rs 20,000, same was to be paid to the heirs of the deceased. Here again there appears to be no infirmity in the order of the High Court. (Para 9). *Ranveer Singh* v. *State of M.P.*, (2009) 3 SCC 384.
Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 21-1-2009]

V. Subramani v. State of T.N., (2005) 10 SCC 358: 2005 SCC (Cri) 1521; Salim v. State of Haryana, (2008) 12 SCC 705, relied on

[3786] — S. 357 — Offence under S. 494 IPC — Compensation to first wife — *Rs 7000 directed to be paid out of the amount of fine imposed on the accused. Ananda Dagadu Jadhav* v. *Rukminibai Anand Jadav*, 1993 Supp (3) SCC 68: 1993 SCC (Cri) 868.
Bench Strength 3. Coram: *S. Ratnavel Pandian*, *Kuldip Singh* and *R.M. Sahai*, JJ. [Date of decision: 12-2-1992]

[3787] — S. 357 — Offences under Ss. 306 and 498-A r/w S. 34 IPC — Compensation — *80% of the fine amount, if realised, directed to be paid to the parents of the victim girl as compensation — Penal Code, 1860 — Ss. 306 and 498-A r/w S. 34* (Para 16). *Kamalakar Nandram Bhavsar* v. *State of Maharashtra*, (2004) 10 SCC 192: AIR 2004 SC 503: 2004 Cri LJ 615: (2004) 14 AIC 336 (SC).

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-11-2003]

[3788] — S. 357 — Victim-complainant awarded part of the fine — Sentence for offence under S. 326 IPC r/w S. 27, Arms Act — High Court altering sentence of five years' RI and fine of Rs 2000 to period of custody already undergone (63 days) and enhancing fine to Rs 25,000 — *Held, High Court erred in doing so — Custodial sentence, in light of enhanced fine, however, raised only to 18 months, and of the Rs 25,000 fine Rs 10,000 awarded to victim-complainant — Penal Code, 1860 — S. 326 — Arms Act, 1959 — S. 27*

The trial court found the respondent-accused guilty of the offence punishable under Section 326 IPC and Section 27 of the Arms Act. He was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs 2000 with default stipulation for the offence relatable to Section 326 IPC. He was also sentenced to undergo rigorous imprisonment for one year in respect of the offences under the Arms Act. On appeal, however, the High Court while upholding the conviction reduced the sentence to the period of custodial sentence already undergone. The fine was, however, enhanced to Rs 25,000. The appellant complainant/victim was before the Supreme Court by special leave.

Allowing the appeals,

Held :

When the factual scenario as noted by the trial court, and the principles of law as noted above are considered, the inevitable conclusion is that the High Court was not justified in reducing the custodial sentence. Taking into account the enhanced fine as imposed by the High Court which admittedly had been paid, it would be appropriate to fix the custodial sentence at eighteen months. The accused-Respondent 1 shall surrender to custody forthwith to serve the remainder of sentence. The custodial sentence has been fixed taking note of the peculiar facts of the case. Out of the fine deposited a sum of Rs 10,000 shall be paid to the appellant. (Paras 9 and 10). *Surjit Singh* v. *Nahara Ram*, (2004) 6 SCC 513: 2004 SCC (Cri) 1801: AIR 2004 SC 4122.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 5-8-2004]

Friedman: Law in Changing Society, relied on

State of M.P. v. Ghanshyam Singh, (2003) 8 SCC 13: 2003 SCC (Cri) 1935, relied on

[3789] — Ss. 357, 320, 431 and 428 — Leniency for a convict under Ss. 279 and 304-A IPC (offence not being compoundable under S. 320 CrPC) — Factual considerations and extent of leniency — Appellant-accused willing to pay mother of deceased rupees one lakh (mother having no grievance against accused) — *Appellant not under the influence of any drug or intoxicant while driving — High Court awarding sentence of one year simple imprisonment and fine of Rs 5000 for offence under S. 279 IPC and simple imprisonment for six months and a fine of Rs 5000 for the offence under S. 304-A IPC — On facts, held, lenient view can be taken — Sentence of imprisonment reduced to period already undergone with the condition of payment of rupees one lakh to the mother of the deceased failing which S. 431 CrPC would be attracted — Penal Code, 1860 — Ss. 304-A and 279*

The appellant dashed against a Kinetic Honda scooter, being driven by the deceased, who fell down and was run over by the left wheel of the tanker. The deceased succumbed to the injuries on the way to the hospital. Both the courts below have found the appellant guilty of the offence under Sections 279 and 304-A IPC. The trial court sentenced him to undergo simple imprisonment for one year and to pay fine of Rs 5000 for both the offences and in default to undergo simple imprisonment for two months. On appeal, the impugned order of High Court maintained the conviction and awarded simple imprisonment for one year and a fine of Rs 5000 for the offence under Section 279 IPC and simple imprisonment for six months and a fine of Rs 5000 for the offence under Section 304-A IPC.

Partly allowing the appeal,

Held :

The prayer for compounding of offences was rejected as offences punishable under Sections 279 and 304-A IPC are not compoundable under Section 320 CrPC. Having regard to the fact that the mother of the victim has no grievance against the appellant and has prayed for some compensation, a lenient view can be taken in the matter and the sentence of imprisonment can be reduced. Ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone but in addition thereto, the appellant who was willing to pay an amount of Rs 1,00,000 to the mother of the deceased by way of compensation should be directed to pay the amount. Accordingly, the conviction of the appellant under Sections 279 and

304-A IPC is maintained. However, the substantive sentence of imprisonment is reduced to the period already undergone. If the appellant fails to pay the said amount within the stipulated time of three months, the same shall be recovered as per the procedure prescribed under Section 431 CrPC and be paid to the mother of the deceased. (Paras 7, 17 and 18)

True that in the instant case the appellant has been found to be guilty of offences punishable under Sections 279 and 304-A IPC for driving rashly and negligently on a public street and his act unfortunately resulted in the loss of a precious human life. But it is pertinent to note that there was no allegation against the appellant that at the time of accident he was under the influence of liquor or any other substance impairing his driving skills. It was a rash and negligent act simpliciter and not a case of driving in an inebriated condition which is, undoubtedly despicable aggravated offence warranting stricter and harsher punishment. (Para 16). *Manish Jalan* v. *State of Karnataka*, (2008) 8 SCC 225: (2008) 3 SCC (Cri) 456: AIR 2008 SC 3074: (2008) 3 KLT 390: (2008) 68 AIC 124 (SC): 2008 Cri LJ 3941.

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 11-7-2008]

[3790] — Ss. 357 and 29(2) — Dishonour of cheque — Sentencing — Power under S. 138 to impose fine up to twice the amount of cheque — Limitation under S. 29(2) CrPC that sentence of fine must not exceed Rs 5000 (now Rs 10,000 after amendment vide Act 25 of 2005) — Effect of — Compensation under S. 357 CrPC — Limitation, if any, on awarding of — *Without going into question as to whether in view of provisions of S. 29(2) CrPC, the jurisdiction of the Magistrate would be to impose a fine for a sum of Rs 5000 or not, held, although the power of court to impose fine may or may not be limited, the power to award compensation is not — In present case, a cheque amounting to Rs 7 lakhs issued by respondent got dishonoured — Trial court directing respondent to pay a fine of Rs 7,05,000 and in default to undergo 3 months' simple imprisonment — Out of the said amount, a sum of Rs 7 lakhs was to be paid to complainant by way of compensation and remaining sum of Rs 5000 was to be credited to Govt. — In appeal filed by respondent, appellate court setting aside award of compensation and modifying the sentence by directing respondent to pay a fine of Rs 5000 and in default to undergo 3 months' simple imprisonment — In revision, High Court confirming the appellate court's order — Considering the facts, held, respondent to pay Rs 7 lakhs by way of compensation instead of fine of Rs 5000 — Negotiable Instruments Act, 1881 — S. 138* (Paras 16, 14 and 25). *P. Suresh Kumar* v. *R. Shankar*, (2007) 4 SCC 752: (2007) 2 SCC (Cri) 696: AIR 2007 SC 1774: (2007) 52 AIC 24 (SC): 2007 Cri LJ 2951.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 8-3-2007]

Rachhpal Singh v. State of Punjab, (2002) 6 SCC 462: 2002 SCC (Cri) 1362, relied on

[3791] — Ss. 357, 358 and 397 — Compensation of Rs 1 lakh for illegal detention and sexual harassment — *Awarded by High Court to accused facing prosecution for murder even before the commencement of trial on the ground of her illegal detention and sexual harassment by police — Held, was not justified*

The High Court in revision challenging the order granting police remand, has awarded Rs 1 lakh as compensation to the accused on the ground that she was illegally detained in the police station and the police personnel committed acts of molestation, obscene violation, etc. It is noteworthy that after investigation, the police has submitted charge-sheet against the accused. Her application for bail was rejected by the learned Sessions Judge and thereafter by the High Court on 18-1-2002 prior to the decision of the revision. There is absolutely no justification for awarding compensation to a person who is facing prosecution for a serious offence like murder even before the trial has commenced. This direction, therefore, deserves to be set aside. (Paras 18 and 25). *State* v. *N.M.T. Joy Immaculate*, (2004) 5 SCC 729: 2004 SCC (Cri) 1722: AIR 2004 SC 2282: 2004 Cri LJ 2515.

Bench Strength **3**. Coram: *S. Rajendra Babu, C.J.*[1] and **Dr. Ar. Lakshmanan** [2] and **G.P. Mathur**[1], JJ. [Date of decision: 5-5-2004]

2002 MLJ (Cri) 661, reversed

[3792] — Ss. 357 and 358 — Custodial violence/death or illegal detention — Compensation against State — Awarding of — Power under Arts. 32/226 — *Held, courts may award compensation under Arts. 32/226 in cases where violation of Art. 21 involving custodial death/torture is established or is incontrovertible — But, may not award the same where there is no evidence of custodial torture except the statement of person aggrieved and where such allegation is not supported by any medical report or other corroborative evidence (including visible marks/scars), or where there are clear indications that the allegations are false or exaggerated, fully or in part — In such cases, the aggrieved party is to be relegated to traditional remedies available under civil/Questions to be considered before awarding compensation as public* *law remedy, indicated — Quantum of compensation would depend upon the facts and circumstances of each case — Award of such compensation will not affect the right to claim additional compensation by way of civil/criminal action — Degree of proof required in criminal prosecution relating to such matters, held, is not strict — Constitution of India — Arts. 21, 32, 226 and 300*

The question involved in this appeal was whether on the facts and circumstances of this case, compensation should be awarded to the petitioner and his family members as a public law remedy for the violation of their fundamental rights under Article 21 of the Constitution.

The petitioner wrote an undated letter to the Supreme Court alleging illegal detention, custodial torture and harassment to him and his family members by the police. The said letter was received by the Supreme Court on 19-11-1998 and was registered as a writ petition under Article 32 of the Constitution.

The letter (re: alleged torture and illegal detention)

In the letter the petitioner alleged that ASI *DS* (in charge of police post concerned), along with some police officers, came to his house on 10-3-1998 at about 11 a.m. to enquire about the whereabouts of his son *J*. When he informed them that he was not aware of it, they started beating him. Thereafter, the police took him, his wife and two minor daughters forcibly to the police post, through the bazaar. He was beaten with sticks on the way. At the police post, on direction of the Superintendent of Police (SP), *DS* took the petitioner inside and beat him for about 10 minutes and brought him back before the SP again. By then, his wife and daughters were made to sit in an uncomfortable posture (as students are made to sit in schools by way of punishment). When the petitioner stated that he was not aware of his son's whereabouts, the SP became furious and ordered his men to remove his moustache, whereupon *DS* sat on his chest (with three policemen pressing his hands and feet) and plucked his moustache. Again, they started beating the petitioner, searched his pockets and took away Rs 2350 which he was carrying. Then the police took him back to his house and ransacked the house. *DS* broke open the lock of his trunk and seized his licensed gun, some cartridges and arms licence, as also some jewellery found in the trunk. Thereafter, the petitioner was taken back to the police post. Though his wife and daughters were sent back to the house, he was illegally detained in police custody for a day and then taken to police station *GH* where he was kept for 10 days and during the first 5 days of such detention, he was regularly beaten. Because of such police harassment and torture, when he was released he and his younger son *G* fled from their house.

Subsequently, when on 8-7-1998 the petitioner returned to his house, he was handcuffed and taken to the police post concerned by the police officers and was tortured by them. When he requested for water, he was forced to drink hot water with salt. He was kept in a wooden shikanza for 5 days and was not allowed to sleep. Then he was taken to a place *J*. After three days he was again taken back to the aforesaid police post and kept there for 2 days. Thereafter, he was released with a condition to visit the police post everyday in the morning and evening.

The petitioner alleged that his friends and relatives who wanted to meet him, when he was being illegally detained, were not permitted to meet him and were also tortured. He also alleged that the police demanded money from him. In view of such torture he was forced to leave his house and remain outside. The petitioner prayed for a direction to the police to stop the atrocities and torture. He sought compensation for himself and his wife and daughters for the social, physical and financial loss, and return of his licensed gun, gold ornaments and other belongings. He also prayed for a thorough inquiry into the atrocities and torture committed by the police and imposition of punishment to those who were responsible.

The alleged second round of harassment

J, who was involved in several criminal cases, was arrested in June 1999, but he escaped from police custody on 25-1-2001. The petitioner filed an affidavit dated 22-2-2001 before the Supreme Court alleging interrogation by the police in regard to escape of *J*. He alleged that on 14-2-2001 he and his brother *N* were handcuffed and taken to the police station and interrogated and released on 15-2-2001. A further affidavit was filed by the petitioner on 1-10-2001 wherein he alleged that his younger son *G* was forcibly taken from his sister's house on 22-6-2001 and tortured.

The Supreme Court on not being satisfied with the enquiry report of the Inspector General of Police (Law and Order), directed CBI to inquire into the matter with reference to the allegations made in the letter as also the subsequent affidavits filed by the petitioner and his relatives and the reply-affidavits filed by the respondents. CBI held a preliminary inquiry and submitted the report. It concluded that some of the allegations of the petitioner were substantiated while several others were not substantiated. On the direction of the Supreme Court, an FIR was lodged against several police officers on 17-10-2002 under Sections 323, 342, 343, 365 and 384 IPC on the basis of the CBI report.

On behalf of the petitioner, a submission was made that in such cases, apart from the CBI inquiry and criminal prosecution, compensation has to be awarded to the victims. The State argued that having regard to the facts of the case and having regard to the registration of the FIR, the matter may have to await the result of the prosecution. The Supreme Court directed hearing on the limited question as to whether compensation should be awarded or not.

The Supreme Court found that the petitioner and his relatives made false and exaggerated claims in regard to illegal detention, torture, etc., apart from suppressing material facts. The fact of filing of writ petition before the High Court in the matter was not disclosed to the Supreme Court. There were many contradictions between the facts alleged before the Supreme Court and the High Court. Further, the CBI enquiry disclosed that the petitioner and his family members had not disowned *J*. They were regularly meeting *J* when he was in custody. This fact was contrary to what was asserted in the letter.

Disposing of the writ petition,

Held :

Compensation as public law remedy for violation of Art. 21

It is now well settled that the award of compensation against the State is an appropriate and effective remedy for redressal of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 CrPC. Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the law of torts, was evolved in the last two-and-a-half decades. (Paras 38 and 31)

Whether compensation should be awarded for every violation of Article 21

In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the courts may award compensation in a proceeding under Article 32 or 226. But, the cases where violation of Article 21 involving custodial death or torture is established or is incontrovertible stand on a different footing when compared to those cases where such violation is doubtful or not established. Where there is no independent evidence of custodial torture and where there is neither medical evidence about any injury or disability, resulting from custodial torture, nor any mark/scar, it may not be prudent to accept claims of human rights violation, by persons having criminal records in a routine manner for awarding compensation. That may open the floodgates for false claims, either to mulct money from the State or as to prevent or thwart further investigation. The courts should, therefore, while zealously protecting the fundamental rights of those who are illegally detained or subjected to custodial violence, should also stand guard against false, motivated and frivolous claims in the interests of the society and to enable the police to discharge their duties fearlessly and effectively. While custodial torture is not infrequent, it should be borne in mind that every arrest and detention does not lead to custodial torture. (Paras 46 and 45)

Before awarding compensation, the Court will have to pose to itself the following questions: (*a*) whether the violation of Article 21 is patent and incontrovertible, (*b*) whether the violation is gross and of a magnitude to shock the conscience of the court, (*c*) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, the courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action. (Para 46)

However, the Supreme Court should not be understood as holding that harassment and custodial violence is not serious or worthy of consideration, where there is no medical report or visible marks or independent evidence. It is a fact that harassment or custodial violence cannot always be supported by a medical report or independent evidence or proved by marks or scars. Every illegal detention irrespective of its duration, and every custodial violence, irrespective of its degree or magnitude, is outright condemnable and per se actionable. Remedy for such violation is available in civil law and criminal law. The public law remedy is additionally available where the conditions mentioned above are satisfied. (Para 47)

The degree of proof required in criminal prosecution relating to such matters has been softened by earlier decisions of the Supreme Court. (Para 47)

In the present case, there was reasonable cause for the police to think that the family members of *J* might know about his whereabouts. The repeated questioning of the family members of *J* in the years 1998 and 2001, either at their houses or by calling them to the police station/post was part of the investigation process and cannot, per se, be considered as harassment or violation of Article 21. Whether the police exceeded their limits in questioning the petitioner or his relatives is of course a different aspect. (Para 29)

There is no clear or incontrovertible evidence about custodial torture, nor any medical report of any injury or disability. The grievance of the petitioner and his relatives is against different officers in different police stations at different points of time. More importantly, several of the allegations are proved to be exaggerated and false. Therefore, this is not a fit case for award of compensation. All reliefs which should be granted in such a case, have already been granted by ordering an inquiry by CBI and ensuring that the police officers named are prosecuted. The law will have to take its own course. However, this order will not come in the way of any civil court awarding compensation in an action in tort or the criminal court awarding compensation under Section 357 CrPC in the pending prosecution against any of the officers, if the charges are established. (Paras 50, 23 to 29 and 51). *Sube Singh* v. *State of Haryana*, (2006) 3 SCC 178: (2006) 2 SCC (Cri) 54: AIR 2006 SC 1117: (2006) 102 Cut LT 19.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *C.J.* and *B.N. Srikrishna* and **R.V. Raveendran**, JJ. [Date of decision: 3-2-2006]

Khatri (II) v. State of Bihar, (1981) 1 SCC 627: 1981 SCC (Cri) 228; Khatri (IV) v. State of Bihar, (1981) 2 SCC 493: 1981 SCC (Cri) 503; Rudul Sah v. State of Bihar, (1983) 4 SCC 141: 1983 SCC (Cri) 798; Bhim Singh v. State of J&K, (1985) 4 SCC 677: 1986 SCC (Cri) 47; Peoples' Union for Democratic Rights v. Police Commr., (1989) 4 SCC 730: 1990 SCC (Cri) 75; Nilabati Behera v. State of Orissa, (1993) 2 SCC 746: 1993 SCC (Cri) 527; D.K. Basu v. State of W.B., (1997) 1 SCC 416: 1997 SCC (Cri) 92; M.C. Mehta v. Union of India, (1987) 1 SCC 395: 1987 SCC (L&S) 7; Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble, (2003) 7 SCC 749: 2003 SCC (Cri) 1918; Munshi Singh Gautam v. State of M.P., (2005) 9 SCC 631: 2005 SCC (Cri) 1269; Dhananjay Sharma v. State of Haryana, (1995) 3 SCC 757: 1995 SCC (Cri) 608; State of M.P. v. Shyamsunder Trivedi, (1995) 4 SCC 262: 1995 SCC (Cri) 715. Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble, (2003) 7 SCC 749: 2003 SCC (Cri) 1918, relied on

[3793] — Ss. 357 and 358 — Custodial death — Compensation to aggrieved party — Liability of erring police officers — *Whether appellant police officers liable to reimburse the State the amount (Rs 1,50,000) paid by it to the widow of the deceased as directed by High Court — Held, the said question would depend on the fact whether the alleged misdeed by the officer concerned was committed in the course of the discharge of his lawful duties, beyond or in excess of the same which would have to be determined in a proper enquiry — High Court did not conclusively hold that the amount should in any circumstance be recovered from the officers concerned — Hence the said question, held, was too premature at this stage for decision — This question would arise only as and when an enquiry specifically in this regard was conducted — Therefore, no direction need be issued in the matter concerned — Penal Code, 1860 — S. 302 — Constitution of India — Arts. 32 and 21*

The question whether the compensation paid by the State can be recovered from the officers concerned will depend on the fact whether the alleged misdeed by the officer concerned is committed in the course of the discharge of his lawful duties, beyond or in excess of the same which will have to be determined in a proper enquiry. The High Court has not conclusively held that the amount should in any circumstance be recovered from the officers, therefore, at this stage it is too premature for the Supreme Court to go into this question whether the appellants in this case are liable to reimburse the State the amount paid by it to the widow of the deceased as directed by the High Court. This will have to be adjudicated in an inquiry wherein it will have to be decided whether the acts of the police officers concerned were in the performance of State duty (a sovereign function) or outside the same. If it is found that the appellant officers did cause the death of the deceased and the same is not in the performance of their official duty or in excess of the same then they cannot escape the liability. However, this question would arise only as and when an inquiry specifically in this regard is conducted. Therefore for the present the need for any direction in this regard does not arise. (Para 10). *State of Maharashtra* v. *Christian Community Welfare Council of India*, (2003) 8 SCC 546.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 15-10-2003]

Nilabati Behera v. State of Orissa, (1993) 2 SCC 746: 1993 SCC (Cri) 527, relied on

[3794] — Ss. 357 and 421 — Conviction under Ss. 304 Pt. II and 201 IPC — Compensation —

Reduction of — *High Court directing that in case fine of Rs 1 lakh was deposited by the accused, the same was to be treated as compensation to the mother of the deceased — Considering the fact that the accused had died and his legal representatives were impleaded, Supreme Court, after confirming the conviction, reducing the fine to Rs 50,000 — Further holding that execution in accordance with law could be levied by deceased's mother if the fine was not deposited within four months — Penal Code, 1860 — Ss. 304 Pt. II and 201* (Para 10). *N. Somashekar* v. *State of Karnataka*, (2004) 11 SCC 334.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 6-5-2004]

[3795] — Ss. 357 and 482 — S. 482 which saves the inherent powers of High Court cannot override express provision contained in S. 357 which save that power. *Palaniappa Gounder* v. *State of T.N.*, (1977) 2 SCC 634: 1977 SCC (Cri) 397: AIR 1977 SC 1323: 1977 Cri LJ 992: (1977) 3 SCR 132: (1978) 1 MLJ 13 (SC).

Bench Strength **2**. Coram: **Y.V. Chandrachud** and *P.K. Goswami*, JJ. [Date of decision: 4-3-1977]

— S. 357(1) *See* Ss. 357(3) & (1) and 421
See also Ss. 357(4), (3) and (1)

[3796] — S. 357(1) — Sentence — Fine in lieu of imprisonment — If realised to be paid as compensation — *During commotion, while a twelve-year-old little girl went to rescue her father, appellant in the heat of the moment swishing a wooden hammer causing a single injury on her head which turned out to be fatal — Sentence of 3 years' RI under S. 304 Part II modified by imposing a fine of Rs 25,000 payable to deceased's father by way of compensation — Penal Code, 1860 — S. 304 Pt. II*

It is true that a little girl died in the unfortunate incident. But it is also true that the appellant had no ire against that little girl either before or during the occurrence. It was an act done in a rash mood without any intention to cause even grievous hurt to her. Even so, the appellant must pay the penalty for it. There is only one injury which the little girl sustained and probably because the skull bone of the deceased was not grown to sturdiness as in grown-up persons, the strike had resulted in such a calamitous proportion. (Para 4)

Section 304 Part II of the Penal Code prescribes a punishment of imprisonment which may "extend to 10 years or with fine or with both". Having regard to the various aspects, a fine of Rs 25,000 is necessary to meet the ends of justice. Therefore, while confirming the conviction under Section 304 Part II, the sentence is altered to a fine of Rs 25.000. If the appellant fails to remit the fine in the trial court within six weeks he is directed to undergo rigorous imprisonment for three years. If the fine is realised from the appellant the trial court shall pay the same to the deceased's father by way of compensation as provided in Section 357(1) CrPC. (Paras 5 and 6). *Bhojappa Hanamanthappa Choudannavar* v. *State of Karnataka*, (2004) 10 SCC 177: 2004 SCC (Cri) 1783.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 21-9-1999]

[3797] — S. 357(1)(a) — Imposition of a substantive sentence of fine a sine qua non for an order of compensation under — *Without imposing a sentence of fine, held, High Court not justified in directing payment of Rs 3000 as litigation costs to the State under S. 357(1)(a), especially where it released the accused on probation. Girdhari Lal* v. *State of Punjab*, (1982) 1 SCC 608: 1982 SCC (Cri) 325: AIR 1982 SC 1229(2): 1982 Cri LJ 1742(1).

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and *R.S. Pathak*, JJ. [Date of decision: 9-9-1980]

— S. 357(1)(b) *See also* Ss. 357(5) and (1)(b)

[3798] — Ss. 357(1)(b) & (3) — Difference between Ss. 357(1)(b) and 357(3), explained

A statute must be read harmoniously. Section 357(1)(*b*) and Section 357(3) seek to achieve the same purpose. What is necessary is to find out the intention of the lawmaker and the object sought to be achieved. Section 357(2) uses the word "fine". It does not say that what would be stayed i.e. application of fine. Section 357(2) does not contemplate any other interpretation. If under Section 357(2), realisation of fine, at least in respect of the factor(s) enumerated in Section 357(1) is to be stayed automatically, there is no reason as to why the legislative intent cannot be held to apply in relation to the amount of compensation directed to be paid in terms of Section 357(3). Unfortunately, the legislature has not made any express provision in this behalf. In absence of any express provision, the question must be considered having regard to the overall object of a statute. A penal statute, in the event different meanings are possible to be given, must be construed liberally in favour of an accused. While the court shall give due weight to the need of the victim, it cannot ignore the right of an accused. In a case of conflict, construction which favours the accused shall prevail. It must be cautioned however that the right of an accused unnecessarily need not be enlarged but it is the court's duty to duly protect his right. In a case of this nature, the court must invoke the doctrine of purposive construction. Section 357(2) was enacted for a definite purpose. It must be given its full effect. It cannot be the case that although a compensation payable out of the quantum of fine under Section 357(1)(*b*) would remain stayed under Section 357(2), if a compensation is directed to be paid under Section 357(3), the same would not attract the said provision. Thus, Section 357(2) would be attracted even when the appellant had been directed to pay compensation without imposition of any fine under Section 357(3). [Paras 11, 32, 43, 45, 52, 53, 55, 58 to 60, 70 and 72(*i*)]. *Dilip S. Dahanukar* v. *Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528: (2007) 3 SCC (Cri) 209: (2007) 137 Comp Cas 1: (2007) 2 KLT 488: 2007 Cri LJ 2417: (2007) 55 AIC 244 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-4-2007]

[3799] — S. 357(1)(b) — Additional compensation awarded by Supreme Court — *High Court reducing substantive sentence to a month and a half — Appellant undergoing and remaining in custody for about fifteen days — Moreover, appellant on bail — Hence, held, directing appellant to surrender for undergoing remaining sentence is inappropriate, 10 years having passed from date of incident — Sentence already undergone, held, sufficient and adequate in the facts and circumstances of the case — However, appellant directed to pay additional amount of Rs 10,000 as compensation to the injured complainant over and above the amount of fine and compensation ordered to be paid by courts below — Penal Code, 1860 — Ss. 323 and 325*

The appellant-accused voluntarily caused simple hurt to complainant and also assaulted the complainant with a stone resulting in grievous injuries to him. Moreover, the appellant-accused intentionally insulted the complainant by abusing him in filthy language thereby giving him provocation knowing fully well that such provocation would make the complainant to break public peace or to commit other offences. A complaint was filed and after usual investigation, charge was framed against the accused for offences punishable under Sections 323, 325 and 504 IPC. The trial court held that the accused caused simple as well as grievous hurt to the complainant, and thereby, he had committed offences punishable under Sections 323 and 325 IPC. Regarding the third charge, however, according to the court, the prosecution was not able to establish it and the accused was ordered to be acquitted. The trial court sentenced him with simple imprisonment and fine with default stipulation, under both sections, accordingly. Compensation of Rs 2000 was also ordered to be paid to the complainant under Section 357(1)(*b*) CrPC, out of the fine amount received.

In an appeal preferred by him, he was acquitted for the offence punishable under Section 323 IPC. However, conviction under Section 325 IPC was confirmed. The appellate court, however, was of the view that it was a fit case to reduce sentence of simple imprisonment from one year to six months. The appellate court also directed the accused to pay compensation of Rs 3000 to the complainant independently of what the trial court awarded. The sentence of fine and compensation passed by the trial court was confirmed.

The appellant challenged even that order passed by the appellate court in revision before the High Court which confirmed the order of conviction while partly allowing the revision by reducing sentence and ordering the appellant to undergo simple imprisonment for 1 1/2 months and to pay fine of Rs 1000 in addition to what was ordered by the courts below. Present appeal is against the said order of the High Court.

Allowing the appeal partly,

Held :

The High Court has reduced the substantive sentence to a month and a half. It is also not in dispute that the appellant has undergone and has remained in custody for about fifteen days. Moreover, he is on bail. Hence, even though in the facts and circumstances of the case, provisions of Section 360 read with Section 361 CrPC are not attracted and *Om Prakash case*, (2001) 10 SCC 477, does not help the appellant, it would not be appropriate to direct the appellant to surrender and to suffer the remaining sentence for about a month. The incident is of 1997 and about 10 years have passed. (Para 14)

The sentence already undergone by the appellant is held sufficient and adequate in the facts and circumstances of the case. It is, however, ordered that the appellant will pay an additional amount of Rs 10,000 to the injured complainant over and above the amount of fine and compensation ordered to be paid by the courts below. (Para 16). *Manjappa* v. *State of Karnataka*, (2007) 6 SCC 231: (2007) 3 SCC (Cri) 76: 2007 Cri LJ 3220.

Bench Strength 2. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 18-5-2007]

Om Prakash v. State of Haryana, (2001) 10 SCC 477: 2003 SCC (Cri) 799, distinguished

[3800] — S. 357(1)(b) — Compensation to the victim under Ss. 376 and 323 IPC — *Accused, besides imprisonment, sentenced to pay a fine of Rs 5000 and Rs 500 under Ss. 376 and 323 respectively — In case of the amount being recovered, a sum of*

Rs 4500 directed to be paid to the victim — Penal Code, 1860 — Ss. 376 and 323 (Para 12). *State of H.P.* v. *Lekh Raj*, (2000) 1 SCC 247: 2000 SCC (Cri) 147: AIR 1999 SC 3916: 2000 Cri LJ 44.
Bench Strength **2**. Coram: *S. Saghir Ahmad* and **R.P. Sethi**, JJ. [Date of decision: 2-11-1999]

[3801] — S. 357(1)(c) — Compensation to be paid to the heirs cannot decide the quantum of fine to be imposed — *Sentence of imprisonment and fine to be imposed independently of any claim for compensation that may have been filed — Approach and considerations to be taken into account by the Court pointed out. Palaniappa Gounder* v. *State of T.N.*, (1977) 2 SCC 634: 1977 SCC (Cri) 397: AIR 1977 SC 1323: 1977 Cri LJ 992: (1977) 3 SCR 132: (1978) 1 MLJ 13 (SC).
Bench Strength **2**. Coram: **Y.V. Chandrachud** and *P.K. Goswami*, JJ. [Date of decision: 4-3-1977]

[3802] — S. 357(1)(c) — Atrocities by armed forces — Compensation to heirs of deceased — Appreciation of evidence — *A Major and four constables of Special Armed Force, going to the house of the deceased on the false pretext of searching for unauthorised firearms, forcibly taking her to the police station, beating her all the way — Deceased dying six days later — Trial Court acquitting the Major but convicting the constables under S. 304 Part II/34 IPC and sentencing them each to five years' imprisonment — High Court setting aside acquittal of the Major and convicting him under S. 304 Part II/149, IPC and sentencing him to five years' imprisonment — Conviction and sentence on others confirmed — Held, the findings recorded by the High Court against the accused were proper and justified and did not call for interference — In the absence of any evidence either oral or documentary, in support of the defence story set up by the accused, the same cannot be accepted — In the result, the conviction of the Major under S. 304 Part II/149 upheld but the conviction of the other four accused altered from S. 304 Part II/34 IPC to one under S. 304 Part II/149 IPC — Their substantive sentence reduced to three years from 5 years — However, considering the atrocities committed by the accused persons taking advantage of the helplessness of the deceased, the Major directed to pay a sum of Rs 20,000 and the other four accused a sum of Rs 10,000 each, as fine — The entire fine, if realised, directed to be paid to the heirs of the deceased — Penal Code, 1860 — Ss. 304 Part II/149. Sukhpal* v. *State of M.P.*, (1997) 9 SCC 773: 1997 SCC (Cri) 769: AIR 1997 SC 468.
Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 8-1-1997]

— **S. 357(3)** *See* Ss. 357(1)(b) & (3)
See also Ss. 357(4), (3) and (1)

[3803] — S. 357(3) — Power of Court to award compensation to victim or dependants of victim of crime — *Position compared with that under CrPC, 1898 — S. 357(3) where the Court may award compensation even in cases where court imposes a sentence of which fine does not form part — Matters to be considered in awarding compensation pointed out — CrPC, 1898 — S. 545(1)(bb) [as amended by Act 26 of 1955]*

In the present case, the accused are possessed of sufficient funds to compensate the loss that has been suffered by the dependants of the deceased. Section 545(1)*(bb)* was introduced in the Criminal Procedure Code, 1898, by Act 26 of 1955. By this amendment, the Court is enabled to direct the accused, who caused the death of another person, to pay compensation to the persons who are, under the Fatal Accidents Act, entitled to recover damages from the persons sentenced, for the loss resulting to them from such death. Though the section enables the Court only to pay compensation out of the fine that would be imposed under law, by S. 357(3) of the new Criminal Procedure Code of 1973, when a court imposes a sentence, of which fine does not form a part, the court may direct the accused to pay compensation. It is the duty of the court to take into account the nature of the crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation. The Court should not first consider what compensation ought to be awarded to the heirs of the deceased and then impose a fine which is higher than the compensation.

In the present case, therefore, in addition to the sentence of five years' R.I., a fine of Rs 3500 should be imposed on each of the accused and the fine should be paid as compensation to the widow of the deceased; and in default of payment of fine, the accused would undergo further imprisonment for a period of six months. *Sarwan Singh* v. *State of Punjab*, (1978) 4 SCC 111: 1978 SCC (Cri) 549: AIR 1978 SC 1525: 1978 Cri LJ 1598.
Bench Strength **2**. Coram: *Jaswant Singh* and **P.S. Kailasam**, JJ. [Date of decision: 30-8-1978]

[3804] — S. 357(3) — Award of compensation — *Question in respect of, held, would not arise where the sentence imposed by the court includes fine — Hence, plea raised for awarding compensation in the instant case, not allowed — However, on facts, amount of fine imposed by the trial court enhanced*

A reading of sub-section (3) of Section 357 would show that the question of award of compensation would arise where the court imposes a sentence of which fine does not form a part. The compensation cannot be awarded in the present case since a sentence of fine has also been imposed. The learned counsel for the appellant submitted that *G* lost both her parents as well as her brother in the incident and now she is alone and would have become of marriageable age or may have to start some work of her own. She would need some money. The Court is not considering for awarding any compensation to *G* but the amount of fine imposed, can in any case be reasonably enhanced. (Paras 9 and 11)

Thus, upholding the sentence of life imprisonment on all three counts under Section 302 IPC, the amount of fine imposed is enhanced from Rs 5000 to Rs 20,000 on each count. The sentence of imprisonment in default of payment of fine is also modified and enhanced to two years' rigorous imprisonment. (Paras 11 and 12). *State of Punjab* v. *Gurmej Singh*, (2002) 6 SCC 663: 2002 SCC (Cri) 1460: AIR 2002 SC 2811.

Bench Strength **2**. Coram: *R.C. Lahoti* and **Brijesh Kumar**, JJ. [Date of decision: 2-8-2002]

Rachhpal Singh v. State of Punjab, (2002) 6 SCC 462: 2002 SCC (Cri) 1362, explained and distinguished

[3805] — S. 357(3) — Compensation — Whether could be awarded where no fine for the offence was statutorily prescribed — *Trial court imposing a sentence of ten years' RI and a fine of Rs 2000 for an offence under S. 304-B IPC — High Court confirming the conviction of the accused-appellant but instead of setting aside the fine not warranted by law, enhancing it to Rs 2 lakhs with a direction that the same to be paid to the complainant when recovered — Contention by the respondent that the same be treated as compensation under S. 357(3) — Held, unsustainable — Enhancement of the amount by the High Court without any discussion, can only be treated as enhancement of fine already imposed — Moreover, in absence of any finding or observation by the High Court that the complainant had suffered any loss or injury, direction to pay Rs 2 lakhs on assumption that the amount was paid as dowry to the accused, without any evidence, unwarranted — Penal Code, 1860 — S. 304-B — Dowry Prohibition Act, 1961*

Section 357 is an enabling provision by which the court can give direction to the effect that when passing judgment, sentence imposed for payment of fine can be recovered and applied either for defraying the expenses properly incurred in the prosecution or in payment to any person as compensation for any loss or injury caused by the offence, when compensation can be recoverable by such person in a civil court. Section 357(1) is applicable in cases where fine forms the part of the sentence whereas under Section 357(3), the court can direct the convicted person to pay compensation even in cases where the fine does not form part of the sentence. It is not possible to accept the contention that even if the court is not competent to impose fine as a punishment, the court can still order compensation under Section 357(3) CrPC and the direction of the High Court to pay Rs 2 lakhs to the complainant is to be treated as a direction given under Section 357(3). Here the trial court had imposed a sentence of fine of Rs 2000 and the High Court enhanced the quantum of fine without there being any further discussion on the matter. Therefore, the direction to the appellant to pay a fine of Rs 2 lakhs could only be treated as enhancement of fine already imposed by the Sessions Judge. Moreover, Section 357(3) contemplates a situation where the complainant has suffered any loss or injury and for which the accused person has been found prima facie responsible. There is no such finding or observation by the High Court. Of course, the daughter of the complainant passed away but the direction of the High Court to pay Rs 2 lakhs was on the assumption that the complainant had paid Rs 2 lakhs as part of the dowry to the appellant. There is no evidence to show that such an amount was given to the appellant. On the other hand, the appellant's counsel contended that it was a love marriage between the appellant and the deceased and no dowry passed between the parties. The direction to pay compensation under Section 357(3) is on the assumption of basic civil liability on the part of the person who committed the offence to redress the victim or his dependants by payment of compensation. The complainant could not have filed a civil suit for recovery of the dowry amount, if any, as the payment itself was illegal and prohibited under law. In any view of the matter, the direction of the High Court to pay a sum of Rs 2 lakhs as fine and the default sentence was not warranted by law and is set aside. (Para 33). *Arun Garg* v. *State of Punjab*, (2004) 8 SCC 251: (2004) 3 KLT 435.

Bench Strength 2. Coram: *K.G. Balakrishnan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 29-9-2004]

[3806] — S. 357(3) — Power to order compensation — Scope — Power under S. 357(3), held, cannot be exercised to enhance a fine already imposed as part of the sentence — Power under S. 357(3) can come into play only where court has imposed a sentence, which does not include a fine — *Where appellant had been found guilty of offence under S. 138 r/w S. 142 of the Negotiable Instruments Act and sentenced to 6 months' RI (later modified to last only up to rising of appeal court) and a fine of Rs 5000, held, High Court erred* *in directing payment of Rs 1 lakh by appellant as compensation to respondent complainant under S. 357(3) — Negotiable Instruments Act, 1881 — S. 138 r/w S. 142* (Para 5). *Sivasuriyan* v. *Thangavelu*, (2004) 13 SCC 795.

Bench Strength 2. Coram: *G.B. Pattanaik* and *K.G. Balakrishnan*, JJ. [Date of decision: 8-3-2002]

[Ed.: *See also* (1994) 3 SCC 430 where the Supreme Court itself enhanced the fine imposed by the High Court (Rs 5000) to Rs 1 lakh, expressly relying on the "message" of Section 357 CrPC.]

[3807] — S. 357(3) — Award of compensation to victims under — Object — Order under, is not ancillary but in addition to other sentences — *Liberal exercise of power by courts under, recommended — In appropriate cases order for compensation instead of deterrent sentence of imprisonment would be more justifiable*

The power of courts to award compensation to victims under S. 357, while passing judgment of conviction, is not ancillary to other sentences but is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes, a step forward in our criminal justice system. Therefore, all courts are recommended to exercise this power liberally so as to meet the ends of justice in a better way. Any such measure which would give the victim succour is far better than a sentence by deterrence. *Hari Singh* v. *Sukhbir Singh*, (1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127.

Bench Strength 2. Coram: *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision: 25-8-1988]

[3808] — S. 357(3) — Compensation to victim — Nature, scope and object of — Held, in addition to conviction, court may order accused to pay compensation to victim for injuries suffered by him — *Power of courts to award compensation is not ancillary to other sentences but is in addition thereto — It is intended to reassure victim that he is not forgotten in criminal justice system — It is a measure of responding appropriately to crime as well as of reconciling victim with offender — Hence, recommended to all courts to exercise said power liberally to meet ends of justice in better way* (Paras 14 and 16 to 18) . *K.A. Abbas* v. *Sabu Joseph*, (2010) 6 SCC 230.

Sarwan Singh v. State of Punjab, (1978) 4 SCC 111 : 1978 SCC (Cri) 549; Hari Singh v. Sukhbir Singh, (1988) 4 SCC 551 : 1988 SCC (Cri) 984; Balraj v. State of U.P., (1994) 4 SCC 29 : 1994 SCC (Cri) 823, followed

Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd., (2007) 6 SCC 528 : (2007) 3 SCC (Cri) 209; R. v. Oliver John Huish, (1985) 7 Cri App R (S) 272, considered

Bench Strength 2. Coram : *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision : 11-5-2010]

[3809] — S. 357(3) — Award of compensation to victims under, should be reasonable — Reasonableness of the compensation would depend upon facts and circumstances — *Where injury inflicted by accused on head of the victim resulting in permanent impairment of his speech and accused able and willing to bear financial burden, High Court's order to each accused to pay Rs 2500 to the victim, being insufficient, altered and instead accused persons directed to pay Rs 50,000 to the victim*

The order under S. 357 for payment by way of compensation must be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default.

In this case the victim's power of speech has been permanently impaired. The lifelong disability of the victim ought not to be bypassed by the court. He must be made to feel that the court and accused have taken care of him. The compensation of Rs 2500 payable by each accused to the victim awarded by the High Court was inadequate, having regard to the nature of injury suffered by the victim. The accused persons have means and ability and are also not unwilling to bear the additional financial burden. With due regard to all the facts and circumstances of the case, award of Rs 50,000 as compensation payable by the accused persons to the victim would meet the ends of justice. *Hari Singh* v. *Sukhbir Singh*, (1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127.

Bench Strength 2. Coram: *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision: 25-8-1988]

[3810] — Ss. 357(3) and 431 — Compensation to victim — Power to award compensation not ancillary to other sentences but in addition thereto — *Widow of deceased left without any support with a family to be maintained — Accused having property and also some means — Accused directed to pay Rs 10,000 by way of compensation to the widow of the deceased. Balraj* v. *State of U.P.*, (1994) 4 SCC 29: 1994 SCC (Cri) 823: AIR 1995 SC 1935.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *Dr. A.S. Anand*, JJ. [Date of decision: 12-4-1994]

Sarwan Singh v. State of Punjab, (1978) 4 SCC 111: 1978 SCC (Cri) 549; Hari Singh v. Sukhbir Singh, (1988) 4 SCC 551: 1988 SCC (Cri) 984, relied on

[3811] — Ss. 357(3) and 421 r/w S. 431 — Direction for payment of compensation under S. 357(3) and consequent direction for recovery under S. 421 r/w S. 431 — Nature and scope of power of court under — *Comparison with power of civil court — Choice between directing application of fine as compensation and awarding compensation without imposition of fine — Quantum of compensation to be awarded — Considerations involved and procedure to be followed, discussed in detail — Considerations involved in directing payment of fine, compared and contrasted — Effect of guidelines under S. 357(5) — Held, Magistrate cannot award compensation in addition to fine — Also, amount of compensation cannot be arbitrary or unreasonable — Besides, amount of compensation granted under S. 357(3) should ordinarily be lesser than the amount which can be granted by a civil court upon appreciation of evidence brought before it for losses which might have reasonably been suffered by the plaintiff — Jurisdiction of civil court for realisation of the amount must also be borne in mind — A criminal case is not a substitution for a civil suit, far less for execution of a decree which may be passed — Negotiable Instruments Act, 1881 — S. 138 — Constitution of India — Art. 21*

Magistrates cannot award compensation in addition to fine. When a fine is imposed, however, the private party has no right to insist that compensation may be awarded to him out of the amount of fine. The power to award compensation under Section 357(3) is not an ancillary power. It is an additional power. (Para 44)

The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefor in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. The considerations involved for payment of compensation are somewhat different from payment of fine. It is, to the said extent applied differently. Before issuing a direction to pay compensation, the capacity of the accused to pay the same and the purpose for which it is directed to be paid, must be judged. A fortiori, an enquiry in this behalf even in a summary way, may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but Section 357(3) does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a Judge. (Paras 38 and 35)

Whereas under Section 357(1) of the Criminal Procedure Code a fine of Rs 5000 can be imposed; fine in terms of Section 357(2) thereof can be twice the amount of cheque whereas there is no upper limit for award of a compensation. But the same would be subject to other provisions of CrPC which mandate that the amount of fine imposed on an accused cannot be more than Rs 5000. The very fact that Parliament did not think it fit to put a ceiling limit in regard to the amount of compensation leviable upon an accused, the discretionary jurisdiction thereto must be exercised judiciously. (Para 68)

The amount of compensation must be a reasonable sum. Section 357(5) also provides for some guidelines. Prosecution under the Negotiable Instruments Act, 1881 may be contemplated as a measure of deterrence, but the same is never meant to be a persecution. Even in a case where violation of fundamental right guaranteed under Article 21 is alleged, the amount of compensation cannot be arbitrary or unreasonable under public law. Ordinarily, it should be lesser than the amount which can be granted by a civil court upon appreciation of the evidence brought before it for losses which might have reasonably been suffered by the plaintiff. Jurisdiction of the civil court, in this behalf, for realisation of the amount in question must also be borne in mind. A criminal case is not a substitution for a civil suit, far less for execution of a decree which may be passed. The court, while fixing the amount of compensation, must have regard to all relevant factors including the one referred to in Section 357(5) and no unreasonable amount of compensation can be directed to be paid. [Paras 39 to 41 and 72(*iii*) to (*v*)]

Compensation is awarded towards sufferance of any loss or injury by reason of an act for which an accused person is sentenced. Although it provides for a criminal liability, the amount which is awarded as compensation is considered to be recourse of the victim in the same manner which may be granted in a civil suit. (Para 27). *Dilip S. Dahanukar* v. *Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528: (2007) 3 SCC (Cri) 209: (2007) 137 Comp Cas 1: (2007) 2 KLT 488: 2007 Cri LJ 2417: (2007) 55 AIC 244 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-4-2007]

Rachhpal Singh v. State of Punjab, (2002) 6 SCC 462: 2002 SCC (Cri) 1362; State of Punjab v. Gurmej Singh, (2002) 6 SCC 663: 2002 SCC (Cri) 1460; Hari Singh v. Sukhbir Singh, (1988) 4 SCC 551: 1988 SCC (Cri) 984; Sarwan Singh v. State of Punjab, (1978) 4 SCC 111: 1978 SCC (Cri) 549; Sube Singh v. State of Haryana, (2006) 3 SCC 178: (2006) 2 SCC (Cri) 54, relied on

[3812] — Ss. 357(3), 386 second proviso and 29(2) — Order to pay compensation instead of fine — S. 138, Negotiable Instruments Act, 1881 — Even the High Court when functioning as a court of appeal held, has to conform to the second proviso to S. 386 and thus cannot impose greater punishment or fine than might have been inflicted by the trial court — *However, the Magistrate or other trial court can award any sum as compensation under S. 357(3) and compensate for the loss to the complainant — Thus held, in respect of a cheque which covers an amount exceeding Rs 5,000 such court has the power to award appropriate compensation to the complainant — High Court in appeal erred in imposing a fine of Rs 1 lakh — Matter remanded to trial court on question of sentence*

The appellate court cannot obviate the jurisdictional limit prescribed in Section 386 of the Code. Though the said provision confers power on the court of appeal to reverse an order of acquittal and find the accused guilty and pass sentence on him according to law, even the High Court when it is the court of appeal has to conform to the second proviso to Section 386 of the Code. (Para 27)

The trial in this case was held before a Judicial Magistrate of the First Class who could not have imposed a fine exceeding Rs 5000 besides imprisonment. The High Court while convicting the accused in the same case could not impose a sentence of fine exceeding the said limit. (Para 29)

If a Judicial Magistrate of the First Class were to order compensation to be paid to the complainant from out of the fine realised the complainant will be the loser when the cheque amount exceeded the said limit. In such a case a complainant would get only the maximum amount of rupees five thousand. But the Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) CrPC. The Supreme Court has emphasised the need for making liberal use of that provision. No limit is mentioned in the sub-section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of a Magistrate of the First Class in respect of a cheque which covers an amount exceeding Rs 5000 the Court has power to award compensation to be paid to the complainant. (Paras 30 and 31)

Therefore, the question of sentence and award of compensation must be considered by the trial court. The Magistrate shall hear the prosecution and the accused on those aspects. Of course, if the complainant and the accused settle their disputes regarding this cheque, in the meanwhile, that fact can certainly be taken into consideration in determining the extent or quantum of sentence. (Para 32). *K. Bhaskaran* v. *Sankaran Vaidhyan Balan*, (1999) 7 SCC 510: 1999 SCC (Cri) 1284: AIR 1999 SC 3762.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 29-9-1999]

Hari Singh v. Sukhbir Singh, (1988) 4 SCC 551: 1988 SCC (Cri) 984, followed

[3813] — Ss. 357(3) & (1) and 421 — Power to order payment of compensation — Power to order default sentence of imprisonment in case of non-payment of the compensation [especially when compensation not part of fine as under S. 357(3)] — Jurisdiction under Ss. 357(1) & (3) in relation to — Comparison between — Extent of power under S. 357(3) — *Held, compensation can be directed to be paid both in terms of Ss. 357(1) & (3) — But while exercising jurisdiction under S. 357(3), no sentence of imprisonment can be ordered for default in payment of compensation — Such an order can be passed only in terms of S. 357(1) — If the compensation directed to be paid under S. 357(3) is not deposited, the same can be realised as fine in terms of S. 421 CrPC* (Paras 1 and 2). *Ahammedkutty* v. *Abdullakoya*, (2009) 6 SCC 660.

Bench Strength **2**. Coram: *S.B. Sinha* and *H.S. Bedi*, JJ. [Date of decision: 3-8-2007]

[3814] — Ss. 357(3), 421 and 431 r/w S. 64 IPC — Content and scope — Compensation not part of fine — If default sentence can be imposed for non-payment of such compensation — *Held, Ss. 357(3) and 431 CrPC, when r/w S. 64 IPC, empower the court, while making an order for payment of compensation not part of fine, to also include a default sentence in case of non-payment of the same — If recourse can only be had to S. 421 CrPC for enforcing the same, the very object of S. 357(3) would be frustrated and the relief contemplated therein would be rendered somewhat illusory — The provision for grant of compensation under S. 357(3) CrPC and the recovery thereof makes it necessary for the imposition of a default sentence — While awarding compensation under S.*

357(3) CrPC, the court is within its jurisdiction to add a default sentence of imprisonment — Penal Code, 1860, S. 64 (Paras 26 to 28 and 31 to 33). *Vijayan* v. *Sadanandan K.*, (2009) 6 SCC 652.

Bench Strength 2. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 5-5-2009]

Hari Singh v. Sukhbir Singh, (1988) 4 SCC 551: 1988 SCC (Cri) 984; Suganthi Suresh Kumar v. Jugdeeshan, (2002) 2 SCC 420: 2002 SCC (Cri) 344, followed

Rajendran v. Jose, (2002) 1 Crimes 653 (Ker): (2001) 3 KLT 431, impliedly overruled

Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd., (2007) 6 SCC 528: (2007) 3 SCC (Cri) 209, distinguished and clarified

Ahammedkutty v. Abdullakoya, (2009) 6 SCC 660: (2008) 1 KLT 851, impliedly doubted and not followed

Balraj v. State of U.P., (1994) 4 SCC 29: 1994 SCC (Cri) 823, distinguished

Shantilal v. State of M.P., (2007) 11 SCC 243: (2008) 1 SCC (Cri) 1; Kuldip Kaur v. Surinder Singh, (1989) 1 SCC 405: 1989 SCC (Cri) 171, impliedly relied on

[3815] — **S. 357(3) — Imposition of default sentence for default in payment of compensation — Permissibility — Factors to be considered** — *Held, such sentence can be imposed, purpose whereof is to accommodate interests of victim — In some situations, no purpose is served by keeping a person behind bars, so accused is directed to pay compensation to victim — Hence on default of payment of this compensation, there must be a just recourse — Not imposing a sentence of imprisonment would mean allowing accused to get away without paying the compensation and imposing another fine would be impractical as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of order of compensation — However, while passing an order under S. 357(3), it is imperative for courts to look at ability and capacity of accused to pay the amount otherwise very purpose of granting compensation would stand defeated* (Paras 26 and 21 to 23) . *K.A. Abbas* v. *Sabu Joseph*, (2010) 6 SCC 230.

Suganthi Suresh Kumar v. Jagdeeshan, (2002) 2 SCC 420 : 2002 SCC (Cri) 344; Balraj v. State of U.P., (1994) 4 SCC 29 : 1994 SCC (Cri) 823; Hari Singh v. Sukhbir Singh, (1988) 4 SCC 551 : 1988 SCC (Cri) 984, followed

Vijayan v. Sadanandan K., (2009) 6 SCC 652 : (2009) 3 SCC (Cri) 296; Shantilal v. State of M.P., (2007) 11 SCC 243 : (2008) 1 SCC (Cri) 1, relied on

Ahammedkutty v. Abdullakoya, (2009) 6 SCC 660 : (2009) 3 SCC (Cri) 302; Radhakrishnan Nair v. Padmanabhan, (2000) 2 KLT 349; Rajendran v. Jose, (2001) 3 KLT 431, overruled

Kuldip Kaur v. Surinder Singh, (1989) 1 SCC 405 : 1989 SCC (Cri) 171, considered

Bench Strength 2. Coram : *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision : 11-5-2010]

[3816] — **Ss. 357(3), 421 and 431 — Imposition of default sentence for default in payment of compensation — Permissibility — Rationale for** — *Compensation ordered under S. 357(3) is recoverable in same way as if it were fine — Person can be imprisoned for non-payment of fine — Since legislative intent is clearly to ensure that mode of recovery of fine and compensation are on same footing, accused can be sentenced to imprisonment for default in payment of compensation — Penal Code, 1860, S. 64 — Magistrates' Courts Act, 1980, S. 82(3) (UK) — Sentencing Act, 1997, S. 4 (Australia)* (Paras 29 to 31). *K.A. Abbas* v. *Sabu Joseph*, (2010) 6 SCC 230.

Bench Strength 2. Coram : *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision : 11-5-2010]

[3817] — **S. 357(3) — Reformative theory of punishment — Sentence till rising of the court awarded by the High Court for offence under Ss. 325/149 IPC is inadequate** — *But in the circumstances of the case, keeping in view the modern theory of penology to reform the accused it would not be proper to enhance the sentence and send the 19 accused persons to jail — Hence in addition to sentence of imprisonment already undergone by the accused persons each one of them directed to pay, by way of compensation, a sum of Rs 2000 to the complainant party* (Para 4). *Gulab Singh* v. *Yuvraj Singh*, 1995 Supp (4) SCC 623: 1996 SCC (Cri) 68.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 27-7-1994]

[3818] — **S. 357(3) — Compensation — Family feud resulting in death — Award of compensation more appropriate than sentence of imprisonment** — *Award of compensation to the heirs of the victim — Property dispute between father and son leading to death of the son — Appellants convicted under Ss. 299/304 Pt. I IPC — Incident happening about 11 years ago — Appellants in a position to pay compensation — Held, in the circumstances of the case order for compensation instead of sentence of imprisonment would be more appropriate — Sentence reduced to the period already undergone (more than 2 years) — Both the appellants directed to pay by way of compensation a sum of Rs 35,000 each to the widow of the victim and her children — Amount shall be recoverable as a decree passed by the Court* (Para 17). *Baldev Singh* v. *State of Punjab*, (1995) 6 SCC 593: 1995 SCC (Cri) 1132: AIR 1996 SC 372.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **K.S. Paripoornan**, JJ. [Date of decision: 13-10-1995]

[3819] — **S. 357(3) — Compensation to family of victim** — *Conviction for abetment to suicide of wife under S. 306 IPC — Fine on offender ordered to be paid to victim's father. State of A.P.* v. *Kuna Satyanarayana*, (1998) 8 SCC 268.

Bench Strength 2. Coram: *B.N. Kirpal* and *S.S.M. Quadri*, JJ. [Date of decision: 14-9-1998]

[3820] — S. 357(3) — Compensation to the victims — *Conviction under S. 304-A for rash and negligent driving causing death of one person and injuries to other — Appellant truck driver directed to pay Rs 30,000 by way of compensation to the legal heirs of the deceased and Rs 10,000 to the injured. Hardev Singh* v. *State of Punjab*, 1994 Supp (2) SCC 282: 1994 SCC (Cri) 1234.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *Yogeshwar Dayal*, JJ. [Date of decision: 11-5-1994]

[3821] — S. 357(4) — Exercise of power under, to grant compensation to victims of offence — *Opportunity of hearing, held, must be given before exercising the said power*

An opportunity of hearing has to be granted before directing payment of compensation under Section 357(4) of the Code. Thus, if the appellate court intends to award compensation, it must grant an opportunity of hearing so that the relevant aspects like the need to award compensation, capacity of the accused to pay and several other relevant factors can be taken note of. (Paras 11 and 12). *Mangilal* v. *State of M.P.*, (2004) 2 SCC 447: 2004 SCC (Cri) 1085: AIR 2004 SC 1280: (2004) 1 KLT 1038: 2004 Cri LJ 880.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-1-2004]

Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664, relied on

[3822] — S. 357(4) — Expression "may" — *Held, has been used in permissive sense and not obligatory* (Para 12). *Mangilal* v. *State of M.P.*, (2004) 2 SCC 447: 2004 SCC (Cri) 1085: AIR 2004 SC 1280: (2004) 1 KLT 1038: 2004 Cri LJ 880.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-1-2004]

[3823] — Ss. 357(4), (3) and (1) — Power of court to award compensation to victims of offence — *Held, is not ancillary to other sentences but is in addition thereto — Said power can be exercised by appellate/revisional court even in absence of imposition of fine*

In the instant case, the High Court in appeal had directed each accused (including the appellant) to pay compensation @ Rs 30,000 to the victims of the offence. Fixing a proportion by apportionment it was directed that out of the compensation, 2/3rd was to be paid to the heirs of the deceased while the rest 1/3rds was to be paid to the injured (PW 8). Before the Supreme Court, the appellant raised objection against the said award and contended (*i*) that the High Court had not kept in view the object underlying the grant of compensation under Section 357 of the Code, and (*ii*) that this was a case where no fine was imposed by the trial court, but the High Court directed payment of compensation.

Rejecting the said contention but partly allowing the appeal,

Held:

The power of the court to award compensation to victims under Section 357 is not ancillary to other sentences but is in addition thereto. (Para 8)

Sub-section (1) of Section 357 deals with a situation when a court imposes a fine or a sentence (including sentence of death) of which fine also forms a part. It confers a discretion on the court to order as to how the whole or any part of fine recovered is to be applied. If no fine is imposed, sub-section (1) of Section 357 has no application. The basic difference between sub-sections (1) and (3) of Section 357 is that in the former case, the imposition of fine is the basic and essential requirement, while in the latter even the absence thereof empowers the court to direct payment of compensation. Such power is available to be exercised by an appellate court or by the High Court or Court of Session when exercising revisional powers. (Para 7). *Mangilal* v. *State of M.P.*, (2004) 2 SCC 447: 2004 SCC (Cri) 1085: AIR 2004 SC 1280: (2004) 1 KLT 1038: 2004 Cri LJ 880.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-1-2004]

[3824] — S. 357(5) — Award of compensation in public law proceedings — *Object of — Different from compensation in private tort law action — In case of violation of fundamental right by State's instrumentalities or servants, Court can direct the State to pay compensation to the victim or his heir by way of 'monetary amends' and redressal — Principle of sovereign immunity inapplicable in such cases — This remedy is apart from the private law remedy — Writ petition filed by mother alleging death of his son aged 22 years in police custody in violation of Art. 21 and claiming compensation — Custodial death established — Having regard to the age of the deceased and his monthly income ranging between Rs 1200 to 1500, State directed to pay Rs 1,50,000 as compensation to deceased's mother and Rs 10,000 as costs to Supreme Court Legal Aid Committee — This is besides petitioner's right to claim compensation in other proceedings in which case the amount awarded by the Supreme Court would be adjusted — Other liabilities of respondents or any other person for the custodial death to remain unaffected — Motor Vehicles Act, 1988, S. 141(3) — International Covenant on Civil and Political Rights, Art. 9(5) — Constitution of India — Arts. 32, 226 & 142 and 300*

Per Verma and Venkatachala, JJ.

The liability of the State of Orissa in the present case to pay the compensation cannot be doubted.

Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention. Award of compensation in a proceeding under Art. 32 by the Supreme Court or by the High Court under Art. 226 is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. 'A claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Arts. 32 and 226. This is what was indicated in *Rudul Sah* and is the basis of the subsequent decisions in which compensation was awarded under Arts. 32 and 226, for contravention of fundamental rights. Certain further observations in *Rudul Sah* which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of the Supreme Court in *Rudul Sah* and others in that line have to be understood and *Kasturilal* distinguished therefrom.

The court is not helpless and the wide powers given to the Supreme Court by Art. 32, which itself is a fundamental right, imposes a constitutional obligation on the Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to the Supreme Court under Art. 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

Article 9(5) of the International Covenant on Civil and Political Rights, 1966 (which reads: "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.") also indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right.

Having regard to the fact based on evidence recorded by the District Judge that the deceased was aged about 22 years and had a monthly income between Rs 1200 to Rs 1500, a total amount of Rs 1,50,000 would be appropriate as compensation, to be awarded to the petitioner in the present case. However, the award of compensation in this proceeding would be taken into account for adjustment, in the event of any other proceeding taken by the petitioner for recovery of compensation on the same ground, so that the amount to this extent is not recovered by the petitioner twice over. Apart from the fact that such an order is just, it is also in consonance with the statutory recognition of this principle of adjustment provided in S. 357(5) CrPC and S. 141(3) of the Motor Vehicles Act, 1988. Accordingly the respondent State is directed to pay the sum of Rs 1,50,000 to the petitioner and a further sum of Rs 10,000 as costs to be paid to the Supreme Court Legal Aid Committee. The mode of payment of Rs 1,50,000 to the petitioner would be, by making a term deposit of that amount in a scheduled bank in the petitioner's name for a period of three years, during which she would receive only the interest payable thereon, the principal amount being payable to her on expiry of the term. The Collector of the District will take the necessary steps in this behalf, and report compliance to the Registrar (Judicial) of the Supreme Court within three months.

The award of this compensation, apart from the direction for adjustment of the amount as indicated, will not affect any other liability of the respondents or any other person flowing from the custodial death of petitioner's son.

Per Anand, J. (concurring)

While granting relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Art. 21 it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. The citizen complaining of the infringement of the indefeasible right under Art. 21 cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law.

The Supreme Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Arts. 32 and 226 to the victim or the heir of the victim whose fundamental rights under Art. 21 are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law — through appropriate proceedings. Of course, relief in exercise of the power under Art. 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Art. 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Art. 32 or 226 are misused as a disguised substitute for civil action in private law.

In the facts of the present case on the findings already recorded, the mode of redress which commends appropriate is to make an order of monetary amends in favour of the petitioner for the custodial death of her son by ordering payment of compensation by way of exemplary damages.

I concur with the view expressed by Brother Verma, J. and the directions given by him in the judgment in all respects. *Nilabati Behera* v. *State of Orissa*, (1993) 2 SCC 746: 1993 SCC (Cri) 527: AIR 1993 SC 1960: 1993 Cri LJ 2899: (1993) 76 CLT 98: 1993 ACJ 787.

Bench Strength **3**. Coram : **J.S. Verma**[1], **Dr. A.S. Anand**[2] and *N. Venkatachala*, JJ. [Date of decision : 24-3-1993]

Rudul Sah v. State of Bihar, (1983) 4 SCC 141: (1983) 3 SCR 508: 1983 SCC (Cri) 798, explained and applied

[3825] — S. 357(5) — Compensation — Adjustment of, in civil suit — Adjustment of amounts awarded in terms of S. 357 CrPC — Jurisdiction of appellate and revisional courts including High Court, held, can be exercised to award a reasonable compensation — *CPC, 1908, S. 9 and Or. 20 R. 6*

The appeal being a continuation of the suit and the appellants having in total deposited a sum of Rs 4,00,000 i.e. Rs 2,10,000 in the criminal proceedings and Rs 1,90,000 in the civil proceedings, out of which a sum of Rs 3,09,000 having been withdrawn by the respondent, the High Court was obligated to take the same into consideration. In view of the doctrine of purposive construction, compensation directed by a court to be paid should be a reasonable one. An appeal from a decree, is a continuation of suit. The limitation of power on a civil court should also be borne in mind by the appellate court as to whether any duty was cast upon the civil court to consider the amount of compensation deposited in terms of Section 357 CrPC. Such an order can also be passed by the appellate court or by the High Court or by the Court of Session when exercising its power of revision. It is futile to urge that on the date on which the civil court passed the decree the appellants were not convicted. (Paras 11 to 15)

Actus curiae neminem gravabit (no person shall be prejudiced by an act of court) is a well-known maxim. In any event, the Supreme Court in exercise of its jurisdiction under Article 136 as also under Article 142 of the Constitution of India can direct rectification of a mistake committed by the courts below. Therefore, the impugned judgment should be modified and the matter be remitted to the trial Judge. (Paras 18 and 19). *D. Purushotama Reddy* v. *K. Sateesh*, (2008) 8 SCC 505: (2008) 3 KLT 590: (2008) 69 AIC 238 (SC).

Bench Strength **2**. Coram : **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision : 1-8-2008]

Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd., (2007) 6 SCC 528: (2007) 3 SCC (Cri) 209; Manish Jalan v. State of Karnataka, (2008) 8 SCC 225; New India Assurance Co. Ltd. v. Nusli Neville Wadia, (2008) 3 SCC 279, relied on

[3826] — Ss. 357(5) and (1)(b) — Adjustment by civil court of compensation awarded under S. 357 — Duty of civil court — *Determination in money suit when fine already paid in criminal proceedings for the same cause of action — Civil suit decreed subsequent to conviction and sentence in criminal proceedings — Criminal court's direction to deposit the fine, held, should have been taken into consideration by civil court while passing a decree against the defendant — It was statutorily bound to do so — CPC, 1908, S. 9, Or. 37 R. 1 and Or. 20 — Negotiable Instruments Act, 1881, S. 138*

Although, it is beyond any doubt or dispute that for the same cause of action both a civil suit and a complaint petition under Section 138 of NI Act would be maintainable, in terms of Section 357 CrPC, a duty is cast upon the civil courts to take into account the sum paid or recovered as compensation in the criminal proceedings. The judgment of conviction and sentence was passed by the criminal court on 15-12-2005. The suit was decreed by the civil court on 23-1-2006. Deposit of a sum of Rs 2,00,000 by the appellants in favour of the respondent was directed by the criminal court. Such an order should have been taken into consideration by the civil court. (Paras 9 and 11 to 14). *D. Purushotama Reddy* v. *K. Sateesh*, (2008) 8 SCC 505: (2008) 3 KLT 590: (2008) 69 AIC 238 (SC).

Bench Strength **2**. Coram : **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision : 1-8-2008]

— S. 358 *See* Ss. 357 & 358

See also Ss. 357, 358 and 397

See also Ss. 482, 148(3), 342, 359, 357, 358 and 227

[3827] — S. 358 — Legal remedies suggested in matter relating to police atrocities — *Report submitted by the District Judge, as directed by the Supreme Court, revealing possibility of assault on petitioner's husband by police officers — Report also stating discrepancies in the contentions of the petitioner — In the circumstances, without deciding the case on merits, Govt. directed to conduct departmental proceedings against the said officers on the basis of the report — Option of initiating criminal action, making claim for damages and other reliefs permissible under the law left open for petitioner's husband — Constitution of India — Arts. 21 and 32. Vinesh Pundir* v. *State of U.P.*, (2002) 9 SCC 563.

Bench Strength **2**. Coram : *M. Jagannadha Rao* and *M.B. Shah*, JJ. [Date of decision : 20-4-2000]

[3828] — S. 358 — Compensation — For illegal detention in police custody — *Where detenus themselves not fair before the Court and filing false affidavit and exaggerating the incident by involving persons who were not present at the scene, held, they would not be entitled to any compensation from State — Constitution of India — Arts. 32 and 21*

Since it has been found that the detenus had been illegally detained by Respondents 3 to 5 for two days, the State must be held responsible for the unlawful acts of its officers and it must repair the damage done to the citizens by its officers for violating their indefeasible fundamental right of personal liberty without any authority of law in an absolutely high-handed manner. But the Court would not direct the State Govt. to compensate the detenu and the driver since the driver indulged in falsehood in the Supreme Court and the detenu also exaggerated the incident by stating that two employees of Respondents 6 and 7 were also present with the police party, which version has not been found to be correct by the CBI. Therefore, they both have disentitled themselves from receiving any compensation, as monetary amends for the wrong done by Respondents 3 to 5, in detaining them. (Para 54). *Dhananjay Sharma* v. *State of Haryana*, (1995) 3 SCC 757: 1995 SCC (Cri) 608: AIR 1995 SC 1795.

Bench Strength **2**. Coram : **Dr. A.S. Anand**[1] and **Faizan Uddin**[2], JJ. [Date of decision : 2-5-1995]

[3829] — S. 358 — Human rights violation — Police atrocities — Follow-up action against and compensation — *Abduction and elimination of seven persons by police party led by DSP by misusing official machinery to wreak private vengeance — Report submitted by Director, CBI in compliance with Supreme Court's order dated 15-9-1994 — Report showing indolent attitude of high-ranking police officers inasmuch as SSP taking no action on the complaint for two months and DIG sitting on it for 8 months and only crime branch charge-sheeting the accused persons but matter at no stage brought to the notice of DGP — Conduct of Punjab Police as a whole deprecated by Supreme Court — Prosecution directed to be completed expeditiously — Disciplinary proceedings directed to be initiated against the erring officials including the SSP and DIG concerned — State as a token of its failure to enforce law and order and to protect its citizens, must bear the consequence by paying Rs 1.50 lakhs to LRs of each of the seven victims within two weeks — Amount can later be recovered from persons found to be guilty — State shall also pay to the petitioner costs quantified at Rs 25,000 — Constitution of India — Arts. 32 and 21*

The primary duty of those in uniform is to uphold law and order and protect the citizen. If members of a police force resort to illegal abduction and assassination, if other members of that police force do not record and investigate complaints in this behalf for long periods of time, if those who had been abducted are found to have been unlawfully detained in police stations in the State concerned prior to their probable assassination, the case is not one of errant behaviour by a few members of that police force. It betrays scant respect for the life and liberty of innocent citizens and exposes the willingness of others in uniform to lend a helping hand to one who wreaks private vengeance on mere suspicion. The Punjab Police as a whole merit the Supreme Court's disapprobation, the Crime Branch thereof a word of praise. (Para 9)

The Supreme Court has in recent times come across far too many instances where the police have acted not to uphold the law and protect the citizen but in aid of a private cause and to oppress the citizen. It is a trend that bodes ill for the country and it must be promptly checked. The DGP, Punjab is expected to take a serious view of such cases. The Home Department of the Central Govt. cannot also afford to appear to be a helpless spectator. (Para 10)

When the police force of a State acts as the Punjab Police has in this case, the State whose arm that force is must bear the consequences. It must do so in token of its failure to enforce law and order and protect its citizens and to compensate in some measure those who have suffered by reason of such failure. The State of Punjab is directed to pay to the legal representatives of each of the said seven persons an amount of Rs 1.50 lakhs within 2 weeks. Later, when the guilty are identified, the State should endeavour to recover the said amount which is the taxpayers' money. (Para 11)

The prosecution of those who have been charge-sheeted in connection with the abduction and disappearance of the said seven persons should be expeditiously conducted under the supervision of the Crime Branch of the Punjab Police. The court trying the accused is cautioned that it should decide the case on the evidence that may be laid before it without being unduly influenced by what has been said in this Order. (Para 12)

Disciplinary inquiries must be started against the accused persons as also the SSP and DIG concerned. Others responsible for delaying the registration of the complaint and inquiry thereon must also be identified and proceeded against. (Para 13)

The State of Punjab shall pay to the petitioner the costs of the writ petition, quantified at Rs 25,000. (Para 14). *Inder Singh* v. *State of Punjab*, (1995) 3 SCC 702: 1995 SCC (L&S) 857: (1995) 30 ATC 122: 1995 SCC (Cri) 586: AIR 1995 SC 1949: 1995 Cri LJ 3235.

Bench Strength **3**. Coram : *A.M. Ahmadi, C.J.* and *Dr. A.S. Anand* and *S.P. Bharucha*, JJ. [Date of decision : 10-5-1995]

— S. 359 *See also* Ss. 482, 148(3), 342, 359, 357, 358 and 227

[3830] — S. 359 — Imposition of costs by High Court without indicating any reason therefor — Sustainability — *FIR lodged by Respondent 2 alleging that Respondent 1 along with his mother and sister had abducted Respondent 2's daughter — In the writ petition filed by Respondent 1 seeking writ in the nature of certiorari for quashing the said FIR, High Court granting him relief — While doing so it also imposing costs of Rs 50,000 against Respondent 2 and State — However, as far as Respondent 2 was concerned it was further observed that imposing costs on him would create further rift in families and if he gives an undertaking that he would reconcile to the situation he would not be liable — Held, impugned order of the High Court so far as it relates to the imposition of cost is founded on no basis — No finding recorded that the police officials were remiss in any way and/or had committed any lapse during investigation — In the absence of any reason having been* *indicated by the High Court as to why the Court felt the necessity for imposing cost, the direction for payment of cost cannot be sustained and hence set aside — Further held, unless any lapse on the part of any authority is found and opportunity is granted to the alleged erring official, cost should not be imposed — Whenever it is felt that cost is to be imposed, the reason for such a conclusion has to be recorded — Constitution of India — Art. 226* (Paras 3, 6, 8 and 9). *State of U.P.* v. *Nitin Agnihotri*, (2008) 8 SCC 31: (2008) 3 SCC (Cri) 412: 2008 Cri LJ 3907: (2008) 5 All LJ 785: (2008) 3 KLT 478.

Bench Strength 2. Coram : **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision : 21-7-2008]

— S. 360 *See also* S. 380 (at p. 1178) and Ss. 562, 563 & 564 (at p. 1309), Criminal Procedure Code, 1898 in Vol. 2

See also CRIMINAL LAW — PRISONS, PRISONERS AND PROBATION OF OFFENDERS

See also CRIMINAL TRIAL — 'Age' in Vol. 3

— S. 360 *See* Ss. 235(2), 248(2), 255(2) and 360

See also Ss. 235(2), 248(2), 325, 360 and 361

See also Ss. 235(2) and 360

See also Ss. 354(3), 360 and 361

See also Ss. 354(3) and 361 & 360

See also Ss. 362 and 360

See also Ss. 374 and 360

See also Ss. 386, 378 and 360

[3831] **— Ss. 360 and 361 — Applicability of provisions of the 1958 Act vis-à-vis Ss. 360 & 361 CrPC** — *Held, where provisions of the 1958 Act apply resort to S. 360 CrPC not to be made — Enforcement of the 1958 Act in some particular area excludes the applicability of the provisions of Ss. 360 & 361 CrPC in that area — Distinguishing provisions of S. 360 CrPC from those of the 1958 Act, held, the two statutes (i.e. the 1958 Act and CrPC) with such significant differences could not be intended to coexist at the same time in the same area — Such coexistence would lead to anomalous results — In present case, matter remitted to High Court to consider whether benefits under the 1958 Act or S. 360 CrPC could be extended to appellant — General Clauses Act, 1897, S. 8(1) — Criminal Procedure Code, 1898, Ss. 380 and 562 to 564 — Probation of Offenders Act, 1958, Ss. 3 & 4*

Where the provisions of the Probation of Offenders Act (for short the "PO Act") are applicable the employment of Section 360 CrPC is not to be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, who gave birth to the PO Act and the Code of Criminal Procedure, wanted to obviate. The provisions of the PO Act have a paramountcy of their own in the respective areas where they are applicable. (Para 11)

In comparison to Section 360 CrPC, the scope of Section 4 of the PO Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Further, Section 360 CrPC does not provide for any role for Probation Officers in assisting the courts in relation to supervision and other matters while the PO Act does make such a provision. That apart, while Section 12 of the PO Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the said Act shall not suffer disqualification, if any, attached to conviction of an offence under any law, the Code does not contain any such parallel provision. Two statutes with such significant differences could not be intended to co-exist at the same time in the same area. Such co-existence would lead to anomalous results. The intention to retain the provisions of Section 360 CrPC and the provisions of the PO Act as applicable at the same time in a given area, cannot be gathered from the provisions of Section 360 or any other provision of the Code of Criminal Procedure. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Act have been brought into force, the provisions of Section 360 CrPC are wholly inapplicable. Enforcement of the PO Act in some particular area excludes the applicability of the provisions of Sections 360 and 361 CrPC in that area. (Paras 12 and 13)

In the present case, the matter is remitted to the High Court to consider whether the benefits under the PO Act or Section 360 CrPC can be extended to the appellant. (Para 15). *Gulzar* v. *State of M.P.*, (2007) 1 SCC 619: (2007) 1 SCC (Cri) 395: (2007) 50 AIC 123 (SC).

Bench Strength 2. Coram : **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision : 4-1-2007]

[3832] **— Ss. 360 and 361 — Applicability of provisions of the 1958 Act vis-à-vis Ss. 360 & 361 CrPC** — *Held, where provisions of the 1958 Act apply resort to S. 360 CrPC not to be made — Enforcement of the 1958 Act in some particular area excludes the applicability of the provisions of Ss. 360 & 361 CrPC in that area — Distinguishing provisions of S. 360 CrPC from those of the 1958 Act, held, the two statutes (i.e. the 1958 Act and CrPC) with such significant differences could not be intended to coexist at the same time in the same* *area — Such coexistence would lead to anomalous results — General Clauses Act, 1897, S. 8(1) — Criminal Procedure Code, 1898, Ss. 380 and 562 to 564 — Probation of Offenders Act, 1958, S. 4*

Where the provisions of the Probation Act are applicable the employment of Section 360 CrPC is not to be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, that gave birth to the Probation Act and the Code, wanted to obviate. The provisions of the Probation Act have a paramountcy of their own in the respective areas where they are applicable. (Para 6)

In comparison to Section 360 CrPC, the scope of Section 4 of the Probation Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Further, Section 360 does not provide for any role for the probation officers in assisting the courts in relation to supervision and other matters while the Probation Act does make such a provision. That apart, while Section 12 of the Probation Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the said Act shall not suffer disqualification, if any, attached to conviction of an offence under any law, the Code does not contain any such parallel provision. Two statutes with such significant differences could not be intended to coexist at the same time in the same area. Such coexistence would lead to anomalous results. The intention to retain the provisions of Section 360 CrPC and the provisions of the Probation Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provision of the Code of Criminal Procedure. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Act have been brought into force, the provisions of Section 360 CrPC are wholly inapplicable. Enforcement of the Probation Act in some particular area excludes the applicability of the provisions of Sections 360 and 361 CrPC in that area. (Paras 7 and 8). *Daljit Singh* v. *State of Punjab*, (2006) 6 SCC 159: (2006) 3 SCC (Cri) 20.

Bench Strength **2**. Coram : **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision : 27-7-2006]

[3833] — Ss. 360 and 361 — Scope and applicability of provisions of the 1958 Act vis-à-vis provisions of Ss. 360 & 361 CrPC — *Held, where provisions of the 1958 Act apply resort to S. 360 CrPC is not required — Enforcement of the 1958 Act in some particular area excludes the applicability of the provisions of Ss. 360 & 361 CrPC in that area — Distinguishing the provisions of S. 360 CrPC from those of the 1958 Act, held, the two statutes (i.e. 1958 Act and CrPC) with such significant differences could not be intended to coexist at the same time in the same area — Such coexistence would lead to anomalous results — Criminal Procedure Code, 1898, Ss. 380 and 562 to 564 — General Clauses Act, 1897, S. 8(1) — Probation of Offenders Act, 1958, S. 4*

Where the provisions of the Probation Act are applicable the employment of Section 360 of the Criminal Procedure Code is not to be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, that gave birth to the Probation Act and the Code wanted to obviate. The provisions of the Probation Act have a paramountcy of their own in the respective areas where they are applicable. (Para 6)

In comparison to Section 360 CrPC, the scope of Section 4 of the Probation Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Further, Section 360 does not provide for any role for probation officers in assisting the courts in relation to supervision and other matters while the Probation Act does make such a provision. That apart, while Section 12 of the Probation Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the said Act shall not suffer disqualification, if any, attached to conviction of an offence under any law, the Code does not contain parallel provision. Two statutes with such significant differences could not be intended to coexist at the same time in the same area. Such coexistence would lead to anomalous results. The intention to retain the provisions of Section 360 CrPC and the provisions of the Probation Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provision of the Code of Criminal Procedure. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Probation Act have been brought into force, the provisions of Section 360 CrPC are wholly inapplicable. Enforcement of the Probation Act in some particular area excludes the applicability of the provisions of Sections 360 and 361 CrPC in that area. (Paras 7 and 8). *Chhanni* v. *State of U.P.*, (2006) 5 SCC 396: (2006) 2 SCC (Cri) 466.

Bench Strength **2**. Coram : **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision : 6-7-2006]

[3834] — S. 360 — Offender released on probation to meet ends of justice — Factors considered — *Appellant (offender) had already been dismissed from service on account of his conviction under Ss. 279 and 304-A IPC for causing accident resulting in a death and injuries to others — Litigation pending for 20 years — Offender having a good career except for the said conviction — Probation of Offenders Act, 1958, S. 4*

The ends of justice would be met if the appellant is released on probation under Section 4 of the Probation of Offenders Act, 1958 on conditions to be imposed by the trial court. The litigation had been going on for the last 20 years and had been fought tenaciously through various courts. The appellant who had had a good career throughout but for this one aberration had since been dismissed from service on account of his conviction. (Para 12). *Paul George* v. *State (NCT of Delhi)*, (2008) 4 SCC 185: (2008) 2 SCC (Cri) 768: (2008) 65 AIC 199 (SC).

Bench Strength **2**. Coram : *S.B. Sinha* and **H.S. Bedi**, JJ. [Date of decision : 14-3-2008]

[3835] — S. 360 — Release of offender on probation — Grounds — Offence under S. 323 IPC — Injuries caused to victims simple in nature — Petitioner, a teacher who might lose his job due to conviction — *No clear evidence that apart from being a member of the mob, the petitioner specifically assaulted anyone — Having regard to the facts and circumstances of the case, held, petitioner should be given benefit under the 1958 Act and be released on probation assuring good conduct for a period of six months — However, direction made to petitioner to pay a sum of Rs 500 each to the four victims — Penal Code, 1860, S. 323 — Probation of Offenders Act, 1958, S. 4* (Para 6). *Jamal Haq* v. *State of Tripura*, (2006) 9 SCC 757.

Bench Strength **2**. Coram : *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision : 9-1-2006]

[3836] — S. 360 — Letting off of one of accused only on probation — Held, improper — *Probation of Offenders Act, 1958, S. 4 — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 33* (Paras 24 and 7). *Sarju* v. *State of U.P.*, (2009) 13 SCC 698: 2009 Cri LJ 4123: (2009) 81 AIC 90 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 7-8-2009]

[3837] — S. 360 — Benefit of — Relevant considerations — *Conviction of appellants (Accused 1 to 4) under Ss. 324/34 IPC, and under Ss. 504/34 IPC — Accused seeking benefit of S. 4 of the Act and S. 360 CrPC — Refusal by Magistrate, on the ground of enmity between the families of accused and complainant, held, improper — Benefit of S. 4 given by the Supreme Court to Accused 3 and 4 who were women, so far as Accused 1 and 2 were concerned, Magistrate directed to secure report of Probation Officer and then pass an appropriate order taking note of S. 4 of the Act — Penal Code, 1860, Ss. 324, 504 r/w S. 34 — Probation of Offenders Act, 1958, S. 4* (Para 5). *Halappa* v. *State of Karnataka*, (2009) 9 SCC 366: (2009) 3 SCC (Cri) 1068.

Bench Strength **2**. Coram: **R.V. Raveendran** and *P. Sathasivam*, JJ. [Date of decision: 13-8-2009]

[3838] — S. 360 — Applicability — Culpable homicide — Release on probation — Factors to be considered — *On facts, deceased, an alcohol addict, picked up a quarrel assaulting A-1 (appellant-accused) and tried to pull her sari, in presence of A-2 (appellant-accused) and A-3 — Because of this conduct of deceased, A-1 dealt a blow with an iron rod to head of deceased, resulting in his death — Accused persons, thereafter, stealthily buried his body in the backyard of the house — Trial court convicted A-1 under Ss. 304 Pt. II and 201 r/w S. 34 IPC with RI for four years and one year respectively and A-2 under S. 201 r/w S. 34 IPC with imprisonment for one year while other co-accused was convicted by Juvenile Court — Appeal against conviction dismissed by High Court — Sustainability — Held, evidence of PW 1 to whom A-1 had made extra-judicial confession, as analysed by courts below, was cogent and credible — However, effect, relevance and applicability of S. 360 CrPC, not considered by courts below — Therefore, while upholding conviction, held, matter remitted to trial court for limited purpose of deciding whether benefit under S. 360 could be extended to the appellants — Penal Code, 1860, Ss. 304 Pt. II, 300 Exceptions 1 and 4, 201 & 34 and S. 354 — Probation of Offenders Act, 1958, Ss. 4 and 5* (Paras 1, 3, 6, 7, 9 and 11). *Eliamma* v. *State of Karnataka*, (2009) 11 SCC 42: (2009) 3 SCC (Cri) 1227.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *Dr. M.K. Sharma* and *H.L. Dattu*, JJ. [Date of decision: 11-2-2009]

Chandreshwar Sharma v. State of Bihar, (2000) 9 SCC 245: 2000 SCC (Cri) 1500, relied on

[3839] — Ss. 360 and 361 — Release on probation — Benefit of — Factors to be considered — *Submission that it was appellant's first offence, he had served part of the sentence of one year's RI imposed on him, and long period of more than twenty-one years had elapsed since date of occurrence, hence, benefit of probation should be extended to him — Held, in the instant case, there were grave injuries, and the High Court had reduced the sentence from three years' to one year's RI — Hence, following* Manjappa *case, (2007) 6*

SCC 231, submission rejected — Probation of Offenders Act, 1958, Ss. 3 and 4 (Paras 25 to 27). *Karamjit Singh* v. *State of Punjab*, (2009) 7 SCC 178: (2009) 3 SCC (Cri) 330.

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 6-7-2009]

Manjappa v. State of Karnataka, (2007) 6 SCC 231: (2007) 3 SCC (Cri) 76, followed

[3840] — S. 360 — Release of offender on probation of good conduct — Applicability of the 1958 Act or S. 360 CrPC not considered by High Court — Effect — *Hence, matter remitted to High Court for consideration thereof — Criminal Procedure Code, 1898, Ss. 380 and 562 to 564 — Probation of Offenders Act, 1958, S. 4* (Para 9). *Daljit Singh* v. *State of Punjab*, (2006) 6 SCC 159: (2006) 3 SCC (Cri) 20.

Bench Strength **2**. Coram : **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision : 27-7-2006]

[3841] — Ss. 360 and 361 — Mandatory duty is cast on the court to record in its judgment specific reasons for not granting benefit of S. 360 to an accused where it could have dealt with the accused thereunder — *Accused-appellant convicted under S. 379 IPC having found to be in possession of 3.5 kg of non-ferrous metal — No reasons recorded by courts below for not dealing with the accused under S. 360 — Having regard to the facts and circumstances of the case, held, there was no reason for not applying S. 360 — Hence while maintaining conviction, by applying S. 360 appellant directed to be released on probation of good conduct instead of sentencing him, and he should enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question* (Para 3). *Chandreshwar Sharma* v. *State of Bihar*, (2000) 9 SCC 245: 2000 SCC (Cri) 1500.

Bench Strength **2**. Coram : *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision : 7-1-2000]

[3842] — S. 360 — Trial Court must gather relevant materials regarding the social background and personal factors of the offender for the purpose of sentencing — *In absence of any such materials, considering the facts and circumstances of the case as well as report and recommendations of the Probation Officer, held, the accused-appellant must be released under S. 4(1) of Probation of Offenders Act, 1958 on his entering into a bond — Further directions given*

The trial Court should collect materials necessary to help award a just punishment in the circumstances. The social milieu and the personal circumstances of the offender are very relevant in this respect. In the present case, though there is absence of such materials, it appears that the offender is a young person and his antecedents have no blemish. His life is not unsettled or restless and the report indicates that he is an agriculturist, pursuing a peaceful vocation. His parents are alive and he has a wife and children to maintain. These are stabilising factors in life. A long period of litigation and the little period of imprisonment suffered, will surely serve as a deterrent. Although the accused-appellant had used a firearm and the offence was grave, nevertheless, the report of the Probation Officer states that the appellant is not given to any bad habits or stresses of poverty. A land dispute led to the crime and that does not survive any longer. The Probation Officer recommends that an opportunity be given to the appellant to improve himself. Therefore, in this case the appellant may be given the benefit of S. 4 of the Probation of Offenders Act on his entering a bond. *Ved Prakash* v. *State of Haryana*, (1981) 1 SCC 447: 1981 SCC (Cri) 182: AIR 1981 SC 643: 1981 Cri LJ 161.

Bench Strength **2**. Coram : **V.R. Krishna Iyer** and *E.S. Venkataramiah*, JJ. [Date of decision : 12-11-1980]

[3843] — S. 360 — Applicability — Held, S. 360(1) itself provides that if for any offence life sentence is provided for, S. 360 would have no application — *On facts, respondents convicted under Ss. 326/149, 325/149, 148 and 323/149 IPC and sentenced accordingly with imprisonment, fine and default stipulation — In appeal, sentence under Ss. 326/149 was reduced, but all other sentences and fine imposed by trial court was upheld — High Court modified judgment of courts below and directed release of accused persons on probation under S. 360 CrPC but enhanced the amount of fine — Held, as conviction herein involves punishment under S. 326 IPC which carries life imprisonment, therefore, S. 360 CrPC has no application to the facts of the instant case — High Court lost sight of the correct position in law — Hence, matter remitted to High Court to consider about the non-applicability of S. 360 CrPC both on the ground that the Probation of Offenders Act, 1958 has application and S. 326 IPC carries life imprisonment — Probation of Offenders Act, 1958, Ss. 3 and 4* (Paras 9, 3, 5, 11 and 12). *Ramesh Dass* v. *Raghu Nath*, (2008) 4 SCC 588: (2008) 2 SCC (Cri) 470: AIR 2008 SC 1298: (2008) 64 AIC 238 (SC): 2008 Cri LJ 1945: (2008) 3 KLT 250.

Bench Strength **2**. Coram : **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision : 14-2-2008]

Chhanni v. State of U.P., (2006) 5 SCC 396: (2006) 2 SCC (Cri) 466; Daljit Singh v. State of Punjab, (2006) 6 SCC 159: (2006) 3 SCC (Cri) 20; Jagdev Singh v. State of Punjab, (1974) 3 SCC 412: 1973 SCC (Cri) 977, relied on

[3844] — Ss. 360 and 361 — Release of offender on probation of good conduct — Considerations for — Nature of the offence and character of the offender — Character — Meaning of — *Accused managing to get entry into legal profession by representing that he was a qualified legal practitioner having enrolled himself with the State Bar Council — Accused practising law for a period of eight years and also holding post of Secretary of Bar Association — Held, in the circumstances of the case, the accused must be dealt with deterrently and the courts below not justified in giving him benefit of S. 4 — Fact that the accused expressed repentance over his conduct or that later he obtained a law degree and got himself enrolled as an advocate is of no consequence — Accused awarded six months' RI under each count (Ss. 419 and 420 IPC) and a fine of Rs 5000 each (total Rs 10,000) to be added to fund of the Legal Service Board — Penal Code, 1860, Ss. 419 and 420 — Probation of Offenders Act, 1958, S. 4*

The respondent approached the Nilgiris Bar Association in the year 1978 for admitting him as a member therein by representing that he was a qualified legal practitioner having enrolled himself with the State Bar Council. Without suspecting the bona fides of the application he was admitted to the membership of the Bar Association. He started his practice at the new station and built up a good clientele and involved himself in all the activities of the Association. He contested for the post of Secretary and won it. In this way, he continued till 1985. But by then some members of the Bar who developed suspicion of his credentials made secret inquiries and discovered that he was imposturing as an advocate and his credentials were bogus. A complaint was lodged with the police who, after investigation, charge-sheeted the accused for offences under Sections 419 and 420 IPC. He pleaded guilty and prayed for mercy. The trial court released him under Section 4 of the Probation of Offenders Act. The High Court declined to interfere but made an endeavour to console the Bar by directing the delinquent person to donate a sum of Rs 15,000 to the Association for buying books to their library. Allowing the appeal by special leave filed by the Bar Council

Held :

Before the relief envisaged in Section 4(1) of the Probation of Offenders Act is granted court must take into account the circumstances of the case, among which "the nature of the offence and the character of the offender" must have overriding considerations. After bestowing judicial consideration on those factors, the court must form an opinion as to whether it would be appropriate in that case to release the particular accused therein as envisaged in the sub-section. The benefits mentioned in Sections 3 and 4 are subject to the limitations laid down in those provisions and the word 'may' in Section 4 of the Act is not to be understood as 'must.'

When considering the nature of the offence the court must have a realistic view of the gravity of the offence, the impact which the offence could have had on the victims and whether considerations of deterrence can be overlooked etc. No fixed yardstick can be laid down to measure the nature of the offence for affording or denying the reliefs envisaged in Section 4 of the Act. However, as the court is enjoined to take into consideration the character of the offender it is well to remember that character is not the abstract opinion in which the offender is held by others. The word "character" is not defined in the Act. Hence, it must be given the ordinary meaning.

Character of the offender in this case reflects in the modality in which he was inveigling in a noble profession duping everybody concerned. In such a view of the matter the two courts could not have formed an opinion in favour of the character of the respondent. It is apposite to observe here that the learned Single Judge did not mention anything about the character of the respondent qua the accusations found against him.

While adverting to the nature of offence the court must bear in mind the necessity to weed out impostors in the professions which require special learning and training, particularly at a time when such impostors are proliferating in the society. Any leniency shown to such wiles would certainly tend to sprout up weeds at menacing scales. The case of the respondent is not one of single lapse or even multiple delinquencies confined to a few days. The long period of 8 years during which the mountebank had successfully indulged in interloping as a qualified and learned counsel would have considerably eroded public confidence in the probity of the legal profession particularly in that area and besmirched the reputation of that Bar as the public might be looking upon every other member of the profession with suspectful eyes. The trial Magistrate and the learned Single Judge, who found a repenting mind in the respondent, have failed to notice that repentance had dawned on him, even if that also was not a pretension, only when he reached a cul-de-sac. When he was masquerading himself everyday in sartorial costumes prescribed only for accredited members of the legal profession it did not occur to him even once during the long period of eight years to think of repentance. On the contrary, he was flourishing at large and had even become the Secretary of the Bar Association. If the vigilant Bar had not discovered the trickery, perhaps he would still have persisted in his art of cheating. Therefore, the crimes committed by him should have been dealt with deterrently and the ameliorative reliefs envisaged in Section 4 of the Act should have been kept at bay. *Nilgiris Bar Assn.* v. *T.K. Mahalingam*, (1998) 1 SCC 550: 1998 SCC (Cri) 450: AIR 1998 SC 398: 1998 Cri LJ 398.

Bench Strength 2. Coram : *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision : 8-12-1997]

Ramji Missar v. State of Bihar, AIR 1963 SC 1088: (1963) 2 Cri LJ 173; Rattan Lal v. State of Punjab, AIR 1965 SC 444: (1964) 7 SCR 676; Ishar Das v. State of Punjab, (1973) 2 SCC 65: 1973 SCC (Cri) 708; Ram Parkash v. State of H.P., (1972) 4 SCC 46: 1973 SCC (Cri) 119, relied on

[3845] — S. 360 — Date of Birth — Entry in school register — Supported by testimony of Head Master who admitted the student and probability of the case — *At the age of little over six years, as suggested by the accused, he could not possibly have been admitted to sixth standard — High Court therefore erred in upsetting the trial Court's finding — Children Act, 1960, Ss. 21 and 2(e) — Juvenile Justice Act, 1986, Ss. 21 and 2(h) — Probation of Offenders Act, 1958, Ss. 4 and 6. Rajan Sinha* v. *State of Bihar*, 1991 Supp (2) SCC 145: 1991 SCC (Cri) 1015: AIR 1991 SC 1377: 1991 Cri LJ 1369: (1991) 2 BLJR 797.

Bench Strength 3. Coram : *A.M. Ahmadi, V. Ramaswami* and *M. Fathima Beevi*, JJ. [Date of decision : 12-3-1991]

[3846] — S. 360 — Long passage of time and sentence imposed — *Appellants 2 and 3 convicted under S. 323 IPC and sentenced to RI for one year — However, considering the long passage of time and period of sentence imposed, benefit of S. 360 CrPC granted to them on entering the stipulated bond — Penal Code, 1860, S. 323* (Para 7). *Nasiruddin Khan* v. *State of Bihar*, (2008) 12 SCC 129.

Bench Strength 2. Coram : **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision : 29-7-2008]

[3847] — S. 360 — Age of the person convicted — Computation of, for the purpose of applicability of S. 20-AA, PFA Act — Relevant date for the said purpose, held, is the date of commission of the offence and not the date of conviction — *Hence, conviction maintained but appellant-accused directed to be released on probation to maintain good behaviour — Probation of Offenders Act, 1958 — Prevention of Food Adulteration Act, 1954, Ss. 20-AA, 16(1)(4) and 7* (Paras 2 and 3). *Rajbir* v. *State of Haryana*, (1999) 9 SCC 200: 1999 SCC (Cri) 1142: AIR 2000 SC 3472.

Bench Strength 3. Coram : *G.B. Pattanaik, M.B. Shah* and *R.C. Lahoti*, JJ. [Date of decision : 11-2-1999]

[3848] — S. 360 — Quantum of sentence under Ss. 354 and 509 — Release on probation — Propriety — *Senior police officer (DGP in the present case) found guilty under Ss. 354 and 509 for gently slapping on the posterior of a lady in the presence of guests at a dinner party — Sessions Court enhancing the sentence of fine to Rs 50,000 but altering the sentence of imprisonment and directing the accused instead to be released on probation — High Court enhancing the fine to Rs 2,00,000 — Incident about 17 long years old — Accused completing the period of probation without violating any terms of the bond — In such circumstances, the appeal of the prosecutrix seeking enhancement of the punishment rejected — Penal Code, 1860, Ss. 354 and 509*

As regards the appeal filed by the complainant, it is relevant that the incident happened in 1988. Despite the accused holding a high position in the State police, the various courts found him guilty of the offence punishable under Sections 354 and 509 IPC and that by itself is setting a model for others and would enhance the faith in the judicial system. The accused has completed the period of probation. There was no occasion for any complaint or violation of any of the terms of the bond. At this juncture, it would not be just and proper to resort to any other punishment. (Para 6). *Kanwar Pal Singh Gill* v. *State*, (2005) 6 SCC 161: 2005 SCC (Cri) 1420: AIR 2005 SC 3104: 2005 Cri LJ 3443.

Bench Strength 2. Coram : **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision : 27-7-2005]

[3849] — S. 360 — Sentence — Release on probation — Attempt to commit rape — Accused aged less than 21 years — Prosecutrix found to be above 16 years of age — *Offence not attracting imprisonment for life but only imprisonment up to 10 years — Held, in the circumstances, trial court justified in extending benefit of probation to the accused — Probation of Offenders Act, 1958, S. 4 — Penal Code, 1860, Ss. 376/511. State of Haryana* v. *Prem Chand*, (1997) 7 SCC 756: 1997 SCC (Cri) 1176.

Bench Strength 2. Coram : *M.M. Punchhi* and *S.B. Majmudar*, JJ. [Date of decision : 7-5-1997]

[3850] — S. 360 — Forgery of surety bonds — *Advocate's clerk forging endorsements regarding* *identification and attestation of sureties as well as signature of another advocate on surety bonds and obtaining release of the accused on that basis — Trial court convicting him under Ss. 465 and 471 and sentencing him for 1 years' imprisonment — High Court maintaining the conviction and sentence though taking the view that the offence in fact covered by S. 468 instead of S. 465 — Held, High court justified in maintaining the conviction — Offence being serious one release on probation of good conduct under S. 360 Criminal Procedure Code on ground of young age and no previous conviction not warranted — But having regard to circumstances of the case, sentence reduced to nine months' imprisonment already undergone — Penal Code, 1860, Ss. 468, 465, 471. Sharvan Kumar* v. *State of U.P.*, (1985) 3 SCC 658: 1985 SCC (Cri) 437: AIR 1985 SC 1663.

Bench Strength 2. Coram : **R.S. Pathak** and *A.N. Sen*, JJ. [Date of decision : 29-7-1985]

[3851] — S. 360 — Sentence — Accused- appellant was aged 13 years on the date of the incident — Contention raised before Supreme Court that although the appellant was aged below 18 years and was a child for the purpose of the Bihar Children Act, 1970 on the date of the occurrence, his trial having been conducted along with that of the other accused who were not children was not in accordance with law — *However, this contention had not been raised either before the trial court or before the High Court — In such circumstances, while sustaining the conviction of the appellant under all the charges, held, the sentence awarded to him needed to be set aside — Juvenile Justice Act, 1986, S. 2(h) — Penal Code, 1860 — S. 302 r/w S. 149* (Para 6). *Umesh Singh* v. *State of Bihar*, (2000) 6 SCC 89: 2000 SCC (Cri) 1026: AIR 2000 SC 2111: 2000 Cri LJ 3167.

Bench Strength 2. Coram : **S. Rajendra Babu** and *Y.K. Sabharwal*, JJ. [Date of decision : 10-5-2000]

Bhola Bhagat v. State of Bihar, (1997) 8 SCC 720: 1998 SCC (Cri) 125; Gopinath Ghosh v. State of W.B., 1984 Supp SCC 228: 1984 SCC (Cri) 478; Bhoop Ram v. State of U.P., (1989) 3 SCC 1: 1989 SCC (Cri) 486; Pradeep Kumar v. State of U.P., 1995 Supp (4) SCC 419: 1995 SCC (Cri) 395, relied on

[3852] — S. 360 — Probation — Refusal to grant probation to the person found guilty of rape — Held, proper — *Probation of Offenders Act, 1958, S. 4 — Penal Code, 1860 — Ss. 375 and 376* (Para 7). *State of M.P.* v. *Babulal*, (2008) 1 SCC 234: (2008) 1 SCC (Cri) 188: AIR 2008 SC 582: 2008 Cri LJ 714: (2008) 1 KLJ 551 (SC).

Bench Strength 2. Coram : **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision : 3-12-2007]

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728; State of Rajasthan v. Narayan, (1992) 3 SCC 615: 1992 SCC (Cri) 781, relied on

[3853] — S. 360 — Sentencing — Circumstances warranting reduction of sentence — *Appellant convicted under NDPS Act and was not entitled to the benefit under the Probation of Offenders Act — His age at the time of framing the charge was 21 years — Taking these factors into consideration, sentence reduced from two years to one year RI — However, fine of Rs 3000 imposed by trial court sustained — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 33 and 20(b)(i) — Probation of Offenders Act, 1958* (Paras 3 and 4). *Vajja Srinivasu* v. *State of A.P.*, (2002) 9 SCC 620.

Bench Strength 2. Coram : *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision : 4-9-2000]

[3854] — S. 360 — Offence under Ss. 323 and 506 read with Ss. 34 and 452 IPC — *Appellants directed to be released on probation — Probation of Offenders Act, 1958, S. 4. Jagat Pal Singh* v. *State of Haryana*, 1999 SCC (Cri) 1313: AIR 2000 SC 3622 (1).

Bench Strength 2. Coram : *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision : 26-3-1999]

[3855] — S. 360 — Accused below 21 years when the offence punishable with fine or imprisonment for a maximum term of seven years was committed — *Held, S. 360, Criminal Procedure Code, is applicable and accused entitled to be released on probation after executing the bond — Probation of Offenders Act, 1958. Surendra Kumar* v. *State of Rajasthan*, (1979) 4 SCC 718: 1980 SCC (Cri) 158: AIR 1979 SC 1048: 1979 Cri LJ 907.

Bench Strength 2. Coram : **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision : 7-2-1979]

[3856] — S. 360 — Conviction under PC Act — Release of appellant on probation directed by High Court invoking S. 360 CrPC — Propriety — *Held, provisions of Probation of Offenders Act and S. 360 CrPC are not applicable to conviction under the Prevention of Corruption Act — Hence, High Court's order set aside — Probation of Offenders Act, 1958, S. 18 — Prevention of Corruption Act, 1988, S. 7* (Para 4). *State of T.N.* v. *Kaliaperumal*, (2005) 12 SCC 473.

Bench Strength 2. Coram : **H.K. Sema** and *Tarun Chatterjee*, JJ. [Date of decision : 8-9-2005]

State v. Ratan Lal Arora, (2004) 4 SCC 590: 2004 SCC (Cri) 1353, followed

[3857] — S. 360 — Inapplicability of provisions of, in case of conviction under Ss. 7 and 13(2), Prevention of Corruption Act, 1988 — Applicability of provisions of the Probation of Offenders

Act and S. 360 CrPC — *Reference in S. 19 and S. 18, Probation of Offenders Act, 1958 to S. 562 CrPC, 1898 and S. 5(2), Prevention of Corruption Act, 1947 respectively — Must be read such as to refer to the corresponding sections in the respective new Acts in view of S. 8, General Clauses Act, 1897 — Hence, held, benefit under provisions of the Probation of Offenders Act and S. 360 inapplicable to a conviction under S. 13(2), Prevention of Corruption Act — General Clauses Act, 1897, S. 8 — Criminal Procedure Code, 1898, S. 562 — Prevention of Corruption Act, 1988, S. 13(2)*

The respondent-accused was an employee of the Delhi Vidyut Board. On 20-1-1995, he allegedly committed offences punishable under Sections 7 and 13(2) read with Section 13(1)(*d*) of the Prevention of Corruption Act, 1988 (for short "the Act"). The trial court found him guilty and sentenced him to undergo rigorous imprisonment for 20 months and a fine of Rs 2000 with default stipulation for offence under Section 7 and 40 months' RI and a fine of Rs 2000 with default stipulation for the offence punishable under Section 13(2) of the Act. The Delhi High Court while upholding the conviction and noting that the minimum sentence under the Act was one year, extended the benefit of Section 360 CrPC, 1973 on the ground that he had remained in custody for about 22 days. It further held that the bar to the applicability of the Probation of Offenders Act, 1958 (in short "the Probation Act") was not operative in respect of offences under the Act though there was a prohibition under the Prevention of Corruption Act, 1947 (in short "the old Act"). The Probation Act had been, by a notification of the Government of India dated 23-12-1961 issued under Section 1(3) thereof, brought into force in the State of Delhi w.e.f. 29-12-1960. Taking into account: (*a*) that the demand and acceptance was of a paltry sum of Rs 1500, (*b*) that the respondent had retired from service during trial itself, (*c*) that he had turned 64 years of age, and (*d*) that his family circumstances were unhappy and he had remained in custody for 22 days, the High Court directed the respondent-accused to be released on probation of good conduct instead of suffering sentence. The State then filed the instant appeal by special leave.

The appellant State contended, inter alia, that where the statute prescribed a minimum sentence the court could not reduce the same any further, and by operation of Section 8 of the General Clauses Act, 1897, the bar contained in the old Act applied to the new Act also. On the other hand, the accused-respondent supported the High Court's judgment.

Allowing the appeal,

Held :

In view of the provisions of Section 8 of the General Clauses Act, 1897, the references to Section 562 CrPC, 1898 and Section 5(2) of the Prevention of Corruption Act, 1947 in Sections 19 and 18 of the Probation Act respectively have to be inevitably read as references to their corresponding provisions in CrPC, 1973 and the Prevention of Corruption Act, 1988. Consequently, for the conviction under Section 13(2) of the Act the principles enunciated under the Probation Act cannot be extended at all in view of the mandate contained in Section 18 of the said Act. So far as Section 360 of the Code is concerned, on and from the date of extension and enforcement of the provisions of the Probation Act to Delhi, powers under Section 562 CrPC, 1898 and after its repeal and replacement powers under Section 360 CrPC, 1973, cannot be invoked or applied at all, as has been done in the present case. (Para 11). *State* v. *Ratan Lal Arora*, (2004) 4 SCC 590: 2004 SCC (Cri) 1353: AIR 2004 SC 2364: (2004) 111 DLT 250: 2004 Cri LJ 2105.

Bench Strength **2**. Coram : *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision : 26-4-2004]

[3858] — S. 360 — Applicability — Minimum sentence prescribed under Ss. 7 and 13(2), PC Act — *Held, cannot be reduced by granting the benefit of probation under S. 360 CrPC, 1973 — However, in the peculiar circumstances of the case which had been taken into account by High Court for granting the benefit of S. 360 CrPC, sentence of imprisonment reduced to the statutory minimum but the levy of fine left undisturbed — Prevention of Corruption Act, 1988, Ss. 7, 13(2) and 28*

Moreover, in view of the minimum sentence prescribed in Sections 7 and 13 of the Act and the provisions of Section 28 thereof and the fact that unlike the provisions contained in Section 5(2) proviso of the old Act, the Act did not carry any such power to enable the court to show any leniency below the minimum sentence stipulated, it is held that the High Court committed a grave error of law in extending the benefit of probation even under CrPC, 1973. (Para 12)

Though the reasons assigned by the High Court to extend the benefits of probation may not be relevant, proper or special reasons for going below the minimum sentence prescribed — which in any event is wholly impermissible, they are being taken into account herein to confine the sentence of imprisonment to the minimum of six months under Section 7 and minimum of one year under Section

13(2) of the Act, both the sentences to run concurrently. However, the levy of fine is confirmed. (Para 12). *State* v. *Ratan Lal Arora*, (2004) 4 SCC 590: 2004 SCC (Cri) 1353: AIR 2004 SC 2364: (2004) 111 DLT 250: 2004 Cri LJ 2105.

Bench Strength **2**. Coram : *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision : 26-4-2004]

New Central Jute Mills Co. Ltd. v. CCE, (1970) 2 SCC 820; State of Bihar v. S.K. Roy, AIR 1966 SC 1995: 1966 Cri LJ 1538; Supdt., Central Excise v. Bahubali, (1979) 2 SCC 279: 1979 SCC (Cri) 447, followed

[3859] — S. 360 — Grant of probation for offence(s) committed under S. 13, Prevention of Corruption Act, 1988 — Impermissibility — Grant of probation for offence(s) committed under — Impermissibility — Applicability of Ss. 18 and 19, Probation of Offenders Act, 1958 (Probation Act) — *Held, references to S. 562 CrPC, 1898 in S. 19, and to S. 5(2), Prevention of Corruption Act, 1947 in S. 18, Probation Act have to be read as references to their corresponding provisions in CrPC, 1973 and Prevention of Corruption Act, 1988 (the Act) — Hence for conviction under S. 13(2), principles enunciated under Probation Act cannot be extended at all in view of mandate of S. 18, Probation Act — So also powers under S. 360 CrPC could not be invoked or applied at all — Hence benefit of probation afforded to respondent by High Court, set aside — Probation of Offenders Act, 1958, Ss. 18 and 19 — General Clauses Act, 1897, S. 8 — Prevention of Corruption Act, 1988, S. 13*

Section 18 of the Probation of Offenders Act, 1958 ("the Probation Act") stipulated that it was inapplicable to offences punishable under Section 5(2) of Prevention of Corruption Act, 1947 ("the old Act"). Specific reference was made in the said Section 18 to Section 5(2) of the old Act which corresponds to Section 13 of the Prevention of Corruption Act, 1988 ("the Act"). But no change was made in the Probation Act after the Act was enacted and brought into force in 1988. Much stress was laid on the non-amendment of the Probation Act which referred to the old Act and not the present Act. The argument overlooks the principles underlying Section 8 of the General Clauses Act, 1897. When an Act is repealed and re-enacted unless a different intention is expressed by the legislature, the reference to the repealed Act would be considered as reference to the provisions so re-enacted. (Paras 9 and 4)

The references to Section 562 of the Criminal Procedure Code, 1898 ("the old Code") in Section 19 of the Probation Act and to Section 5(2) of the old Act in Section 18 of the Probation Act, respectively have to be inevitably read as references to their corresponding provisions in the newly enacted Code of Criminal Procedure, 1973 and the re-enacted Prevention of Corruption Act, 1988. Section 13(2) of the re-enacted Act is the corresponding provision to Section 5(2) of the old Act. Consequently, for the conviction under Section 13(2) of the Act of 1988 the principles enunciated under the Probation Act cannot be extended at all in view of the mandate contained in Section 18 of the said Act. So far as Section 360 CrPC, 1973 is concerned, on and from the date of extension and enforcement of the provisions of the Probation Act to Madras, powers under Section 562 of the Old Code and after its repeal and replacement powers under Section 360 CrPC, 1973, cannot be invoked or applied at all, as has been done in the case on hand. (Paras 12 and 10)

Consequently, the Single Judge in the High Court committed a grave error in law in extending the benefit of probation even under Section 360 CrPC, 1973. (Para 14). *State* v. *A. Parthiban*, (2006) 11 SCC 473: 2006 Cri LJ 4772.

Bench Strength **2**. Coram : **Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision : 9-10-2006]

Supdt., Central Excise v. Bahubali, (1979) 2 SCC 279: 1979 SCC (Cri) 447; State v. Ratan Lal Arora, (2004) 4 SCC 590: 2004 SCC (Cri) 1353; New Central Jute Mills Co. Ltd. v. CCE, (1970) 2 SCC 820; State of Bihar v. S.K. Roy, AIR 1966 SC 1995: 1966 Cri LJ 1538, followed

Ishar Das v. State of Punjab, (1973) 2 SCC 65: 1973 SCC (Cri) 708; Som Nath Puri v. State of Rajasthan, (1972) 1 SCC 630: 1972 SCC (Cri) 359, relied on

[3860] — S. 360 — Juvenile delinquents — Appropriate sentence when convicted for rape — *Background, social circumstances, etc. must be considered — Putting the child under parental control rather than in an approved school considered. Satto* v. *State of U.P.*, (1979) 2 SCC 628: 1979 SCC (Cri) 534: AIR 1979 SC 1519: 1979 Cri LJ 943: (1979) 16 ACC 264: 1979 ALJ 904.

Bench Strength **2**. Coram : **V.R. Krishna Iyer**[1] and **R.S. Pathak**[2], JJ. [Date of decision : 26-4-1979]

[3861] — S. 360 — Offence of forgery of surety bonds under Ss. 468, 465 and 471 IPC, being of serious nature, release of accused on probation of good conduct under S. 360 on ground of young age and no previous conviction unwarranted. *Sharvan Kumar* v. *State of U.P.*, (1985) 3 SCC 658: 1985 SCC (Cri) 437: AIR 1985 SC 1663.

Bench Strength **2**. Coram : **R.S. Pathak** and *A.N. Sen*, JJ. [Date of decision : 29-7-1985]

[3862] — S. 360 — Offence under S. 304 Pt. II IPC — Appellant inflicting an incised injury on a vital part of the head with an axe which proved

fatal — *Held, appellant not entitled to benefit of S. 360. Prabhu* v. *State of Rajasthan*, 1994 Supp (3) SCC 320: 1994 SCC (Cri) 1715.

Bench Strength **3**. Coram : *K. Jayachandra Reddy, S. Mohan* and *G.N. Ray*, JJ. [Date of decision : 17-11-1993]

[3863] — S. 360 — Probation of Offenders Act, 1958 — S. 4 — Offence under S. 304 Pt. II IPC — Release of offender on probation not barred — *High Court releasing the offender on probation after considering relevant material — Even after long lapse of time accused not violating terms and conditions of probation — No interference by Supreme Court with order of the High Court called for. State of Karnataka* v. *Muddappa*, (1999) 5 SCC 732: 1999 SCC (Cri) 1046.

Bench Strength **2**. Coram : *G.B. Pattanaik* and *N. Santosh Hegde*, JJ. [Date of decision : 20-4-1999]

[3864] — S. 360 — Probation of Offenders Act, 1958 — Ss. 3 and 4 — *Trial court acquitting the appellant but High Court convicting him under S. 397 read with S. 109, Penal Code and imposing fine of Rs 500 for theft of a quantity of coal valued at Rs 8 from railway goods wagon — Appellant taken back in service after High Court's judgment and still continuing in service — On facts and circumstances held, appellant entitled to the benefit of S. 360, Criminal Procedure Code or Ss. 3 and 4 of the 1958 Act. Keshav Sitaram Sali* v. *State of Maharashtra*, (1983) 1 SCC 390: 1983 SCC (Cri) 210: AIR 1983 SC 291: 1983 Cri LJ 436.

Bench Strength **2**. Coram : **E.S. Venkataramiah** and *R.B. Misra*, JJ. [Date of decision : 6-1-1983]

[3865] — S. 360 — Probation, release on — *Allegation of entering into criminal conspiracy to obtain Small-Scale Industries Registration Certificate, Essentiality Certificate and import licences on false representations — Occurrence relating to period between 1967 and 1969 — Trial court acquitting the accused while High Court reversing the acquittal convicting him — Supreme Court granting bail in 1980 — Several achievements in industrial field made by appellant since then — In the circumstances, held, it would be expedient to release the accused- appellant on probation — Penal Code, 1860, Ss. 120-B, 420 — Prevention of Corruption Act, 1947, Ss. 5(1)(b) and 5(2). N.M. Parthasarathy* v. *State by S.P.E.*, (1992) 2 SCC 198: 1992 SCC (Cri) 367: AIR 1992 SC 988: 1992 Cri LJ 1284.

Bench Strength **2**. Coram : **Kuldip Singh** and *R.M. Sahai*, JJ. [Date of decision : 21-1-1992]

[3866] — S. 360 — Release on probation of good conduct or after admonition — Applicability — *Appellants being first-time offenders, convicted under S. 7, Essential Commodities Act, 1955 and sentenced to RI for three years and fine of Rs 10,000 — High Court upholding conviction and sentence of fine, but reducing sentence of imprisonment to three months — Held, in facts and circumstances of the case, appellants should have been dealt with under provisions of S. 360 — Conviction and sentence of fine upheld, but sentence of imprisonment set aside and trial court directed to deal with appellants under S. 360 — Essential Commodities Act, 1955, S. 7 . Harivallabha* v. *State of M.P.*, (2005) 10 SCC 330: 2005 SCC (Cri) 1518.

Bench Strength **2**. Coram : *B.N. Agrawal* and *Tarun Chatterjee*, JJ. [Date of decision : 27-10-2004]

Distinguished in Harendra Nath Chakraborty v. State of W.B., (2009) 2 SCC 758

[3867] — S. 360 — Order under, for release of first offenders — *Accused, having no intention to commit murder, acquitted from charge under S. 307/149 IPC — But while maintaining conviction under Ss. 325/149, 323/149 and 148 IPC, accused released by High Court's order under S. 360 having regard to the facts that the occurrence was the outcome of a sudden flare-up and there was no previous history of enmity between the parties — Held on facts, High Court's order under S. 360 justified — Probation of Offenders Act, 1958, S. 4*

Many offenders are not dangerous criminals but are weak characters or who have surrendered to temptation or provocation. In placing such type of offenders on probation, the court encourages their own sense of responsibility for their future and protects them from the stigma and possible contamination of prison. In this case, there being no previous history of enmity between the parties, the occurrence having taken place as a result of a sudden flare-up and the accused having no intention to commit murder, the extension of benefit of the beneficial legislation applicable to first offenders cannot be said to be inappropriate. *Hari Singh* v. *Sukhbir Singh*, (1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127.

Bench Strength **2**. Coram : *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision : 25-8-1988]

[3868] — Ss. 360 and 235(2) — Offences punishable under NDPS Act and S. 120-B IPC — Sentence — Reduction — Relevant factor — First offence — *Accused-appellant convicted of the offences in question for the first time — Hence, sentence reduced from 14 years to 10 years — Direction to pay fine maintained — Penal Code, 1860, S. 120-B — Narcotic Drugs and Psychotropic*

Substances Act, 1985, Ss. 18, 22, 23, 25 and 28 to 30 (Para 4). *Balwinder Singh* v. CCE, (2005) 4 SCC 146: 2005 SCC (Cri) 1092: AIR 2005 SC 2917: (2005) 181 ELT 203.

Bench Strength 2. Coram : *K.G. Balakrishnan* and *B.N. Srikrishna*, JJ. [Date of decision : 22-2-2005]

[3869] — Ss. 360 and 235(2) — Sentence to first offenders — Family background and history, past social behaviour and present situation of the offender must be considered — On facts appellant deserved to be released on probation — Specifically he must abjure alcohol . *Dilbag Singh* v. *State of Punjab*, (1979) 2 SCC 103: 1979 SCC (Cri) 376: AIR 1979 SC 680: 1979 GLR (SC) 390: 1979 Cri LJ 636: 1979 MLJ (Cri) 534: 16 ACC 104 (II).

Bench Strength 3. Coram : **V.R. Krishna Iyer**, *D.A. Desai* and *A.P. Sen*, JJ. [Date of decision : 25-1-1979]

[3870] — Ss. 360 and 361 — Release on probation — *Held, in view of peremptory nature of S. 361, lower courts ought to have considered whether appellants, who were convicted under S. 323 (voluntarily causing hurt) and S. 325 (voluntarily causing grievous hurt) r/w Ss. 148/149 IPC, deserved release on probation under S. 360 — Offence in this case took place 11 years ago and the appellants did not indulge in misbehaviour or mischief while they remained in jail — Held, this was a fit case for invoking S. 360 — Appellants therefore released on probation subject to furnishing of bond with surety for good behaviour and keeping peace* (Paras 4 and 5). *Om Prakash* v. *State of Haryana*, (2001) 10 SCC 477.

Bench Strength 2. Coram : *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision : 29-11-1999]

[3871] — S. 360 — Conviction under S. 323, IPC — *On the peculiar facts and circumstances accused-appellants released on probation under S. 360(1) on surety bonds. Om Prakash* v. *State of M.P.*, (1982) 3 SCC 224: 1982 SCC (Cri) 702: AIR 1982 SC 783(2): 1982 Cri LJ 628(2).

Bench Strength 2. Coram : **P.N. Bhagwati** and *A. Varadarajan*, JJ. [Date of decision : 10-4-1981]

— S. 361 *See* Ss. 235(2), 248(2), 325, 360 and 361

See also Ss. 354, 355, 361, 264, 412 and 384(3)

See also Ss. 354(3), 360 and 361

See also Ss. 354(3) and 361 & 360

See also Ss. 360 and 361

— S. 362 *See also* S. 369, Criminal Procedure Code, 1898, pp. 1173 et seq. in Vol. 2

— S. 362 *See* Ss. 204 & 203, 202, 200, 239 and 362 & 482

See also Ss. 452 and 362

See also Ss. 482, 190(1)(b), 204, 173, 169 and 362

See also Ss. 482 and 362

[3872] — S. 362 — Power under — Exercise of — Scope and limitations — Correction of clerical or arithmetic mistakes or omissions in judgments or decrees — *Held, exercise of said power contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate passing of effective judicial orders after the judgment, decree or order — Omission sought to be corrected which goes to the merits of the case is beyond the scope of S. 152 — Thus the said section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be — An unintentional mistake of the court which may prejudice the cause of any party must and alone could be rectified — Powers under S. 152 distinguished from power of review — Meaning of "arithmetical mistake", "clerical mistake" and "error arising out of or occurring from accidental slip or omission", taken note of — On facts, held, the first appellate court was not justified in exercising power under S. 152 and the High Court was equally in error by putting its seal of approval thereon — CPC, 1908, S. 152*

The respondent as a plaintiff filed a declaratory suit challenging his removal from service. After considering the evidence on record the suit was dismissed. An appeal was preferred before the Additional District Judge who held that the dismissal was bad. While granting the relief to the respondent employee, the first appellate court also made the following order:

"It is made clear that it is up to the Department to grant him or not to grant him increments for the past service rendered by him. It will be again for the Department to decide whether he is or he is not fit to be promoted after taking his past service into account."

The respondent filed an application under Section 152 CPC claiming that the aforequoted directions were not in order and deserve to be deleted. By an order dated 3-2-1988 the learned Additional District Judge deleted the aforequoted portion on the ground that if the said portion remains, it would have the effect of neutralizing the relief granted to the plaintiff-appellant before it.

Allowing the appeal filed against the decision of the High Court whereby the order dated 3-2-1988 passed by the first appellate court was approved,

Held :

Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate passing of effective judicial orders after the judgment, decree or order. (Para 12)

The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very court or the tribunal cannot and, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. (Para 12)

The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party, if at all, is to file an appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. (Para 12)

The courts below have been liberally construing and applying the provisions of Sections 151 and 152 of the Code even after passing of effective orders in the lis pending before them. No court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order. (Para 12)

The basis of the provision under Section 152 of the Code is founded on the maxim "*actus curiae neminem gravabit*" i.e. an act of court shall prejudice no man. An unintentional mistake of the court which may prejudice the cause of any party must and alone could be rectified. (Para 13). *State of Punjab* v. *Darshan Singh*, (2004) 1 SCC 328: AIR 2003 SC 4179: (2003) 99 FLR 1171: (2004) 2 MPLJ 302: (2004) 1 SLR 39: (2004) 2 CHN 102.

Bench Strength 2. Coram : *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision : 29-10-2003]

Master Construction Co. (P) Ltd. v. State of Orissa, AIR 1966 SC 1047: (1966) 17 STC 360; Dwaraka Das v. State of M.P., (1999) 3 SCC 500; Jayalakshmi Coelho v. Oswald Joseph Coelho, (2001) 4 SCC 181; Freeman v. Tranah, 12 CB 406: 138 ER 964, relied on

[3873] — S. 362 — Scope of review power under — Expression "clerical or arithmetical error" — Meaning of — *"Save as otherwise provided by this Code..." does not include S. 482 — Hence, inherent jurisdiction under S. 482 cannot be invoked to override bar of Review under S. 362*

A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing.

Expression "Save as otherwise provided by this Code or by any other law, for the time being in force" in S. 362 refers to those provisions only where the court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the court under S. 482 cannot be exercised for doing that which is specifically prohibited by the Code such as under S. 362.

In the present case an application was filed under S. 482 asking the High Court for further adjudication in the matter covered by its earlier order. Such an application cannot be entertained in view of S. 362. *Sooraj Devi* v. *Pyare Lal*, (1981) 1 SCC 500: 1981 SCC (Cri) 188: AIR 1981 SC 736: (1981) 2 SCR 485: 1981 Cri LJ 296: 1981 MLJ (Cri) 392.

Bench Strength 2. Coram : *R.S. Sarkaria* and **R.S. Pathak**, JJ. [Date of decision : 8-1-1981]

[3874] — Ss. 362 and 127(2) — Nature and scope — Alteration or modification of judgment — Power for, if exists — *Held, S. 362 makes it clear that a court cannot alter or review its judgment or final order after it is signed except to correct clerical or arithmetical error — As a general rule, held, as soon as a judgment is pronounced or order is made by a court, it becomes functus officio and has no power to review, override, alter or interfere with it — S. 362 starts with the words "save as otherwise provided by this Code", thus, held, if CrPC provides for alteration, such power can be exercised, for instance, S. 127(2) — But in absence of express power, held, alteration or modification of judgment* *or order is not permissible* (Paras 31 and 32). *Sunita Jain* v. *Pawan Kumar Jain*, (2008) 2 SCC 705: (2008) 1 SCC (Cri) 537: (2008) 64 AIC 212 (SC): (2008) 2 KLJ 304.

Bench Strength 2. Coram : **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision : 25-1-2008]

Hari Singh Mann v. Harbhajan Singh Bajwa, (2001) 1 SCC 169: 2001 SCC (Cri) 113, relied on

[3875] — Ss. 362 and 311 — Bar under S. 362 — *Held, the court cannot review or alter its earlier order which became final — Prayer of 1st respondent to examine one P rejected by the trial court on 6-11-1997and the said order attained finality as no appeal or revision was filed against that order — Since High Court was not aware of the said order, it passed order dated 19-10-2000 in criminal revision filed by the 1st respondent whereby the trial court was directed to permit the 1st respondent to lead additional evidence of P or her guardian — Further, no objection as to the maintainability of the revision on the ground of limitation was raised by the appellants during the hearing of the revision — Appellants failed to point out to High Court the various orders which were within their knowledge at the time order dated 19-10-2000 was passed — Appellants moving application before the High Court for recalling the order dated 19-10-2000 — Held, the High Court was justified in holding that S. 362 was a bar to the Court to review or alter its earlier order dated 19-10-2000 which was a final order* (Paras 18, 19, 24 and 25). *Hindustan Construction Co. Ltd.* v. *Gopal Krishna Sengupta*, (2003) 11 SCC 210: 2004 SCC (Cri) 81: AIR 2003 SC 3536.

Bench Strength 2. Coram : **S.N. Variava** and *H.K. Sema*, JJ. [Date of decision : 9-4-2003]

[3876] — Ss. 362 and 482 — Bar under S. 362 — Exercise of jurisdiction under S. 482, when warranted — *In view of specific bar created under S. 362 in regard to exercise of jurisdiction of High Court to review its own order, held, ordinarily exercise of jurisdiction under S. 482 would be unwarranted — Only in some rare cases, High Court may do so where a judgment has been obtained from it by practising fraud — Herein, such a case has not been made out* (Para 15). *R. Rajeshwari* v. *H.N. Jagadish*, (2008) 4 SCC 82: (2008) 2 SCC (Cri) 186: (2008) 5 Mah LJ 404: (2008) 3 Guj LR 2286: (2008) 64 AIC 29 (SC).

Bench Strength 2. Coram : **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision : 5-3-2008]

[3877] — Ss. 362 and 482 — Even if High Court refuses to recall its order passed in exercise of power under S. 482 CrPC on ground of bar contained in S. 362 of the Code, held, that would not prevent the Supreme Court from considering the legality of the order in appeal under Art. 136 — *Constitution of India — Art. 136*

A young bride committed suicide in her nuptial home within seven months of her marriage. An inquiry under Section 174(3) CrPC was held. The Sub-Divisional Magistrate conducted the inquiry and submitted a report holding that it was conclusively proved that due to mental restlessness she had committed suicide and no one is responsible and hence it was informed that her death was not due to dowry harassment. However, the police continued with the investigation and submitted a challan against the deceased's husband and his mother for the offence under Sections 304-B and 498-A IPC. The deceased's father, the first respondent, was not satisfied with the challan as the deceased's husband's sister, the appellant, and her father were not arraigned as accused. Hence he moved the High Court under Section 482 CrPC. A Single Judge of the High Court disposed of the petition under Section 482 directing that the papers be placed before the Public Prosecutor "as it is without any further investigation and he shall render an impartial opinion on the matter and thereafter an amended charge-sheet shall be filed in the concerned court". The appellant's father filed a petition before the Single Judge for recalling it on the main ground that neither he nor his daughter (appellant) was heard nor were they made parties in the proceedings. But the Single Judge dismissed the petition on the main premise that Section 362 CrPC contains a bar against recalling any order passed under the Code. Hence the appellant filed the present appeal to challenge both the orders. Allowing the appeals,

Held :

Though no endeavour was made before the Supreme Court to canvass against the correctness of the view adopted by the Single Judge that the order could not be recalled by him due to the bar contained in Section 362 of the Code, but even assuming it to be so, that does not bar the Supreme Court in considering the legality of that order in the present appeal. (Para 6). *R. Sarala* v. *T.S. Velu*, (2000) 4 SCC 459: 2000 SCC (Cri) 823: AIR 2000 SC 1731: 2000 Cri LJ 2453.

Bench Strength 2. Coram : **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision : 13-4-2000]

[3878] — Ss. 362 and 482 — Interlocutory order — Modification of — Matter not finally disposed of — Correction of apparent error — Permissibility of — Inherent power in High Court — *Held, on facts, order passed on a wrong, illegal premise —*

S. 362 only operative in a situation where a final order has been passed — Also, S. 482 confers inherent power in High Court unlike lower court — Therefore, held, there is no reason as to why High Court cannot modify its own interlocutory order when the matter is yet to be finally disposed of — Hence, there is no impediment to correct an apparent error (Paras 9 and 10). *State of Punjab* v. *Deepak Mattu*, (2007) 11 SCC 319: (2007) 59 AIC 220 (SC).

Bench Strength **2**. Coram : **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision : 18-9-2007]

[3879] — S. 362 — No alteration in judgment after signature — Scope — Not affected by provisions of Ss. 424, 430 and 561-A CrPC, 1898 — *High Court with its original as well as appellate criminal jurisdiction also comes within the purview of the general prohibition in S. 369 — Hence, High Court has no power to alter or review its own judgment — Criminal Procedure Code, 1898, S. 369*

Section 369 is general in its application. The words 'no court' would include all courts and apply in respect of all judgments. Though the section appears in Chap. 26, its application is not limited to trial courts alone. The reference to the High Court in the section would indicate that the High Court is also covered by the provisions of the section subject to the exception provided for. The application of the section cannot be restricted to judgments delivered by the High Court only in criminal trials. The criminal jurisdiction as conferred by the Letters Patent on the High Court covers not only the original criminal jurisdiction but also appellate powers. *State of Orissa* v. *Ram Chander Agarwala*, (1979) 2 SCC 305: 1979 SCC (Cri) 462: AIR 1979 SC 87: 1979 Cri LJ 33.

Bench Strength **2**. Coram : *Jaswant Singh* and **P.S. Kailasam**, JJ. [Date of decision : 5-10-1978]

[3880] — S. 362 — Clerical mistake — What is — *High Court after giving specific and express finding in its judgment that the accused intended to kill the deceased and therefore, committed offence under S. 302, IPC and confirming in the operative part of its judgment, conviction under S. 302 and sentence of life imprisonment, held, clearly contravened S. 362, CrPC in subsequently altering the operative part in purported exercise of power to correct clerical mistake by convicting the accused under S. 304, Part I and sentencing him to 7 years' RI* . *Naresh* v. *State of U.P.*, (1981) 3 SCC 74: 1981 SCC (Cri) 631: AIR 1981 SC 1385: 1981 Cri LJ 1044: 1981 ALJ 674.

Bench Strength 3. Coram : **O. Chinnappa Reddy**, *A.P. Sen* and *Baharul Islam*, JJ. [Date of decision : 24-4-1981]

[3881] — Ss. 362 and 482 — Review — *High Court has no jurisdiction to alter or review its own judgment or order except to the extent of correcting any clerical or arithmetical error — Practice of filing criminal miscellaneous petition after disposal of the main case and issuance of fresh directions in such petition is unwarranted and amounts to abuse of process of the court — Once a matter is finally disposed of, held, the Court, in the absence of a specific statutory provision, becomes functus officio in respect of that matter*

Respondent 1, a practising advocate, filed a petition under Section 482 CrPC in the High Court praying to call for the records of the case for perusal, to direct Respondent 6 SHO and Respondent 3 SSP to register a case on the basis of a complaint against the appellant lodged by the petitioner (Respondent 1); and to direct Respondent 2 DGP to transfer Respondents 4, 5 and an Inspector for the purpose of free, fair and impartial investigation/inquiry. A Single Judge of the High Court disposed of the petition on 7-1-1999 with the direction to the SSP to look into the allegations of the petitioner and if some cognizable offence was found to have been committed, to order for the registration of the case but if the allegations were found to be false, to prosecute the petitioner under Section 182 IPC. Thereafter, Respondent 1 again filed a miscellaneous petition which the same Single Judge disposed of without notice to the present appellant or any other respondent in that petition. In view of the submission of the petitioner (Respondent 1) that since pursuant to his criminal complaint before JMTC cognizance of the offence had been taken, he did not want to prosecute his allegations with the SSP, the Single Judge directed that the SSP need not comply with the directions dated 7-1-1999. The appellant also filed a criminal miscellaneous petition with prayer for quashing the court order dated 30-4-1999 on the ground of it being illegal, against the well-established principles of law and being a review of order dated 7-1-1999 not permissible under the criminal law. The said application was dismissed by the Single Judge on 21-7-1999. The present appeals have been filed with prayer for quashing the orders passed by the Single Judge on 30-4-1999 and 21-7-1999 mainly on the ground of the orders being without jurisdiction. Allowing the appeal,

Held :

The impugned orders were passed completely ignoring the basic principles of criminal law. The petition filed under Section 482 of the Code had been finally disposed of by the High Court on 7-1-1999. Thereafter, there was no lis pending in the High Court wherein the respondents could have filed any miscellaneous petition. Directions in the case filed by the respondents were issued apparently without notice to any of the respondents in the petition. Merely because Respondent 1 was an Advocate did not justify the issuance of directions at his request without notice of the other side. The impugned orders dated 30-4-1999 and 21-7-1999 could not have been passed by the High Court under its inherent power under Section 482 of the Code of Criminal Procedure. The impugned orders of the High Court dated 30-4-1999 and 21-7-1999 which are not referable to any statutory provisions, having been passed apparently in a review petition in a criminal case are without jurisdiction and liable to be quashed. (Paras 8, 10 and 11)

The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance an abuse of the process of the court. (Para 8)

There is no provision in the Code of Criminal Procedure authorising the High Court to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code. Section 362 CrPC has extended the bar of review not only to the judgment but also to the final orders other than the judgment. Section 362 is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error. (Paras 9 and 10). *Hari Singh Mann* v. *Harbhajan Singh Bajwa*, (2001) 1 SCC 169: 2001 SCC (Cri) 113: AIR 2001 SC 43: 2001 Cri LJ 128: (2001) 1 Mah LJ 465.

Bench Strength **2**. Coram : *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision : 1-11-2000]

Talab Haji Hussain v. Madhukar Purshottam Mondkar, AIR 1958 SC 376: 1958 Cri LJ 701: 1958 SCR 1226, distinguished

State of Orissa v. Ram Chander Agarwala, (1979) 2 SCC 305: 1979 SCC (Cri) 462: AIR 1979 SC 87, relied on

[3882] — Ss. 362 and 482 — Review — Scope — *Held, High Court cannot review its own judgment except to correct a clerical or arithmetical error — By way of clarification it cannot reverse its own judgment and order*

The respondent filed a revision petition under Section 482 CrPC before the High Court for quashing criminal proceedings initiated against him. A Single Judge of the High Court dismissed the petition on the grounds that there was proper sanction to prosecute the respondent and a prima facie case was made out against him. Subsequently, a miscellaneous petition was filed in the said criminal case by the respondent for clarification of the above order. This petition was finally allowed by the impugned order by the same learned Judge holding that there was no proper sanction from the competent authority and, therefore, no cognizance could have been taken against him. Question before the Supreme Court was whether the subsequent order of the Single Judge clarifying the earlier order holding that no cognizance against the respondent could have been taken for want of proper sanction is valid or not. Allowing the appeal,

Held :

By the impugned subsequent order, it cannot be said that the High Court only corrected any clerical or arithmetical error. In fact the impugned order is an order of review, as the earlier order was reversed, which could not have been done. (Para 6)

The Code of Criminal Procedure does not authorise the High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 of the Code prohibits the court after it has signed its judgment or final order disposing of a case from altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal court can review its own judgment or order after it is signed. (Para 6). *State of Kerala* v. *M.M. Manikantan Nair*, (2001) 4 SCC 752: 2001 SCC (Cri) 808: AIR 2001 SC 2145: 2001 Cri LJ 2346.

Bench Strength **3**. Coram : *K.T. Thomas*, *R.P. Sethi* and **S.N. Phukan**, JJ. [Date of decision : 25-4-2001]

Hari Singh Mann v. Harbhajan Singh Bajwa, (2001) 1 SCC 169: 2001 SCC (Cri) 113, relied on

[3883] — S. 362 — Nature of power — Criminal courts — No power of review of an order by criminal court exists under CrPC — *Held, it is settled law that power of review is not an inherent power and must be conferred on a court by a specific or express provision to that effect — No power of review has been conferred by Criminal Procedure Code, 1973 on a criminal court and therefore it cannot review an order passed or judgment pronounced — CPC, 1908, Ss. 114, 115, 151 and Or. 47 — Constitution of India, Art. 137* (Para 33). *Sunita Jain* v. *Pawan Kumar Jain*, (2008) 2 SCC

705: (2008) 1 SCC (Cri) 537: (2008) 64 AIC 212 (SC): (2008) 2 KLJ 304.

Bench Strength 2. Coram : **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision : 25-1-2008]

Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844, relied on

[3884] — S. 362 — Review — Power of High Court — *High Court has no power to recall or review its own order* (Para 5). *R. Annapurna* v. *Ramadugu Anantha Krishna Sastry*, (2002) 10 SCC 401.

Bench Strength 2. Coram : *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision : 9-8-2000]

[3885] — S. 362 — Review of own judgment by court not permissible — *CJM in his first order recording that despite notice having been sent to informant, no one appeared on his behalf and prosecution having submitted final report mentioning "truth undetected" and the case having been pending since 1998, the final report had to be accepted and accordingly dismissing the complaint — But by a subsequent order of the same date, the same CJM in the same case taking cognizance of offence punishable under Ss. 302/201/34 IPC — No reason noticeable therefor in the subsequent order — Held, this amounted to review by CJM of his earlier order which is impermissible under S. 362 — Hence subsequent order taking cognizance was bad in law and liable to be quashed* (Paras 6 and 7). *Surendra Singh* v. *State of Bihar*, (2005) 12 SCC 361.

Bench Strength 2. Coram : *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision : 25-1-2005]

[3886] — Ss. 362 and 320 — Once judgment pronounced, High Court has no jurisdiction to entertain application for grant of permission to compound the offence. *Tanveer Aquil* v. *State of M.P.*, 1990 Supp SCC 63: 1990 SCC (Cri) 618.

Bench Strength 2. Coram : *K. Jagannatha Shetty* and *A.M. Ahmadi*, JJ. [Date of decision : 1-2-1989]

[3887] — Ss. 362 and 360 — Modification of judgment — Permissibility — *Prayer to modify the judgment after conviction by directing the appellant to be released on probation under S. 4 of the Probation of Offenders Act, 1958 or in the alternative under S. 360 CrPC — Rejection of, by High Court, held, was justified in the absence of any provision for modification of the judgment — But considering the peculiar circumstances, High Court directed to consider appellant's application under the Probation Act or S. 360 CrPC, as the case may be — Probation of Offenders Act, 1958, S. 4* (Para 9). *Chhanni* v. *State of U.P.*, (2006) 5 SCC 396: (2006) 2 SCC (Cri) 466.

Bench Strength 2. Coram : **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision : 6-7-2006]

[3888] — Ss. 362 and 439 — Bail order — Corrections made in subsequent to the release of the accused on bail without hearing him — Propriety of — *Accused granted bail due to the erroneous recording by the court on the order-sheet to the effect that the accused had been released on bail — Trial Judge ordered to take the accused into custody — Held, rectification of the mistake by the court without providing any opportunity of hearing to the accused was not just and proper. Rajendra Prasad Arya* v. *State of Bihar*, (2000) 9 SCC 514: 2001 SCC (Cri) 639: AIR 2000 SC 3536.

Bench Strength 2. Coram : *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision : 28-2-2000]

[3889] — S. 363 — Entitlement to legal aid — *Held, if the court is required to render some assistance or service free of cost, it should be specifically provided for in law — Constitution of India — Arts. 21 & 39-A* (Para 10.3). *State of Gujarat* v. *Shaileshbhai Mansukhlal Shah*, (2007) 7 SCC 71: (2007) 3 SCC (Cri) 313: (2007) 4 KLT 579.

Bench Strength 2. Coram : **R.V. Raveendran** and *L.S. Panta*, JJ. [Date of decision : 30-5-2007]

[3890] — Ss. 363(5) and 207 — Nature and scope — *Held, neither contains any non-obstante clause, nor affects the inherent power of holding proceedings in camera, nor takes away accused's right to get copies under S. 548, CrPC, 1898 or copies of statements recorded by magistrate or statement of witnesses recorded by police or documents obtained by police during investigation envisaged under Criminal Rr. 308 and 310 framed under Criminal Procedure Code — Accused's lawyer also entitled to take notes of such statements in extenso and cannot be compelled to show his register containing the notes by virtue of privilege under S. 126, Evidence Act, 1872 — Criminal Procedure Code, 1898, Ss. 548, 251-A — Official Secrets Act, 1923, S. 14*

The words 'in addition and without prejudice to any powers' in S. 14 cannot be construed to be a non-obstante clause at all so as to override other provisions of the Act or those of the Code of Criminal Procedure. Section 14 is merely an enabling and not a barring provision. It reserves the inherent powers of the court to exclude the public from the proceedings if the court is of the opinion that it is just and expedient to do so.

The words 'publication of any evidence' in S. 14 merely highlight the ground for holding the proceedings in camera because if public are allowed to be present during the hearing the evidence which is recorded in their presence it will amount to publication and it is in that sense alone that the word 'publication' has been used in S. 14. By using the word 'publication' S. 14 does not deprive an accused of getting any copies of the statement of witnesses or of the judgment under S. 548, CrPC, 1898 or Criminal Rr. 308 and 310 framed by the Calcutta High Court. If an interpretation of S. 14 which would deprive the accused of access to the statements recorded by the police or the statements of witnesses recorded at the inquiry or the trial be accepted, then the provisions of S. 14 will have to be struck down as being violative of Art. 21. So far as the arguments and the discussion of the evidence inside the court is concerned, so long as the proceedings are in camera the danger of publication is completely excluded.

There was absolutely no impropriety on the part of the magistrate in not taking action against the defence lawyer for his refusal to show his register because the lawyer had rightly claimed privilege under S. 126 of the Evidence Act. On a parity of reasoning, there is also no impropriety in the conduct of the lawyer in refusing to show the statement of witnesses recorded by the court in extenso in order to prepare himself for an effective cross-examination of the witnesses. *Supdt. & Remembrancer of Legal Affairs* v. *Satyen Bhowmick*, (1981) 2 SCC 109: 1981 SCC (Cri) 342: AIR 1981 SC 917: (1981) 2 SCR 661: 1981 Cri LJ 341.

Bench Strength **2**. Coram : **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision : 15-1-1981]

— **S. 366** *See also* S. 374, Criminal Procedure Code, 1898, pp. 1174 et seq. in Vol. 2

— **S. 366** *See* S. 354(3), above

See also Ss. 354(3), 366 and 368

See also Ss. 354(3), 366 and 433-A

See also Ss. 374 and 366

See also Ss. 374 & 386 and 366

See also Ss. 386, 374(2) and 366

See also Ss. 433, 433-A, 434, 413, 414, 418, 366, 368 and 371

[3891] — S. 366 — Reference of death sentence under — Rejection of — *High Court should give reasons for differing from the view of trial court instead of mechanically rejecting the reference* (Para 13). *Ramji Rai* v. *State of Bihar*, (1999) 8 SCC 389: 1999 SCC (Cri) 1446: AIR 1999 SC 3857.

Bench Strength **2**. Coram : *G.B. Pattanaik* and **N. Santosh Hegde**, JJ. [Date of decision : 13-10-1999]

[3892] — S. 366 — Reference under — Duty of High Court to reappreciate the evidence and come to an independent finding — *High Court making only a general reference to the evidence of the eyewitness and observing that all witnesses examined by the prosecution inspire full confidence — Held, improper — Case not remanded — Supreme Court reappreciating evidence in the interest of justice to prevent further delay*

As the High Court was dealing with not only the appeal filed by the appellants but also a reference under S. 374 for confirming the death sentence, it was essential for the High Court to have reappraised the evidence adduced in the case and come to an independent conclusion as to whether the guilt of the accused had been proved or not.

Ordinarily in a criminal appeal against conviction the appellate court can dismiss the appeal if the Court is of the opinion that there is no sufficient ground for interference after examining the various grounds urged before it for challenging the correctness of the decision of the trial court. It is not necessary for the appellate court to examine the entire record for the purpose of arriving at an independent conclusion. The position, however, is different where in addition to an appeal filed by an accused who is sentenced to death, the High Court has to dispose of the reference for confirmation of the death sentence under S. 374. While dealing with a reference the High Court should consider the proceedings in all their aspects and come to an independent conclusion on the material on record apart from the view expressed by the Sessions Judge. In so doing the High Court will be assisted by the opinion expressed by the Sessions Judge, but under the provisions of the law above-mentioned it is for the High Court to come to an independent conclusion of its own. *Charan Singh* v. *State of Punjab*, (1975) 3 SCC 39: 1974 SCC (Cri) 735: AIR 1975 SC 246: (1975) 1 SCR 561: 1974 Cri LJ 1253.

Bench Strength **2**. Coram : **H.R. Khanna** and *Y.V. Chandrachud*, JJ. [Date of decision : 26-7-1974]

[3893] — Ss. 366, 368, 374 and 386 — Appeal against conviction and reference relating to death sentence — Proper mode of disposal of — *In an appeal against conviction and reference relating to death sentence, High Court setting aside conviction and sentence in a casual and summary manner — High Court neither analysing the evidence nor referring to any finding recorded by the trial court as to in what way the evidence was not acceptable — Acquittal of co-accused not sufficient to discard the prosecution version in its totality — Statement by High Court that there was no corroboration of "investigation", unclear — Held, that was not the way an appeal or reference for confirmation of death sentence is to be dealt with — While setting aside order of conviction the least that was required* *to be done was analysis of the evidence to show as to how the conclusions of the trial court as regards acceptability of the evidence of any witness were erroneous — That not being done impugned judgment set aside and matter remitted to High Court for fresh consideration — Penal Code, 1860 — Ss. 302/34* (Paras 2 and 4). *State of U.P.* v. *Govind Das*, (2007) 10 SCC 795: (2007) 3 SCC (Cri) 699: 2007 Cri LJ 4289: (2007) 57 AIC 99 (SC).

Bench Strength 2. Coram : **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision : 10-8-2007]

[3894] — Ss. 366, 368, 374 and 386 — Confirmation of death sentence — *Court must deal with the matter carefully and examine all relevant and material circumstances before upholding the conviction and confirming the sentence of death. Arjun Marik* v. *State of Bihar*, 1994 Supp (2) SCC 372: 1994 SCC (Cri) 1551.

Bench Strength 2. Coram : *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision : 2-3-1994]

[3895] — Ss. 366, 368 and 386 — Duty of High Court in death reference — Held, High Court has to satisfy itself whether a case beyond reasonable doubt attracting death penalty has been made out — *In doing so High Court has to reappraise and reassess the entire facts and law so as to come to its independent conclusion but cannot totally overlook the conclusion of the Sessions Judge either — Therefore, it should consider the merits of the case itself and examine the entire evidence on record afresh — On facts, held, High Court instead of discharging its duty in the said manner, found the accused entitled to benefit of doubt merely on surmises and conjectures — Such conclusion, held, was unsustainable and resulted in miscarriage of justice*

When a reference is made to the High Court under Section 366 CrPC by the Sessions Judge on passing a sentence of death, the High Court has to satisfy itself whether a case beyond reasonable doubt has been made out against the accused for infliction of the extreme penalty of death. The proceedings before the High Court in such a case require a reappraisal and reassessment of the entire facts and law so that it may come to its independent conclusion but while so doing, the High Court cannot also totally overlook the conclusion arrived at by the Sessions Judge. In performing its duty, the High Court is of necessity bound to consider the merits of the case itself and has to examine the entire evidence on record. In the instant case, the High Court as a court of appeal has failed to exercise its power under Section 386 CrPC and instead of discharging its bounden duty to examine the evidence and other materials on record, it, without appreciating the same, merely on surmises and conjectures, came to the conclusion that the accused was entitled to the benefit of doubt. Therefore, its conclusion cannot be sustained. Moreover, such infraction of duty by the High Court has caused a gross miscarriage of justice. (Para 5). *State of T.N.* v. *Rajendran*, (1999) 8 SCC 679: AIR 1999 SC 3535.

Bench Strength 3. Coram : **G.B. Pattanaik**, *M. Srinivasan* and *N. Santosh Hegde*, JJ. [Date of decision : 22-9-1999]

[3896] — Ss. 366, 415, 433, 434 and 435 — Keeping prisoners sentenced to death in solitary confinement, held, is impermissible being a distinct and separate kind of punishment under S. 73, IPC and not part of the death sentence under S. 53, IPC — *To read solitary confinement as permissible under S. 30(2) would render it unconstitutional and violative of prisoner's fundamental rights under Arts. 21, 20(2), 19 and 14 — Prisoner in jail still retains his fundamental rights — Nature of non-punitive custodial isolation of such a prisoner awaiting execution permissible under S. 30(2) read with S. 366, Criminal Procedure Code, 1973 laid down — Meaning of "apart from other persons" and "be confined in a cell" in S. 30(2) explained — For applicability of S. 30(2) when is a prisoner "under sentence of death" also explained — "Shall" in S. 30(2) means "shall be liable to" — Constitution of India, Arts. 72 and 161 — Prisons Act, 1894, S. 30(2)*

The petitioner was found guilty by the Sessions Court of the offence of murder and was awarded the capital sentence. He was a 'B' class prisoner eligible for certain amenities. After the death penalty was pronounced, the prison superintendent stripped him of the 'B' class facilities and locked him up in a single cell with a small, walled yard attached but beyond the view of other human beings except the jail guards and formal visitors who visited in discharge of their official duties and a few callers on rare occasions.

He filed the present petition under Art. 32 of the Constitution of India to the Supreme Court.

Held :

The scope of S. 30(2) is that persons in the position of the petitioner are not to be completely segregated except in extreme cases of necessity which must be specifically made out and that too after he is, in the true sense of the expression, 'a prisoner under sentence of death'.

Per Chandrachud, C.J. and Fazal Ali, Shinghal and Desai, JJ.

It is no more open to debate that convicts are not wholly denuded of their fundamental rights. Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed. Therefore, any imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards. However, they are not in a position to enjoy the full panoply of fundamental rights because these very rights are subject to restrictions imposed by the nature of the regime to which they have been lawfully committed.

Solitary confinement has a degrading and dehumanising effect on prisoners. If S. 30(2) of the Prisons Act enables the prison authorities to impose solitary confinement on a prisoner under death sentence, not as a consequence of violation of prison discipline but on the sole and solitary ground that the prisoner is one under sentence of death, the provision would offend Arts. 14, 19 and 20. Further, if by imposing solitary confinement, there is total deprivation of camaraderie amongst co-prisoners, commingling and talking and being talked to, it would offend Art. 21.

It is, however, clear that S. 30(2) does not empower the prison authorities to impose solitary confinement in the sense in which that word is understood in paragraph 510 of the Punjab Jail Manual. Sections 73 and 74, Indian Penal Code, show that solitary confinement is by itself a substantive punishment which can be imposed only by a court of law. The limit of solitary confinement that can be imposed under the court order is strictly prescribed and that provides internal evidence of its abnormal effect on the subject.

Such confinement can neither be cellular nor separate, and in any event, it cannot be a solitary confinement. The expression "such prisoner shall be confined in a cell apart from all other prisoners" has a restricted meaning. It must be given a rational meaning to effectuate the purpose behind the provision so as not to attract the vice of solitary confinement. Section 366(2), Criminal Procedure Code, 1973 enables the Sessions Court to commit a convicted person, who is awarded capital punishment, to jail custody under a warrant. It is implicit that the prisoner is neither awarded a simple nor rigorous imprisonment. The purpose of the subsection is to make available the prisoner when a sentence is required to be executed. He is only to be kept in jail custody. After the sentence becomes executable, he may be kept in a cell apart from other prisoners with a day and night watch. But, even here, unless special circumstances exist, he must be within the sight and sound of other prisoners and be able to take food in their company. Hence, the prisoner under sentence of death, who is already in jail custody cannot be subjected to punitive detention except for prison offences. If he is detained in solitary confinement, it will amount to imposing punishment for the same offence more than once and that would be violative of Art. 20(2).

The expression "prisoner under sentence of death" can only mean a prisoner whose sentence of death has become final and conclusive and indefeasible which cannot be annulled or voided by any judicial or constitutional procedure. A sentence of death imposed by Sessions Judge cannot be executed unless it is confirmed by the High Court. The High Court may either confirm the sentence or pass any other sentence or even acquit him. If he is convicted he can appeal to the Supreme Court when S. 415, Criminal Procedure Code, provides for postponement of execution of sentence of death. Further, under Arts. 72 and 161 of the Constitution of India, the President and the Governor have the power to grant pardon, reprieve, remittance or commutation of sentence of death. It could not have been the intention of the legislature that a prisoner under sentence of death could be kept in solitary confinement from the time the Sessions Judge awards the punishment till the sentence is finally executed, especially when solitary confinement or cellular or separate confinement cannot be imposed beyond the prescribed period under S. 73, Indian Penal Code, and S. 46(8) of the Prisons Act. As the prisoner is not to be kept in solitary confinement and the custody under S. 30(2) would preclude detention in solitary confinement, there is no question of imposing a second punishment and hence the provision is not violative of Art. 20.

The challenge under Art. 21 must also fail on the interpretation given to S. 30(2). Personal liberty of a person who is incarcerated is to a great extent curtailed by punitive detention. It is even curtailed in preventive detention. The liberty to move, mix, mingle, talk, share company with co-prisoners, if substantially curtailed, would be violative of Art. 21 unless the curtailment has the backing of law. Section 30(2) of the Prisoners Act establishes the procedure by which it can be curtailed but it must be read as interpreted above. The word 'law' in the expression 'procedure established by law' in Art. 21 means a law which is right, just and fair and not arbitrary, fanciful or oppressive. Once S. 30(2) is read down its obnoxious element is erased and it cannot be said that it is arbitrary or that there is deprivation of personal liberty without the authority of law.

Classification, according to the sentence for security purposes, is valid, and, therefore, S. 30(2) does not violate Art. 14.

On the interpretation given to S. 30(2) as read down, the restriction is not unreasonable. The restriction is imposed keeping in view the safety of the prisoner and the prison security and it is not violative of Art. 19.

Per Krishna Iyer, J.

Condemned prisoners like the petitioner shall be merely kept in custody and shall not be put to work like those sentenced to rigorous imprisonment. These prisoners shall not be kept apart or segregated except on their own volition since they do not come under S. 30(2) of the Prisons Act. They shall be entitled to the amenities of ordinary inmates in the prison like games, books, newspapers, reasonably good food, the right to expression, artistic or otherwise, and normal clothing and bed. In a sense, they stand better than ordinary prisoners because they are not serving any term of rigorous imprisonment, as such. However, if their gregarious wishes induce them to live in fellowship and work like other prisoners they should be allowed to do so. To eat together, to sleep together, to work together, to live together, generally speaking, cannot be denied to them except on specific grounds warranting such a course such as homosexual tendencies, diseases, violent proclivities and the like. But if these grounds are to be the basis for revocation of advantages to the prejudice of the sentencee he should be given a brief hearing in essential compliance with the principles of natural justice.

Solitary confinement, even if mollified and modified marginally, is not sanctioned by S. 30 for prisoners under sentence of death. The contention that solitary confinement is a compassionate measure to protect the prisoner lest he be killed or kill himself is absurd. Such persons have no motive to commit suicide or further commit murder within the jail. The contention is not based on any relevant statistical study. The contention that the confinement is not 'solitary' but 'statutory' authorised by S. 30(2), Prisons Act, and S. 366(2), Criminal Procedure Code, must also be rejected. It will be a stultification of judicial power, if, under guise of using S. 30(2), the Superintendent inflicts what is substantially solitary confinement which is a species of punishment within the jurisdiction of the criminal Court. The Penal Code and Criminal Procedure Code regard *punitive* solitude too harsh and the Legislature cannot be intended to permit *preventive* solitary confinement, released even from the restrictions of Ss. 73 and 74, Indian Penal Code and S. 29, Prisons Act and the restrictive Prison Rules.

Under S. 366(2), Criminal Procedure Code, the Court passing the sentence of death shall commit the convicted person to jail custody under a warrant. This 'safe keeping' in jail custody is the limited jurisdiction of the jailor and the convict is *not sentenced to imprisonment.* But it is legal under that section to separate such prisoners from the rest of the prison community during hours when prisoners are generally locked in. A special watch day and night of such prisoners by guards is also valid. Infraction of privacy may be inevitable but guards must concede minimum privacy in practice.

The phrase 'to be confined in a cell' does not mean a *solitary* cell, and 'apart from all other prisoners' only connotes that in a cell where there are a plurality of inmates the death sentencee will have to be kept separated from the rest in the same cell but not too close to others, and under a guard. The word 'shall' in this disciplinary context means 'shall be liable to'. The sub-section, understood in the correct setting, plainly excludes any trace of severity and merely provides for a protective distance being maintained between the prisoner under death sentence and other prisoners, although they are accommodated in the same cell and are allowed to communicate with each other, eat together, see each other for all other practical purposes and continue community life. The sub-section relates to separation without isolation, keeping apart without close confinement.

More importantly, if the prisoner desires loneliness for reflection and remorse, for prayers and making peace with his maker, or opportunities for meeting family or friends, such facilities shall be liberally granted. Having regard to the stressful spell of terrestrial farewell his soul may be passing through the compassion society owes to him whose life it takes.

The crucial holding under S. 30(2) is that a prisoner is *not* 'under sentence of death' even if the sessions court has sentenced him to death subject to confirmation by the High Court. He is *not* 'under sentence of death' even if the High Court imposes, by confirmation or fresh appellate infliction, death penalty, *so long as* an appeal to the Supreme Court is likely to be or has been moved or is pending. Even if Supreme Court has awarded capital sentence, S. 30 does not cover him so long as his petition for mercy to the Governor and/or to the President permitted by the Constitution, Code and Prison Rules, has not been disposed of. Of course, once rejected by the Governor and the President, and on further application there is no stay of execution by the authorities, he *is* 'under sentence of death', even if he goes on making further mercy petitions. During that interregnum he attracts the custodial segregation specified in S. 30(2), subject to the ameliorative meaning assigned to the provision. To be 'under sentence of death' means "to be under a finally executable death sentence."

Further restraint, however, on such a condemned prisoner would be valid if clear and present danger of violence or likely violation of custody is, for good reasons, made out with due regard to the rules of fair play implied in natural justice. *Sunil Batra* v. *Delhi Admn.*, (1978) 4 SCC 494: 1979 SCC (Cri) 155: AIR 1978 SC 1675: 1978 Cri LJ 1741.

Bench Strength **5**. Coram : *Y.V. Chandrachud, C.J.*[2] and **V.R. Krishna Iyer**[1], *S. Murtaza Fazal Ali*[2], *P.N. Shinghal*[2] and **D.A. Desai**[2], JJ. [Date of decision : 30-8-1978]

[3897] — S. 366 — Non-imposition of death sentence even when the case falls under "rarest of rare" category — Long time-gap in matter coming up before Supreme Court — *Murder of two old, infirm and defenceless ladies by accused (domestic servant) in whom they reposed confidence — Death sentence imposed by the trial court on 5 2-1994, reduced to that of life imprisonment by High Court — Held, considering long time-gap between the sentence of death originally imposed by trial court and thereafter High Court taking a different view, it would not be a fit case to upset the order rendered by High Court* (Para 5). *State of Punjab* v. *Jaswamt Singh*, (2009) 16 SCC 357.

Bench Strength **2**. Coram: *S. Rajendra Babu* and *Arun Kumar*, JJ. [Date of decision: 28-11-2002]

Amrutlal Someshwar Joshi v. State of Maharashtra, (1994) 6 SCC 186: 1994 SCC (Cri) 1591, considered

[3898] — Ss. 366 to 368 — Confirmation of death sentence — Scope of enquiry by High Court — *Obligation to reassess the entire evidence — Criminal Procedure Code, 1898, Ss. 374, 375 and 376*

On a reference for confirmation of the sentence of death, the High Court is under an obligation to proceed in accordance with the provisions of Ss. 375 and 376 of the Criminal Procedure Code. Under these sections the High Court must not only see whether the order passed by the Sessions Court is correct but it is under an obligation to examine the entire evidence for itself, apart from and independently of the Sessions Court's appraisal and assessment of that evidence.

On facts, the High Court has failed to show due regard to this well-established position in law. It did not undertake a full and independent examination of the evidence led in the case and it mainly contented itself with finding out whether the Sessions Court had in any manner erred in reaching the conclusion that the charge of murder levelled against the appellants was established beyond reasonable doubt. It was wrong to attach a sort of mystical weight and authority to the trial court's judgment on the ground that the trial Judge had the opportunity to observe the demeanour of the witnesses, when in fact he made no special reference to this aspect. *Subhash* v. *State of U.P.*, (1976) 3 SCC 629: 1976 SCC (Cri) 483: AIR 1976 SC 1924: 1976 Cri LJ 1521: 1977 MLJ (Cri) 129.

Bench Strength **3**. Coram : **Y.V. Chandrachud**, *R.S. Sarkaria* and *P.N. Shinghal*, JJ. [Date of decision : 6-5-1976]

[3899] — Ss. 366, 391, 24 and 225 — Confirmation proceedings of death sentence under S. 366 before High Court — Nature of — Recalling of witness before High Court, at stage of — Permissibility — Role and duties of Public Prosecutor towards court — Duty of court in case of dereliction of duty by prosecuting agency — Murder trial — *Dying declaration by deceased* ***P*** *given to doctor, not brought on record by prosecution — This declaration part of charge-sheet and copy thereof supplied to accused persons — Aforesaid declaration going to root of matter relating to culpability of one of accused A-2 (out of A-1 to A-3) relating to assault and murders of* ***P*** *and his family members, as it did not mention A-2's name — Application under S. 391 for taking on record aforesaid dying declaration, opposed by Public Prosecutor and A-1 and A-3 — Application rejected by High Court on grounds that no question put to doctor regarding dying declaration by A-2 before trial court and there was strong opposition to application — Sustainability — Held, confirmation proceedings are always original proceedings in the nature of extended trial — Task of Public Prosecutor is not only to secure conviction, he has a duty to court — He is an officer of court and, therefore, in all fairness, firstly, document should have been brought on record and secondly, even if doctor who recorded dying declaration was not confronted with that dying declaration, that opportunity could have been provided before High Court, if necessary by recalling doctor before High Court itself — Fairness of trial is basic requirement in criminal law — Public Prosecutor ought not to have opposed production of document — Therefore, production of document, allowed — Also clarified that though A-2's name did not appear in aforesaid dying declaration, that is of no consequence as evidence of eyewitnesses completely fixes criminal liability on his part herein — Therefore, even if dying declara-*

tion was somewhat helpful to A-2, that by itself would not wipe out credible evidence of eyewitnesses — Evidence Act, 1872, S. 32(1) (Paras 44 to 50). *Dilip Premnarayan Tiwari* v. *State of Maharashtra*, (2010) 1 SCC 775.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 10-12-2009]

Rampal Pithwa Rahidas v. State of Maharashtra, 1994 Supp (2) SCC 73: 1994 SCC (Cri) 851, relied on

[3900] — Ss. 366, 368 and 374 — Exercise of power under, to confirm death sentence — Need of greater care and circumspection, stressed

Per Ganguly, J.

The High Court cannot accept one part of the statement to the total non-consideration of the other part in which the appellant has retracted his confession. In a case where death penalty has been imposed, the High Court is expected to consider the evidence with greater care and circumspection. In para 13 of the High Court's judgment, the High Court merely referred to the general denials by the appellant in the course of his examination under Section 313 CrPC and held that the non-explanation of the suspicious circumstances under which the deceased had died will be treated as an additional link against the appellant. (Paras 56 and 55). *Rameshbhai Chandubhai Rathod* v. *State of Gujarat*, (2009) 5 SCC 740.

Bench Strength 2. Coram: **Dr. Arijit Pasayat**[1] and **A.K. Ganguly**[2], JJ. [Date of decision: 27-4-2009]

Megh Singh v. State of Punjab, (2003) 8 SCC 666: 2004 SCC (Cri) 58, relied on

[3901] — Ss. 366, 368, 415, 432 and 433 — Rape and murder of child by watchman — Death sentence — If warranted — *Appellant-accused aged about 27 years was watchman of building where deceased was residing — Death sentence imposed by trial court affirmed by High Court — Difference of opinion amongst Judges of Division Bench of Supreme Court as regards award of capital punishment in* Rameshbhai (1) case, *(2009) 5 SCC 740 — Possibility of rehabilitation and reformation of young offender — Uncertainty due to nature of circumstantial evidence — Hence held, death sentence cannot be maintained — Considering gravity of offence, behaviour of appellant, and fear and concern such incident generate in ordered society, death sentence commuted to life imprisonment directing that life sentence would extend to full life of appellant subject to any remission/commutation at instance of Government for good and sufficient reasons — Constitution of India, Arts. 72 and 161 — Penal Code, 1860, Ss. 376, 302, 363 and 366* (Paras 9 to 12). *Rameshbhai Chandubhai Rathod (2)* v. *State of Gujarat*, (2011) 2 SCC 764.

Bench Strength 3. Coram: **H.S. Bedi**, *P. Sathasivam* and *C.K. Prasad*, JJ. [Date of decision: 24-1-2011]

Ramraj v. State of Chhattisgarh, (2010) 1 SCC 573: (2010) 1 SCC (Cri) 842; Mulla v. State of U.P., (2010) 3 SCC 508: (2010) 2 SCC (Cri) 1150; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358, distinguished on facts

Opinion of A.K. Ganguly, J. in Rameshbhai Chandubhai Rathod (1) v. State of Gujarat, (2009) 5 SCC 740: (2009) 2 SCC (Cri) 881, affirmed

[3902] — S. 366 — Death sentence — Imposition of — Propriety — Factors to be considered — Multiple murder case — *Object and function of criminal law, need for imposition of appropriate sentence, extent of adherence to principle of proportionality while sentencing, requirement for delicately balancing the aggravating and mitigating factors and circumstances in which crime committed and guidelines related to imposition of death sentence, restated — Murder of six members of a family, including helpless women and children, committed in a brutal, diabolic and grisly manner — Crime being one of enormous proportion which shocks conscience of law — Death sentence imposed by trial court on **S, U, H** and **Ha**, altered to life sentence in case of **S** and **U** by High Court, after upholding conviction of S and U, however, acquitting **H** and **Ha** — Sustainability — In a case of this nature, held, death sentence as awarded to respondent-accused S and U on conviction under S. 302 r/w S. 149 was appropriate sentence and High Court ought not to have altered it — Regarding acquittal of **H** and **Ha**, High Court noted that evidence of their involvement was not totally free from doubt and that High Court had analysed factual scenario in detail to direct acquittal — Hence, their acquittal, affirmed — Penal Code, 1860 — S. 302 r/w S. 149, Ss. 307/149 and 148* (Paras 2, 4 and 30 to 32). *State of U.P.* v. *Sattan*, (2009) 4 SCC 736.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 27-2-2009]

Bantu v. State of U.P., (2008) 11 SCC 113: (2009) 1 SCC (Cri) 353, followed

Sahdeo v. State of U.P., (2004) 10 SCC 682: 2004 SCC (Cri) 1873, relied on

[3903] — S. 366 — Death sentence — On facts, held, not warranted — Weighing of mitigating circumstances while awarding death sentence — Requirement of — *Reiterated, there have to be very special reasons to award death penalty and if mitigating factors in the case are stronger, then it is neither proper nor justified to award death sentence and it would be sufficient to place it out of "the rarest of rare category" — In the present case of murder by appellant-accused of his wife and children, after weighing the mitigating circumstances,* *held, instant case not fit to fall within category of "the rarest of rare cases" — Therefore, death sentence, as awarded to appellant by trial court and confirmed by High Court, commuted to life imprisonment — Penal Code, 1860 — S. 302*

In the case in hand, weighing the mitigating circumstances the following facts are manifest:

(*i*) The appellant had been unemployed for last seven to eight months.

(*ii*) He used to borrow money from others to meet his daily needs.

(*iii*) He himself had consumed "sulphas tablets" to commit suicide even though not medically established.

(*iv*) He therefore, was keen that his whole family should be finished and no one should be alive to suffer the pain and agony alone.

(*v*) He was fed up with his life and was seen in a perplexed condition by PW 4.

(*vi*) In any case, he cannot be a threat to the society and there are fairly good chances of his reformation as he has learnt sufficient lesson from it. (Para 45)

Extreme poverty had driven the appellant to commit the gruesome murder of three of his very near and dear family members-his wife, minor son and daughter. There is nothing on record to show that the appellant is a habitual offender. He appears to be a peace-loving, law-abiding citizen but as he was poverty-stricken, he thought in his wisdom to completely eliminate his family so that all problems would come to an end. Precisely, this appears to be the reason for him to consume some poisonous substances, after committing the offence of murder. (Para 46)

No witness has complained about the appellant's bad or intolerable behaviour in the past. That many people had visited his house after the incident is indicative of the fact that he had cordial relations with all. He is now about thirty-five years of age and there appear to be fairly good chances of the appellant getting reformed and becoming a good citizen. (Para 47)

Thus, looking to the matter from all angles and after giving serious consideration to the whole matter, it is not a fit case where it would fall within the category of "the rarest of rare cases" and therefore death sentence as awarded to him by the trial court and confirmed by the High Court deserves to be set aside and quashed and is accordingly done so. Instead he is held guilty of commission of offence under Section 302 IPC on three counts and is awarded life imprisonment for the same. The impugned judgment and order stands modified to the aforesaid extent. (Paras 48 and 49). *Sushil Kumar* v. *State of Punjab*, (2009) 10 SCC 434: (2009) 82 AIC 218 (SC).

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **Deepak Verma**, JJ. [Date of decision: 1-9-2009]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Om Prakash v. State of Haryana, (1999) 3 SCC 19: 1999 SCC (Cri) 334; Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498: (2009) 2 SCC (Cri) 1149, applied

[3904] — S. 366 — Reference of death sentence — Alteration to life imprisonment — Factors to be considered — *Held, number of deaths would not be the determinative factor for awarding death sentence — Even in case of single victim death sentence can be awarded taking into consideration circumstances of case — On facts held, it cannot be said that High Court by altering sentence from death to life had acted inappropriately* (Para 21). *Aqeel Ahmad* v. *State of U.P.*, (2008) 16 SCC 372: AIR 2009 SC 1271: (2009) 2 All LJ 178: (2009) 75 AIC 248 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 19-12-2008]

[3905] — Ss. 366 and 386 — Reference under S. 366 before High Court against death sentence awarded to accused persons for rape and murder — *High Court setting aside the conviction and sentence passed by Sessions Court — By doing so High Court adopting an erroneous approach which resulted in miscarriage of justice — Held, error committed by the High Court must be undone by restoring the conviction passed against the accused — But at this distance of time, sentence of death need not be restored — Accordingly accused convicted under Ss. 302 and 376 r/w S. 34 IPC and sentenced to undergo imprisonment for life on the first count and rigorous imprisonment for a period of 10 years on the second count — Sentences on both counts to run concurrently — Penal Code, 1860 — Ss. 302, 376 r/w S. 34. State of T.N.* v. *Suresh*, (1998) 2 SCC 372: AIR 1998 SC 1044.

Bench Strength **2**. Coram : *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision : 5-12-1997]

[3906] — S. 366 — Conviction under — Award of death sentence — Paedophilia and murder — Whether death sentence warranted — *Conviction* *based on circumstantial evidence — Propriety — Essential ingredients of proof by circumstantial evidence, restated — On facts, appellant accused of raping and murdering two minor girls less than ten years of age — Earlier also he was convicted for raping minor girls — Trial court considering all the circumstances to be a complete chain unerringly pointing at the guilt of appellant-accused accordingly convicting him — Appellant awarded death sentence under S. 302 while custodial sentences imposed under Ss. 363, 376 and 201 — Death sentence affirmed by High Court — Sustainability — Contention of appellant that as the case was one which rested on circumstantial evidence, conviction was improper — Alternatively, death sentence was not the proper sentence — Held, prosecution was able to establish the accusations — Also, PWs 7 and 8, wife and daughter of appellant-accused, were the key witnesses — Considering the facts and circumstances held, and the relevant case law, the instant case falls in the rarest of rare category — Hence, the depraved acts of appellant-accused warranted only death sentence — Therefore, no interference warranted — Penal Code, 1860 — Ss. 302, 363, 376 and 201*

Two young girls, *N* and *G*, less than ten years of age, were the victims of the sexual assault and animal lust of the appellant-accused. They were not only raped but were murdered by the appellant-accused. Case was based on circumstantial evidence. Trial court considering all the circumstances awarded death sentence to the appellant under Section 302 IPC while imposing custodial sentences under Sections 363, 376 and 201 IPC. The appellant questioned correctness of the judgment before the High Court and a reference was made by the trial court in view of the death sentence imposed. After analysing the evidence, the High Court found the evidence to be cogent and credible and affirmed the death sentence looking into the ghastly acts committed by the appellant.

It was not the first occasion when the appellant was convicted for rape of minor girls. Earlier, the appellant was convicted for kidnapping a minor girl and committing rape on her. Thereafter the accused was again convicted for having raped a minor girl of less than nine years of age. He was released after completion of the sentence and thereafter continued his degraded acts. The raping of the two girls, one aged about five years and the other about ten years, formed the subject-matter of consideration in the instant appeal.

Dismissing the appeal,

Held :

Prosecution relied on the following circumstances to fasten the guilt on the appellant-accused:

1. Last seen.

2. Motive.

3. Seizure of bloodstained clothes which were on the person of the accused at the time of arrest.

4. Chemical analyst's report which showed that shirt and pant of the accused were stained with Blood Group 'A' which was the blood group of both the deceased.

5. Blood in the nail clippings of the accused was of 'A' group which was the blood group of both the deceased.

6. Recovery of dead body of *G* at the instance of the accused.

7. The accused pointing out the places where rape was committed on *N* and *G* where the earth was found stained with blood of 'A' group and other incriminating articles were seized.

8. Extra-judicial confession to PW 11.

9. Recovery of frocks of both the deceased girls at the instance of the accused.

10. The accused pointing out the well wherein he had thrown *N*.

11. False explanation by the accused. (Para 11)

The prosecution had established that both the girls were missing since about 6 p.m. on 13-12-1999 and the appellant-accused was seen in the company of the girls till morning of 14-12-1999 and soon thereafter dead body of *N* was found and thereafter the dead body of *G* was found. The post-mortem of *N* was conducted on 14-12-1999 between 9.30 p.m. to 10.30 p.m. and post-mortem of *G* was conducted on 14-12-1999 between 10.30 p.m. to 11.30 p.m. The evidence of doctor, PW 9, clearly showed that the girls according to him were murdered within 36 hours and the rape was committed on them within 48 hours before the time of post-mortem. Therefore, the time given by the doctor fitted with the prosecution case of timings relating to last seen. The prosecution was able to establish the accusations. (Para 20)

In the instant case, interestingly, PWs 7 and 8, wife and daughter of the appellant-accused, were the key witnesses. (Para 17)

The case at hand falls in the rarest of rare category. The depraved acts of the accused called for only one sentence that is death sentence. (Para 23)

Looked at from any angle, the judgment of the High Court, confirming the conviction and sentence imposed by the trial court, does not warrant any interference. (Para 24). *Mohan Anna Chavan* v. *State of Maharashtra*, (2008) 7 SCC 561: (2008) 3 SCC (Cri) 193: (2008) 68 AIC 194 (SC).

Bench Strength 3. Coram : **Dr. Arijit Pasayat**, *P. Sathasivam* and *Dr. M.K. Sharma*, JJ. [Date of decision : 16-5-2008]

Bodhraj v. State of J&K, (2002) 8 SCC 45; State of M.P. v. Munna Choubey, (2005) 2 SCC 710: 2005 SCC (Cri) 559; Union of India v. Devendra Nath Rai, (2006) 2 SCC 243: (2006) 1 SCC (Cri) 487, followed

Joseph v. State of Kerala, (2000) 5 SCC 197: 2000 SCC (Cri) 926; Damodar v. State of Karnataka, (2000) 10 SCC 328: 2000 SCC (Cri) 90, relied on

[3907] — Ss. 366(1) and 354(3) — Commutation of death sentence to life imprisonment — *Acquittal of a large number of the accused is no ground for not awarding death sentence to those whose conviction has been upheld* (Para 17). *Subash Chander* v. *Krishan Lal*, (2001) 4 SCC 458: 2001 SCC (Cri) 735: AIR 2001 SC 1903: 2001 Cri LJ 1825.

Bench Strength 2. Coram : *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision : 29-3-2001]

[3908] — Ss. 366(1) and 386 — Life imprisonment or death sentence — Where two views are possible the one favouring life sentence should be accepted — *Where trial court awarded death sentence but High Court on general conspectus and consideration of facts, commuted the sentence to life imprisonment, for interfering with the sentence of life imprisonment further exceptional grounds should be made out — Held on facts, despite having some reservations about commutation of death sentence to life imprisonment by High Court, discretion exercised by High Court need not be interfered with — However, sentence of life imprisonment of main accused not to be commuted under any circumstances — Constitution of India, Art. 134 — Penal Code, 1860 — S. 302*

The families of the deceased *B* and A-1 had an old enmity. One of the sons of *B* was murdered by A-1 and his family members, the co-accused persons. *B* and his sons *S* and PW 2 had been cited as eyewitnesses in that case. During pendency of trial A-1 and the co-accused had been released on bail. They thereupon intruded into the house of the deceased at night when *B* and his family members were sleeping and started indiscriminate firing on the sleeping family members. As a result *B*, his son *S* and his mother died. A-1 exhorted others to spare no family members of *B* and also fired shots from his pistol which hit the bone of the right-side hip and abdomen of PW 2. His sister PW 3 also received gunshot injuries. PWs 2 and 3 then hid themselves in a room. Thus they survived. When everybody belonging to the family of *B* fell after receiving gunshot injuries, A-1 declared that the work was over, whereafter the accused persons left the place. The trial court convicted the accused persons under Sections 302, 307, 148, 450 read with Sections 149, 120-B and Section 307 read with Sections 149 and 120-B IPC and awarded death sentence. The High Court upheld the conviction but commuted the death sentence to life imprisonment.

Held :

It is established that the accused-appellants, who were earlier involved in the murder of one of the sons of *B* left no stone unturned to eliminate the whole family of *B* including the eyewitnesses in that case. It is also established that the aforesaid accused persons attacked the deceased and the injured at the dead hour of night when they were sleeping, being incapable of defending themselves. The means adopted in execution of the evil designs speak of the mental condition of the accused persons whom the trial court found to have been involved in the commission of a crime termed by it as rarest of the rare cases. The High Court, while commuting the death sentences, appears to have completely ignored various pronouncements of the Supreme Court dealing with the yardstick to be adopted while awarding the death sentence. Merely because 8 persons, convicted by the trial court, were acquitted, by itself cannot be termed to be a justified ground for commuting the death sentence. However, as the High Court, presumably on a general conspectus and upon consideration of facts of the case, found that the accused persons should not be awarded with death sentence, it is felt that for interfering with the discretion of the Court, further exceptional grounds are required to be made out. When two views are possible about the quantum of sentence, a view which favours the grant of life in comparison with death is generally accepted for the exercise of the powers by the High Court in commuting the death sentence. Despite having some reservations about the sentence awarded vide the impugned judgment in view of the exercise of discretion in commuting the death sentence the sentence awarded to the accused persons need not be interfered with by us. (Para 17). *Subash Chander* v. *Krishan Lal*, (2001) 4 SCC 458: 2001 SCC (Cri) 735: AIR 2001 SC 1903: 2001 Cri LJ 1825.

Bench Strength 2. Coram : *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision : 29-3-2001]

[3909] — S. 366(1) — Death sentence, upheld — Murder of all members (6) of a family at their residence at night — *Circumstances against* *appellant-accused were motive (money), presence of appellant-accused in the house on the night of the occurrence till next morning and his absence from his own residence during the corresponding period, recovery of clothes under S. 27 of Evidence Act, 1872, fingerprints on doorsteps of the house found by fingerprint expert to have matched with those of accused, recovery of scalp hair of accused from place of occurrence, and judicial confession and extra-judicial confession made by accused — Defence pleas found to be untenable — Trial court and High Court convicted accused on the basis of these proved circumstances — Having regard to the chain of circumstances, held, no interference called for. M.A.* Antony v. *State of Kerala*, (2009) 6 SCC 220.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 22-4-2009]

Mohd. Aman v. State of Rajasthan, (1997) 10 SCC 44: 1997 SCC (Cri) 777, referred to

[3910] — Ss. 366(1), 368 and 374 — Exercise of power under, to confirm death sentence — Non-application of mind — Rape and murder of a minor girl of 10 years — If a rarest of rare case — Mitigating circumstances — Court not giving any reasons for rejecting/not taking into account extra-judicial confession — Effect on awardability of death sentence

Per Ganguly, J.

The written statement which the accused gave and the court made it as an exhibit must be treated as part of his statement under Section 313 CrPC. It is true that when an extra-judicial confession is retracted by the accused, there is no inflexible rule that the court must accept the retraction. But if the court wants to reject the retraction, the court must give cogent reasons before such rejection. It does not appear that the High Court has given any reason for not accepting the retraction of the confession by the accused. The High Court dealt with the so-called extra-judicial confessions by the appellant and held that the second extra-judicial confession by the appellant before the police is hit by Section 25 of the Evidence Act. But about the retraction of his first extra-judicial confession in the written statement of the appellant, which is part of his Section 313 statement, there is no discussion in the judgment of the High Court. (Paras 52 to 54). *Rameshbhai Chandubhai Rathod* v. *State of Gujarat*, (2009) 5 SCC 740.

Bench Strength 2. Coram: **Dr. Arijit Pasayat**[1] and **A.K. Ganguly**[2], JJ. [Date of decision: 27-4-2009]

Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87; Mohd. Azad v. State of W.B., (2008) 15 SCC 449, relied on

King Emperor v. Biseswar Dey, (1921-22) 26 CWN 1010, approved

[3911] — S. 366(2) — Committing a person sentenced to death to jail custody — Not in the nature of punitive detention — *Hence does not amount to double jeopardy — Constitution of India, Art. 20(2)*

It was contended that in case of capital punishment the sentence awarded is only sentence of death but not sentence of death plus imprisonment and therefore if a condemned prisoner has to live in jail for long in substance it amounts to punishment which is sentence of death and imprisonment for some time and this will amount to double jeopardy which is contrary to Art. 20. Rejecting the contention

Held :

Per majority (Jagannatha Shetty, J., expressing no opinion)

A person who is sentenced to death and is kept in jail custody under a warrant under S. 366(2) is neither serving rigorous imprisonment nor simple imprisonment. In substance he is in jail so that he is kept safe and protected with the purpose that he may be available for execution of the sentence which has been awarded. The life of the condemned prisoner in jail awaiting execution of sentence must be such which is not like a prisoner suffering the sentence and it is essential that he must be kept safe. *Triveniben* v. *State of Gujarat*, (1989) 1 SCC 678: 1989 SCC (Cri) 248: AIR 1989 SC 1335.

Bench Strength 5. Coram : **G.L. Oza**[1], *M.M. Dutt*[1], *K.N. Singh*[1], **K. Jagannatha Shetty**[2] and *L.M. Sharma*[1], JJ. [Date of decision : 7-2-1989]

Sunil Batra v. Delhi Admn., (1978) 4 SCC 494: 1979 SCC (Cri) 155, followed

— S. 367 *See also* Ss. 366 to 368

[3912] — S. 367 — Murder trial — Death sentence — Exception of unsoundness of mind — Applicability — Mental condition during non-offending days — Relevance of — No medical reports on any psychological illness — Unsoundness of accused alleged by family members being attributed to accused's addiction of ganja — Effect — *Accused murdering wife and five children (aged 1 to 16 years) with knife — Conviction under S. 302 and award of death sentence confirmed by High Court — Accused not taking the plea of unsoundness of mind in courts below but Supreme Court getting enquiry conducted by police after a plea raised at SLP stage — Report of enquiry and evidences of family members and other witnesses revealing that accused was addicted to ganja for which he was under treatment, due to which mental illness allegedly he killed his wife and five children*

— Effect — The accused, on facts, held, is not entitled to benefit under S. 84 IPC — For availing benefit under S. 84 IPC, mental condition of accused on day of the incident, held, is relevant — State of mind on other days is relevant only to the extent of determining mental state on day of the incident along with other evidence and circumstances — Penal Code, 1860, Ss. 84 and 302

At about midnight of 19-8-2005, the informant, PW 1 (brother of the appellant-accused), on being informed by PW 4 about a huge commotion in appellant's house, rushed to the spot and saw through the window, his accused brother, sitting in the room with a bloodstained knife in his hand and his clothes soiled in blood. PW 1 also saw the dead bodies of appellant-accused's wife, 4 daughters and one son lying beside him (all murdered children aged between 1 to 16 years). When PW 1 questioned the appellant about the incident, the appellant-accused threatened to kill him as well. PW 1 thereupon retreated and raised an alarm which attracted the occupants of the neighbouring houses. PW 1 locked the room from the outside to prevent the accused-appellant's escape. He also rushed to the police station accompanied by PW 3 and recorded the FIR. He then returned to the village with a police party, headed by PW 15, SI. The appellant was arrested on the spot and on interrogation a bloodstained pyjama and a knife hidden in a quilt were seized. The appellant was convicted under Section 302 IPC for the six murders and was sentenced to death by the Sessions Judge by judgment dated 24-4-2006. On an appeal and reference to the High Court, the conviction and sentence was maintained by the impugned order.

During pendency of the appeal and on direction of the Supreme Court, yet another enquiry was made to find out if the appellant had any mental disorder and had been undergoing any treatment to this effect. Consequent to the enquiry, a report was tendered by an Additional SP to the effect that no medical record which could establish that the appellant had undergone treatment for a mental or psychological problem had been found but statements of his family members and others which were to the effect that the appellant had been addicted to drugs, particularly to ganja, and had become mentally disturbed and had been under treatment, and it was on account of this mental illness that he had killed his family, had been received and were being put on record. Based on this it was pleaded that the appellant appeared to be of unsound mind and incapable of understanding the nature of his actions, and therefore, in terms of Section 84 IPC, should be absolved of any liability.

Dismissing the appeal of the accused,

Held :

The benefit of Section 84 IPC is available to a person who at the time when the act was done was incapable of knowing the nature of his act or that what he was doing was wrong or contrary to law. The implication of this provision is that the offender must be of unsound mind at the time when the act was committed and his unsoundness of mind earlier or later are relevant only to the extent that they, along with other evidence, may be circumstances in determining the mental condition of an accused on the day of incident. (Para 19)

The status report filed by Additional SP and the affidavit in response to the enquiry directed by the Supreme Court do not advance the appellant's case whatsoever. It is significant that before the trial court as well as in appeal before the High Court, no plea with regard to the appellant's mental condition had been taken and it was only in the present SLP, when, shaken by the sheer brutality of the crime, it was felt that only a person of unsound mind could commit such a horrendous crime, and it had thus been thought prudent to have the matter re-examined. (Para 20) . *Jagdish* v. *State of M.P.*, (2009) 9 SCC 495: (2009) 4 APLJ 1 (SC): (2009) 82 AIC 65 (SC).

Bench Strength 2. Coram: **H.S. Bedi** and *J.M. Panchal*, JJ. [Date of decision: 18-9-2009]

[**Ed.**: In a case of death sentence, the High Court under Section 367 CrPC has power to direct further inquiry to be made or additional evidence to be taken so that no stone is left unturned even if there is a bleak chance of proving the innocence of the accused or bringing on record the mitigating circumstances against death sentence or making out a case for applicability of a general exception under Chapter IV against award of death sentence. In the present appeal, the Supreme Court applied the above rationale noticeable in Section 367 CrPC in exercise of its power under Article 136 of the Constitution by directing a further enquiry to ascertain the possibility of unsoundness of mind during commission of crime. But at the same time the Supreme Court also took note of the fact that such a plea had not been taken in the High Court or the trial court and no medical reports on psychological illness were found.]

— S. 368 *See also* S. 376, Criminal Procedure Code, 1898, pp. 1176 et seq. in Vol. 2

— S. 368 *See* Ss. 229, 241, Ch. XX-A (Ss. 265-A to 265-L) and 368, 399 and 401

See also Ss. 354 and 368

See also Ss. 354(3), 366 and 368

See also Ss. 354(3) and 368

See also Ss. 354(3), 368 and 235(2)

See also Ss. 354(3), 368 and 386

See also Ss. 366 to 368

See also Ss. 366, 368 and 374

See also Ss. 366, 368, 374 and 386

See also Ss. 366, 368 and 386

See also Ss. 366(1), 368 and 374

See also Ss. 433, 433-A, 434, 413, 414, 418, 366, 368 and 371

[3913] — Ss. 368 and 413, 414 and 415 — Sentence of death and its execution are two different aspects — Sentence once confirmed not open to review by Supreme Court but delay in execution if unjustified may, on its peculiar facts and circumstances call for interference by Supreme Court

The sentence in every criminal case when confirmed by the Supreme Court is justified and, therefore, normally it is not open for review or reconsideration. However, the Court on several occasions in appropriate cases even after the imposition of sentence of death reached its finality has commuted that sentence to one of life imprisonment by exercising its extraordinary powers when the Court felt that the execution of that sentence was not justified on account of the subsequent supervening circumstances namely, the undue long delay which has elapsed since the confirmation of that sentence by the Court. This is based on the principle that sentence of death is something and the sentence of death followed by lengthy imprisonment prior to execution is another. (Para 15). *Jumman Khan* v. *State of U.P.*, (1991) 1 SCC 752: 1991 SCC (Cri) 283: AIR 1991 SC 345: 1991 Cri LJ 439.

Bench Strength 2. Coram : **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision : 30-11-1990]

Sher Singh v. State of Punjab, (1983) 2 SCC 344: 1983 SCC (Cri) 461, relied on

[3914] — Ss. 368 and 354 — High Court must carefully analyse, assess and discuss each piece of evidence on its merits before reaching its conclusion — *Where trial court awarded death sentence to 10 persons, High Court should not have recorded acquittal in a brief judgment by an indifferent process of rejecting the prosecution evidence on a uniform assumption that investigation was faulty*

Care and brevity are not strange bed-fellows and both can combine in a judgment, with some beauty for a change. But the compression, in a few brief pages, of a confirmation case by a court of first appeal, involving the death sentence imposed upon 10 persons for four murders, is an act of some uncommon ingenuity which is best left alone. *State of U.P.* v. *Jageshwar*, (1983) 2 SCC 305: 1983 SCC (Cri) 427: AIR 1983 SC 349: 1983 Cri LJ 686: 1983 ALJ 281.

Bench Strength 2. Coram : **Y.V. Chandrachud, C.J.** and *V.D. Tulzapurkar*, J. [Date of decision : 14-2-1983]

[3915] — S. 368 — Morally and conscientiously an accused may appear to be guilty on the basis of suspicion, but that cannot amount to legal proof — *Graver the crime, greater should be the standard of proof — In case of capital sentence awarded by a court to the accused the appellate court must adopt a very cautious approach to the case. Sharad Birdhichand Sarda* v. *State of Maharashtra*, (1984) 4 SCC 116: 1984 SCC (Cri) 487: AIR 1984 SC 1622: 1984 Cri LJ 1738.

Bench Strength 3. Coram : **S. Murtaza Fazal Ali**[1], **A. Varadarajan**[2] and **Sabyasachi Mukharji**[3], JJ. [Date of decision : 19-7-1984]

[3916] — S. 368 — Delay beyond two years in executing death sentence, held, violative of Art. 21 — *Death sentence liable to be commuted to life imprisonment in appropriate cases — Constitution of India — Arts. 21, 32, 136, 226, 72 & 161 — Penal Code, 1860, S. 302*

The accused appellant was sentenced to death for committing dastardly murders in a planned way. He was first a 'prisoner under remand' for two years and thereafter he was kept in solitary confinement for eight years. In the present SLP and writ petition, the accused has claimed that the prolonged delay of about 10 years in executing the sentence of death has violated his right under Art. 21.

Held :

Procedure established by law does not end with the pronouncement of sentence but includes the carrying out of the sentence. Prolonged delay in execution of a sentence of death has dehumanising effect, whatever may be the cause of delay be it the time necessary for appeal and consideration of reprieve or some other cause for which the accused himself may be responsible. This dehumanising factor of prolonged delay has the constitutional implication of depriving a person of his life in an unjust, unfair and unreasonable way so as to offend Art. 21. It is open to the court of appeal or a court exercising writ jurisdiction, in an appropriate proceeding to take note of the circumstance when it is brought to its notice and give relief where necessary.

Having regard to the periods, considered by the Supreme Court in various cases, to be sufficient to justify interference with the sentence of death and making all reasonable allowances for the time necessary for appeal and consideration of reprieve, it must be held that delay exceeding two years in the execution of a sentence of death is sufficient to entitle the person under sentence of death to invoke Art. 21 and demand quashing of the sentence of death.

In the present case in place of the sentence of death, the sentence of imprisonment for life must be substituted. *T.V. Vatheeswaran* v. *State of T.N.*, (1983) 2 SCC 68: 1983 SCC (Cri) 342: AIR 1983 SC 361 (2): 1983 Cri LJ 481: (1983) 2 MLJ 39: 1983 MLJ (Cri) 466.

Bench Strength 2. Coram : **O. Chinnappa Reddy** and *R.B. Misra*, JJ. [Date of decision : 16-2-1983]

Overruled in Triveniben v. State of Gujarat, (1989) 1 SCC 678 [See its order at (1988) 4 SCC 574]; Sher Singh v. State of Punjab, (1983) 2 SCC 344: 1983 SCC (Cri) 461

See also (1991) 1 SCC 752

[3917] — S. 368 — Death sentence whether proper — Bride burning not relating to dowry death — *Though accused-husband poured kerosene and lighted matchstick resulting in injuries to his wife but immediately thereafter he made attempts to save her, took her to his relations and to a doctor and also informed her parents indicating that he tried to save her — Deceased's daughter though sleeping along with the deceased remained unhurt — Circumstances thus show that accused had lost his balance due to certain happening — In the circumstances held, High Court erred in enhancing sentence of life imprisonment awarded by trial court to sentence of death — Penal Code, 1860, Ss. 304-B and 302. Jagdish* v. *State of Rajasthan*, 1989 Supp (1) SCC 20: 1989 SCC (Cri) 126.

Bench Strength 3. Coram : *G.L. Oza, B.C. Ray* and *K. Jagannatha Shetty*, JJ. [Date of decision : 13-1-1988]

[3918] — S. 368 — Sentence — Death sentence when not proper — *Murder of mother and her 12 year old son and infliction of serious injury on daughter — Accused aged 20 years, having illicit relationship with the deceased mother, suddenly spurned by her causing disappointment — Accused's mental agitation further fuelled by a film showing murder of four women seen by him at the night of the occurrence — Accused stopping his murderous assaults immediately on being commanded by a Police Inspector and coming out of the room without trying to escape — On facts, held, death sentence imposed by trial court and High Court should be converted to imprisonment for life — Penal Code, 1860 — S. 302*

The mental agitation of the accused was further fuelled by the movie, showing murder after murder. The vicious effect of films picturising violence in detail on impressionable minds has been subject of serious concern for some time now, but unfortunately no effective step has been taken so far to curb the growing tendency of a section of the film industry to cash in on human weakness. And when this upsets a young man, already vulnerably disturbed, the society cannot be completely absolved from sharing the responsibility of the resulting tragedy. *Moorthy* v. *State of T.N.*, (1988) 3 SCC 207: 1988 SCC (Cri) 629: AIR 1988 SC 1245: 1988 BBCJ 23.

Bench Strength 2. Coram : *A.P. Sen* and **L.M. Sharma**, JJ. [Date of decision : 9-5-1988]

[Appeal from 1987 Mad LW (Cri) 170]

[3919] — S. 368 — Accused's relation with his family members, held, not a relevant factor to be considered while confirming death sentence — *High Court must consider the matter with greatest concern and solicitude*

While confirming the sentence of death imposed on the appellant by the Sessions Court, the High Court even took into consideration the appellant's relations with the members of his family. After mentioning that he had beaten his mother and brother and that his wife was living separately from him, the High Court concluded:

"In our opinion, such a person could neither be an asset to his wife and children nor entitled to live in the society."

Unfaithful husbands, unchaste wives and unruly children are not for that reason to be sentenced to death if they commit murders unconnected with the state of their equation with their family and friends. The passing of the sentence of death must elicit the greatest concern and solicitude of the judge because, that is one sentence which cannot be recalled. *Shankarlal Gyarasilal Dixit* v. *State of Maharashtra*, (1981) 2 SCC 35: 1981 SCC (Cri) 315: AIR 1981 SC 765: 1981 Cri LJ 325: 1981 MLJ (Cri) 320.

Bench Strength 3. Coram : **Y.V. Chandrachud, C.J.** and *A.P. Sen* and *Baharul Islam*, JJ. [Date of decision : 17-12-1980]

[3920] — S. 368 — Sentence — Two shots fired at the deceased from two different guns — No clear evidence that fatal injury was caused as a result of the shot fired by the accused — *Held, High Court justified in reducing death sentence to life imprisonment. Nidhan Singh* v. *State of Punjab*, 1980 Supp SCC 211: 1980 SCC (Cri) 902: AIR 1981 SC 376: 1980 Cri LJ 1421.

Bench Strength 3. Coram : **Y.V. Chandrachud, C.J.** and *S. Murtaza Fazal Ali* and *A.D. Koshal*, JJ. [Date of decision : 26-8-1980]

— S. 368(c) *See also* Ss. 386, 374(2) and 368(c)

[3921] — S. 368(c) — Conviction and death sentence — Acquittal by High Court in appeal — Propriety — *Theft of properties of a post office (which included inland letters, postcards, revenue stamps etc. valuing Rs 850.55) and murder of*

In-charge of that post office — Since accused was employee of same post office, he being found in company of deceased on the date of incident was not an incriminating circumstance — PW 3 stating that on the date of incident she saw the accused coming out of post office with a yellow bag (which was recovered from shop of one P and found containing theft properties) — Testimony of PW 3 not reliable in view of material contradiction as to date and time of incident between the statements of PW 3 and IO — Circumstance of abscondence, also not established — Recovery of bloodstained towel and bloodstained shirt of accused at the instance of accused, not supporting the prosecution case — Non-examination of P, on facts, proved fatal — Acquittal of accused, held, justified — Penal Code, 1860, Ss. 302, 381 and 201 (Paras 4 and 5). *State of T.N.* v. *Sundar,* (2003) 12 SCC 695: AIR 2004 SC 1216: 2004 Cri LJ 913.

Bench Strength 2. Coram : **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision : 11-12-2003]

— **S. 369** *See also* S. 377, Criminal Procedure Code, 1898, pp. 1178 et seq. in Vol. 2

[3922] — Ss. 369 and 2(e) — Confirmation by two Judges under S. 377 — Confirmation of death sentence by the only Judicial Commissioner then functioning in the Union Territory not improper — *Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963 will not prevail over the Code — In any case Regulation 8(1) permits JC to confirm death sentence — Referral jurisdiction under S. 377 is akin to appeal and revision — Criminal Procedure Code, 1898, Ss. 377 & 4(1)(i). Joseph Peter* v. *State of Goa, Daman and Diu,* (1977) 3 SCC 280: 1977 SCC (Cri) 486: AIR 1977 SC 1812: 1977 Cri LJ 1449.

Bench Strength 2. Coram : **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision : 4-5-1977]

— **S. 370** *See* Ss. 386 & 370

— **S. 371** *See also* Ss. 433, 433-A, 434, 413, 414, 418, 366, 368 and 371

[3923] — S. 371 — Duty to communicate orders of confirmation of conviction and sentence to lower courts immediately

A sentence should not be delayed at least after it is confirmed by the High Court but when this happens on account of the indifference of the administrative side of the High Court in the mechanical process of communication to the trial Court it speaks badly of the management side of the court system. More business-like procedures in such matters should be evolved so that the rule of law need not suffer a new shock on account of messy management of judicial business rectifiable by a little more promptitude and attention. *Muktinarain Jha* v. *State of Bihar,* (1978) 1 SCC 497: 1978 SCC (Cri) 131: AIR 1978 SC 770: 1978 Cri LJ 763.

Bench Strength 2. Coram : **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision : 23-1-1978]

— Ch. XXIX (Ss. 372 to 394) *See* S. 300 and Ch. XXIX (Ss. 372 to 394)

See also Ss. 437, 439, 300 and Chs. XXIX (Ss. 372 to 394) and XXX (Ss. 395 to 405)

— **S. 372** *See also* S. 404, Criminal Procedure Code, 1898, p. 1189 in Vol. 2

[3924] — S. 372 — Criminal appeal — Charge wrongfully quashed by High Court — *Even so matter should not be restored where in the fact situation owing to delay it would be difficult to collect the evidence to sustain the charge — Iron and Steel (Control) Order, 1956. State of A.P.* v. *P. Jagannadhan,* (1982) 3 SCC 365: 1983 SCC (Cri) 47.

Bench Strength 2. Coram : *Y.V. Chandrachud, C.J.* and *O. Chinnappa Reddy*, J. [Date of decision : 9-11-1982]

[3925] — S. 372 — Refusal of leave to appeal by High Court when not justified — *On question of fact requiring full examination by High Court refusal of the leave without assigning any reason not justified. State of Maharashtra* v. *Vithal Rao Pritirao Chawan,* (1981) 4 SCC 129: 1981 SCC (Cri) 807: AIR 1982 SC 1215.

Bench Strength 2. Coram : **D.A. Desai** and *R.B. Misra*, JJ. [Date of decision : 20-7-1981]

[3926] — Ss. 372 and 456 — Appeal against order awarding sentence of fine and directing under S. 456 to vacate the premises, held, competent

The appeal filed before the Session Court was also competent. Although against an award of sentence of fine only a revision and not an appeal would lie but since in this case along with the sentence of fine an order purporting to be under S. 456, CrPC for vacating the premises was made, the order was appealable. *Kanwal Sood* v. *Nawal Kishore,* (1983) 3 SCC 25: 1983 SCC (Cri) 553: AIR 1983 SC 159: 1983 ALJ 814: 1983 Cri LJ 173.

Bench Strength 2. Coram : *D.A. Desai* and **R.B. Misra**, JJ. [Date of decision : 26-11-1982]

[3927] — Ss. 372 and 377 — Inadequacy of sentence — Who may appeal and before which forum — Criminal matters — Inadequate sentence — Who may appeal — Reduction of sentence of rape convict by High Court — Appeal by National Commission for Women (NCW) contending that reasons given by High

Court for reducing the sentence not acceptable — State had not filed appeal — *Held, said appeal not maintainable under inherent powers of Supreme Court — No appeal lies from a judgment of a criminal court except as provided by CrPC or by any other law — S. 372 proviso CrPC confers a right only on victim and also does not envisage appeal against inadequate sentence — Appeal challenging quantum of sentence maintainable only under S. 377 CrPC — S. 377 CrPC does not authorise appeal to Supreme Court — National Commission for Women Act, 1990, S. 10 — Penal Code, 1860 — Ss. 375 and 376 — Constitution of India, Art. 136* (Paras 8 and 10). *National Commission For Women* v. *State of Delhi*, (2010) 12 SCC 599.

Bench Strength 2. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 23-7-2010]

Pritam Singh v. State, AIR 1950 SC 169: (1950) 51 Cri LJ 1270; P.S.R. Sadhananthamv. Arunachalam, (1980) 3 SCC 141: 1980 SCC (Cri) 649, followed

[3928] — **Ss. 372 to 382 — Statement regarding what transpired at the hearing in lower court** — *Whether any other contentions had been raised before High Court — Supreme Court in appeal would not go into that question — It would decide the appeal having regard to the judgment of the High Court — Proper remedy in that respect would be to file a review before the High Court — CPC, 1908, Ss. 96 and 100*

Though it had been submitted that various other contentions had also been raised before the High Court, but the Supreme Court would not go into the said contentions inasmuch as assuming the same to be correct, the remedy of the appellants would lie in filing appropriate application for review before the High Court. Incidentally, even in the special leave petition no substantial question of law in this behalf has been raised nor has any affidavit been affirmed by the advocate who had appeared before the High Court or by any officer of the appellant who was present in court that certain other submissions were made before the High Court which were not taken into consideration. As has been observed by the Supreme Court in *State of Maharashtra* v. *R.S. Nayak*, the principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. (Para 61). *Bhavnagar University* v. *Palitana Sugar Mill (P) Ltd.*, (2003) 2 SCC 111: AIR 2003 SC 511: (2003) 2 Guj LR 1154.

Bench Strength 3. Coram : *G.B. Pattanaik, C.J.* and *K.G. Balakrishnan* and **S.B. Sinha**, JJ. [Date of decision : 3-12-2002]

State of Maharashtra v. Ramdas Shrinivas Nayak, (1982) 2 SCC 463: 1982 SCC (Cri) 478, relied on

[3929] — Ss. 372 to 382 — Statement of fact regarding proceedings in court such as admission or concession made by a party, recorded in the judgment of a court — *Held, is conclusive and not open to be contradicted in appeal denying making of such statement — Only the court recording the statement itself competent to rectify the error if approached without delay — However, plea that the statement was made under wrong appreciation of law may in rare case be allowed by appellate court in the interest of justice — Constitution of India — Arts. 133, 134 and 136 — CPC, 1908, Ss. 96, 97, 99, 100-101, 103, 104 and 107*

Statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course, a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment. *State of Maharashtra* v. *Ramdas Shrinivas Nayak*, (1982) 2 SCC 463: 1982 SCC (Cri) 478: AIR 1982 SC 1249: 1982 Cri LJ 1581.

Bench Strength 2. Coram : **O. Chinnappa Reddy** and *A.P. Sen*, JJ. [Date of decision : 28-7-1982]

[3930] — Ss. 372(2) and 386 — Manner of recording of acquittal by High Court was not proper — Absence of appeal by State — Absence of appeal by State — *Though Supreme Court not approving the manner of recording of acquittal of some of the co-accused by the High Court and where no appeal filed by State against such acquittal, Supreme Court not inclined to interfere. Darshan* v. *State of Haryana*, (2002) 9 SCC 755: AIR 2002 SC 2344.

Bench Strength 3. Coram : *Dr. A.S. Anand*, C.J. and *R.C. Lahoti* and *Ashok Bhan*, JJ. [Date of decision : 19-9-2001]

[3931] — Ss. 372 proviso and 377 — No retrospective effect of S. 372 proviso — Proviso inserted by Act 5 of 2009 w.e.f. 31-12-2009 —

Proviso not applicable to this case, as it was inserted long after present incident (Para 8). *National Commission For Women* v. *State of Delhi*, (2010) 12 SCC 599.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 23-7-2010]

Pritam Singh v. State, AIR 1950 SC 169: (1950) 51 Cri LJ 1270; P.S.R. Sadhanantham v. Arunachalam, (1980) 3 SCC 141: 1980 SCC (Cri) 649, followed

— S. 373 *See* Ss. 354(2), 373 and 386

See also Ss. 372 to 382

See also Ss. 389(1) and 482 & 373

— S. 374 *See also* Ss. 410, 411 & 411-A, Criminal Procedure Code, 1898, pp. 1189 et seq. in Vol. 2

— S. 374 *See* Ss. 313, 228, 374 and 386

See also Ss. 313, 374, 386 and 401

See also Ss. 354(1)(b) and 374

See also Ss. 354(3), 374 and 384

See also Ss. 357 and 421 & 431 and 374 and 389 & 387

See also Ss. 366, 368 and 374

See also Ss. 366, 368, 374 and 386

See also Ss. 366(1), 368 and 374

See also Ss. 372 to 382

See also Ss. 378, 374 and 386

See also Ss. 383 and 374

See also Ss. 383, 374 and 386

See also Ss. 384, 374, 382 and 383

See also Ss. 385, 374, 378 and 386

See also Ss. 386 and 374

See also Ss. 386, 374, 303, 304 and 162

See also Ss. 386 and 374 & 378

See also Ss. 386, 374 and 385(2)

See also Ss. 386, 378 and 374

See also Ss. 386(b)(ii) and 374

See also Ss. 389 and 374

See also Ss. 397, 401, 374, 377 and 386

See also Ss. 401 and 374

See also Ss. 401, 374 and 386

See also Ss. 401(3) and 374

See also Ss. 482 and 374 & 378

[3932] — S. 374 — Right of appeal under — Scope of

Per Mukharji, Oza and Natarajan, JJ.

Article 21 as recently interpreted safeguards one right of appeal on facts and law. The trial by High Court in the present case cannot be deemed to be one under its 'extraordinary original criminal jurisdiction' which is confined to cases decided under Letters Patent jurisdiction. Therefore a right of appeal as of right is not available to the appellant under S. 374, CrPC. *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531.

Bench Strength **7**. Coram : **Sabyasachi Mukharji**[1], **Ranganath Misra**[2], **G.L. Oza**[1&3], **B.C. Ray**[4], *S. Natarajan*[1], **M.N. Venkatachaliah**[5] and **S. Ranganathan**[6], JJ. [Date of decision : 29-4-1988]

[3933] — S. 374 — Right to appeal against conviction — Nature of — Right to appeal — From a judgment of conviction as under S. 374 CrPC *— Is a fundamental right — It is absolute — Neither can be interfered with or impaired nor can it be subjected to any condition — Constitution of India — Art. 21*

Article 21 of the Constitution read with Section 374 CrPC confers a right of appeal. Right of appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 as also the international covenants operating in the field, is also a fundamental right. Such a right is an absolute one. Right of appeal, thus, can neither be interfered with or impaired, nor can it be subjected to any condition. (Paras 12, 55 and 66). *Dilip S. Dahanukar* v. *Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528: (2007) 3 SCC (Cri) 209: (2007) 137 Comp Cas 1: (2007) 2 KLT 488: 2007 Cri LJ 2417: (2007) 55 AIC 244 (SC).

Bench Strength **2**. Coram : **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision : 10-4-2007]

[3934] — S. 374 — Acquittal from criminal conviction — Effect — Nature of — Date effective from — Date of appellate acquittal or date of conviction by lower court *— Held (per curiam), is the date of conviction by lower court, thereby wiping out conviction as recorded by lower court and sentence passed thereon — Said effect is a legal fiction which cannot be extended beyond the purpose for which it is created — Hence to hold that a candidate for election, though convicted and sentenced to imprisonment for two years or more, was not disqualified under S. 8(3), Representation of the People Act, 1951 on the date of scrutiny of the nomination, consequent upon his acquittal on a much later date, would be an illegitimate extension of the purpose of the legal fiction*

That an appellate judgment in a criminal case, exonerating the accused-appellant, has the effect of wiping out the conviction as recorded by the trial court and the sentence passed thereon — is a legal fiction. While pressing into service a legal fiction it should not be forgotten that legal fictions are created only for some definite purpose and the fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field. A legal fiction presupposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Such consequences have got to be worked out only to their logical extent having due regard to the purpose for which the legal fiction has been created. Stretching the consequences beyond what logically flows amounts to an illegitimate extension of the purpose of the legal fiction. Fictionally, an appellate acquittal wipes out the trial court conviction; yet, to hold on the strength of such legal fiction that a candidate though convicted and sentenced to imprisonment for two years or more was not disqualified on the date of scrutiny of the nomination, consequent upon his acquittal on a much later date, would be an illegitimate extension of the purpose of the legal fiction. However in the present case the issue is not so much as to the applicability of the legal fiction; the issue concerns more the power of the Designated Election Judge to take note of subsequent event and apply it to an event which had happened much before the commencement of that proceeding in which the subsequent event is brought to the notice of the court. An election petition is not a continuation of election proceedings. (Para 39). *K. Prabhakaran* v. *P. Jayarajan*, (2005) 1 SCC 754: 2005 SCC (Cri) 451: AIR 2005 SC 688: (2005) 1 KLT 510.

Bench Strength 5. Coram : **R.C. Lahoti, C.J.**[1] and *Shivaraj V. Patil*[1], **K.G. Balakrishnan**[2], *B.N. Srikrishna*[1] and *G.P. Mathur*[1], JJ. [Date of decision : 11-1-2005]

[3935] — **Ss. 374 and 313 — Appeal against conviction — Proper disposal of — Kidnapping and rape — Appreciation of evidence — Guilt established — Conviction restored** — *Prosecutrix kidnapped from lawful custody of her brother, by A-1 (respondent-accused) and A-2 — She was taken to another place under threat and kept in a rented room for many days, where A-1 committed forcible sexual intercourse upon her — Whenever she asked A-1 for return to her village, she was threatened and her mouth was gagged — Held, evidence of prosecutrix was reliable and rightly acted upon by trial court — Except bald statement of A-1 under S. 313 CrPC, that he was falsely implicated due to enmity, nothing brought on record that may probabilise that prosecutrix had motive to falsely implicate him — Delay in registration of FIR, also reasonably explained — Judgment of High Court not only cryptic and perfunctory but it also did not take into consideration crucial evidence on record — A-1, convicted of serious crime of kidnapping and rape, acquitted on flimsy grounds — There was no application of mind to evidence of prosecutrix at all — High Court not at all justified in taking a different view or conclusion from trial court — Penal Code, 1860, Ss. 376, 363, 366 and 368* (Paras 29 to 38). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

[3936] — Ss. 374 and 378 — Appeal — Nature of — Held, is a continuation of original proceedings — Maintainability of writ petition — Question as to — Determination of, in appeal under Art. 136 — *Held, said question could be decided by Supreme Court under Art. 136 as appeal is a continuation of original proceedings* (Para 13). *Moran M. Baselios Marthoma Mathews II* v. *State of Kerala*, (2007) 6 SCC 517: (2007) 3 KLT 349.

Bench Strength **2**. Coram : **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision : 4-4-2007]

[3937] — Ss. 374, 378 and 386 — Due weight to be given to appreciation of evidence by trial court — Appellate court should give due weight to appreciation of evidence made by trial court, as it has advantage of observing demeanour of witnesses and general tenor of the evidence

If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness and to observe his demeanour, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. (Paras 16, 74 and 75). *State of U.P.* v. *Krishna Master*, (2010) 12 SCC 324: AIR 2010 SC 3071: 2010 Cri LJ 3889: (2010) 94 AIC 257 (SC): (2010) 5 All LJ 423.

Bench Strength **2**. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 3-8-2010]

[3938] — Ss. 374 and 386 — Appeal against conviction — When should appellate court interfere with the judgment and order of conviction — *What should be the approach of the appellate court — Trial court lightly brushing aside the infirmities, improbabilities, contradictions and omissions in the prosecution case and convicting the accused on the basis of uncorroborated testimony of the sole interested witness and High Court instead of objectively scrutinizing the evidence as a first court of appeal, finding absence of plausible defence and explanation by accused, simply endorsing the conviction and sentence recorded by the trial court — In view of this erroneous approach which resulted in miscarriage of justice Supreme Court's interference called for — Penal Code, 1860 — S. 302*

In this case the substantial portion of the judgment of the trial court is contained in the narration of the prosecution story and referring to the prosecution witnesses. There was hardly any evaluation, analysis or scrutiny of evidence in a proper perspective objectively. Apart from material contradictions and omissions in the statements of witnesses, there were serious infirmities and improbabilities of the prosecution case giving rise to grave doubts as to the involvement of the appellant in the commission of the offence. With regard to serious infirmities pointed out by the defence raising doubt about the prosecution case, the Sessions Judge simply stated that he did not agree with such contentions. The trial court was not right and justified in lightly brushing aside the infirmities and improbabilities brought out from the prosecution case, that too when the entire prosecution case rested on the sole eyewitness, who was interested being the son of the deceased; more so in the absence of any corroboration of his evidence by other independent evidence on material aspects of the prosecution case. However, the High Court has simply endorsed the conviction and sentence passed by the trial court without objectively and satisfactorily scrutinizing and examining the evidence as a first court of appeal except narrating the prosecution case and referring briefly to the evidence of a few prosecution witnesses. The High Court instead of giving benefit of doubt to the appellant, placed the burden on the defence and found that there was absence of plausible defence and explanation by the appellant. The case of the prosecution should rest on its strength, not on the absence of explanation or plausible defence by the accused. (Paras 7, 6 and 8)

Ordinarily the Supreme Court does not disturb or upset the concurrent findings recorded by the trial court as affirmed by the High Court, entering into the domain of appreciation of evidence. But in a case like this where there was no proper and objective appreciation of evidence by the trial court and the High Court, as a first court of appeal, fails in its duty of reappreciating the evidence and reviewing the evidence objectively and simply endorses the conclusion arrived at by the trial court resulting in patent miscarriage of justice, not only the Supreme Court interferes but it becomes its duty to do so to prevent miscarriage of justice. (Para 5)

In the result, the impugned judgment affirming the judgment of the trial court is set aside. The appellant is acquitted giving benefit of doubt. He be set at liberty forthwith if he is not required in any other case. (Para 9). *Toran Singh* v. *State of M.P.*, (2002) 6 SCC 494: 2002 SCC (Cri) 1377: AIR 2002 SC 2807.

Bench Strength 2. Coram : *Doraiswamy Raju* and **Shivaraj V. Patil**, JJ. [Date of decision : 1-8-2002]

[3939] — Ss. 374 and 386 — Appeal against conviction — When appellate court's interference called for — *Findings recorded by trial court and accepted by High Court, suffering from manifest error and improper and misappreciation of evidence on record — Held, Supreme Court's interference with conviction recorded by courts below called for — Appellant-accused entitled to benefit of doubt* (Para 28). *Arun Bhanudas Pawar* v. *State of Maharashtra*, (2008) 11 SCC 232: 2008 Cri LJ 1798: (2008) 63 AIC 129 (SC).

Bench Strength 2. Coram : *P.P. Naolekar* and **L.S. Panta**, JJ. [Date of decision : 11-1-2008]

[3940] — Ss. 374 and 386 — Appeal against conviction — Proper mode of disposal — Held, where two views of a story appear to be probable, the one that was contended by the accused should be accepted — *Trial court as well as the High Court, after weighing the probability of both, erred in convicting the appellant opining that the appellant having not been able to prove his case, the prosecution case should be accepted*

Both the trial court as also the High Court proceeded to compare the probabilities of two views. It is now beyond any cavil that where two views of a story appear to be probable, the one that was contended by the accused should be accepted. Hence appellant entitled to be acquitted. (Para 27). *Vikramjit Singh* v. *State of Punjab*, (2006) 12 SCC 306: (2007) 1 SCC (Cri) 732: 2007 Cri LJ 1000: (2007) 49 AIC 89 (SC).

Bench Strength 2. Coram : **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision : 24-11-2006]

Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487; K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355: 1979 SCC (Cri) 305; Tota Singh v. State of Punjab, (1987) 2 SCC 529: 1987 SCC (Cri) 381; Divakar Neelkantha Hegde v. State of Karnataka, (1996) 10 SCC 236: 1996 SCC (Cri) 1242; State of Orissa v. Babaji Charan Mohanty, (2003) 10 SCC 57: 2004 SCC (Cri) 785; Hem Raj v. State of Haryana, (2005) 10 SCC 614: 2005 SCC (Cri) 1646, relied on

[3941] — Ss. 374 and 386 — Appeal against conviction — Judgment of trial court acquitting the accused perverse, erroneous and based on wrong assumptions — *On facts held, High Court justified in interfering with trial court's judgment by reversing the same and convicting the accused — Penal Code, 1860, Ss. 148 and 302 read with S. 149. Narayan Singh* v. *State of M.P.*, (1985) 4 SCC 26: 1985 SCC (Cri) 460: AIR 1985 SC 1678.

Bench Strength 2. Coram : **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision : 19-7-1985]

[3942] — Ss. 374 and 386 — Appeal against conviction — Method of disposal — *Reappreciation of the evidence by the appellate court itself, held, essential — It cannot proceed to dispose of the appeal upon appraisal of evidence by the trial court alone, particularly when the appeal has been already admitted and placed for final hearing — Disposal of criminal appeal in contravention to the said procedure, if permitted, held, would amount to negation of valuable right of appeal of an accused — Since the High Court disposed of the appeal without reappraising the evidence independently, matter remitted to it for disposal afresh — Penal Code, 1860, Ss. 326 and 325 r/w S. 34*

The High Court did not consider any evidence and disposed of the appeal by simply saying that after reappreciation of the evidence and rescrutiny of the records, it did not find any error apparent in the finding of the trial court. (Para 4)

It is well settled that in a criminal appeal, a duty is enjoined upon the appellate court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the trial court alone, especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law. Hence, the impugned order passed by the High Court is fit to be set aside. (Para 4). *Rama* v. *State of Rajasthan*, (2002) 4 SCC 571: AIR 2002 SC 1814.

Bench Strength 2. Coram : *M.B. Shah* and **B.N. Agrawal**, JJ. [Date of decision : 5-4-2002]

[3943] — Ss. 374, 386 and 389 — Appeal — Non-application of mind — Casual disposal of appeal — *In appeal by A-1 to A-3 against conviction under Ss. 326/149, without adverting to contentions of appellants held that since S. 149 was invoked acquitted accused would be equally and vicariously liable though noting that State had not filed appeal against such "illegal acquittal" — Held, High Court had not applied its mind to the various contentions and disposed of the appeal in a casual manner — Matter remitted for fresh disposal — Penal Code, 1860, Ss. 326/149* (Paras 3 to 6). *Huchappa* v. *State of Karnataka*, (2008) 14 SCC 497.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 1-4-2008]

[3944] — Ss. 374, 378 and 386 — Appellate jurisdiction — High Court does not have any advisory jurisdiction

The High Court does not have authorisation by and under the existing legal system to exercise any advisory jurisdiction. The Government has its agencies to advise and in the event the Government feels it expedient to obtain the advice from such agency or agencies, it is for the Government to decide and not for the High Court to suggest. The State is otherwise capable of managing its own affairs in a manner conducive to the people at large and the State itself has got its own law officer/officers to advise in its legal affairs: the State Government in the contextual facts did not seek any opinion from the High Court as to the methodology of dealing with the matter. The methodology of filing an appeal lay with the State and the High Court has no authority or jurisdiction to issue such a directive. Direction to file appeal not only stands as an excessive user of jurisdiction but indicates exercise of advisory jurisdiction which the High Court does not possess and is unknown to law. (Paras 11 and 14)

In this case, obviously the High Court was swayed by the nature of incident, namely, the deaths of about 20 people by reason of consumption of illicit country liquor. But it is not for the High Court but for the Government to decide as to whether there is any social evil. In the event of a positive reply it is the Government's responsibility to proceed with the matter further and it is not for the High Court to advise. The High Court has not only exceeded its jurisdiction but has transgressed all limits of jurisdiction. This is neither fair nor reasonable and thus cannot be sustained. (Paras 15 and 17). *Dwarka Dass* v. *State of Haryana*, (2003) 1 SCC 204: 2003 SCC (Cri) 264: AIR 2003 SC 185.

Bench Strength 2. Coram : **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision : 13-11-2002]

Mohinder Singh v. State of Punjab, (1985) 1 SCC 342: 1985 SCC (Cri) 87, relied on

[3945] — S. 374 — Appeal against conviction — Manner of disposal of — Thorough appraisal of evidence — Necessity of — Reversal of conviction without appraisal of evidence — Impropriety of — *Sessions Court imposing sentence of seven years' RI — High Court, without any discussion of evidence whatsoever modifying conviction to one under S. 354 and reducing sentence to period already undergone and fine of Rs 5000 — Held, for the serious and heinous crime of rape, judgment of Sessions Court could not have been reversed without adverting to the evidence at all, by general observations made in one paragraph of the impugned judgment — Matter remanded to High Court for decision afresh — Directed that matter be* *placed before a Judge other than the Judge who delivered the impugned judgment — Penal Code, 1860 — Ss. 375 and 376. State of U.P.* v. *Munni Lal*, (2005) 11 SCC 574.

Bench Strength 2. Coram : *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision : 15-4-2005]

[3946] — S. 374 — Appeal against conviction — Reappreciation of entire evidence — Necessity of — *Trial court convicted six accused and sentenced them to life imprisonment — High Court upheld conviction of all accused excepting A-3 without discussing entire evidence — State has not preferred any appeal against acquittal of A-3 — Appeal excepting re A-3 remitted to High Court for deciding the same afresh after closely examining entire evidence — Penal Code, 1860, S. 302 r/w S. 149. Shivanagoud Chanegoud Patil* v. *State of Karnataka*, (2010) 13 SCC 537.

Bench Strength 2. Coram: *Dalveer Bhandari* and *A.K. Patnaik*, JJ. [Date of decision: 14-1-2010]

[3947] — S. 374 — High Court in appeal bound to consider all the circumstances against the accused before confirming the conviction by trial court — Failure to do so meriting reconsideration by the High Court — *Criminal Procedure Code, 1898, S. 410. Jagan Nath* v. *State*, (1976) 1 SCC 583: 1976 SCC (Cri) 101: AIR 1976 SC 1132: 1976 Cri LJ 847.

Bench Strength 2. Coram : *K.K. Mathew* and **Y.V. Chandrachud**, JJ. [Date of decision : 21-10-1975]

[3948] — Ss. 374, 378 and 386 — Proper approach of High Court in appeal against conviction — *When reversal of trial court's order of conviction by High Court should be interfered with by Supreme Court in second appeal — Constitution of India — Art. 136*

The High Court in appeal against the Sessions Court's order of conviction should record its finding in regard to the question of reliability and credibility of witnesses, and, after weighing the probabilities, and taking into account the circumstantial evidence, should record a finding of fact. If the High Court performs this function, which it is normally expected to do, the Supreme Court under Art. 136 would not examine afresh on merits the finding of guilt recorded by the Sessions Court. But where the High Court resorts to unfounded surmises and conjectures, when no such defence was taken and no such plea was ever advanced on behalf of the accused, the Supreme Court will have to reappraise the evidence. In the present case the High Court set aside the unexceptionable finding of the Special Judge under a serious misconception, on an altogether untenable reasoning. Therefore, the High Court's order of acquittal has to be set aside. *State of U.P.* v. *G.K. Ghosh*, (1984) 1 SCC 254: 1984 SCC (Cri) 46: AIR 1984 SC 1453.

Bench Strength 3. Coram : *S. Murtaza Fazal Ali, A. Varadarajan* and **M.P. Thakkar**, JJ. [Date of decision : 21-9-1983]

[3949] — Ss. 374 and 386 — Appeal against conviction — Duty of High Court under — Need if any, to consider/advert to all points raised in memorandum of appeal — *Held, while deciding appeal under S. 374, High Court must go into all details of oral and documentary evidence adduced in the case, and conclusions should be drawn on basis thereof — High Court should discuss oral and documentary evidence on record, to indicate that points argued were considered — Usual practice that in memorandum of appeal/revision, several grounds are taken/pleaded, but at time of arguments, advocate confines himself to few points which he considers best and presses only those points to be considered by court, and consideration of only such points by the court is not improper — Herein, advocate for appellant and others emphasised three points before High Court — High Court justified in considering those points and not adverting to all points raised in memorandum of appeal — No grievance of appellant-accused that certain points were urged but not considered by High Court — Herein, impugned judgment indicates that conviction of appellant-accused was confirmed by High Court after careful analysis, assessment and discussion of relevant piece of evidence on record — Hence, conviction of appellant, held, justified* (Paras 12 and 15). *Ram Bharosey* v. *State of U.P.*, (2010) 1 SCC 722.

Bench Strength 2. Coram: *B. Sudershan Reddy* and **J.M. Panchal**, JJ. [Date of decision: 17-11-2009]

[3950] — Ss. 374 and 386 — Appeal against conviction — Improper disposal — *High Court disposing of the remitted matter, again without discussing evidence in detail, in spite of specific directions of Supreme Court that High Court could not sideline the defence version and the same had to be considered to see whether presumption under S. 113-B, Evidence Act, 1872 had been rebutted by appellant — Impugned judgment set aside and matter remitted for expeditious disposal, preferably within six months — Penal Code, 1860, S. 304-B — Evidence Act, 1872, S. 113-B* (Paras 2 to 4). *Gurram Chakravarthy (2)* v. *State of A.P.*, (2008) 16 SCC 799: (2008) 72 AIC 106 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 28-11-2008]

[3951] — Ss. 374 and 386 — Appeal against conviction — When can High Court interfere with trial court's judgment recording conviction

The High Court has nowhere stated that the analysis of evidence and the conclusions arrived at by the trial court were erroneous. Without recording such a finding, the High Court was not justified in drawing different conclusions without indicating any reason to justify the same. Such a course is impermissible. Even if a different view is possible to be drawn, it should be specifically held that the view taken by the trial court was not supportable by evidence. It would not be possible for the High Court to act on surmises and conjectures and disturb the findings recorded by the trial court. (Para 19)

Above being the position, the judgment of the High Court is set aside and the judgment of the trial court is restored. (Para 20). *Basudeo Yadav* v. *Surendra Yadav*, (2008) 15 SCC 124: (2009) 3 SCC (Cri) 744: AIR 2009 SC 546.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-8-2008]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220; Sachchey Lal Tiwari v. State of U.P., (2004) 11 SCC 410: 2004 SCC (Cri) Supp 105; S. Sudershan Reddy v. State of A.P., (2006) 10 SCC 163: (2006) 3 SCC (Cri) 503; Israr v. State of U.P., (2005) 9 SCC 616: 2005 SCC (Cri) 1260; Munivel v. State of T.N., (2006) 9 SCC 394: (2006) 2 SCC (Cri) 581; State of U.P. v. Satish, (2005) 3 SCC 114: 2005 SCC (Cri) 642, relied on

[3952] — **Ss. 374 and 386 — Appeal against conviction** — *High Court by impugned judgment acquitting respondent-accused by a practically unreasoned order and without indicating any reasons as to why conclusions of trial court convicting the accused were unsustainable — Whatever reasons were indicated were not only sketchy but also based on surmises and conjectures — Impugned order set aside and matter remitted to High Court for consideration afresh — Penal Code, 1860, Ss. 302, 450, 324 & 148 r/w S. 149* (Paras 10 to 13). *State of Punjab* v. *Mohinder Singh*, (2009) 17 SCC 751: (2009) 1 APLJ 171: (2009) 80 AIC 182 .

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 27-2-2009]

[3953] — **Ss. 374 and 386 — Appeal before High Court against conviction — Reversal of trial court's conviction order by High Court on the basis of surmises, conjecture, minor and insignificant inconsistencies and rejection of testimony of truthful eyewitnesses as being not independent or impartial** — *Held, manifestly unreasonable and unsustainable — Conviction recorded by trial court restored — Constitution of India — Arts. 136 and 137. State of U.P.* v. *Brahma Das*, (1986) 4 SCC 93: 1986 SCC (Cri) 368: AIR 1986 SC 1769: 1986 Cri LJ 1732.

Bench Strength 2. Coram : **M.P. Thakkar** and *S. Natarajan*, JJ. [Date of decision : 19-8-1986]

[3954] — **Ss. 374 and 386 — Appeal before High Court against conviction — High Court has full powers in an appeal to review the entire evidence and come to its own conclusion unless the matter depended on the demeanour of the witness** — *On facts held, reversal of order of acquittal by High Court justified. Jinnat Mia* v. *State of Assam*, (1998) 9 SCC 319: 1998 SCC (Cri) 1017: AIR 1998 SC 533.

Bench Strength 2. Coram : *M.M. Punchhi* and **M. Srinivasan**, JJ. [Date of decision : 12-12-1997]

Tota Singh v. State of Punjab, (1987) 2 SCC 529: 1987 SCC (Cri) 381; Sanwat Singh v. State of Rajasthan, AIR 1961 SC 715: (1961) 1 Cri LJ 766; Betal Singh v. State of M.P., (1996) 8 SCC 205: 1996 SCC (Cri) 571; Rajendra Mahton v. State of Bihar, (1998) 9 SCC 315, relied on

[3955] — Ss. 374 and 386 — Appeal before High Court against conviction — High Court failing to view the evidence in its proper perspective and setting unrealistic standards to evaluate testimony of eyewitnesses — *Held, High Court adopted an unsustainable approach which vitiated its reasoning and conclusion — Hence High Court's reversal of conviction and sentence recorded by trial court open to interference by Supreme Court in appeal against acquittal under Art. 136 — Constitution of India — Art. 136. State of U.P.* v. *Ranjha Ram*, (1986) 4 SCC 99: 1986 SCC (Cri) 374: AIR 1986 SC 1959: 1986 Cri LJ 1906.

Bench Strength 2. Coram : *M.P. Thakkar* and **S. Natarajan**, JJ. [Date of decision : 19-8-1986]

[3956] — **Ss. 374 and 386 — Appeal before High Court against conviction** — *When two views are possible, one which is favourable to accused should be accepted. State of Haryana* v. *Inder Singh*, (2002) 9 SCC 537.

Bench Strength 2. Coram : *R.P. Sethi* and *B.P. Singh*, JJ. [Date of decision : 29-1-2002]

[3957] — **Ss. 374 and 386 — Appeal before High Court against conviction — High Court erroneously sidestepping all the relevant and reliable circumstances established by the prosecution and interfering with the well-considered conclusion of trial court by acquitting all the accused —**

Held, thereby the judicial system became mauled and faith of the public in the efficacy of the judicial function would have been considerably impaired (Para 46). *State of Maharashtra* v. *Damu*, (2000) 6 SCC 269: 2000 SCC (Cri) 1088: AIR 2000 SC 1691: 2000 Cri LJ 2301.

Bench Strength 2. Coram : **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision : 1-5-2000]

[3958] — Ss. 374 and 386 — Appeal against conviction by High Court — Trial court's judgment perverse and based mainly on surmises and conjectures without any attempt to appreciate the evidence in a proper and scientific manner — *No view other than that taken by High Court possible — Conviction and sentences imposed by High Court in circumstances upheld — Penal Code, 1860, S. 304/34. Keisam Kumar Singh* v. *State of Manipur*, (1985) 3 SCC 676: 1985 SCC (Cri) 446: AIR 1985 SC 1664.

Bench Strength 2. Coram : **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision : 26-7-1985]

[3959] — Ss. 374 and 386 — Appeal against conviction — Improper exercise of power by High Court, censured by Supreme Court — *On facts, respondent-accused, a Senior Engineer (Civil), convicted under Ss. 13(1)(d)/13(2) and 7, PC Act, 1988 — High Court had only to find whether respondent was guilty or not of the offence alleged against him — Evidence that a full-fledged departmental enquiry was conducted against respondent, wherein he was found guilty — However, High Court acquitted respondent and directed his reinstatement as seniormost Civil Engineer with all usual retiral monetary benefits inclusive of restoration of seniority, etc. with immediate retrospective effect — Sustainability — Held, this was certainly not the jurisdiction of High Court — Under what powers High Court acted, not known — Step taken by High Court in straightaway writing off findings in departmental enquiry without any justification, shocking — This aberration on part of High Court speaks of its wholly incorrect approach — Prevention of Corruption Act, 1988, Ss. 13(1)(d)/13(2) and 7* (Para 36). *State* v. *G. Prem Raj*, (2010) 1 SCC 398.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 19-11-2009]

[3960] — Ss. 374 and 386 — Appeal against conviction — Matters to be considered — High Court acquitting accused persons — Propriety of — *The alleged delay in lodging FIR satisfactorily explained that informant first got his two injured sons admitted to hospital and soon thereafter lodged FIR — High Court not considering relevance of concession made by advocate of accused as regards death of wife of informant — High Court also discarding evidence of three injured eyewitnesses which trial court found flawless and credible — Held, High Court should not have on mere surmises and conjectures interfered with judgment of trial court — Hence, conviction restored*

On 11-2-1993 *M* (PW 1) accompanied by his sons, *MJ* and *B* was returning to his dhani in the fields after closing the shop. When they were on the kacha path leading to the house of accused *L*, they were confronted by *L* armed with a DBBL gun, and other accused persons heavily armed with various weapons. On seeing *M* and his sons, accused persons fired gunshots resulting in the death of *MJ* and leaving another gravely injured. On hearing the noise *MJ*'s mother *D* with her other two sons came. She also received gunshot injuries. Other accused persons attacked *M* and his other two sons with various weapons gravely injuring them. One SI recorded the statement of informant at 00.05 a.m. on 12-2-1993 and on its basis the formal FIR was registered at the police station 30 minutes later. Trial court found all accused persons guilty and convicted them. The High Court primarily directed acquittal on the ground that there was delay in lodging the FIR and there is doubt about the weapon used.

Allowing the appeal,

Held :

The first aspect which has been highlighted by the High Court was purported delay in lodging the FIR. The explanation given to explain the so-called delay was that two sons of *M* were seriously injured and the first reaction was to provide the medical facilities to them and accordingly he took them and got them admitted to the hospital and immediately thereafter the FIR was registered. Therefore, there is absolutely no delay in lodging the FIR. (Paras 13 and 14)

Shots fired on *D* were clearly from the weapon described by the prosecution as wads and pellets were found in the wounds. There was clear concession by learned counsel for the accused that in the light of the report given by Dr. *G* there could be no doubt that *D* had died of gunshot wounds as wads and pellets have been recovered from her body. The High Court unfortunately did not consider the relevance of this concession. The High Court observed that the concession had been made rightly, but it further said that there was doubt about the weapon used on *MJ*. Even if that be so, there was no scope for directing acquittal of the accused persons in respect of murder of *D*. (Para 17)

Coming to the question of testimony of the three injured eyewitnesses the trial court noticed that their statements were flawless and nothing has come out in their cross-examination on the basis of which any doubt could be created about their veracity. The High Court discarded the credible evidence of the eyewitnesses on mere surmises and conjectures. Though there should not be interference with the judgment of acquittal where the view taken is a possible view, but where conclusions are without any foundation, there is need to interfere with the judgment of the appellate court. In the instant case the analysis done by the trial court was appropriate and the High Court should not have on mere surmises and conjectures interfered with the judgment of the trial court and directed the acquittal. In the result, the appeals are allowed. (Paras 18 and 21). *State of Punjab* v. *Atma Singh*, (2009) 15 SCC 45.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 8-5-2009]

[3961] — Ss. 374 and 386 — Appeal against conviction — Proper mode of disposal — High Court's judgment of acquittal unreasoned and having deficiencies — When should matter be remitted to High Court for fresh decision on merits instead of restoring trial court's judgment of conviction — *Murder — Two of the eyewitnesses fully corroborated prosecution case but High Court observed that there were material discrepancies in eyewitness' version — Evidence clearly established that one of the acquitted accused caused farsa injury on head of deceased but that fact was not noticed by High Court — Neither eyewitness' version nor medical evidence discussed by High Court — Incident as per prosecution, occurred at 9 a.m. and FIR lodged at 9.30 a.m. at police station at a distance of 6 km — But according to High Court time of the incident was changed by prosecution — Held, High Court's judgment was unsustainable in view of these deficiencies — Normally, Supreme Court would have restored trial court's judgment of conviction but in view of the fact that respondent-accused had not appeared in spite of notice, matter remitted to High Court for detailed analysis of relevant evidence and fresh decision on merits. State of M.P.* v. *Ramesh*, (2009) 11 SCC 330: (2009) 3 SCC (Cri) 1349: (2009) 75 AIC 26 (SC): (2009) 1 APLJ 87 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 3-2-2009]

[3962] — Ss. 374 and 386 — Appeal under — Proper approach for disposal — *High Court, as final court of fact required to reappraise evidence — High Court rejected appeal observing that nothing could be pointed out to show as to why it should reappreciate the evidence — Held, observation is erroneous — High Court has not disposed of appeal in manner postulated under law — No reference made to evidence produced — No discussion as to process of reasoning leading to dismissal of appeal — Matter remitted for decision afresh* (Paras 6 and 7). *Amarjit Singh* v. *State of Punjab*, (2010) 12 SCC 106.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 29-4-2010]

Rama v. State of Rajasthan, (2002) 4 SCC 571: 2002 SCC (Cri) 829, followed

[3963] — Ss. 374 and 386 — Appeal against conviction — Proper mode of disposal — *In appeal against conviction, High Court acquitting respondent-accused basing its conclusions on surmises and conjectures and erroneously discarding presence of witnesses — Impugned judgment set aside and matter remitted to High Court for disposal afresh — Penal Code, 1860 — S. 302 r/w Ss. 148 and 149* (Paras 1, 12 and 17). *Rama Kant Verma* v. *State of U.P.*, (2008) 17 SCC 257: AIR 2009 SC 1093: (2009) 74 AIC 238 (SC): (2009) 2 All LJ 122.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 2-12-2008]

State of A.P. v. Kanda Gopaludu, (2005) 13 SCC 116: (2006) 2 SCC (Cri) 121; B.K. Channappa v. State of Karnataka, (2006) 12 SCC 57: (2007) 2 SCC (Cri) 374, considered

[3964] — Ss. 374 and 386 — Appeal against conviction — Wrong acquittal by High Court in appeal — Effect

In this case the acquittal of the accused recorded by the High Court was clearly contrary to the evidence on record and on the basis of misappreciation of eyewitnesses' account.

Held :

The criminal justice system must be alive to the expectation of the people. Like the principle that no innocent man should be punished it is equally applicable that no guilty man should be allowed to go unpunished. Wrong acquittal of the accused will send a wrong signal to the society. Wrong acquittal has its chain reactions, the law-breakers would continue to break the law with impunity, people then would lose confidence in the criminal justice system and would tend to settle their score on the street by exercising muscle power and if such situation is allowed to happen, woe would be the rule of law. (Para 15). *Nallabothu Venkaiah* v. *State of A.P.*, (2002) 7 SCC 117: 2002 SCC (Cri) 1615: AIR 2002 SC 2945.

Bench Strength **2**. Coram : *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision : 20-8-2002]

[3965] — Ss. 374 & 386 and 366 — Non-appearance of accused's counsel before High Court in appeal against conviction under S. 302 IPC — High Court disposing of the appeal relying on assistance of counsel for the State — Permissibility — *Held, even though High Court considered the matter elaborately, but that is no substitute for judgment rendered after hearing the counsel for the accused especially in case where accused is convicted under S. 302 IPC and sentenced to life imprisonment — Matter remitted to High Court for fresh disposal expeditiously after appointing an amicus curiae — Request for bail also directed to be considered on merits. Mangat Singh* v. *State of Punjab*, (2005) 11 SCC 185.

Bench Strength **2**. Coram : *P. Venkatarama Reddi* and *P.P. Naolekar*, JJ. [Date of decision : 10-1-2005]

[3966] — S. 374 — Appeal from conviction — Where appellant's advocate had died during pendency of appeal before High Court and High Court disposed of matter without hearing appeal, held, intimation should have been given to appellant to make alternative arrangements — *High Court erred in disposing of matter without hearing — Case remanded to High Court for rehearing* (Para 3). *Tehzibul Husain* v. *State of U.P.*, (2000) 3 SCC 688: 2000 SCC (Cri) 739.

Bench Strength **2**. Coram : *G.T. Nanavati* and *S.N. Phukan*, JJ. [Date of decision : 7-1-2000]

[3967] — Ss. 374, 384, 386, 401 and 397 — Appeal/Revision against conviction — Dismissal of, due to non-deposit of fine imposed by trial court — Propriety — *Trial court convicting appellant in two cases under S. 138, NI Act and directing him to undergo one month's simple imprisonment and pay fine of certain amounts in each case — Appellate court dismissing the appeals against conviction due to failure of appellant to deposit the amount of fine — Revision petitions against the said order also dismissed due to non-deposit of fine — Held, the appellate court and the revisional court were not right in dismissing the appeals and revisions in the event of non-deposit of fine — The said courts should have disposed of the case on merits — Matter remitted to appellate court for disposal on merits in accordance with law after giving opportunity of hearing to the parties — Negotiable Instruments Act, 1881, S. 138* (Paras 4 and 5). *Vijay D. Salvi* v. *State of Maharashtra*, (2007) 5 SCC 741: (2007) 3 SCC (Cri) 13: (2007) 104 Cut LT 511.

Bench Strength **2**. Coram : *B.N. Agrawal* and *P.P. Naolekar*, JJ. [Date of decision : 16-5-2007]

[3968] — S. 374 — Non-appearance of accused's counsel — Effect — Relief — *Accused charged under Ss. 302/34 and 323/34, IPC but convicted by Sessions Court under Ss. 304 Part II/34 and 323/34 — Appeal to High Court filed by accused — But in absence of appearance of the accused's counsel, High Court proceeding with the case with the assistance of State's counsel — Although High Court finding that the accused had intention to cause death of the deceased, but in absence of any appeal being filed by the State against the acquittal under S. 302, it maintaining the conviction and sentence imposed by the Sessions Court — Held, non-appearance of the counsel during the hearing of the appeal influenced the decision on the merits as certain aspects of the case could not be covered — Hence, in the special circumstances of this exceptional case, High Court's judgment set aside and the case remitted to it for fresh consideration and disposal of the appeal . Shaukin Singh* v. *State of U.P.*, (1981) 3 SCC 128: 1981 SCC (Cri) 662: AIR 1981 SC 1698: 1981 ALJ 966.

Bench Strength **2**. Coram : **R.S. Pathak** and *Baharul Islam*, JJ. [Date of decision : 30-3-1981]

[3969] — Ss. 374 and 468 — Appellate court interfering with conviction on the ground of bar of limitation — Necessity to record findings on merit — *Appellant convicted by Judicial Magistrate for offences under Ss. 406, 420 and 471 IPC — On appeal, Additional Sessions Judge acquitting appellant on the ground that prosecution was barred by limitation — High Court on further appeal, reversing the decision and restoring the order of the Judicial Magistrate and also recording conviction under S. 467 IPC — Held, the Additional Sessions Judge while setting aside the conviction on the ground of limitation did not consider the findings recorded by the Judicial Magistrate on merits — The High Court also, while restoring the conviction, did not consider the matter on merits — Thus the appellant was convicted without being afforded the right to assail on merits the findings of the Judicial Magistrate — Hence conviction set aside and matter remitted to Additional Sessions Judge for consideration on merits. Balwinder Singh* v. *State of Punjab*, 1994 Supp (1) SCC 511: 1994 SCC (Cri) 591.

Bench Strength **2**. Coram : *S.C. Agrawal* and *G.N. Ray*, JJ. [Date of decision : 3-5-1993]

[3970] — Ss. 374 and 386 — Appeal against conviction — High Court's power to dismiss the appeal summarily — *Held, must be exercised only in a case where there is no arguable question of fact or law — High Court simply affirming the findings of trial court without recording reasons — High Court* *observing that the trial court had gone into all details of oral and documentary evidence adduced in the case and it finding that conclusions drawn on the basis thereof were absolutely correct and hence there was no need to discuss oral and documentary evidence on record which may only result in repetition — Held, this approach was perverse — Matter remanded to the High Court with a direction to scrutinise the evidence closely and decide the issues in detail* (Paras 3 and 4). *Vijayendra Kumar* v. *State of Bihar,* (2005) 9 SCC 252.

Bench Strength **2**. Coram : **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision : 24-11-2004]

[3971] — **Ss. 374 and 386 — Appeal against conviction — High Court allowing the appeal but recording reasons therefor, later — Impermissibility** — *Held, the same was a very unsatisfactory way of disposing of the case — Moreover, thus the impugned judgment appears to be antedated because date of the judgment giving reasons is mentioned as 31-7-2003, while in para 7 of the judgment it is mentioned that the reasons will be given after 31-7-2003* (Paras 10 to 14). *State of Tripura* v. *Ram Bir Singh*, (2007) 11 SCC 442: (2007) 55 AIC 70 (SC).

Bench Strength 2. Coram : *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision : 8-5-2007]

[3972] — **Ss. 374 and 386 — Appeal against conviction — Appellate court should not interfere with the findings of lower court without indicating reasons** — *Incumbent upon the appellate court, if it takes a contrary view, to analyse the evidence and to record its own conclusions — High Court's view that the prosecutrix being of easy virtue the accused were entitled to acquittal, indefensible — Matter remitted to High Court for rehearing* (Para 13). *State of U.P.* v. *Pappu*, (2005) 3 SCC 594: 2005 SCC (Cri) 780: AIR 2005 SC 1248: 2005 Cri LJ 331.

Bench Strength **2**. Coram : **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision : 1-12-2004]

[3973] — **Ss. 374, 378 and 386 — Appeal — Proper mode of disposal of — Principles reiterated** — *Held, role of appellate court in criminal appeal is extremely important — All facts are open to it and it is expected to go deep into evidence and more particularly, the record as also proved documents — In instant case, there was no serious effort to delve deep into record of case and evidence of witnesses — Hence, need to examine evidence afresh along with the proved documents*

The courts below also failed to appreciate the evidence in its proper perspective and to delve deeper into record of the case and evidence of witnesses. The role of the appellate court in a criminal appeal is extremely important. All the questions of facts are open before the appellate court. However, since High Court failed in its duty, it was necessary to examine the evidence afresh along with the proved documents, which ordinarily would not have been done. (Paras 30 and 31). *Arun Kumar Sharma* v. *State of Bihar,* (2010) 1 SCC 108.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 5-10-2009]

Arun Kumar Sharma v. State of Bihar, (2002) 3 PLJR 174, reversed

[3974] — Ss. 374 and 386 — Appeal against conviction — Proper mode of disposal — *Trial court convicted appellant under Ss. 307, 326 and 324 IPC and sentenced him to rigorous imprisonment for 7 years and 5 years respectively — High Court disposed of the appeal by a brief order — Sentence reduced from 7 years to 6 years, for being his first offence — Material evidence against appellant not taken into account — No reason given for maintaining conviction — Held, High Court while hearing appeal is the last court of facts — Order of High Court set aside and appellant's appeal before High Court is restored to its file for a fresh hearing and decision in accordance with law — In case appeal is not disposed of by end of year, it will be open to appellant to make a prayer for bail before High Court — Penal Code, 1860, Ss. 307, 326 and 324. Ram Ratan* v. *State of Rajasthan*, (2010) 13 SCC 509.

Bench Strength **2**. Coram: **Aftab Alam** and *R.M. Lodha*, JJ. [Date of decision: 8-10-2010]

[3975] — Ss. 374 and 386 — Appeal in High Court against conviction — Disposal of, by cryptic order — Propriety — *Where 5 persons had been convicted of an offence under S. 302 IPC and awarded life imprisonment, it was expected that the High Court should have dealt with the case more thoroughly — Merely stating that the eyewitnesses had convincingly given depositions against the appellants for an offence committed in broad daylight, held, was not a proper manner to discharge the judicial obligations to discuss evidence and arguments. Shanabhai Gokalbhai Baria* v. *State of Gujarat*, (2002) 10 SCC 123.

Bench Strength **3**. Coram : *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and *K.G. Balakrishnan*, JJ. [Date of decision : 18-7-2001]

[3976] — **Ss. 374 and 386 — Appeal against conviction — High court by a cryptic judgment acquitted accused persons — Judgment held unsustainable — Matter remanded for elaborate and comprehensive discussion — Reasoned order — Necessity of**

Appeals allowed and matter remanded to the High Court. *State of M.P.* v. *Chandu*, (2010) 13 SCC 718.

Bench Strength 2. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 2-12-2010]

[3977] — Ss. 374, 378, 384 and 386 — Appeal — High Court not making points for determination nor making critical assessment or appraisal of evidence — *Case remitted to High Court for fresh disposal in accordance with law. Chhedi Rana* v. *State of Bihar*, 1990 Supp SCC 88: 1990 SCC (Cri) 624.

Bench Strength 3. Coram : *A.P. Sen*, *L.M. Sharma* and *M.N. Venkatachaliah*, JJ. [Date of decision : 12-10-1987]

[3978] — Ss. 374 and 366 — Ex parte disposal on merits without hearing the accused-appellant or his counsel bad — *Court can appoint counsel at State cost — Case remanded — Matter can be disposed of on merits only after hearing the appellant or his counsel. Ram Naresh Yadav* v. *State of Bihar*, AIR 1987 SC 1500: 1986 Pat LJR (SC) 52: 1987 Cri LJ 1856.

Bench Strength 2. Coram : *M.P. Thakkar* and *S. Natarajan*, JJ. [Date of decision : 21-7-1986]

Overruled in (1996) 4 SCC 720

See also (1999) 8 SCC 644 and (1998) 5 SCC 123; (1994) 4 SCC 664; (1996) 4 SCC 720

But see also AIR 1962 SC 1208

Held Overruled in Madan Lal Kapoor v. Rajiv Thapar, (2007) 7 SCC 623

[3979] — S. 374 — Appeal against conviction — Proper mode of disposal — Ex parte disposal of appeal with assistance of State counsel — Propriety — *None appearing for appellant — Notice issued to appellant for engaging another counsel — High Court itself not sure as to service of notice on appellant — Hence, held, appeal should not have been taken up ex parte — Matter remitted for fresh consideration on merits — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 36-B and 18. Sukhdev Singh* v. *State of Haryana*, (2007) 15 SCC 238.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 1-6-2007]

[3980] — S. 374 — Appeal against conviction — Proper mode of disposal — Reasons for decision — Clarity of decision, necessity of, restated — *Dismissal of the criminal appeal by a non-reasoned order — Order of High Court set aside, case remanded back — Casual manner in which appeal dismissed, deprecated — CPC, 1908, Or. 20 Rr. 4(2) and 5 — Penal Code, 1860 — Ss. 376(2)(g), 506 and 34*

The appellants stood convicted for offence punishable under Sections 447, 376(2)(*g*) and 506 read with Section 34 of the Penal Code, 1860. Contention of the appellants was that the High Court's judgment was practically non-reasoned.

Remanding the case to the High Court,

Held :

A bare perusal of the High Court's impugned judgment shows that the same is non-reasoned and no basis or reasons have been indicated by the High Court and there is not even analysis of the evidence. Various infirmities pointed out by the accused to throw doubt on the authenticity of the prosecution evidence are not even referred to. (Paras 8 and 10). *Prasad* v. *State of Karnataka*, (2009) 3 SCC 174.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 9-2-2009]

Breen v. Amalgamated Engg. Union, (1971) 2 QB 175: (1971) 2 WLR 742: (1971) 1 All ER 1148 (CA); Alexander Machinery (Dudley) Ltd. v. Crabtree, 1974 ICR 120 (NIRC); State of Punjab v. Bhag Singh, (2004) 1 SCC 547, relied on

[3981] — S. 374 — Appeal from conviction — Proper mode of disposal — Need for reasoned/speaking order — *Murder trial — High Court reversing conviction of respondent-accused by trial court under S. 302 r/w S. 34 IPC — Sustainability — Held, High Court practically disposed of criminal appeal without analysing the evidence — No reason was indicated as to why detailed analysis done by trial court deserved to be upset — Conclusions were factually incorrect — Hence, matter remitted to High Court for disposal afresh in accordance with law* (Paras 18 and 20). *G. Vivekanandan* v. *Sriramulu*, (2009) 11 SCC 281: (2009) 3 SCC (Cri) 1326.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-2-2009]

Applied in State v. Sriramulu, (2009) 11 SCC 491 at p. 492

[3982] — Ss. 374, 378 and 386 — Unreasoned order of High Court — Dismissal of appeal based on — Matter remanded — *Nine accused armed with swords, iron rods, hockey sticks, etc. alleged to have broken the glass windows of complainant's hotel and severely assaulted the employees therein, resulting in death of one — Trial court convicting Accused 1 to 4 under Ss. 302, 307, 324, 323, 427, 453, 506(II), S. 147 r/w S. 149 and S. 148 IPC — They were, however, acquitted of charges under S. 120-B IPC — High Court dismissing the appeal filed thereagainst by a cryptic and practically non-reasoned order by simply referring to the conclusion of trial court to come to a conclusion that the same cannot be termed to be unreasonable or perverse without discussing as to why it was so — Appeal filed by appellant Union* *also related to the acquittal of Accused 1 to 4 of the charges relating to S. 120-B IPC but no finding was recorded so far as they were concerned — Impugned order set aside and matter remitted to High Court for reconsideration — Penal Code, 1860 — Ss. 302, 307, 324, 323, 427, 453, 506(II), S. 147 r/w S. 149 and S. 148* (Paras 3 and 9 to 17). *Union of India* v. *Bali Ramu Pawar*, (2008) 15 SCC 793: (2009) 3 SCC (Cri) 1220: AIR 2009 SC 135.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 15-10-2008]

[3983] — **Ss. 374 and 386 — Acquittal by cryptic, non-reasoned order — Impermissibility** — *On facts, respondents convicted by trial court for causing death and in respect of other allied offences — Convictions primarily based on evidence of PWs 2 and 8 — High Court directing acquittal of respondents — Sustainability — Acquittal by a cryptic and practically non-reasoned order — Impermissibility of — Held, if High Court intends to differ from conclusions of trial court, it has to indicate reasons therefor — Merely stating that evidence of witness is not believable would not suffice — Herein, High Court had discussed, in major parts of its judgment, the factual scenario as projected by the parties — Thereafter, by abrupt conclusions, PW 2's evidence was discarded — This certainly was not the proper way of disposing of an appeal involving accusations relating to death of five persons — On that limited ground, High Court's judgment set aside, with directions to it for reconsidering the matter afresh by dealing with various points highlighted by prosecution and responses of accused persons — No opinion expressed on merits — Penal Code, 1860 — Ss. 302, 307, 147 to 149 and 353* (Paras 9 to 11 and 13). *State of Orissa* v. *Sikhar Jena*, (2008) 15 SCC 187: (2009) 3 SCC (Cri) 775: AIR 2009 SC 1039: (2009) 74 AIC 90 (SC): 2009 Cri LJ 980.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 1-12-2008]

[3984] — **Ss. 374 and 386 — Appeal against conviction — Reasoned order/Speaking order necessity** — *High Court by impugned judgment without attempting to analyse evidence of witnesses upholding judgment of trial court convicting A-1, A-2 and A-3 under S. 394, S. 302 r/w S. 34 and S. 307 r/w S. 34, by a practically unreasoned order — Matter remitted to High Court for disposal afresh* (Paras 2, 4 and 5). *Sudheer Singh* v. *State of A.P.*, (2008) 17 SCC 64: AIR 2009 SC 784: (2009) 2 ECrN 550 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 22-10-2008]

[3985] — **Ss. 374 and 386 — Reversing order of conviction in appeal — Propriety of — Proper mode of disposal — Matter remitted to High Court for fresh consideration** — *Penal Code, 1860 — Ss. 302, 323 and 34*

Respondent-accused persons were found guilty and had been convicted and sentenced to imprisonment for life and to pay fine by the Sessions Judge. However, the co-accused, was acquitted by the Sessions Judge. A Division Bench of the High Court acquitted the respondents.

Allowing the appeal,

Held :

The High Court has not analysed the evidence in detail. It has come to certain abrupt conclusions about the prosecution version being not credible. Since the High Court was upsetting a judgment of the trial court which had been rendered after analysing the evidence, the casual manner in which the appeal was disposed of allowing the appeal filed by the respondent-accused persons was certainly not the proper course to be adopted. Therefore, without expressing any opinion on merit, the judgment is set aside and the matter remitted to the High Court for fresh consideration. (Paras 3 and 4). *State of H.P.* v. *Naresh Kumar*, (2009) 14 SCC 195.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 22-4-2009]

[3986] — Ss. 374 and 386 — Appeal against conviction — Dismissal without reason — Unsustainability — *High Court dismissed the criminal appeal under S. 27 of the PC Act without discussing the merits of the case though in its 14 page judgment it only referred to evidence and arguments to conclude that there was no ground to interfere with conviction of the appellant under Ss. 7, 13(1)(d) and (2) — Matter therefore remanded to High Court for fresh disposal — Prevention of Corruption Act, 1988, Ss. 27, 7, 13(1)(d) and (2)*

It was alleged that the appellant while working as a Junior Assistant in the office of the Commissioner, Endowments received illegal gratification after making a demand from PW 1. By the impugned order, the Division Bench of the High Court dismissed a criminal appeal against conviction for offences punishable under Sections 7, 13(1)(*d*) read with Section 13(2) of the PC Act.

Allowing the appeal partly,

Held :

The High Court has not dealt with the criminal appeal in an appropriate way. The only conclusion arrived at by the High Court after referring to the evidence and arguments is that there is no ground to interfere with the conviction and sentence imposed by the court below. Out of 14 pages of the judgment as appearing in the paper book except the above conclusion there is no discussion about the merits of the case. The impugned judgment is, therefore, set aside and remitted back for a fresh consideration in accordance with law. (Para 6). *S. Raghu Ramaiah* v. *State of A.P.*, (2009) 1 SCC 70.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-11-2008]

[3987] — Ss. 374 and 378 — Appeal — Proper mode of disposal — Contradictory findings of guilt in respect of A-1 in order of trial court — High Court disposing of appeal without considering the same — Unsustainability — *Matter remanded for decision afresh in respect of guilt of A-1. Thanga Prakash* v. *State of Karnataka*, (2008) 14 SCC 698.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 26-11-2008]

[3988] — Ss. 374 and 386 — Appeal against conviction — Acquittal if justified — Findings of High Court based on no evidence — *Respondent-accused personally known to victims — Dying declarations and evidence of injured witnesses identifying respondents as accused — Trial court convicting respondents for offence committed under S. 396 IPC — High Court in appeal acquitting accused — Propriety — Held, High Court had failed to correctly analyse the evidence on record — Certain findings of its judgment were based on no evidence — High Court further ignored the dying declarations recorded by Magistrate — Also ignored the consistent and well-corroborated evidence of injured witnesses — Unless there were compelling reasons, held, High Court ought not to have set aside the judgment of a trial court — Setting aside of a well-reasoned judgment of trial court by High Court was an error — High Court's judgment of acquittal set aside as an exceptional case and trial court's judgment of conviction restored — Bail bonds of respondents cancelled — Evidence Act, 1872, Ss. 9 and 32*

Certain findings in the impugned judgment of the High Court are based on no evidence. All the witnesses have categorically stated that the accused persons committed dacoity and killed two and injured two others. There was adequate light in which they had recognised these accused persons in the night who were otherwise known to them. On careful consideration of the entire evidence on record, the following conclusions are inescapable:

1. The impugned judgment of the High Court is based on total misreading of the evidence of the injured eyewitnesses.

2. The High Court has gravely erred in totally ignoring the dying declarations, particularly when the dying declarations were recorded by the Magistrate.

3. The High Court erred in discarding the evidence of the injured eyewitnesses whose statement is consistent and corroborated by other evidence on record. (Paras 22, 27 and 31)

The High Court erroneously set aside a well-reasoned judgment of the trial court which is based on correct evaluation of evidence of the injured eyewitnesses and other witnesses and dying declarations on record. (Para 28)

The impugned judgment of the High Court is contrary to well-settled legal principles which have been crystallised by a series of decisions of the Supreme Court. The Supreme Court on an earlier occasion has clearly observed that unless there are compelling reasons the High Court should not set aside the judgment of the trial court and must always keep in view that the trial court had the advantage of seeing the demeanour of the witnesses and, therefore, the conclusion of the trial court should not be set aside in the light-hearted manner. (Paras 32 and 34)

Ordinarily the Supreme Court would have been very reluctant to interfere with the judgment of acquittal but in this case for very substantial and compelling reasons the Court is constrained to set aside the impugned judgment of the High Court and restore the judgment of the trial court because the High Court totally misread the entire evidence on record. (Paras 35 and 36). *State of U.P.* v. *Sukhpal Singh*, (2009) 4 SCC 385.

Bench Strength 2. Coram: **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision: 12-1-2009]

Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60, followed

Har Pal Singh v. State of U.P., (2000) All LJ 2226: 2000 Cri LJ 4552, reversed

[3989] — S. 374 — Appeal against conviction — Conviction by trial court upheld — *High Court reversing order of conviction of trial court disbelieving otherwise consistent and reliable witnesses on ground of trivial discrepancies — High Court's approach artificial and based on speculations, conjectures and surmises — High Court committing serious error of law in not considering common object of the accused persons — Held, High Court's judgment perverse and must be set aside — Conviction under Ss. 302/149, Penal Code and sentence of* *life imprisonment ordered by trial court upheld — Penal Code, 1860 — Ss. 302 and 149 — Constitution of India — Art. 136. State of Gujarat* v. *Naginbhai Dhulabhai Patel*, (1983) 3 SCC 316: 1983 SCC (Cri) 590: AIR 1983 SC 839: 1983 Cri LJ 1112: (1983) 2 Mah LJ 1189.

Bench Strength **3**. Coram : **S. Murtaza Fazal Ali**, *A. Varadarajan* and *M.P. Thakkar*, JJ. [Date of decision : 6-5-1983]

[3990] — **S. 374 — Appeal against conviction — Ground of acquittal of some accused persons raised therein — Effect — Acquittal of some accused persons on the ground of benefit of doubt — Effect of, on the remaining accused persons in the case** — *Held, the said ground ipso facto could not in any manner affect the prosecution case against the remaining accused persons, particularly when the evidence against them is found to be credible*

Merely because benefit of doubt has been given in relation to some of the accused persons, the same *ipso facto* cannot in any manner affect the prosecution case against the appellants especially when the evidence against them has been found to be credible. (Para 8)

The complicity of two accused persons who were armed with guns having been doubted by the High Court itself, they have already been acquitted which cannot in any manner affect the prosecution case so far as the appellants are concerned against whom the witnesses have consistently deposed and their evidence has been found to be credible. (Para 13). *Komal* v. *State of U.P.*, (2002) 7 SCC 82: 2002 SCC (Cri) 1600: AIR 2002 SC 3057.

Bench Strength **2**. Coram : *U.C. Banerjee* and **B.N. Agrawal**, JJ. [Date of decision : 23-8-2002]

[3991] — **S. 374 — Case related to murder and causing of grievous injuries — Contention of appellant that when co-accused were acquitted, there was no reason for High Court to uphold his conviction** — *Held, High Court had indicated reasons as to why appellant-accused stood on a different footing from acquitted co-accused and how accusations against him were fully established — Hence, no infirmity in High Court's view to warrant interference — Penal Code, 1860 — Ss. 302, 307, 326, 325, 323, 148 and 149 — Constitution of India — Art. 136* (Paras 2, 8, 14 and 15). *State of Punjab* v. *Sukhchain Singh*, (2008) 16 SCC 629: AIR 2009 SC 1542: (2009) 2 ECrN 51 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 7-11-2008]

[3992] — **Ss. 374, 384 and 386 — Criminal appeal — That High Court should not dismiss the appeal in limine, especially where grave offence such as murder is involved reiterated** — *High Court directed to dispose of the appeal on merits. Arun Ram Chandra Swant* v. *State of Maharashtra*, 1989 Supp (2) SCC 410.

Bench Strength **2**. Coram : *O. Chinnappa Reddy* and *K.N. Singh*, JJ. [Date of decision : 30-3-1987]

[3993] — **Ss. 374, 386 and 401 — Appeal before High Court against conviction — Dismissal without examining merits — Propriety** — *Appeal dismissed only on ground that criminal revision petition filed by informant had been dismissed and the revision and the appeal related to the same judgment — Case of the appellants not examined independently on merits — Held, merely because revision petition filed by informant was dismissed, that could not have been a ground for not discussing merits of the appeal filed by appellants — Revision petition may have been without merits but that would not make the appeal meritless — Matter sent back to High Court for fresh consideration on merits. Kalu Ram* v. *State of Delhi*, (2006) 5 SCC 674: (2006) 3 SCC (Cri) 48: AIR 2006 SC 2460: 2006 Cri LJ 3284.

Bench Strength **2**. Coram : **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision : 15-6-2006]

[3994] — **S. 374 — Appeal against conviction — High Court's practice of dismissing the appeal in limine deprecated** — *Reasoned order commended. Samir Kumar Das* v. *State of W.B.*, 1989 Supp (1) SCC 23: 1989 SCC (Cri) 125.

Bench Strength **2**. Coram : *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision : 25-1-1988]

[3995] — **S. 374 — Intervention in appeal — Permissibility — Locus standi** — *Capital sentence awarded by lower courts to mother of a suckling child — National Commission for Women seeking permission for intervention to save such woman from the gallows — Held, under the Code of Criminal Procedure, the National Commission for Women or any other organisation does not have locus standi to intervene — Constitution of India — Art. 136. Panchhi* v. *State of U.P.*, (1998) 7 SCC 177: 1998 SCC (Cri) 1561: AIR 1998 SC 2726.

Bench Strength **3**. Coram : *M.M. Punchhi, C.J.* and **K.T. Thomas** and *S.S.M. Quadri*, JJ. [Date of decision : 19-8-1998]

[3996] — **Ss. 374 and 386 — Appeal before High Court against conviction under S. 302, IPC** — *Murder arising out of dispute between two factions in the village over possession of land — High Court while settling the land dispute summarily setting* *aside the conviction without considering the evidence on record — Held, improper — Case remanded . Jai Singh* v. *Sarwan Singh*, (1984) 1 SCC 165: 1984 SCC (Cri) 42: AIR 1983 SC 1326.

Bench Strength **2**. Coram : **Y.V. Chandrachud, C.J.** and *E.S. Venkataramiah*, J. [Date of decision : 14-11-1983]

[3997] — Ss. 374 and 386 — Appeal before High Court against conviction under S. 302 IPC — High Court is dutybound to examine the evidence on record and arrive at its own conclusion *— That having not been done, case remitted to High Court for rehearing and redisposal*

When the accused prefers an appeal against his conviction and sentence the appellate court is dutybound to consider the evidence-on-record and examine the question of reliability of those witnesses on which the conviction is based. The High Court while deciding the appeal filed by the accused, convicted of offence under Section 302 IPC, has to examine all the relevant and material circumstances before upholding conviction. In this case the High Court failed to exercise its jurisdiction vested in law in not discussing the evidence and not coming to its own conclusion. Thus the judgment cannot be held to be one in accordance with law. It is, therefore, appropriate to remit the matter to the High Court with the direction that the appeal be reheard and redisposed of in accordance with law by giving opportunity of hearing to the party concerned. Since the appeal is an old one, the High Court is requested to dispose of the same within 3 months from the date of receipt of this order. (Para 1). *Badri* v. *State of Rajasthan*, (2000) 10 SCC 246.

Bench Strength **2**. Coram : *G.B. Pattanaik* and *S.N. Phukan*, JJ. [Date of decision : 30-9-1999]

[3998] — Ss. 374 and 386 — Appeal against conviction under Ss. 302 and 307 Indian Penal Code *— Appreciation of evidence of High Court in convicting the appellant not to be interfered with by Supreme Court in appeal in absence of any flaw in reasoning or approach of the High Court — Penal Code, 1860 — Ss. 302 and 307 — Constitution of India, Art. 134. Veluswami* v. *State of T.N.*, 1987 Supp SCC 598: 1988 SCC (Cri) 130.

Bench Strength **2**. Coram : *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision : 25-2-1987]

[3999] — Ss. 374 and 386 — Appeal against conviction — Multiple murders — Conviction justified *— Appellants along with other accused alleged to have murdered B and M by inflicting axe-blows, set Mu on fire resulting in the death, attempted to murder two others and also caused injuries to children — PWs 3, 8 and one A who were also eyewitnesses supporting the prosecution case and their evidence found credible — Trial court convicting the appellants under Ss. 302 and 307 IPC and imposing death sentence while other accused were convicted under S. 326 IPC — High Court in appeal opining that only the appellants were responsible for death of deceased and attempt to murder, while participation of other accused was not established — It however, reducing the sentence of death to RI for life — High Court by reason of the impugned judgment opined that a free fight between the parties had taken place and examining the case on the basis of the actual role played by each of the accused — Existence of any common intention, on facts, ruled out — No case made out that injuries were inflicted by the appellants in their self-defence — Hence, injuries suffered by some of them insignificant — Held, three persons had lost their lives and the manner in which the offence was committed was gruesome — Those who came to save them were also assaulted and even children were not spared — Hence, appellants cannot be absolved of charges of murder — However, since State had not preferred any appeal against acquittal of other accused, Supreme Court restraining itself from expressing any opinion thereon — Penal Code, 1860 — S. 302* (Paras 3, 4 and 17 to 21). *Motilal* v. *State of M.P.*, (2007) 14 SCC 453: 2008 Cri LJ 722: (2007) 60 AIC 49 (SC).

Bench Strength **2**. Coram : **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision : 3-10-2007]

[4000] — Ss. 374 and 386 — Appeal against conviction — Murder *— FIR lodged promptly and special report also sent to Ilaqa Magistrate promptly — Trial court's conclusion of conviction based on ocular testimony of eyewitnesses which was corroborated by medical evidence — High Court proceeding to test correctness of expert opinion regarding the injuries sustained by deceased and in the process substituting its own opinion — High Court also disbelieving the testimony of the eyewitnesses on unsustainable grounds — Held, High Court's approach not justified — Conviction and sentence recorded by trial court upheld — Penal Code, 1860, Ss. 302/34 — Arms Act, 1959, Ss. 25, 30*

According to the prosecution, two brothers were murdered by the accused-respondents as their father had appeared as a witness against the respondents in a case in which one of the respondents and his companions had been convicted for the offence of murder and sentenced to life imprisonment. The existence of the motive stood established. On appreciation of evidence, the trial court found that it was admitted case of the parties that the occurrence had taken place at about 5 p.m., of which the FIR was lodged at the police station located at a distance of 7 km from the place of occurrence at about 8 p.m. The special report was received by the Ilaqa Magistrate on the same night at 11 p.m. The findings arrived at by the trial court were based upon the ocular testimony of the eyewitnesses which was supported by the medical evidence. But the High Court found that the oral evidence of the two eyewitnesses was not consistent with the medical evidence which was sufficient to hold that they were not the eyewitnesses of the occurrence and were got-up witnesses. Despite the expert opinion that the injuries found on the person of the deceased were gunshot injuries and the injuries were caused by sharp-edged and blunt weapon, the High Court plunged into the exercise of finding out as to whether the injuries could be caused by gunshots. Keeping in mind the distance between the accused and the victim, as stated by the eyewitnesses, the High Court held that since there was no blackening, tattooing or collar of abrasion or charring on the injuries on the person of the deceased, they could not have received such gunshot injuries from the distance as detailed by the eyewitnesses. The High Court found that as in the post-mortem report Ext. PA it was not mentioned that the injuries found on the person of the deceased were caused by a firearm, the doctor was not justified to state so in the court. The High Court did not rely on the statement of the doctor and arrived at its own conclusions. The High Court disbelieved the eyewitnesses on finding a number of injuries on the person of the deceased on account of the fact that the eyewitnesses were held to have stated the firing of only two gunshots.

Allowing the appeal by the State,

Held :

The finding of the High Court in this regard cannot be justified. The High Court could not substitute its own opinion for the opinion of the expert who had categorically stated that the injuries received by the deceased were the gunshot injuries. The statements of the eyewitnesses have not been properly appreciated. Nothing could be spelt out from their cross-examination which could weaken the testimony of the aforesaid two witnesses regarding the firing of a number of shots at the time of occurrence. The shots were fired from the double-barrelled gun and the cartridges recovered show that the firing would have spread the pellets all around. In such a situation it could not be ruled out that the deceased could have received more than one or two injuries. As the witnesses had run away from the spot to save their lives, they could not state as to what happened to the deceased after they were forced to leave the place of occurrence. The testimony of the witnesses could not be discarded only on the ground that they happened to be the relations of the deceased. Under the circumstances of the case the eyewitnesses were proved to be natural witness. There was, therefore, no justification for the High Court not to accept the testimony of the eyewitnesses and reject the same on the ground of there being contradictions between their testimony and the conclusion arrived at by the High Court regarding the injuries sustained by the deceased. There is no inconsistency between the statements of the two eyewitnesses and that of the doctor. The statements of the eyewitnesses stand corroborated by the medical evidence. There is no doubt that the accused persons are responsible for causing the death of the deceased persons. The prompt lodging of the FIR and its dispatch to the Magistrate has further strengthened the belief that there was no possibility of either wrong person being impleaded as accused or persons who have not seen the occurrence produced as eyewitnesses. The finding of the High Court, being contrary to the legal evidence, is perverse and cannot be sustained. (Paras 13 to 15). *State of Punjab* v. *Jugraj Singh*, (2002) 3 SCC 234: 2002 SCC (Cri) 630: AIR 2002 SC 1083: 2002 Cri LJ 1503.

Bench Strength 2. Coram : **R.P. Sethi** and *K.G. Balakrishnan*, JJ. [Date of decision : 14-2-2002]

[4001] — Ss. 374 and 386 — Appeal against conviction before High Court — Causation of fatal injury — Benefit of doubt — Conviction restored — *Respondent-accused alleged to have hit deceased on left side of his head with a stone consequent to which he dropped dead and rolled down the hillside up to a distance of about 50 ft — Respondent-accused and co-accused thereafter alleged to have pelted stones at others present there, causing simple hurt to two others — High Court in appeal against conviction, acquitting respondent- accused noticing that the injury could have been caused because of the fall and not because of the assault made by the respondent — Basis for such conclusion was that the injuries noticed on post-mortem clearly revealed that there was a scope for the injuries having been sustained during the fall — However, eyewitnesses categorically stating that respondent hit the deceased on the left side of the head with the stone and he rolled down — No material before High Court to come to a conclusion that the death occurred due to fall — Besides the fatal injury there were at least five other injuries on head which could be related to the assault by the stone and more particularly Injury 9 viz. the fracture in the left temporal region — Held, since the High Court's order is based on surmises* *and conjectures, it cannot be sustained and is set aside and the order of conviction recorded by the trial court stands restored* (Paras 2 and 8 to 11). *State of H.P.* v. *Ram Krishan*, (2009) 11 SCC 327: (2009) 3 SCC (Cri) 1347: 2009 Cri LJ 1138: (2009) 2 ECrN 259 (SC): (2009) 74 AIC 17 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-1-2009]

[4002] — Ss. 374 and 386 — High Court acquitting respondents — Propriety of — *Trial court had analysed evidence in great detail in coming to conclusion about its acceptability — Held, without indicating any basis as to how conclusion of trial court was erroneous High Court should not have interfered with those conclusions — Penal Code, 1860 — Ss. 302, 149, 148 and 326 — Explosives Act, 1884, S. 9*

All the thirteen accused persons were sentenced to undergo imprisonment for life for the offence relatable to Section 302 IPC. Separate sentence was imposed for the offences punishable under Sections 148, 326 IPC and Section 9 of the Explosives Act, 1884. Primarily the prosecution version rested on the dying declaration purported to have been made by the deceased and the evidence of the injured witnesses. In appeal the High Court directed acquittal.

Allowing the appeal,

Held :

The trial court by an elaborate judgment had considered the evidence of the eyewitnesses and held that to be cogent and credible and after referring to the various aspects of the case, the trial court held the accused persons guilty. The High Court came to the conclusion that the evidence of the so-called injured eyewitnesses does not inspire confidence because they were similar and there was party faction. It was not open to the High Court to discard the evidence by observing in very generalised terms that the evidence lacks credibility and cogency. The trial court had analysed the evidence of the injured eyewitnesses in great detail and had come to the conclusion about its acceptability. Without indicating any basis as to how the conclusion of the trial court, was in any manner, erroneous, the High Court should not have interfered with those conclusions. (Paras 6 and 7). *State of Orissa* v. *Pramod Kumar Kodam Singh*, (2009) 12 SCC 725.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 15-4-2009]

[4003] — Ss. 374 and 386(b) — Dying declaration — Recorded by IO — Reliance upon — Propriety — Death by burning — High Court, holding that dying declaration was not in accordance with applicable Police Rules relating to recording of dying declaration directing acquittal — Sustainability — *Appellant State contending that authenticity of dying declaration was not doubted, hence, acquittal was indefensible — Held, Police Rules on which High Court placed reliance was at the most a set of procedural guidelines — That cannot take away effect of S. 32(1) — Moreover High Court disbelieved IO's statement that it was not possible to get hold of a Magistrate, rejected without reason — Dying declaration was recorded in presence of a doctor — To add to vulnerability of High Court's judgment, High Court concluded that there was no other reliable evidence — This conclusion runs counter to High Court's own observation that evidence of PWs 7 and 6 (eyewitness and his cousin, respectively), was credible — Evidence of PW 8 (brother of deceased) and PW 9 provide ample corroboration — Hence, judgment of acquittal set aside — Evidence Act, 1872, S. 32(1)*

In *Dalip Singh case*, (1979) 4 SCC 332, it was categorically observed that in case there was no time or facility available to the prosecution for adopting any better method, the dying declaration can be taken into consideration. In fact in the present case that is the categorical statement of PW 20 (police officer who recorded the statement of the deceased) that it was not possible to get a Magistrate to record the dying declaration. As rightly contended by counsel for the State, the High Court discarded the statement even without indicating any reason. The dying declaration was recorded in the presence of a doctor. In addition, the evidentiary value of the evidence of PW 7 (the eyewitness), PWs 9 and 10 has not been considered in its proper perspective. (Paras 9, 12 and 13). *State of Rajasthan* v. *Champa Lal*, (2009) 12 SCC 571: 2009 Cri LJ 2403.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 1-4-2009]

Dalip Singh v. State of Punjab, (1979) 4 SCC 332: 1979 SCC (Cri) 968; Ramawati Devi v. State of Bihar, (1983) 1 SCC 211: 1983 SCC (Cri) 169; Laxman v. State of Maharashtra, (2002) 6 SCC 710: 2002 SCC (Cri) 1491, relied on

Munnu Raja v. State of M.P., (1976) 3 SCC 104: 1976 SCC (Cri) 376, clarified

[4004] — Ss. 374 and 386(b) — Conviction restored — *Altercation between PW 2 and A-3, at petrol pump owned by accused persons, ending in fight between them — Sometime afterwards, PW 2 dragged and beaten by A-1 to A-3, which was seen by PW 1 (appellant complainant and relative of PW 2) and A, who tried to intervene — On exhortation of A-3, A-2 shot at PW 1 and A, compelling them to retreat to safety — Gunshot and resulting commo-*

*tion attracting attention of **R** and **B** (both sons of PW 1), who reached the spot — Again A-1 and A-3 exhorted A-2 to kill **R** and **B** — Shots fired by A-2 hitting both, resulting in their death — Aforesaid incident witnessed by PW 3 and several other persons — PW 2 then taken captive by accused persons inside their petrol pump and released only when accused tried to flee seeing police — Held, no dispute regarding place of crime — PWs 1 to 3 (eyewitnesses) fully proving incident and corroborating statements mentioned in FIR — No material contradiction in their cross-examination — Allegation of bungling regarding report and time of FIR because of its prompt registration, devoid of any merit — Medical evidence clearly establishing cause of death — Regarding submission of PWs 1 to 3 being interested witnesses, held, although PWs 1 and 2 were relatives and both deceased were PW 1's sons, however, PW 3 not interested with PWs 1 and 2 in any way nor he having any enmity with accused persons — PW 3's evidence being unmistakably clear, cannot be doubted — Again, non-examination of other witnesses available on spot, held, not necessary to prove guilt of accused as it is quality of evidence and not number of witnesses that is relevant for ascertaining truth — Taking PW 2 captive by accused persons completely believable as PW 2 could have well protected accused persons from crowd which gathered at petrol pump after hearing gunshots, while also protecting petrol tank from being damaged by pressure of agitated crowd — Injuries found on PW 2 by doctor — Defence version that both deceased came to petrol pump of accused persons to commit robbery by hurling bomb causing damage to it, not proved — Nothing on record even remotely suggesting that accused persons acted in exercise of their right of private defence — Hence, reversal of conviction, not justified — Arms Act, 1959, Ss. 27 and 30 — Penal Code, 1860 — Ss. 302, 307, 323, 342 r/w S. 34* (Paras 20 to 36). *Raj Narain Singh* v. *State of U.P.*, (2009) 10 SCC 362: (2009) 82 AIC 261 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 18-9-2009]

Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145: 2001 SCC (Cri) 1070, relied on

[4005] — **Ss. 374 and 386(b) — Appreciation of evidence — Conviction restored — Approach of High Court while acquitting respondent-accused — Propriety** — *On a scuffle between deceased and three respondent- accused, deceased shot at by respondent-accused S, resulting in his death — Trial court, placing reliance on evidence of PW 1 (eyewitness and father of the deceased), convicting respondent-accused S under S. 302 and other two respondent-co-accused under Ss. 302/34 — High Court directing acquittal of respondents — Sustainability — Held, conclusions of High Court were based on surmises, conjectures and hypothesis — Evidence of PW 1 was credible and cogent, therefore, acquittal of S as recorded by High Court, unsustainable — However, so far as other two respondent-co-accused were concerned, High Court after analysing evidence of PW 1, rightly held that evidence was not sufficient to bring in application of S. 34 IPC — Hence, their acquittal, proper — Penal Code, 1860 — Ss. 302 and 34*

The conclusions of the High Court were based on surmises and conjectures and hypothesis. Mere non-mention of the names of the assailants or the nature of the weapon in the inquest report, cannot be a ground to discard the evidentiary value of PW 1's (eyewitness and father of the deceased) evidence. (Para 10)

Regarding non-mention of the name of PW 1 (eyewitness and father of the deceased) in the hospital records, who accompanied the deceased to the hospital, defence witness (DW 1, the Chief Pharmacist), had clearly stated in his cross-examination by the prosecution, that in case an injured is accompanied by several persons to the hospital, only the name of one person is recorded who is closest to the injured. He had also stated that besides the mother of the deceased others may have accompanied the deceased to the hospital. The presumptuous conclusion (of the High Court) that merely because the name of the mother of the deceased was recorded in the medical records, PW 1's presence is ruled out, is indefensible. (Para 13)

Again, PW 1, an advocate, had categorically stated that he did not go to the court because it was a Saturday and the lawyers were on strike for a particular reason. There was no cross-examination even on this aspect. The High Court's conclusion that he was expected to be at the place of practice (and not at home) on the face of this stand shows non-application of mind. (Para 14)

The evidence of PW 1 is credible and cogent, therefore, the acquittal of respondent-accused *S* as recorded by the High Court cannot be sustained and is set aside. (Para 15)

So far as the other two co-accused-respondents are concerned, the High Court, after analysing the evidence of PW 1, had rightly held that the evidence is not sufficient to bring in application of Section 34 IPC. Therefore, while allowing the appeal qua *S*, the appeal is dismissed for the other two respondent-accused. (Paras 15 and 17). *State of U.P.* v. *Atul Singh*, (2009) 14 SCC 203: AIR 2009 SC 2713: (2009) 5 All LJ 443.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 8-5-2009]

Girija Shankar v. State of U.P., (2004) 3 SCC 793: 2004 SCC (Cri) 863, relied on

Atul Singh v. State of U.P., 2004 Cri LJ 111: 2003 All LJ 2742, reversed

[4006] — Ss. 374 and 386(b) — Appeal against conviction — Improper exercise of power by High Court under — Acquittal reversed in case of some of the accused — Case of atrocities committed by upper caste *T* against lower caste *H* — *18 respondent-accused of **T** caste committed dacoity in house of PW 14 and **J** (PW 14's wife) of **H** caste — Thereafter, persons present in the house (eight in number), including PW 14 and **J**, tied with rope and taken to bank of river, where they were pushed into boats and brutally murdered, except PW 14 who jumped and saved his life — For wiping out entire evidence of atrocities, dead bodies of victims thrown in river where currents were very strong — Therefore, bodies of five abducted persons could not be recovered — **J** was recovered in injured and unconscious state, who afterwards succumbed to her injuries — Reversing their conviction by trial court, all 18 respondents acquitted by High Court — Sustainability — Held, trial court exhaustively dealt with entire evidence and documents on record — It gave graphic description of entire prosecution case and detailed circumstances in which evidence of PW 14 recorded — According to trial court, prosecution succeeded in establishing case against respondent-accused — However, findings of High Court not based on proper analysis and marshalling of entire evidence and documents on record — High Court in the impugned judgment did not even discuss evidence on record — Entire evidence and documents on record re-examined by Supreme Court — Trial court's view found to be the only possible view in facts and circumstances of the case — However, order of trial court modified, to the extent of giving benefit of doubt to 12 accused — Hence, their acquittal by High Court, maintained — But no iota of doubt regarding remaining 6 accused, whose participation in aforesaid ghastly crime, established — Hence, their acquittal by High Court set aside — Penal Code, 1860 — Ss. 302/149, 395, 364 and 201* (Paras 31 to 41, 44, 45 and 60 to 63). *State of U.P.* v. *Ram Sajivan*, (2010) 1 SCC 529.

Bench Strength 2. Coram: **Dalveer Bhandari** and *A.K. Patnaik*, JJ. [Date of decision: 4-12-2009]

[4007] — Ss. 374, 378 and 386 — Appellate Court's approach when accused is charged of murder — *Penal Code, 1860 — S. 302*

It is the duty of an appellate court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate court in drawing inference from proved and admitted facts. It must be remembered that the appellate court, like the trial court, has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubt as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final court of appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial court. The judicial approach in dealing with the case where an accused is charged of murder under Section 302 has to be cautious, circumspect and careful and the High Court, therefore, has to consider the matter carefully and examine all relevant and material circumstances, before upholding the conviction. In the present case the majority Judges of the High Court have not acted in accordance with the aforesaid parameters and the duties of a court of appeal, while considering the legality of conviction recorded by the Sessions Judge. (Paras 2 and 3). *Padam Singh* v. *State of U.P.*, (2000) 1 SCC 621: 2000 SCC (Cri) 285: AIR 2000 SC 361: 2000 Cri LJ 489: 2000 All LJ 123.

Bench Strength 2. Coram : **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision : 30-11-1999]

[4008] — Ss. 374, 378 and 386 — Where two views are possible, one in favour of accused and the other against it, the one favouring the accused should be accepted (Para 33). *Raghunath* v. *State of Haryana*, (2003) 1 SCC 398: AIR 2003 SC 165.

Bench Strength 2. Coram : *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision : 13-11-2002]

[4009] — Ss. 374 and 386 — Powers of appellate court — Enhancement of sentence — Interference with sentence passed — Enhancement to death sentence — Appeal against conviction — *Appellant convicted and sentenced to life imprisonment for causing murder of his wife by courts below — Held, crimes against women are brutal and barbaric which outrage modern conscience and belong to rarest of rare category deserving death* *sentence — Hence, notice issued to petitioner as to why his life sentence be not enhanced to death sentence — Constitution of India, Art. 136. Sukhdev Singh* v. *State of Punjab*, (2010) 13 SCC 656.

Bench Strength 2. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 12-11-2010]

Satya Narayan Tiwari v. State of U.P., relied on

[4010] — **Ss. 374, 386 and 164 — Appeal against conviction — Reversal of conviction by the High Court on ground that statement of the witness initially recorded as dying declaration but subsequently treated as a statement recorded under S. 164 and the FIR lodged by the said witness contradicted each other materially** — *Held, approach of the High Court was patently wrong — A case has to be decided on the basis of the evidence adduced by the witnesses during the trial — Previous statement of a witness cannot be used as substantive evidence — It can only be used by the defence to contradict or discredit any witness as provided in S. 145, Evidence Act — High Court further erred in discarding the evidence of the witnesses with a sweeping observation that they were artificial and unnatural — Matter remanded to the High Court for disposal of the appeal in accordance with law — Evidence Act, 1872, S. 145. Chinnammal* v. *State of T.N.*, (1997) 1 SCC 145: 1997 SCC (Cri) 51.

Bench Strength 2. Coram : *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision : 20-11-1996]

[4011] — **Ss. 374, 386 and 428 — Appeal — Period of sentence awarded by trial Court less than that already undergone as undertrial** — *Held, fact that appellant would not have to suffer further imprisonment because of set-off under S. 428 does not mean he cannot challenge his conviction. Retti Deenabandhu* v. *State of A.P.*, (1977) 1 SCC 742: 1977 SCC (Cri) 173: AIR 1977 SC 1335: 1977 Cri LJ 1004: (1977) 2 SCR 599.

Bench Strength 2. Coram : **H.R. Khanna** and *R.S. Sarkaria*, JJ. [Date of decision : 11-1-1977]

[4012] — **Ss. 374, 393 and 401 — Appeal by accused and plea for revision by complainant** — *Revision application disposed of on grounds, stated in appeal — No further appeal against disposal of appeal — Effect on appeal against disposal of revision application. Suraj Bhan* v. *Om Prakash*, (1976) 1 SCC 886: 1976 SCC (Cri) 208: AIR 1976 SC 648: 1976 Cri LJ 577.

Bench Strength 3. Coram : **P.K. Goswami**, *P.N. Shinghal* and *Jaswant Singh*, JJ. [Date of decision : 2-2-1976]

[4013] — **Ss. 374 and 360 — Conviction under Ss. 279/304-A IPC — Maintainability of appeal against the said conviction if accused released on probation** — *Held, the Appellate Authority erred in holding that the appeal was not maintainable merely because the Magistrate released the accused on probation. Arun Ahluwalia* v. *State*, (2002) 10 SCC 454.

Bench Strength 2. Coram : *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision : 4-9-2000]

[4014] — **Ss. 374 and 378 — Challenge to public document for the first time in appeal — Permissibility — Public document (in this case, order of sanction for prosecution issued in the name of Governor and authenticated by Secretary to Govt.)** — *Authenticity of, not challenged before trial court — Held, respondent could not be permitted to question the admissibility of the said document for the first time before the appellate court — Prevention of Corruption Act, 1988, S. 19 — Evidence Act, 1872, Ss. 74 and 78* (Para 13). *State* v. *K. Narasimhachary*, (2005) 8 SCC 364.

Bench Strength 2. Coram : **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision : 7-10-2005]

Ranvir Singh v. Union of India, (2005) 12 SCC 59, relied on

[4015] — **Ss. 374 and 386 — Appeal against conviction — Conviction and sentence of imprisonment upheld but sentence of fine reduced by Supreme Court** — *Penal Code, 1860, S. 326 — Constitution of India, Art. 134. Labh Singh* v. *State of Punjab*, 1990 Supp SCC 20: 1990 SCC (Cri) 602.

Bench Strength 2. Coram : **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision : 31-1-1990]

[4016] — **Ss. 374 and 386 — Accused-appellant convicted under S. 302, IPC and S. 27 of Arms Act and sentenced to life imprisonment and one year's RI respectively by trial court** — *Conviction and sentence affirmed by High Court having regard to ocular, circumstantial and medical evidence — Considering facts and circumstances as well as evidence on record, held, there was no infirmity in the judgment and order of High Court — Hence Supreme Court's interference not called for — Constitution of India — Art. 136. Bikkar Singh* v. *State of Punjab*, 1989 Supp (1) SCC 265: 1989 SCC (Cri) 414: AIR 1989 SC 1440: (1989) 2 Crimes 1: 1989 Cri LJ 1457.

Bench Strength 2. Coram : **B.C. Ray** and *K. Jagannatha Shetty*, JJ. [Date of decision : 28-3-1989]

[4017] — **Ss. 374 and 386 — Appeal to Supreme Court against conviction by High Court setting aside acquittal ordered by trial court** — *Where prosecution failed to establish charges and High Court without proper appraisal of materials and without meeting the findings reached by trial court* *reversed the acquittal, held, Supreme Court's interference called for — Constitution of India — Art. 136. Vinod Chaturvedi* v. *State of M.P.*, (1984) 2 SCC 350: 1984 SCC (Cri) 250: AIR 1984 SC 911: 1984 Cri LJ 814.

Bench Strength **2**. Coram : *S. Murtaza Fazal Ali* and **Ranganath Misra**, JJ. [Date of decision : 5-3-1984]

[4018] — Ss. 374 and 386 — Interference by Supreme Court — *In absence of any infirmity, illegality, failure of justice or question of principle, Supreme Court would not interfere with the order of conviction and sentence concurrently arrived at by trial court and High Court — Penal Code, 1860, Ss. 302 and 364 — Constitution of India — Art. 136. Gopal* v. *State of T.N.*, (1986) 2 SCC 93: 1986 SCC (Cri) 111: AIR 1986 SC 702: 1986 Cri LJ 801.

Bench Strength **2**. Coram : *V. Balakrishna Eradi* and **B.C. Ray**, JJ. [Date of decision : 30-1-1986]

[4019] — Ss. 374 and 386 — Interference with concurrent findings — When justified — *Though Supreme Court does not normally interfere with the concurrent findings of fact but where High Court merely affirmed the findings of trial court without reappraisal of its own which resulted in substantial or grave injustice, it would interfere — Constitution of India, Arts. 134 and 136*

While it is true that normally the Supreme Court would not interfere with the concurrent findings of fact save in exceptional circumstances, where legal process is disregarded or principles of natural justice are violated or substantial and grave injustice has otherwise resulted. The High Court is a final court of appeal and normally this Court would not interfere, if the High Court on the reappraisal of evidence confirms the trial court judgment. But in the present case, going through the judgment of the High Court, it appears that the High Court merely affirmed the findings of the trial court without reappraisal of the evidence on its own. (Para 21). *Raghunath* v. *State of Haryana*, (2003) 1 SCC 398: AIR 2003 SC 165.

Bench Strength **2**. Coram : *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision : 13-11-2002]

Balak Ram v. State of U.P., (1975) 3 SCC 219: 1974 SCC (Cri) 837, relied on

[4020] — Ss. 374 and 386 — On grant of SLP against acquittal by HC non-bailable warrants directed to be issued to accused-respondents — *But respondent 1 had already been granted bail and whether notice of appearance before the Court served on him not known — Respondent 2 remained untraceable — So the warrant could not be executed — Offence alleged to have been committed in 1971 — It would be unjust to carry on the present prosecution — SLP revoked — Not to prejudice rights in future if respondent 2 traced — Constitution of India — Art. 136. State of J&K* v. *Mazhar Ali*, 1989 Supp (2) SCC 181: 1990 SCC (Cri) 28.

Bench Strength **2**. Coram : *Sabyasachi Mukharji* and *S. Ranganathan*, JJ. [Date of decision : 31-3-1989]

[4021] — S. 374 — Appeal before Supreme Court against order of acquittal of High Court by reversing conviction recorded by trial court — *Two courts below having come to different conclusion, it is incumbent on the part of Supreme Court to reappreciate the entire evidence to see whether the findings of the trial court were so unreasonable and unrealistic as to call for interference therewith — Prosecution having adduced inviolable and convincing evidence through eyewitnesses supported by circumstantial and medical evidence, finding of the trial court being reasonable one and High Court in a summary manner and on insignificant and flimsy reasons having ignored abundant material produced by prosecution, held on facts, finding of High Court not sustainable and conviction recorded by trial court must be restored — Penal Code, 1860, Ss. 302 and 302/34 — Constitution of India, Arts. 134 and 136. State of U.P.* v. *Vinod Kumar*, (1992) 2 SCC 536: 1992 SCC (Cri) 505: AIR 1992 SC 1011: 1992 Cri LJ 1115.

Bench Strength **3**. Coram : **S. Ratnavel Pandian**, *M. Fathima Beevi* and *Yogeshwar Dayal*, JJ. [Date of decision : 12-3-1992]

[4022] — Ss. 374 and 386 — Intervention of Supreme Court when called for — Conviction restored — *Reiterated, interference by Supreme Court on reappraisal of evidence should not ordinarily be made, particularly in case of acquittal — However, if it is found that judgment of acquittal recorded by High Court was not justified on evidence, it would be a travesty of justice for Supreme Court to ignore this aspect and circumstances may thus warrant interference — High Court, on appeal, considering PW 1 was not an eyewitness and hence conviction of accused by trial court was based on solitary related witness and a belated FIR, acquitting the accused — Propriety — Held, eyewitnesses and medical evidence have fully supported prosecution story and there is no delay in recording FIR — Hence, conviction restored — Constitution of India, Art. 136* (Paras 14 and 19 to 21). *State of A.P.* v. *M. Narasimha Rao*, (2010) 9 SCC 166: (2010) 3 SCC (Cri) 1165: AIR 2010 SC 3776.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 27-8-2010]

[4023] — **Ss. 374 and 386(b) — Appeal against conviction — Acquittal by High Court on the basis that the prosecution version was unreliable — High Court's view plausible — Interference, by Supreme Court, if called for** — *On facts, trial court by placing reliance on the evidence of PW 3, convicted respondent-accused under S. 304 IPC — In appeal, High Court finding several factors making prosecution version unreliable, directed acquittal — Sustainability — Appellant State contending that factors highlighted by High Court to direct acquittal had no foundation — Held, though some of the factors highlighted by High Court may not create a dent in the prosecution version but the cumulative effect certainly casts a shadow upon credibility of the prosecution version — View taken is a possible view — Therefore, no interference called for*

In appeal, the High Court found that there were several factors which made the prosecution version unreliable. It was noted that the FIR was purportedly lodged on 22-3-1989 but the same was received by the Ilaqa Magistrate after a long time i.e. on 24-3-1989, though the Court of the Ilaqa Magistrate was situated at less than half a kilometre. Additionally, the number of injuries as stated by the so-called eyewitness, PW 3, was at great variance with the medical evidence. It also noted that the medical examination conducted at 3.30 p.m. by PW 1, the doctor, showed that the injuries were caused within a duration of 6 to 12 hours. His specific evidence was that the deceased could have received the injuries at about 10 a.m. on 22-3-1989 and he had not received injuries within six hours. According to the prosecution version the occurrence took place at 3.30 p.m. and the medico-legal examination was done at 5.30 p.m. (Para 8)

Though some of the factors highlighted by the High Court may not create a dent in the prosecution version but the cumulative effect certainly casts a shadow upon the credibility of the prosecution version. The view taken is a possible view. Therefore, no interference is called for. (Para 11). *State of Haryana* v. *Krishan*, (2008) 15 SCC 208: (2009) 3 SCC (Cri) 786: (2009) 1 ECrN 633 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 7-11-2008]

Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220; Sachchey Lal Tiwari v. State of U.P., (2004) 11 SCC 410: 2004 SCC (Cri) Supp 105, relied on

[4024] — **Ss. 374 and 386(b) — Appeal against conviction — Reappreciation of evidence by appellate court — When justified**

The view taken by the High Court is both plausible and possible. The scope of interference under Article 136 of the Constitution, in an appeal against acquittal, is rather limited. The findings recorded by the High Court do not warrant any interference by the Supreme Court. (Paras 40 and 45). *State of U.P.* v. *Guru Charan*, (2010) 3 SCC 721.

Bench Strength 2. Coram : *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision : 23-2-2010]

[4025] — **Ss. 374 and 386 — Appeal against conviction — When Supreme Court's interference not called for — Charge of abetment of suicide by husband — Proof — Suicide committed by wife by pouring kerosene on her person and setting her body on fire soon after marriage** — *Constant harassment, humiliation and torture of wife by appellant husband for bringing insufficient dowry articles and his persistent demand for more sophisticated articles proved by reliable evidence of PWs — Defence of accused husband that his wife was suffering from mental ailment belied by evidence of PWs — Fact that deceased sustained 100% burn injuries showing that neither accused made any effort to save his wife from committing suicide nor he called any doctor though he was present in the house when the incident took place — This apathetic conduct of accused provided an additional circumstance in the link of the ocular version of PWs who supported prosecution case in its entirety — Courts below found accused guilty — Evaluation of findings of trial court and High Court not suffering from any illegality, manifest error or perversity, nor those courts overlooked or wrongly discarded any vital piece of evidence against accused — Held findings of fact of courts below do not call for any interference by Supreme Court in appeal — Hence conviction and sentence of 7 years' RI under S. 306 IPC and 6 months' RI under S. 4 of the Dowry Prohibition Act and fine of Rs 5000 with default clause against the husband upheld — Dowry Prohibition Act, 1961, S. 4 — Penal Code, 1860, S. 306* (Paras 11 to 14). *Arvind Kumar* v. *State of M.P.*, (2007) 12 SCC 681: (2008) 3 SCC (Cri) 356: AIR 2007 SC 2674: (2007) 57 AIC 54 (SC): 2007 Cri LJ 3741.

Bench Strength 2. Coram : *R.V. Raveendran* and **L.S. Panta**, JJ. [Date of decision : 24-7-2007]

[4026] — **Ss. 374 and 386 — Appeal against conviction — Supreme Court's interference with, when called for — Murder** — *Approach and appreciation adopted by the Sessions Court was manifestly erroneous and contrary to the well-settled principles of law inasmuch as lapses, omissions and contradictions in the prosecution case were either condoned or lightly brushed aside or were supported without any justification against the probabilities appearing in the case — Reliance* *on sole evidence was not justified — High Court instead of seriously and objectively reappreciating the evidence placed on record as first appellate court, simply approving the judgment of Sessions Court — On facts and in the circumstances held, prosecution failed to establish guilt of accused beyond reasonable doubt — Sessions Court as well as the High Court have concurrently and manifestly erred in convicting and sentencing the accused — In a case like this it is Supreme Court's duty to interfere with the judgment and order of High Court to do substantial justice — Penal Code, 1860 — S. 302. Sohan* v. *State of Haryana*, (2001) 3 SCC 620: 2001 SCC (Cri) 587: AIR 2001 SC 1380: 2001 Cri LJ 1707.

Bench Strength **2**. Coram : *U.C. Banerjee* and **Shivaraj V. Patil**, JJ. [Date of decision : 2-3-2001]

[4027] — Ss. 374 and 386 — Appeal against conviction — Trial Court and High Court recording concurrent finding of guilt — *On reappraisal of evidence Supreme Court finding that evidence of identification of accused-appellant was not reliable and that of recovery of crime articles at the accused's instance could not be acted upon — Held, prosecution failed to establish its case beyond reasonable doubt — Hence order of conviction and sentence set aside . Veerpal* v. *State of Haryana*, 1986 Supp SCC 733: 1987 SCC (Cri) 227.

Bench Strength **2**. Coram : *M.P. Thakkar* and *K.N. Singh*, JJ. [Date of decision : 16-10-1986]

[4028] — Ss. 374 and 386 — Appeal against conviction — Scope of consideration by the Supreme Court — *Held, there was no scope to interfere on appeal by the convicted persons where High Court after dispassionately considering all contentions raised before it, gave benefit of doubt where possible, took considerate view in upholding conviction of rest of persons and recorded cogent reasons for its decision — Constitution of India, Arts. 134(1)(c) and 134-A. Annaporna Dutt* v. *State of U.P.*, 1993 Supp (2) SCC 246: 1993 SCC (Cri) 502: AIR 1993 SC 1207: 1993 Cri LJ 490.

Bench Strength **2**. Coram : *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision : 24-9-1992]

[4029] — Ss. 374 and 386 — Conviction by three courts below — Interference — Grounds — *Held, conviction ordinarily would not have been interfered with by Supreme Court by reappreciating evidence — However, when evidence has been found to be mechanically appreciated, without proper consideration of facts and circumstances on record, the same reappreciated in interests of justice — Conviction reversed* (Para 4). *Mankamma* v. *State of Kerala*, (2009) 10 SCC 164.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 8-10-2009]

[4030] — Ss. 374 and 386 — Conviction and sentence of life imprisonment under S. 302 IPC challenged on ground that the deceased for whose murder accused were convicted, was found murdered 12 years later — *Inquiry report of DM called for by Supreme Court — Report indicating that the deceased for whose murder the accused-appellants were convicted was not the same person whose dead body was later found, thus falsifying accused's claim — Supreme Court also coming to the same conclusion by comparing photographs of the two dead bodies — Held, appellants not entitled to be released — Constitution of India — Arts. 136 and 21. Lallu Ram* v. *State of U.P.*, 1984 Supp SCC 424: 1985 SCC (Cri) 15: AIR 1984 SC 1886.

Bench Strength **3**. Coram : **Y.V. Chandrachud, C.J.** and *E.S. Venkataramiah* and *A. Varadarajan*, JJ. [Date of decision : 27-9-1984]

[4031] — Ss. 374 and 386 — Reappraisal of evidence — When not called for — *On facts, held, no error committed by courts below in appreciation of evidence of witnesses — Hence not a fit case for reappraisal of evidence in exercise of jurisdiction under Art. 136 — Constitution of India — Art. 136. Ajab* v. *State of Maharashtra*, 1989 Supp (1) SCC 601: 1989 SCC (Cri) 602: AIR 1989 SC 827: (1989) 1 Crimes 725: 1989 Cri LJ 954.

Bench Strength **2**. Coram : *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision : 24-2-1989]

[4032] — Ss. 374 and 386 — Rule of non-interference by Supreme Court with concurrent findings of fact — Principles restated — *Case law referred to — Appeal disposed of accordingly — Constitution of India — Art. 136. Ashok Kumar Chatterjee* v. *State of M.P.*, 1989 Supp (1) SCC 560: 1989 SCC (Cri) 566: AIR 1989 SC 1890.

Bench Strength **2**. Coram : *B.C. Ray* and **S. Ratnavel Pandian**, JJ. [Date of decision : 2-5-1989]

[4033] — Ss. 374 and 386 — Supreme Court's interference with concurrent findings of trial court and High Court when called for — *Constitution of India — Art. 136. Mallela Seetharmaiah* v. *State of A.P.*, 1989 Supp (1) SCC 74: 1989 SCC (L&S) 177: AIR 1989 SC 421: 1989 Cri LJ 968.

Bench Strength **2**. Coram : **B.C. Ray** and *N.D. Ojha*, JJ. [Date of decision : 2-11-1988]

[4034] — Ss. 374 and 386 — Murder — *Relying upon evidence of three eyewitnesses PWs 1, 2 and 4 and finding corroboration of the same with evidence of the doctor who had conducted autopsy on the dead body, trial court convicting the appellant under Ss. 302/34 and sentencing him to imprisonment for life — High Court on reappreciation of* *evidence of the eyewitnesses taking the view that prosecution case had been proved beyond reasonable doubt and therefore affirming the conviction and sentence — On scrutiny of evidence, held, reliable evidence of PW 1 who was accompanying the deceased right from the beginning, was fully corroborated by the testimony of PWs 2 and 4 and therefore, courts below were justified in maintaining conviction and sentence of the appellant* (Para 6). *Ramesh* v. *State of M.P.*, (2000) 1 SCC 243: 2000 SCC (Cri) 206: AIR 1999 SC 3759: 1999 Cri LJ 4603.

Bench Strength **2**. Coram : **G.B. Pattanaik** and *N. Santosh Hegde*, JJ. [Date of decision : 16-9-1999]

[4035] — **Ss. 374 and 386 — Normally Supreme Court, sitting in appeal against conviction passed by trial court and upheld in appeal, does not reappreciate the evidence of the witnesses again — But when the evidence had been placed before Supreme Court and had been argued at length by the counsel, Court can scrutinise the evidence** — *Constitution of India — Art. 136* (Para 6). *Ramesh* v. *State of M.P.*, (2000) 1 SCC 243: 2000 SCC (Cri) 206: AIR 1999 SC 3759: 1999 Cri LJ 4603.

Bench Strength **2**. Coram : **G.B. Pattanaik** and *N. Santosh Hegde*, JJ. [Date of decision : 16-9-1999]

[4036] — **Ss. 374 and 386 — Appeal to High Court against conviction under S. 302, IPC** — *High Court must examine the defence version by applying its own mind and if decides to reject it, must do so only after recording reasons on points which are shown to be arguable — Defence plea of grave and sudden provocation under S. 300 Exception 4, IPC involves mixed question of fact and law — High Court dismissing the appeal without applying its mind on that question — Order of dismissal of the High Court must be set aside and appeal remitted to High Court — Penal Code, 1860, Ss. 300 and 302 — Constitution of India — Art. 136. Rajaram Govind Gavade* v. *State of Maharashtra*, (1982) 3 SCC 225: 1983 SCC (Cri) 7: AIR 1982 SC 31: 1982 Cri LJ 157.

Bench Strength **2**. Coram : **D.A. Desai** and *Baharul Islam*, JJ. [Date of decision : 14-4-1981]

[4037] — **Ss. 374 and 386 — Summary dismissal by High Court of appeal against conviction under S. 376, IPC and sentence of imprisonment for one year, held, not justified** — *Appeal therefore, remanded to the High Court for disposal on merits after issuing notice to the State — Practice and Procedure. Mayur Panabhai Shah* v. *State of Gujarat*, (1982) 2 SCC 396: 1982 SCC (Cri) 442: AIR 1983 SC 66: 1982 Cri LJ 1972.

Bench Strength **2**. Coram : *P.N. Bhagwati* and *E.S. Venkataramiah*, JJ. [Date of decision : 22-1-1982]

[4038] — **Ss. 374 and 386 — Grounds for recording acquittal — Only because a lesser sentence is imposed by trial court (two years' RI in case of rape), held, the same would not be a ground for acquitting the accused** — *Matter remanded to High Court for fresh consideration — Penal Code, 1860 — Ss. 375 and 376* (Para 5). *State of Rajasthan* v. *Bhanwar Singh*, (2006) 6 SCC 9: (2006) 3 SCC (Cri) 9.

Bench Strength **2**. Coram : *S.B. Sinha* and *P.P. Naolekar*, JJ. [Date of decision : 2-5-2006]

[4039] — **Ss. 374 and 386 — Duty of appellate court — Murder — Appellant's conviction under S. 302 IPC by trial court affirmed by High Court** — *But except affirming the conclusion of trial court, High Court not appreciating the evidence — Neither credibility of the witnesses examined nor conclusion drawn after examining the evidence on record — Held, High Court failed to discharge its duty of an appellate criminal court as its judgment suffers from improper judicial approach — Appellate court while sitting in appeal against the judgment of the trial Judge is duty-bound to satisfy itself that the guilt of the accused has been established beyond all reasonable doubt. L.L. Kale* v. *State of Maharashtra*, (2000) 1 SCC 295: 2000 SCC (Cri) 169: AIR 2000 SC 366: 2000 Cri LJ 494.

Bench Strength **2**. Coram : **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision : 30-11-1999]

[4040] — **Ss. 374 and 386 — Conviction not sustained — Circumstantial evidence** — *Held, to base a conviction on circumstantial evidence prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused — Further held, suspicion, however grave, cannot be a substitute for a proof and the courts should take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence — Conviction of appellants on the basis of circumstantial evidence, in the instant case, not sustainable*

The appellants were prosecuted for murdering one *R* between 10.30 p.m. of 14-6-1998 and 5 a.m. of 15-6-1998. The deceased was a motor mechanic. A quarrel allegedly took place between the deceased and the appellants at about 9 p.m. on 14-6-1998 on two grounds: (*1*) Jeep of A-1 had not been satisfactorily repaired by the deceased although he had taken repair charges in respect thereof; and (2) over a woman. PW 8 and others were said to have intervened and the deceased thereafter went to his residence. At about 10.30 p.m. the appellants went to his residence in an auto and A-1 called him on the ground that his jeep required some repairs. PW 1, elder brother of the deceased came out and saw A-1 on the road and A-2 and A-3 standing by an auto on which the words "swathi" were inscribed. Next day dead body of the deceased was found in front of PW 4's house who informed about the same to PW 1. PW 1 went to the spot and thereafter to the police station. But instead of going directly in, he waited for about 10 minutes in front of the police station and got the FIR scribed from PW 5 who was passing by, despite the fact that he was related to one SI. Although FIR was dispatched to the court at 0645 hours, nothing was brought on record to show as to when it reached the court. Testimony of PW 9, an eyewitness to the occurrence was relied on by the trial court to base the conviction, whereas the same was disbelieved by the High Court. However, the High Court upheld the conviction and sentence passed by the Sessions Judge holding that the appellants had quarrelled with the deceased and thus motive was proved. Hence, the present appeal.

Allowing the appeals,

Held :

The statement of PW 9 (an eyewitness) was recorded three days after the incident by the police. PW 8, eyewitness to the quarrel, was also examined two days after the incident. No TI parade was held. PW 6, the auto driver, in whose auto the appellants were alleged to have driven to the deceased's house was examined after three years and three months and he deposed that the words written on his auto were "suverna" and not "swathi" as disclosed in FIR and hence identity of the auto by the first informant was doubtful. Besides, his conduct in not going to the police station to lodge the FIR though he was related to one of the police officer, and waiting for someone to scribe the same on road makes his story doubtful. It is a mystery as to how PW 1 could name all the accused in the FIR since he had neither stated in the FIR nor in his deposition in the court that he knew the appellants. Moreover, since he had not met PW 8 before lodging the FIR there was no reason for him to know about the alleged quarrel between the appellants and the deceased. Testimony of other PWs neither appears credible nor corroborating each other. Though Appellant 2 was a history-sheeter and his whereabouts must have been known to the police, why the appellants were arrested after a fortnight has not been explained. Further, why the FIR was dispatched at 0645 hours when the court was situated in the same town is also difficult to understand. Exact time of death has also not been proved, particularly when no specific reason therefor had been assigned in the post-mortem report. Even the recovery of knife was said to have been made only from Appellant 2.

Considering aforementioned circumstantial evidence the conviction of the appellants cannot be sustained. *Ramreddy Rajesh Khanna Reddy* v. *State of A.P.*, (2006) 10 SCC 172: (2006) 3 SCC (Cri) 512: AIR 2006 SC 1656: (2006) 2 Guj LH 271.

Bench Strength 2. Coram : **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision : 24-3-2006]

Anil Kumar Singh v. State of Bihar, (2003) 9 SCC 67: 2004 SCC (Cri) 1167; Reddy Sampath Kumar v. State of A.P., (2005) 7 SCC 603: 2005 SCC (Cri) 1710, relied on

[4041] — Ss. 374 and 386 — Acquittal confirmed — Murder of wife — Prosecution case based on circumstantial evidence — *Deceased wife and accused husband found lying in a pool of blood in their house — Their throat had been cut and while wife was dead, husband was gasping for breath — Crime weapon found under clothes of deceased, as stated by IO — Informant stated that accused having suspected chastity of deceased, there used to be frequent quarrel between them — Trial court found that circumstances were sufficient to establish the guilt of accused and accordingly, convicted him — But High Court noted defence stand that PWs did not support prosecution case — It also noted that there was no quarrel between accused and deceased — It accepted the possibility that there was suicide pact between them or that wife attacked the husband and committed suicide after inflicting blows on neck of the accused who survived — Accordingly, it concluded that prosecution failed to establish its case and hence it acquitted the accused — Held, defence version was not an improbable stand — Reasons which weighed with High Court to direct acquittal cannot be characterised as perverse — Penal Code, 1860 — Ss. 302, 316 and 309. State of Rajasthan* v. *Narain*, (2008) 17 SCC 6: AIR 2009 SC 821: (2008) 72 AIC 129 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 17-10-2008]

V.N. Ratheesh v. State of Kerala, (2006) 10 SCC 617: (2007) 1 SCC (Cri) 50, relied on

[4042] — Ss. 374 and 386 — Appeal against conviction — Acquittal justified — Charge of committing murder of three persons — *Trial court held that the charge was established by evidence of substantial nature — But, High Court noticed certain glaring infirmities in prosecution case — Pivotal witness, claimed to be eyewitness injured in the occurrence, examined three weeks after his release from hospital and no explanation offered for this delay — Fact that incident took* *place around 12 midnight but FIR lodged at 8.30 a.m. next morning, High Court considered it as abnormal delay — Prosecution explained that one M had told informant about the incident at 7 a.m. and after some time was spent for taking injured persons to hospital, FIR was lodged, but M not examined which according to High Court was a vitiating factor — Further, serious injuries sustained by accused, delay in sending accused to hospital also not explained — Information sent by doctor attending accused reached police before lodging of FIR — Effect of this information and whether it constituted FIR not considered by trial court — Held, acquittal as directed by High Court cannot be faulted — Even though it may be possible hypothetically to take a different view on evidence, interference with view of High Court not called for. State of Punjab* v. *Kulwant Singh*, (2008) 16 SCC 290: AIR 2008 SC 3279: (2008) 3 APLJ 61 (SC): (2008) 68 AIC 1 (SC): 2008 Cri LJ 4322.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Dr. M.K. Sharma*, JJ. [Date of decision: 16-7-2008]

Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227 (2); Nur Mohammad v. Emperor, AIR 1945 PC 151: 47 Cri LJ 1; Prandas v. State, AIR 1954 SC 36; Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217: (1955) 2 SCR 1285; Sanwat Singh v. State of Rajasthan, AIR 1961 SC 715: (1961) 3 SCR 120; M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200: (1963) 2 SCR 405; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355: 1979 SCC (Cri) 305; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; George v. State of Kerala, (1998) 4 SCC 605: 1998 SCC (Cri) 1232; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Kallu v. State of M.P., (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

[4043] — Ss. 374 and 386 — Appeal against conviction — Acquittal confirmed — Unnatural conduct of eyewitnesses — Contradictory dying declarations — *A-1 to A-3 armed with knives while A-4 armed with sickle alleged to have severely assaulted deceased while he was going along with his friends PWs 1 and 2 — Deceased bleeding profusely falling down in pool of blood and PWs 1 and 2 fleeing away on being threatened by accused — PW 3, an auto driver, seeing deceased lying with bleeding wounds taking him to hospital — No explanation for why any close friend of a person i.e. PWs 1 & 2 would allow such a thing to happen — Further, they not informing about occurrence to anybody till they were asked by police in midnight of date of occurrence — Held, conduct of PWs 1 and 2 is unnatural and unbelievable and their presence at time of occurrence is doubtful and hence, their testimonies cannot be accepted — Moreover, deceased not stating in his dying declaration before the Judicial Magistrate that A-1 to A-4 were his assailants — Rather, he stating that four unknown persons had attacked him — According to prosecution case, deceased knew all accused very well since he had an encounter with all of them a few days before occurrence — In such circumstance, if really Accused 1 to 4 had attacked the deceased, definitely he would have told the names or identification of the assailants — Reliance by prosecution on Ext. P-21 statement given by deceased to PW 22 Head Constable in hospital as his dying declaration was found misplaced — Ext. P-21 ran to two full pages and names of accused and overt acts on their part were mentioned in detail — Vast difference in both statements of deceased with regard to contents discernible — Also, actual complaint not having been sent with FIR leads to suspicion as rightly noted by High Court — In such circumstances, dying declaration by Judicial Magistrate deserves acceptance that deceased had not implicated accused therein — Analysis of High Court directing acquittal well justified — Evidence Act, 1872, S. 32(1)* (Paras 31 to 37). *State of T.N.* v. *Zubair*, (2008) 16 SCC 319: AIR 2009 SC 1189: (2009) 73 AIC 11 (SC): (2009) 2 ECrN 68 (SC): 2009 Cri LJ 1777.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 18-12-2008]

[4044] — Ss. 374 and 386 — Injured eyewitness — Corroboration of testimony — Sufficiency of — Non-explanation of injuries of accused — Effect — *Prosecution case mainly based on evidence of injured eyewitnesses PWs 12 and 13 — While PW 12 was the informant, PW 13 was named as eyewitness in FIR itself — These two witnesses consistently supported the prosecution case in their statements before police as well as in court — Their evidence corroborated by medical evidence — Held, evidence of the injured eyewitnesses credible and no ground made out to disbelieve the same — Therefore, non-explanation of injuries of accused by prosecution cannot be a ground to record acquittal of accused-appellants — Penal Code, 1860 — Ss. 302/149, 307/149, 324 and 148*

Merely because prosecution has failed to explain injuries on the accused, the same cannot be a solitary ground for doubting the prosecution case, if otherwise, evidence relied upon is found to be credible. (Para 4). *Krishan* v. *State of Haryana*, (2006) 12 SCC 459: (2007) 2 SCC (Cri) 214.

Bench Strength 2. Coram : *B.N. Agrawal* and *L.S. Panta*, JJ. [Date of decision : 23-8-2006]

[4045] — **Ss. 374 and 386 — Search and seizure — Requirement under the section — Non-compliance with — Effect** — *The plastic bag, on which the appellant was found sitting, after being seized and on verification thereafter, found containing poppy straw — Rejecting appellant's contention that the requirement under S. 50 were not complied with, held, the said section comes into play only in the case of search of a person and not in respect of the search related to any premises etc. — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 50. Birakishore Kar* v. *State of Orissa*, (2000) 9 SCC 541: 2001 SCC (Cri) 645: AIR 2000 SC 3626 (1): (2000) 1 KLT 639.

Bench Strength 2. Coram : *G.T. Nanavati* and *S.S.M. Quadri*, JJ. [Date of decision : 12-8-1999]

State of Punjab v. Baldev Singh, (1999) 6 SCC 172: 1999 SCC (Cri) 1080, relied on

[4046] — **Ss. 374 and 386 — Conviction under S. 304 Pt. I IPC — Appeal against — Appreciation of evidence** — *Blows inflicted on deceased's head with sharp side of barchi — FIR lodged promptly mentioning appellant's name — Testimony of eye-witnesses credible and corroborated by FIR, dying declarations and medical evidence — Plea of alibi not sustainable in view of such evidence — On facts and in the circumstances held, appeal against conviction unmerited — Constitution of India, Art. 134 — Penal Code, 1860, S. 304 Pt. I. Munir Ahmad* v. *State of Rajasthan*, 1989 Supp (1) SCC 377: 1989 SCC (Cri) 455: AIR 1989 SC 705: 1989 Cri LJ 845.

Bench Strength 2. Coram : *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision : 11-1-1989]

[4047] — **Ss. 374 and 386 — Dowry death — Intimation of death to bride's family not a mitigating factor if cruelty proved — Death due to electrocution within seven years of marriage** — *Six accused persons including husband and in-laws of the deceased charged under Ss. 304-B and 201 IPC — Acquittal of three accused by Sessions Court becoming final as not appealed in High Court — Remaining three accused, in appeal before High Court, acquitted of the charge under Ss. 304-B and 201 but convicted under S. 498-A — Once the High Court comes to the conclusion on the basis of evidence adduced that the deceased during her lifetime was subjected to harassment on account of insufficient dowry and demands were being made before her death occurred, held, intimation of death by the in-laws to the parents of deceased would not absolve the accused of their ill-motive when necessary ingredients of the offence under S. 304-B are established — Setting aside the acquittal, accused convicted under S. 304-B and sentenced to 7 years' imprisonment — However, acquittal in respect of offence under S. 201 upheld — Penal Code, 1860, Ss. 304-B, 201 and 498-A. Balwant Singh* v. *Partap Singh*, (2000) 9 SCC 352: 2001 SCC (Cri) 318.

Bench Strength 3. Coram : *G.B. Pattanaik, R.P. Sethi* and *Shivaraj V. Patil*, JJ. [Date of decision : 29-3-2000]

[4048] — **Ss. 374 and 386 — Rape on married woman — Testimony of the victim of the rape corroborated by her immediate and subsequent conduct as also medical evidence** — *Testimony found to be truthful and trustworthy — Prosecutrix neither a woman of easy virtue nor having any grudge or reason to falsely implicate the accused — Non-examination of neighbour who had responded to her cry but was not a witness to the crime, held, not fatal — Held on facts, High Court seriously erred in reversing trial court's verdict of conviction, on the basis of wild surmises — Penal Code, 1860, S. 376*

According to the prosecutrix, at midnight during absence of her husband, the two accused-respondents entered her room by making a passage from the thatched roof. Both of them then closed the mouth of the prosecutrix and threatened her. They then subjected her to forcible sexual intercourse one after the other and thereafter, they made good their escape. The prosecutrix raised a cry whereupon one of the neighbours rushed towards her house. Next day the prosecutrix was carried in a trolley to the police station which is seven kilometres away from the place of occurrence. She lodged a report at 1030 hours in the morning. In the course of investigation the police seized the petticoat of the prosecutrix which she was wearing at the time of forcible sexual intercourse with her and also the *kantha* and mat on which she was sleeping. The prosecutrix was sent for medical examination and was found to have stains of human blood and semen and a bruise of 1 cm x 1 cm 1/4 cm on the lateral side of the left of the genital channel. The bruise was found to have been caused within 24 hours. According to chemical examination report there was presence of blood and semen stains on the articles including petticoat sent for chemical examination. According to the trial Judge, the version of the prosecutrix was corroborated by the medical evidence and the evidence of the chemical report of the Forensic Science Laboratory. However, the High Court disbelieved the prosecutrix's version. With regard to injuries found on her private parts, the High Court observed that there was no evidence as to how long before and after the alleged offence the husband of the prosecutrix was absent and the possibility of her sexual contact with her husband could not be ruled out. The High Court also took note of the statement made in cross-examination by the doctor that the injury could be self-inflicted. It was observed that the possibility of semen being that of her husband could not be ruled out. It also saw some infirmity in the prosecution case as her neighbour who was alleged to have rushed towards her house after she had given a cry and when the accused ran away, was not examined as a witness. The High Court also took note of the omission of the investigating officer (PW 5) in not making any attempt to collect any evidence of forcible entry of the accused in the house through the roof. On the above reasoning the High Court acquitted the accused.

Allowing the appeal,

Held :

The High Court discarded the apparent truthful testimony of the prosecutrix on wild surmises and strange reasoning. The High Court did not at all bestow any importance to the fact that the victim of the rape was not a woman of easy virtue. There has been no suggestion made to her in cross-examination or in the defence plea of the accused in the course of their examination under Section 313 CrPC that the prosecutrix had any grudge or reason to falsely implicate the two accused in such a heinous crime in which she herself was ravished and her honour was at stake. The High Court gave no importance to the report of the chemical examiner and serologist which showed blood and semen stains on the petticoat of the prosecutrix. It gave no importance to the fact that the trial Judge rejected the defence plea that the semen stains on the petticoat of the prosecutrix might have been caused by her physical contact with her husband. There was nothing to disbelieve, according to the trial Judge — the version of the prosecutrix that her husband had left the house on the previous afternoon and was absent at the time of incident and when she made the report to the police. The High Court then ventured into a wild surmise that the injury found on her private parts could have been self-inflicted. It is most unlikely that only to falsely implicate the accused the prosecutrix would inflict injury on her private parts. Non-examination of one of the neighbours who had rushed towards her house after hearing a call by her, is also not a serious infirmity in the prosecution case as he was not the witness of the commission of the offence. The testimony of the prosecutrix appears truthful and trustworthy being without any embellishments and exaggerations. She is corroborated by her immediate and subsequent conduct as also the medical evidence. Consequently, the judgment of acquittal passed by the High Court is set aside and the judgment of conviction and sentence of the trial court is restored. (Paras 7, 8 and 9). *State of Orissa* v. *Thakara Besra*, (2002) 9 SCC 86: AIR 2002 SC 1963: 2002 Cri LJ 2642.

Bench Strength 2. Coram : *R.P. Sethi* and **D.M. Dharmadhikari**, JJ. [Date of decision : 16-4-2002]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

Thakara Besra v. State, (1994) 2 Crimes 596 (Ori), reversed

[4049] — Ss. 374 and 386 — Murder — Common intention — Absence of — Testimony conflicting with medical evidence — Benefit of doubt — *Appellants along with other companions allegedly causing death of the deceased inflicting blows with lathis — Medical evidence not indicating any lathi-blow — Out of the three witnesses one stating that he saw appellants inflicting lathi-blows while other two stating that they found appellants chasing deceased with lathis — In absence of any reliable evidence showing appellants inflicted lathi-blows on deceased, held, is not enough to credit the appellants with sharing common intention with real killers — Appellants acquitted on benefit of the doubt — Penal Code, 1860 — Ss. 302 r/w 34 or 149 and 148. Kalachand Bhowmik* v. *State of Tripura*, 2001 SCC (Cri) 1585: AIR 2000 SC 3583.

Bench Strength 2. Coram : *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision : 3-2-2000]

[4050] — Ss. 374 and 386 — Appeal against conviction under — Trial court's order of acquittal reversed by High Court on cogent reasons — *Testimony of independent eyewitness corroborated by recovery crime article, relied on — No view other than the guilt of the accused possible on the evidence — Held, conviction justified — Penal Code, 1860 — Ss. 302/34. Bhanwar Lal* v. *State of Rajasthan*, 1984 Supp SCC 538: 1985 SCC (Cri) 91: AIR 1985 SC 336.

Bench Strength 3. Coram : **Y.V. Chandrachud, C.J.** and *D.A. Desai* and *M.P. Thakkar*, JJ. [Date of decision : 27-9-1984]

[4051] — Ss. 374 and 386 — Conviction of appellant under, by trial court and High Court — No eyewitness to the occurrence — *Prosecution case based solely on uncorroborated testimony of approver which on facts appearing to be involuntary — Evidence regarding recovery of deceased's wearing apparel doubtful — Deceased's body could not be traced — Various discrepancies found in evidence led by prosecution — Held on facts,* *conviction not proper — Accused-appellant entitled to acquittal — Penal Code, 1860 — S. 302. Abdul Sattar* v. *UT of Chandigarh*, 1985 Supp SCC 599: 1985 SCC (Cri) 505: AIR 1986 SC 1438.

Bench Strength **2**. Coram : *A.N. Sen* and **Ranganath Misra**, JJ. [Date of decision : 24-9-1985]

[4052] — Ss. 374 and 386 — Nature of injury — Effect — Appellant-accused inflicted only one injury on deceased which resulted in his death — *Appellant-accused also received injury — PWs consistently supported prosecution case and their statements were corroborated by medical evidence — Held, prosecution succeeded in proving its case beyond reasonable doubt — But having regard to the nature of offence, High Court was not justified in confirming conviction of appellant under S. 302, instead he should have been convicted under S. 304 Pt. II — Since appellant was in custody since 1999, ends of justice would be met if appellant is sentenced to the period of imprisonment already undergone — Penal Code, 1860 — S. 302 or 304 Pt. II. Mohd. Shakeel* v. *State of A.P.*, (2007) 3 SCC 119: (2007) 2 SCC (Cri) 44.

Bench Strength **2**. Coram : *B.N. Agrawal* and *P.P. Naolekar*, JJ. [Date of decision : 22-11-2006]

[4053] — Ss. 374 and 386 — Accused apprehended while accepting money pursuant to a trap — Sustainability of explanation — *Explanation of accused that money was received by him from complainant as payment towards govt. loan and not as a bribe for showing any official favour to complainant — Held on facts, not reasonable and probable — Trial court rightly convicted the accused — When material on record led to the only conclusion of guilt of accused, in absence of two possible views, High Court erred in reversing the order of conviction and acquitting the accused on benefit of doubt — Penal Code, 1860, S. 161 — Prevention of Corruption Act, 1988, S. 13(2) r/w S. 13(1)(d) — Prevention of Corruption Act, 1947, S. 5(2) r/w S. 5(1)(d)*

The respondent was working as Talathi of a village. The complainant and his brother *B* had taken a loan from one *K* and had secured the land owned by them in favour of *K* by way of mortgage. A mortgage suit was filed by the mortgagee which ended in compromise. The complainant then requested the respondent to delete the name of *K* from the revenue record in view of repayment of the mortgage loan in terms of the compromise. According to the prosecution case, the respondent demanded Rs 900 for this work. The complainant paid Rs 600 but the respondent insisted on payment of the balance amount of Rs 300 for doing the work. The complainant then lodged a report with the Anti- Corruption Bureau, which laid a trap. Evidence of the complainant (PW 1) shows payment of Rs 300 as illegal gratification by him and acceptance thereof by the respondent in his house. PW 2 (panch witness) who accompanied the complainant corroborated the evidence of the complainant. The defence as put forth in the cross-examination of the prosecution witnesses and the explanation given in the statement under Section 313 CrPC was as follows: some amount was outstanding from the complainant in regard to a Tagai loan taken in the name of his brother *B*. The Tahsildar sent a communication on 3-9-1986 to the respondent stating that *B* was due in a sum of Rs 2575.90 towards interest in respect of an engine loan taken in the year 1966. The accused was, therefore, instructed to recover the said amount and deposit it in the government treasury. Therefore, the accused sent a notice dated 6-9-1986 to the complainant, demanding payment of the amount due. In pursuance of it, the complainant came to the accused's house on 6-10-1986 and paid him Rs 300 towards the amount outstanding to the Government, and it was received by him as government dues and not as a bribe for showing any official favour to the complainant.

The explanation given by the accused was rejected by the Special Judge, with detailed reasons. Accepting the case of the prosecution, he convicted and sentenced the respondent herein to undergo RI for one year in regard to an offence under Section 161 IPC and RI for one year for an offence punishable under Section 5(2) read with Section 5(1)(*d*) of the Prevention of Corruption Act and to pay a fine of Rs 1000 and in default to suffer further RI for three months, with a direction that both the substantive sentences shall run concurrently. The accused filed an appeal, which the High Court allowed holding that the explanation given by the accused for receiving the amount was reasonable and probable and therefore, the charge against the accused that he had accepted Rs 300 as illegal gratification was not proved beyond doubt and that the accused was entitled to benefit of doubt.

Allowing the appeal, setting aside the order of the High Court and restoring the judgment of the Special Judge convicting the respondent,

Held :

Section 4 of the Act, *inter alia*, provided that where in any trial of an offence punishable under Section 161 IPC or Section 5(1)(*a*) or (*b*) punishable under Section 5(2) of the Act, it is proved that an accused person has accepted any gratification (other than legal remuneration), it shall be presumed, unless the contrary is proved, that he accepted that gratification as a motive or reward, such as is mentioned in the said Section 161. This would mean that a mere explanation in the statement under Section 313 that the amount was received towards a loan will not be sufficient. The contrary position should be established by the accused either from inferences legally drawn from the evidence on record let in by the prosecution, or by letting in direct evidence in regard to the explanation. The statutory presumption raised under Section 4 will not stand rebutted merely by offering an explanation under Section 313 if such explanation does not find support from the evidence let in by the prosecution. Though, it is well settled that the accused is not required to establish his explanation by the strict standard of "proof beyond reasonable doubt", and the presumption under Section 4 of the Act would stand rebutted if the explanation or defence offered and proved by the accused is reasonable and probable, the following words of caution in *Chaturdas Bhagwandas Patel* v. *State of Gujarat* should be kept in mind before it can be said that the presumption stood rebutted: "Nevertheless, this burden on the accused is to be discharged by bringing on record evidence, circumstantial or direct, which establishes with reasonable probability, that the money was accepted by the accused, other than as a motive or reward such as is referred to in Section 161." (Paras 11 and 13)

In this case, the evidence of PW 1 (the complainant), PW 2 (panch witness) and PW 3 (Police Inspector) clearly prove the ingredients of a valid trap case. If the accused has received the money towards a government loan or at least being under a bona fide impression that it was towards repayment of the government loan, he will not be guilty. But the evidence clearly shows that no amount was due from the complainant to the State. When no amount was due from the complainant, and when the instruction of the Tahsildar was that the amount outstanding from *B* should be recovered, there is no explanation as to why the accused should send a demand notice to the complainant and not *B* on 6-9-1986. If no amount was due to the Government from the complainant, the question of the accused accepting it as payment towards a government loan does not arise. The evidence relating to demand, payment and acceptance of illegal gratification, is clear. The trial court had considered the entire evidence in detail and drawn proper inferences. (Paras 14 to 16)

Further, the notice of demand on 6-9-1986 was not sent by registered post to the complainant, nor delivered personally against acknowledgement. The notice was posted on 6-9-1986 at Pune and a certificate of posting was obtained. It is strange that the notice dated 6-9-1986, if really sent, was not posted at the place where the accused was working, but from Pune which is at a distance of about 40 km from his place of work. It is thus clear that no notice dated 6-9-1986 was issued to the complainant and the accused has tried to create an explanation by securing a certificate of posting dated 6-9-1986 from Pune after the event. (Para 16)

It is no doubt true that if two views are possible and the view of the High Court acquitting the accused cannot be said to be wholly improbable, the Supreme Court will not interfere with the decision of the High Court. But where the material on record leads to only one conclusion viz. the guilt of the accused, the judgment of the High Court will not be sustained. In this case the High Court was not justified in accepting the explanation regarding receipt of Rs 300 by the accused as being towards Tagai loan. The conclusion of guilt is inescapable. Therefore, the trial court was justified in convicting the respondent under Section 161 IPC and Section 5(2) r/w Section 5(1)(*d*) of the P.C. Act. (Para 18). *State of Maharashtra* v. *Rashid B. Mulani*, (2006) 1 SCC 407: (2006) 1 SCC (Cri) 408: AIR 2006 SC 825: 2006 Cri LJ 794: (2006) 39 AIC 65 (SC).

Bench Strength **2**. Coram : *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision : 4-1-2006]

Chaturdas Bhagwandas Patel v. State of Gujarat, (1976) 3 SCC 46: 1976 SCC (Cri) 351; Dhanvantrai Balwantrai Desai v. State of Maharashtra, 1963 Supp (1) SCR 485: AIR 1964 SC 575: (1964) 1 Cri LJ 437, relied on

[4054] — Ss. 374 and 386 — Dying declaration — Necessity for corroboration arises only when the dying declaration suffers from any infirmity — *Dying declarations recorded by the Head Constable and doctor found to be genuine and properly recorded — Deceased herself stating that the accused poured kerosene on her body and set her on fire — Finding of the High Court that there was no evidence to prove that the accused was in the house was patently wrong — Medical evidence supporting the dying declaration — Held, in the circumstances of the case, High Court not justified in reversing the conviction of the accused — Evidence Act, 1872, S. 32. State of Maharashtra* v. *Mehtabi*, (1998) 8 SCC 618: 1998 SCC (Cri) 1614.

Bench Strength **2**. Coram : *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision : 22-2-1996]

[4055] — Ss. 374 and 386 — **Appeal against conviction — Attempt to murder — First part of S. 307 — Applicability — Intention or knowledge regarding commission of murder and doing of an act towards it are necessary ingredients —**

Receipt of injury by victim not a prerequisite for convicting accused under first part — *When victim receives injuries, second part would be attracted — Pursuant to rivalry inter se between the parties in regard to grant of railway contracts, two bombs hurled by accused at the victims, one of which did not explode and the second one exploded but victims did not sustain any injury — Trial court convicted accused persons under Ss. 307 and 307/109 — High Court held that no injury having been sustained by the victims, no case under S. 307 was made out — No finding arrived at by High Court that PWs contradicted themselves in material particulars so as to render their testimonies untrustworthy or that findings of trial court were either unsatisfactory or contrary to legal principles — Held, High Court's judgment cannot be sustained — Matter remitted to High Court for consideration afresh — Penal Code, 1860, S. 307. Prakash Chandra Yadav* v. *State of Bihar*, (2007) 13 SCC 134: 2008 Cri LJ 438.

Bench Strength 2. Coram : **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision : 12-10-2007]

Parsuram Pandey v. State of Bihar, (2004) 13 SCC 189: 2005 SCC (Cri) 113, followed

[4056] — Ss. 374 and 386 — Appeal against conviction — *Held, must be considered by appellate court, both on questions of law and questions of fact* (Para 3). *Vijayendra Kumar* v. *State of Bihar*, (2005) 9 SCC 252.

Bench Strength 2. Coram : **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision : 24-11-2004]

[4057] — Ss. 374 and 386 — Appeal against conviction — *High Court in appeal against the conviction by the trial Court could not possibly affirm the conviction if it had disbelieved the essential and vital part of the prosecution case. Hari Dev Sharma* v. *State (Delhi Admn.)*, (1977) 3 SCC 352: 1977 SCC (Cri) 516: AIR 1976 SC 1489: 1976 Cri LJ 1176.

Bench Strength 2. Coram : **A.C. Gupta** and *S. Murtaza Fazal Ali*, JJ. [Date of decision : 4-5-1976]

[4058] — Ss. 374 and 386 — Appeal against conviction — *High Court not justified in acquitting some of the accused persons influenced by false involvement of others even though their involvement in crime had been established — Maxim falsus in uno falsus in omnibus wrongly applied. State of Karnataka* v. *Bheemappa*, 1994 Supp (1) SCC 103: 1994 SCC (Cri) 198: 1993 Cri LJ 2609.

Bench Strength 2. Coram : **Dr. A.S. Anand** and *N.P. Singh*, JJ. [Date of decision : 13-5-1993]

[4059] — Ss. 374 and 386 — Appeal against conviction — *High Court not justified in disposing of an appeal against conviction by a cryptic judgment, specially in a case under S. 302 IPC — High Court must go into the evidence, advert to the same as well as the arguments of the appellant's counsel and then pass a reasoned order. Badri* v. *State of Rajasthan*, 1995 Supp (3) SCC 521: 1995 SCC (Cri) 990.

Bench Strength 2. Coram : *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision : 18-7-1994]

[4060] — Ss. 374 and 386 — Appeal against conviction — Affirming the conviction sentence reduced considering 90 years age and physical condition of appellant — Interference with sentence — Reduction of sentence — Age factor — *Conviction of appellant under Ss. 307, 326, etc. IPC not interfered with — However, considering the advanced age of 90 years and physical condition of the appellant, sentence reduced to the period already undergone on condition that he pays the fine imposed on him within four weeks — Constitution of India — Art. 136. Beyas Mahto* v. *State of Bihar*, (2000) 9 SCC 509: 2001 SCC (Cri) 638.

Bench Strength 2. Coram : *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision : 24-4-2000]

[4061] — Ss. 374 and 386 — Appeal against conviction — Allowed by High Court giving valid and weighty reasons for its unassailable logical conclusion — Prosecution evidence directly in conflict with medical evidence — *Held on facts, conclusion of High Court cannot be termed as perverse or fallacious and hence Supreme Court's interference not called for — Penal Code, 1860, Ss. 302/109 — Constitution of India, Art. 136. State of Haryana* v. *Lakhbir Singh*, 1991 Supp (1) SCC 35: 1991 SCC (Cri) 242: AIR 1990 SC 2154: 1990 Cri LJ 2274.

Bench Strength 2. Coram : **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision : 11-9-1990]

[4062] — Ss. 374 and 386 — Appeal against conviction — Defence case based on objective evidence and appearing to be more probable — No explanation advanced by prosecution — *Held, accused entitled to benefit of doubt — Interference with concurrent finding of conviction called for*

When two versions are before the court, the version which is supported by objective evidence cannot be brushed aside lightly unless it has been properly explained. In this case the defence version surfaces as a more probable one in the facts and circumstances of the case. At any rate the appellant is entitled to the benefit of doubt. Consequently the order of conviction and sentence is set aside. (Paras 8 and 10). *Buta Singh* v. *State of Punjab*, (1991) 2 SCC 612: 1991 SCC (Cri) 494: AIR 1991 SC 1316: 1991 Cri LJ 1464.

Bench Strength 3. Coram : **A.M. Ahmadi**, *V. Ramaswami* and *K. Ramaswamy*, JJ. [Date of decision : 26-3-1991]

[4063] — **Ss. 374 and 386 — Appeal against conviction — Discrepancies in evidence considered by the trial court and good reasons given for accepting the evidence of the prosecution witnesses** — *High Court giving undue importance to those discrepancies and without valid reasons discarding their evidence — Erroneous appreciation of evidence by the High Court and consequent acquittal leading to miscarriage of justice — Judgment and order passed by the High Court set aside and judgment and order passed by the trial court restored. State of Bihar* v. *Ram Padarath Singh*, (1998) 6 SCC 240: 1998 SCC (Cri) 1436: AIR 1998 SC 2606.

Bench Strength 2. Coram : **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision : 21-7-1998]

[4064] — **Ss. 374 and 386 — Appeal against conviction — Erroneous appreciation of evidence by High Court** — *CRPF personnel alleged to have attacked the local police when they were asked to vacate some seats in a function, for which the CRPF personnel did not have any tickets, resulting in death of one — Held, CRPF personnel who are responsible for this incident deserve severe punishment both on the criminal side as well as in departmental proceedings — No one can be allowed to take the law into his own hands, because if permitted rule of law and democracy will collapse — Prosecution unequivocally proving that the CRPF personnel had committed the offence — As regards identity of accused, though trial court dealt with the evidence elaborately, High Court failed to advert to those points — Arms Issue Register of CRPF Authority was produced by prosecution to prove that the said Authority had issued arms and ammunitions to the accused person, and the investigating officer had seized those self-loading rifles from the CRPF Authority — CFSL also corroborated the fact that those were used very recently and were used for firing purpose — Trial court specifically observing that all the eyewitnesses had clearly, categorically and emphatically stated that the accused CRPF personnel had opened fire indiscriminately from their self-loading rifles and the defence not specifically denying it — High Court failing to consider said point also — High Court merely emphasising in detail that there was an opportunity to show the accused to the witnesses before they were put up in the test identification parade, but not considering the fact that the accused had been kept in police custody in a different police station and not in the police station to which the witnesses belonged — Matter remitted to High Court for consideration afresh* (Paras 16 to 23). *State of Tripura* v. *Ram Bir Singh*, (2007) 11 SCC 442: (2007) 55 AIC 70 (SC).

Bench Strength 2. Coram : *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision : 8-5-2007]

[4065] — **Ss. 374 and 386 — Appeal against conviction — Erroneous appreciation of evidence by High Court** — *Prosecution case primarily based on circumstantial evidence viz. deceased last seen in company of accused and recoveries at instance of accused — High Court failing to consider evidence on record in its proper perspective and basing its findings on surmises and conjectures — For example, High Court holding that identity of accused as the person who travelled with the deceased was not established, whereas his identity was clearly established by PWs — Evidence was also produced to show that deceased was also seen subsequently in company of other accused, which was not properly considered by High Court — Moreover, High Court also failed to appreciate the fact that dead body of deceased was alleged to have been recovered at the instance of accused and that recoveries were made pursuant to disclosures made by other accused — Hence, matter remitted to High Court for consideration afresh — Considering the fact that incident occurred 10 years back, High Court directed to consider feasibility of hearing the case expeditiously. State of H.P.* v. *Uttam Kumar*, (2007) 12 SCC 348: (2008) 1 SCC (Cri) 378: 2007 Cri LJ 2946: (2007) 55 AIC 210 (SC).

Bench Strength 2. Coram : *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision : 27-4-2007]

[4066] — **Ss. 374 and 386 — Appeal against conviction — High Court altering the conviction of the respondent for offence punishable under S. 302 r/w S. 34 of the Penal Code, 1860 to S. 307 IPC — Sustainability** — *High Court in the impugned order altering the conviction primarily on the ground that there was no injury on the person of the deceased, as allegedly accepted by the learned Public Prosecutor and further observing that "mechanical" injury being absent it would be unjust if the argument of the learned counsel for the accused is not given some weightage — It thereafter concluding that in this background offence under S. 307 IPC would be clearly made out because in that process there was an attempt by virtue of which one of the victims has died — Held, on a bare reading of* *the High Court's order it is clear that it is a classic case of non-application of mind — Evidence of doctor as well as the post-mortem report clearly showed that there were 12 injuries noticed on the body of the deceased and each one of them was described to be ante-mortem — It is not clear as to how the High Court observed that there was no injury on the body of the deceased and what it meant by the expression "mechanical injury" — Judgment of trial court restored and the High Court's order so far as it relates to alteration of the conviction from S. 302 r/w S. 34 to S. 307 IPC set aside* (Paras 2, 10, 11 and 13 to 16). *State of Rajasthan* v. *Gulab Singh*, (2008) 8 SCC 139: (2008) 3 SCC (Cri) 433: AIR 2008 SC 3100: (2008) 69 AIC 160 (SC).

Bench Strength 2. Coram : **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision : 10-7-2008]

[4067] — Ss. 374 and 386 — Appeal against conviction — High Court by a cryptic unreasoned order acquitting respondent-accused for offence punishable under Ss. 363, 366 and 376 IPC — Unsustainability — *High Court neither discussing the evidence, nor indicating any basis for departing from conclusions of trial court — Matter remanded to High Court for fresh disposal — Penal Code, 1860, Ss. 363, 366 and 376* (Paras 1, 2, 6 and 8). *State of U.P.* v. *Munshi*, (2008) 9 SCC 390: (2008) 3 SCC (Cri) 778: (2008) 70 AIC 237 (SC).

Bench Strength 2. Coram : **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision : 28-8-2008]

[4068] — Ss. 374 and 386 — Appeal against conviction — High Court failing to consider individual cases of the accused persons — *Entire evidence considered by the High Court, although not in detail — No infirmity found in the impugned judgment of the High Court — But, since the High Court did not consider the individual cases of the accused persons, Supreme Court considering the same instead of remitting the appeal — Penal Code, 1860 — S. 302* (Para 6). *Amar Malla* v. *State of Tripura*, (2002) 7 SCC 91: 2002 SCC (Cri) 1608: AIR 2002 SC 3052.

Bench Strength 2. Coram : *U.C. Banerjee* and **B.N. Agrawal**, JJ. [Date of decision : 23-8-2002]

[4069] — Ss. 374 and 386 — Appeal against conviction — Rape — High Court should be slow to interfere with trial court's findings based on proper appreciation of evidence merely on surmises and conjectures

The judgment of the High Court was based more on surmises and conjectures than on proper appreciation of evidence. Court must be sensitive to the serious crime committed against human dignity. Courts must be wary, circumspect and slow to interfere with reasonable and proper findings based on appreciation of evidence as recorded by the lower courts, before upsetting the same and acquitting an accused involved in the commission of heinous offence of rape of hapless girl child. *State of H.P.* v. *Raghubir Singh*, (1993) 2 SCC 622: 1993 SCC (Cri) 674: 1993 (2) ALT (Cri) 286: (1993) 2 Crimes 887.

Bench Strength 2. Coram : *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision : 18-2-1993]

[4070] — Ss. 374 and 386 — Appeal against conviction — Two accused (respondents) convicted under Ss. 302 r/w 34 IPC and each sentenced to life imprisonment — High Court acquitting one of them in view of a gift of land made by him in favour of widow of the deceased as compensation and converting conviction of the second respondent to one under S. 304, IPC and reducing his sentence two years' RI -- *Held, High Court's judgment perverse and bad and liable to be set aside — Case remanded to High Court for rehearing without taking notice of the gift. Ramesh Kumar* v. *Ram Kumar*, (1984) 3 SCC 90: 1984 SCC (Cri) 387: AIR 1984 SC 1029: 1984 Cri LJ 832.

Bench Strength 3. Coram : **O. Chinnappa Reddy**, *A.P. Sen* and *E.S. Venkataramiah*, JJ. [Date of decision : 26-4-1984]

[4071] — Ss. 374 and 386 — Appeal against conviction — When High Court acquitted the co-accused finding it unsafe to convict him on sole testimony of the complainant, held, it erred in upholding conviction of the accused appellant on the basis of the same testimony — *Hence conviction and sentence of appellant also set aside — Prevention of Corruption Act, 1947, Ss. 5(1)(d) & 5(2) — Penal Code, 1860, S. 161. Shantilal Kashibhai Patel* v. *State of Gujarat*, 1993 Supp (2) SCC 187: 1993 SCC (Cri) 456.

Bench Strength 2. Coram : *Kuldip Singh* and **Yogeshwar Dayal**, JJ. [Date of decision : 2-11-1992]

[4072] — Ss. 374 and 386 — Appeal against trial court's judgment awarding life imprisonment — *Duty of High Court to consider the matter in detail — Disposal of appeal in one paragraph indicating agreement with findings recorded by trial court improper — Case remitted back to High Court. Saybu Maruti Ghadge* v. *State of Maharashtra*, 1990 Supp SCC 65: 1990 SCC (Cri) 619.

Bench Strength 2. Coram : *K.N. Singh* and *Kuldip Singh*, JJ. [Date of decision : 6-2-1989]

[4073] — **Ss. 374 and 386 — Appeal before High Court against conviction — High Court reversing the order of conviction — Propriety** — *Testimony of prosecution witnesses unimpeached and corroborated by medical evidence and post-mortem report — Motive for committing crime established — High Court recording acquittal on two grounds: (i) though the incident was alleged to have occurred on a pucca road at 5.15 p.m., no outsider or pedestrian or resident of the vicinity had been named in FIR or statement of witnesses but only PW 2 was examined as independent witness; and (ii) there was no necessity for PW 1 (father of the deceased) to go to Bareilly to fetch medicines for his younger son, when the deceased was going there to give evidence — Held, findings recorded by High Court are contrary to evidence on record and based on surmises and conjectures — Prosecution evidence has to be weighed and not counted — Besides, naming of witnesses is within the domain of the prosecution — Moreover, High Court has doubted the presence of witnesses without assigning any reasons — Hence order of acquittal recorded by High Court set aside and that of trial court restored — Evidence Act, 1872, S. 134* (Paras 10, 11, 12, 14, 15 and 18). *State of U.P.* v. *Ganga Ram*, (2005) 13 SCC 239: (2006) 2 SCC (Cri) 154: AIR 2006 SC 20: (2006) 1 All LJ 298: 2005 Cri LJ 4643.

Bench Strength 2. Coram : **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision : 25-10-2005]

Mithu Singh v. State of Punjab, (2001) 4 SCC 193: 2001 SCC (Cri) 668, considered

State of Rajasthan v. Kishan Singh, (2002) 10 SCC 160: 2004 SCC (Cri) 456, distinguished

[4074] — **Ss. 374 and 386 — Appeal before High Court against conviction — Rape case — High Court while acquitting the accused on benefit of doubt should be cautious to see that the doubt should be a reasonable doubt** — *It should not reverse the findings of guilt on the basis of irrelevant circumstances or mere technicalities — No person should be allowed to escape unpunished once guilt against him is proved*

It is true that the golden thread which runs throughout the cobweb of criminal jurisprudence as administered in India is that nine guilty may escape but one innocent should not suffer. But at the same time no guilty should escape unpunished once the guilt has been proved to the hilt. An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females. It is the spurt in the number of unmerited acquittals recorded by criminal courts which gives rise to the demand for death sentence to the rapists. The courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women. (Para 9). *State of Rajasthan* v. *N.K.*, (2000) 5 SCC 30: 2000 SCC (Cri) 898: AIR 2000 SC 1812: 2000 Cri LJ 2205.

Bench Strength **3**. Coram : *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *S.N. Variava*, JJ. [Date of decision : 30-3-2000]

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728; State of Punjab v. Gurmeet Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[4075] — **Ss. 374 and 386 — Appeal from conviction — High Court acquitting respondent-accused and setting aside their conviction recorded by trial court under Ss. 302/34 and 209 IPC — Sustainability** — *Accused* ***R, S*** *and* ***C*** *variously armed, alleged to have belaboured the deceased with their respective weapons, while he was returning after grazing the cattle, along with his wife (PW 1 and informant) and son (PW 7) — On hearing their shouts PW 4 and others gathered on the spot but all were chased away by the assailants, and victim dragged by his feet — PW 1 after some time going to the place of occurrence along with village chowkidar but could not find her husband although blood was found lying there — FIR lodged by PW 1 on next day at 9.15 a.m. — Body of victim discovered from a pond which was full of water after a month of the occurrence by village chowkidar — Dead body identified by PW 1 solely from the clothes worn by the corpse — PW 4 resiling from the statement made during investigation — Evidence of PW 1 found totally unreliable and full of discrepancies — Moreover, her relationship with deceased found doubtful because even though she claimed to be married to deceased, PW 7 stated that she was not living with the deceased on the relevant date — Besides, from the next day of murder she started staying with one* ***I*** *— No explanation offered for non-examination of village chowkidar — PW 7, aged 7/8 years appeared to be a* *tutored witness — Held, in such circumstances, judgment of High Court calls for no interference* (Paras 1, 2, 3, 7, 8 and 10). *State of U.P.* v. *Ram Veer Singh*, (2007) 13 SCC 102: AIR 2007 SC 3075: (2007) 58 AIC 111 (SC): (2007) 5 All LJ 705.

Bench Strength 2. Coram : **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision : 5-9-2007]

V.N. Ratheesh v. State of Kerala, (2006) 10 SCC 617: (2007) 1 SCC (Cri) 50, relied on

[4076] — Ss. 374 and 386 — Appeal to High Court against conviction under S. 302, IPC and sentence of life imprisonment — *Held, High Court not justified in enhancing the sentence by imposing additional sentence of fine of Rs 5000 and in default 2 years' RI without issuing show cause notice to the accused and without affording the accused opportunity to the heard — Hence the additional sentence set aside — Penal Code, 1860 — S. 302. Surjit Singh* v. *State of Punjab*, 1984 Supp SCC 518: 1985 SCC (Cri) 90: AIR 1984 SC 1910(2).

Bench Strength 2. Coram : *D.A. Desai* and *Ranganath Misra*, JJ. [Date of decision : 31-8-1984]

[4077] — Ss. 374 and 386 — Appeal to Supreme Court against conviction — *Court can take into account the circumstances of the case even if defence version found to be incorrect*

Even if the defence version is incorrect, that itself cannot blind the court to the circumstances in which the offence was committed, the background in which it was committed and the ferocity of the attack and the weapon used. *Jawahar Lal* v. *State of Punjab*, (1983) 4 SCC 159: 1983 SCC (Cri) 805: AIR 1983 SC 284: 1983 Cri LJ 429.

Bench Strength 2. Coram : *D.A. Desai* and *R.B. Misra*, JJ. [Date of decision : 17-1-1983]

[4078] — Ss. 374 and 386 — Concurrent finding of guilt by trial court and High Court — *Testimony of injured eyewitnesses fully corroborated by medical evidence and testimony of approvers also corroborated by other evidence establishing presence of those witnesses at the scene of occurrence — Trial court and High Court recording concurrent finding of guilt of accused-appellants — No infirmity in appreciation or assessment of evidence or approach of courts below as to relevant evidence pointed out — Held, there was no reason to upturn the finding of the courts — Constitution of India, Art. 134 — Penal Code, 1860 — Ss. 302, 34 and 149. Kannan* v. *State of T.N.*, 1989 Supp (1) SCC 81: 1989 SCC (Cri) 184: AIR 1989 SC 396: 1989 Cri LJ 825.

Bench Strength 2. Coram : **M.P. Thakkar** and *B.C. Ray*, JJ. [Date of decision : 31-10-1988]

[4079] — Ss. 374 and 386 — Criminal appeal — Appeal against conviction — Supreme Court's interference with concurrent findings of trial court and High Court when called for — Reappreciation of evidence by Supreme Court — *Place of occurrence as stated by prosecution witness different from that mentioned in FIR — Evidence regarding time of occurrence also not satisfactory — FIR prepared at hospital and handed over to police 7 hours after the occurrence and after victim's death without any convincing reason for the inordinate delay — Commencement of investigation also much delayed — Author of FIR a man of dubious character and his evidence completely tarnished — Eye witnesses highly inimical towards the accused and interested in prosecution and their testimony ambulatory and vacillating — Held, prosecution evidence unreliable, and it failed to establish the charges against the accused — Findings of courts below perverse — Hence Supreme Court's interference called for. Nain Singh* v. *State of U.P.*, (1991) 2 SCC 432: 1991 SCC (Cri) 421.

Bench Strength 2. Coram : **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision : 22-2-1991]

[4080] — Ss. 374 and 386 — Expeditious disposal of appeal — Direction by Supreme Court for — Delay incurred in proceedings — Appellant in custody for a long period — Relief — *Hence, High Court requested to dispose of the appeal as expeditiously as possible — Constitution of India — Art. 136* (Para 6). *Satbir* v. *State of Haryana*, (2006) 9 SCC 234: (2006) 2 SCC (Cri) 553.

Bench Strength 2. Coram : *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision : 5-9-2005]

[4081] — Ss. 374 and 386 — High Court unreasonably brushing aside truthful and compulsive testimony of witnesses on fanciful grounds and acquitting the accused — *Trial court justified in accepting testimony of disinterested witnesses and convicting the accused — Conviction under S. 302 restored — Constitution of India — Art. 136 — Penal Code, 1860 — S. 302. State of Kerala* v. *Bahuleyan*, (1986) 4 SCC 124: 1986 SCC (Cri) 361: AIR 1987 SC 482: 1986 Cri LJ 1579.

Bench Strength 2. Coram : *M.P. Thakkar* and **S. Natarajan**, JJ. [Date of decision : 19-8-1986]

[4082] — Ss. 374 and 386 — High Court's order dismissing appeal against conviction without discussing the evidence not sustainable — *Case remanded for fresh decision in accordance with law. Ram Karan* v. *State of Rajasthan*, 1990 Supp SCC 604: 1991 SCC (Cri) 162.

Bench Strength 2. Coram : *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision : 18-4-1988]

[4083] — Ss. 374 and 386 — Offence under Prevention of Corruption Act — Since case not proved beyond reasonable doubt, High Court reversing the conviction — Appreciation of evidence — Case not proved beyond reasonable doubt — *Accused police officer alleged to have demanded and taken bribe for releasing complainant — Special Judge convicting accused-respondent — Complainant turning hostile — Statement of prosecution witness that he went to the police station on request of complainant's father to find out how the complainant was detained, held, was not sufficient to establish the demand made by the accused — In absence of the necessary ingredients of the office under S. 5(1)(d) as well as under S. 161 IPC, order of acquittal not interfered with — Prevention of Corruption Act, 1947, S. 5(1)(d) and Penal Code, 1860, S. 161. State of M.P.* v. *J.B. Singh*, 2000 SCC (Cri) 1507: AIR 2000 SC 3562.

Bench Strength **2**. Coram : *G.B. Pattanaik* and *S.N. Variava*, JJ. [Date of decision : 27-4-2000]

[4084] — **Ss. 374 and 386 — Proper approach of the High Court in first appeal against conviction and sentence — Failure to consider and discuss evidence and deal with arguments raised at the bar** — *Held, judgment in appeal not sustainable — Case remanded for fresh disposal*

On a plain requirement of justice, the High Court while dealing with a first appeal against conviction and sentence is expected to, howsoever briefly depending upon the facts of the case, consider and discuss the evidence and deal with the submissions raised at the bar. If it fails to do so, it apparently fails in the discharge of one of its essential jurisdiction under its appellate powers. (Para 4). *Ishvarbhai Fuljibhai Patni* v. *State of Gujarat*, (1995) 1 SCC 178: 1995 SCC (Cri) 222: (1995) 1 GCD 401.

Bench Strength **2**. Coram : *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision : 24-11-1994]

[4085] — **Ss. 374 and 386 — Suspension of sentence — Application for, by the convict, rejected by High Court — Incarceration of convict for long pending appeal not desirable** — *But where conviction by trial court is under S. 302, High Court would normally presume that the convict is guilty, though even so, it can consider whether it is a fit case for suspending the sentence — Striking a balance, petitioner permitted to move the High Court again for suspension of the sentence* (Para 2). *Akhilesh Kumar Sinha* v. *State of Bihar*, (2000) 6 SCC 461: 2000 SCC (Cri) 1126.

Bench Strength **2**. Coram : *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision : 13-4-2000]

[4086] — **Ss. 374 and 386 — Trial court convicting the accused by a reasoned judgment after carefully considering the testimony of all the witnesses and the circumstances of the case** — *High Court's decision reversing trial court's acquittal order by wrongly rejecting the consistent, straightforward and cogent testimony of the independent witnesses without adequate reasons — Held, on facts, prosecution case proved beyond reasonable doubt and High Court's approach perverse — Hence trial court's order of conviction restored — Constitution of India — Art. 136. Abdul Razaq* v. *Nanhey*, 1984 Supp SCC 15: 1984 SCC (Cri) 384: AIR 1984 SC 452: 1984 Cri LJ 185.

Bench Strength 3. Coram : **S. Murtaza Fazal Ali**, *O. Chinnappa Reddy* and *E.S. Venkataramiah*, JJ. [Date of decision : 22-11-1983]

[4087] — Ss. 374 and 386 — Appeal against acquittal by High Court — Accused charged under Ss. 498-A and 306 IPC convicted by trial court under S. 498-A IPC — *High Court, not finding any sufficient material which could establish that the husband "treated his deceased wife with cruelty", acquitting the accused — In view of the absence of any complaint against the husband in the letters written by the deceased, held, oral evidence of the deceased's brother was not adequate to maintain the conviction, under S. 498-A, against the husband — Order of acquittal by High Court not interfered with — Penal Code, 1860, S. 498-A. State of Maharashtra* v. *Ashok Narayan Dandalwar*, (2000) 9 SCC 257: AIR 2000 SC 3568 (2).

Bench Strength **2**. Coram : *G.B. Pattanaik* and *S.N. Variava*, JJ. [Date of decision : 27-4-2000]

[4088] — Ss. 374 and 395 — Practice of making wild and unfounded allegations against the Judges strongly deprecated. *Vinod Kumar* v. *State of U.P.*, (1987) 2 SCC 623: 1987 SCC (Cri) 423: AIR 1987 SC 1501.

Bench Strength **2**. Coram : **A.P. Sen** and *B.C. Ray*, JJ. [Date of decision : 21-4-1987]

— S. 374(1) *See also* Ss. 221 and 374(1)

[4089] — Ss. 374(1), 379 and 384 — Criminal appeals under — Constitutionality of procedure for ex parte hearing and summary dismissal under Or. 21, R. 15(1)(c) of Supreme Court Rules, 1966 read with S. 384, CrPC, 1973 — *Held, not violative of Art. 21 if the rule is read down and in serious cases (i) full records of the case are placed before the Court; (ii) notice given to the opposite party; (iii) both parties heard; and (iv) reason recorded in the ultimate order — Relevant* *criteria and considerations for such deserving cases pointed out — Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, S. 2(a) — Art. 145(1)(b) — Constitution of India, Art. 134*

Per Krishna Iyer, Shinghal and Desai, JJ.:

The vires of Or. 21, R. 15(1)*(c)* of the Supreme Court Rules and also S. 384 of the Criminal Procedure Code, 1973 is upheld but in their application both the provisions shall be restricted by certain criteria as a permissible exercise in constitutionalisation.

A single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the conception that men are fallible, that judges are men and that making assurance doubly sure, before irrevocable deprivation of life or liberty comes to pass, a full-scale re-examination of the facts and the law is made an integral part of fundamental fairness or procedure. Order 21, R. 15(1)*(c)* is an enabling provision, not a compulsive one.

In consequence it is reasonable to hold that before hearing the appeal under Art. 134(1) or appeal under S. 2*(a)* of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 under R. 15(1)*(c)* of Or. 21, *(i)* ordinarily the records be sent for and are available; *(ii)* in the common run of cases the Court must issue notice to the opposite party, namely, the State and afford a hearing in the presence of both and with the records on hand; and *(iii)* reasons be recorded in the ultimate order.

But every right of appeal does not carry with it all the length of getting the record, hearing both sides and giving full reasons for decisions. The cases to which ex parte summary procedure will still apply are: Where the point of law urged is already covered by an earlier ruling of the Supreme Court; where the accused has pleaded guilty; where there is only a minor procedural irregularity; where the grounds, taken at their face value, are frivolous, vexatious, malicious, wholly dilatory or blatantly mendacious, the prolongation of an appeal is a premium on abuse of the process of court, and other such instances. This exceptional category is where, in all conscience, there is no point at all. In cases of real doubt the benefit of doubt goes to the appellant and notice goes to the adversary — even if the chances of allowance of the appeal be not bright.

Per Kailasam and Koshal, JJ.:

A right of appeal does not mean that before an appeal is disposed of the records should be called for, notice ordered to the other side, the other side heard and reasons given for the disposal of the appeal. An appeal to the Supreme Court under S. 374, Criminal Procedure Code, 1973 is restricted by the provisions of S. 384. The impugned R. 15(1)*(c)*, Or. 21 more or less incorporates the provisions found in the Criminal Procedure Code. When the provision in the Criminal Procedure Code enabling the Court to dismiss an appeal summarily is not challenged, the impugned rule is equally unassailable. The contention of the accused that the right conferred on him under Art. 134(1)*(a)* and *(b)* of the Constitution and under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, is curtailed is therefore without substance.

The impugned Rule is neither ultra vires Art. 145(1)*(b)* nor of any other statute.

The Rule does not offend Art. 21. Procedure established by law means the ordinary well-established Criminal Procedure, that is, those settled usages and normal modes of procedure sanctioned by the Criminal Procedure Code, which are the general law of criminal procedure in our country. The impugned procedure being the procedure prescribed under the Criminal Procedure Code cannot be assailed. Nor can it be said that the procedure prescribed by the Criminal Procedure Code is no procedure at all.

In fact Art. 21 cannot be invoked since a person convicted of an offence has no right of appeal unless such a right is conferred by the statute. If the statute does not confer a right of appeal the person has no remedy. A right of appeal is a statutory right which has got to be recognised by the Courts, and the right of appeal, where one exists, cannot be denied in exercise of the discretionary power even of the High Court. An appeal is a creature of the statute and the powers and the jurisdiction of the appellate Court must be circumscribed by the words of the statute. The powers and the jurisdiction of the Appellate Court as prescribed by the Criminal Procedure Code and the rule cannot be said to deny a right of hearing to the appellant. Taking into account the fact that the duty to decide the question where there are no sufficient grounds for interfering placed on highly placed judicial officers after affording a due hearing, it cannot be stated that the very right of appeal has been taken away. *Sita Ram* v. *State of U.P.*, (1979) 2 SCC 656: 1979 SCC (Cri) 576: AIR 1979 SC 745: 1979 Cri LJ 659.

Bench Strength 5. Coram : **V.R. Krishna Iyer**[1], *P.N. Shinghal*[1], **P.S. Kailasam**[2], *D.A. Desai*[1] and *A.D. Koshal*[2], JJ. [Date of decision : 24-1-1979]

— S. 374(2) *See* Ss. 378(1) and 374(2)
See also Ss. 386 & 374(2)
See also Ss. 386, 374(2) and 366
See also Ss. 386, 374(2) and 368(c)
See also Ss. 386, 378 and 374(2)
See also Ss. 386(b), 374(2) and 218
See also Ss. 386(b)(iii), 374(2) and 377
See also Ss. 401 and 374(2)
See also Ss. 437 and 374(2)
See also Ss. 482, 374(2), 386 and 397

[4090] — **S. 374(2) — Appeal against acquittal — Where the prosecution failed to prove common intention on the part of the accused persons, held, their conviction rightly set aside by the High Court** — *Penal Code, 1860, S. 34 — Constitution of India — Art. 136* (Para 9). *Bhura Ram* v. *State of Rajasthan*, (2003) 9 SCC 205.

Bench Strength 2. Coram : *Y.K. Sabharwal* and *H.K. Sema, JJ.* [Date of decision : 7-8-2002]

[4091] — **S. 374(2) — High Court as the first appellate court must analyse the evidence of eyewitnesses and other materials on record** — *High Court not doing so — Supreme Court going through the entire evidence on record and setting aside judgment of High Court in part. Raja Ram* v. *State of M.P.*, 1997 SCC (Cri) 908.

Bench Strength 2. Coram : *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision : 16-1-1997]

[4092] — **S. 374(2) — Proof beyond reasonable doubt — Necessity of — Prosecution failing to prove the case against appellants beyond reasonable doubt — Impropriety** — *On facts, in view of improbabilities, serious omissions and infirmities, interested nature of the evidence and other circumstances, held, prosecution has failed to prove the case against appellants beyond reasonable doubt — High Court erred in brushing aside serious infirmity in the prosecution case regarding non-explanation of the injuries sustained by A-2 and his wife, DW 3 and also not accepting the plea of right of private defence of the accused on unconvincing premises — Courts below were not correct in holding that A-2 had no right of private defence to his body or to the person of his wife — The evidence of DW 3, corroborated by the medical evidence, was so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy that it has to be relied upon and accepted vis-à-vis the evidence of prosecution — Hence, conviction of appellants set aside — Fine imposed by trial court, if realised, to be paid back — Penal Code, 1860 — S. 302*

In a case of murder, the trial court, on appreciation of the evidence, held the appellants guilty of the murder of the deceased *A* and, accordingly, convicted and sentenced accused A-1 and A-2 under Section 302 read with Section 34 IPC and A-3 under Section 302 IPC, imposing life imprisonment and fine with default stipulation. The appellants preferred an appeal under Section 374(2) CrPC before the High Court in which the High Court confirmed the conviction and sentence imposed upon the appellants. Hence the present appeal.

Allowing the appeal,

Held :

The incident, which resulted in the death of the deceased *A*, is not in dispute. PWs 2 and 3, the alleged eyewitnesses of the occurrence, are interested witnesses. They are brother and nephew respectively of the deceased. The prosecution has not examined any other witness in support of its case though it has come in the evidence of PW 3 that large number of persons were present at the scene of occurrence, who witnessed the incident. The defence of the accused A-2 corroborated by the evidence of his wife DW 3 appears to be more plausible than the rival version of the evidence of PWs 2 and 3. Despite searching lengthy cross-examination, the prosecution has failed to elicit any material to shatter and discredit the testimony of DW 3, wife of accused A-2. (Paras 11, 13 and 17)

The evidence of DW 3, corroborated by the medical evidence, is more probable, satisfactory and convincing than the evidence of PWs 2 and 3 who are interested witnesses and who have not given true genesis and origin of the occurrence in their testimony. Thus, non-explanation of the injuries on the person of the accused A-2 and his wife DW 3 supports the version of the defence that the accused A-2 inflicted single blow with *rambi* on the person of the deceased *A*, in private defence of his body and also the person of his wife, who had suffered several injuries at the hands of *A* with a weapon called *kapa*, though the injury received by the deceased turned out to be fatal in nature but it was not inflicted by the accused with the intention of causing death of the deceased or with the intention or knowledge that the injury would, in all probability, cause his death. Courts below were not correct in holding that the accused A-2 had no right of private defence to his body or to the person of his wife. (Paras 20 and 21)

The injuries on the person of the accused A-2 were simple in nature, whereas one injury found on the person of his wife DW 3 by the doctor was grievous in nature. The evidence of DW 3, corroborated by the medical evidence, is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy that it has to be relied upon and accepted vis-à-vis the evidence of the prosecution. (Para 21)

In the light of the evidence and in the background of the well-settled proposition of law and in view of the improbabilities, the serious omissions and infirmities, the interested nature of the evidence and other circumstances, it is clear that the prosecution has failed to prove the case against the appellants beyond reasonable doubt. The High Court was in error in brushing aside serious infirmity in the prosecution case regarding non-explanation of the injuries sustained by the accused A-2 and his wife DW 3 and also not accepting the plea of the right of defence of the accused on unconvincing premises. (Para 22)

The conviction of the appellants are set aside and are, accordingly, acquitted. Fine imposed by the trial court, if realised from the appellants, shall be paid back to them. (Paras 23 and 24). *Babu Ram* v. *State of Punjab*, (2008) 3 SCC 709: (2008) 2 SCC (Cri) 727: AIR 2008 SC 1260: (2008) 63 AIC 47 (SC): 2008 Cri LJ 1651.

Bench Strength 2. Coram : *P.P. Naolekar* and **L.S. Panta**, JJ. [Date of decision : 15-2-2008]

[4093] — S. 374(2) — Circumstances against the accused — *Where appellant and deceased, his sister-in-law leaving together to go to the jungle and appellant returning alone; upon return appellant telling daughter of deceased that her mother would return later; giving statement in custody leading to discovery of body; record also showing that appellant gave false information stating that he never went to the jungle with deceased and that he did not know what had happened to her — Held, the false information was an additional link in the chain of circumstances completing the chain — There was no reason to interfere with the order of the High Court confirming the conviction — Penal Code, 1860 — Ss. 302 and 201* (Paras 4 and 5). *Birbal* v. *State of M.P.*, (2000) 10 SCC 212.

Bench Strength 3. Coram : *G.B. Pattanaik, M. Srinivasan* and *S.N. Phukan*, JJ. [Date of decision : 30-9-1999]

[4094] — S. 374(2) — Appeal against conviction — Appreciation of evidence by High Court — Seals intact or broken — *Trial court found the seals intact as deposed by official witnesses — High Court's conclusion that there was no evidence to show that seals were intact, held, is abrupt and therefore, unsustainable — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 17*

It is to be noted that the trial court found that the seals were intact as deposed by the official witnesses. The High Court came to an abrupt conclusion that there was no evidence to show that the seals were intact. No such question was raised and on the contrary the trial court found that the evidence of official witnesses clearly establishes that the seals were intact. (Paras 12 and 13). *State of Haryana* v. *Mai Ram*, (2008) 8 SCC 292: (2008) 69 AIC 95 (SC).

Bench Strength 2. Coram : **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision : 31-7-2008]

[4095] — S. 374(2) — Question of fact raised for the first time in appeal — Scope of interference with — Appeal against conviction — Question of fact — Scope of interference by High Court — *Appellant-accused contending for the first time before High Court that the date written on complaint made to CBI was different from that claimed by the prosecution — Since that was a question of fact, High Court could not have made out a new case regarding correctness of the date — Mere suggestions made before the trial court that the document was not prepared at the time alleged, held, could not sustain the said plea as there is a lot of difference between "time" and "date" — Prevention of Corruption Act, 1988, S. 27*

Accused 1 and 2, respondents herein were two senior officers of Visakhapatnam Port Trust. Both of them were members of the Tender Opening Committee and were associated with the processing of the tender file which dealt with placement of purchase order for Assam Salwood Sleepers during the period September-December 1991. PW 1 was the power-of-attorney holder of a firm. That firm submitted its quotation through PW 1. The prosecution's case was that on 28-12-1991, A-1 and A-2 demanded bribe from PW 1 for clearing the file in favour of the said firm. On 30-12-1991, A-1 asked PW 1 to hand over the bribe money to him and A-2 the same day at the specified time and place. At the instance of PW 1, CBI registered a case and took up investigation. Both the accused were caught red-handed after they had demanded and accepted bribe amount of Rs 5000 each from PW 1 as a motive or reward for clearing the tender file in favour of the said firm. The tainted currency notes amounting to Rs 10,000 were recovered immediately from the polythene carrybag which was available with A-1. After obtaining sanction under Section 19(1)(*c*) of the Prevention of Corruption Act, 1988 (in short "the Act") from the Chairman of the Port Trust, a charge-sheet was filed under Sections 7 and 13(1)(*d*) r/w Section 13(2) of the Act and Section 120-B IPC. The accused denied their guilt. PWs and DWs were examined. PW 2 who was taken as witness to prove the acceptance and recovery of the money from PW 1 resiled partially from the statement given during investigation. The trial court held the accused persons guilty and sentenced them to undergo two years' RI and to pay a fine of Rs 1000. It awarded similar custodial punishment and imposed a fine of Rs 2000 under Section 120-B IPC. However, the A.P. High Court set aside the conviction and directed acquittal. The High Court noticed that the so-called complaint before CBI was dated 20-12-1991 while the prosecution claimed the same to have been made on 30-12-1991. That PW 2 who was one of the mediators did not support the prosecution version completely. That there was no consistent evidence to substantiate the alleged demand. That the accused persons being only members of the Tender Committee, possibility of making a demand was not there. The State then filed the present appeals.

The appellant State contended that the High Court had failed to take into consideration the legal position regarding presumptions. That the High Court had made out a new case regarding the alleged discrepancy in the date of complaint which had not been even pleaded by the accused before the trial court. That evidence of PW 1 clearly established the demand and recovery of money. That direct evidence was not necessary to show the acceptance of money. However, in respect of the discrepancy in the date of the complaint the respondents submitted that suggestion to that effect had been made before the trial court.

The evidence of PW 1 coupled with that of PWs 3 and 5 is sufficient to bring home the accusations. Further, the High Court has made out a new case about the alleged date of complaint. A bare reading of the contents of the complaint and the date put in the complaint clearly shows that the High Court was not correct in saying that the date of the document was 20-12-1991. Additionally, this plea was not raised before the trial court. There was even no suggestion about that aspect. What was suggested was that the documents were not prepared at the time they were claimed to be. There is a gulf of difference between "time" and "date". In any event such a plea had not been taken before the courts below. It being essentially a question of fact, the High Court could not have made out a new case regarding correctness of the date. Besides, the views of the High Court were also not correct when the document is itself looked at. (Para 27)

Therefore, the High Court was not justified in directing acquittal. Custodial sentence of one year for each of the proved offences would meet the ends of justice, with the fine and default stipulation stipulated by the trial court. (Para 28). *State of A.P.* v. *C. Uma Maheswara Rao*, (2004) 4 SCC 399: 2004 SCC (Cri) 1276: AIR 2004 SC 2042: 2004 Cri LJ 2040.

Bench Strength **2**. Coram : *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision : 31-3-2004]

Chaturdas Bhagwandas Patel v. State of Gujarat, (1976) 3 SCC 46: 1976 SCC (Cri) 351, followed

[4096] — Ss. 374(2) and 26(a)(ii) — Appeal — Right to — *In cases other than covered by S. 49-E(2), Electricity Act held, the accused has a right of appeal to High Court against the conviction recorded by Special Court — Electricity Act, 1910, Ss. 49-E(1) & (2) and 49-F (as ins. by A.P. Act 35 of 2000)*

From Sections 49-C(1) & (2), 49-E and 49-F as inserted by the amending Act and Sections 374(2) and 26(*a*)(*ii*), CrPC, it follows that except for such category of cases which are covered by Section 49-E(2) of the amending Act, there would be a right of appeal to the High Court against a conviction recorded by the Special Court. (Para 16). *Transmission Corpn. of A.P.* v. *Ch. Prabhakar*, (2004) 5 SCC 551: 2004 SCC (Cri) 1681.

Bench Strength **2**. Coram : *S. Rajendra Babu, C.J.* and **G.P. Mathur**, J. [Date of decision : 26-5-2004]

[4097] — Ss. 374(2) and 386 — Appeal to High Court against conviction — *Plea of self-defence main basis of the memorandum of appeal — High Court erred in not considering the said plea which went to the root of the matter* (Para 13). *Krishnan* v. *State of T.N.*, (2006) 11 SCC 304: AIR 2006 SC 3037: 2006 Cri LJ 3907.

Bench Strength **2**. Coram : *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision : 14-8-2006]

[4098] — Ss. 374(2) and 386 — Sentencing — Applicability of statutory standard for, on appellate court as applicable to trial court — Reduction of sentence below the statutory minimum — Need for recording "adequate and special reasons" — Applicability to High Court — *Held, what is applicable to trial courts regarding recording of reasons for a departure from minimum statutory sentence is equally applicable to High Court in reducing the sentence in appeal — Penal Code, 1860 — Ss. 376(1) & (2) provisos*

What is applicable to the trial courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The only reason indicated by the High Court in the present case is the young age of the accused and the fact that he belongs to a Scheduled Tribe. The same can by no stretch of imagination be considered either adequate or special. The requirement in law is cumulative. (Para 18). *State of M.P.* v. *Santosh Kumar*, (2006) 6 SCC 1: (2006) 3 SCC (Cri) 1: AIR 2006 SC 2648.

Bench Strength 2. Coram : **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision : 14-7-2006]

[4099] — S. 374(3) — Subsequent events taking place during the pendency of appeal — On facts, held, were to be taken into account by the appellate court while disposing of the appeal — Compromise — Settlement between parties during pendency of appeal in Sessions Court against conviction and sentence of imprisonment and fine under S. 138, NI Act, 1881 — *Pursuant to such settlement the convicted party depositing the cheque amount with the trial court — Relief — In such circumstances, Supreme Court directing the Sessions Court to take the said events into account and pass such order as it may deem fit in the appeal — Moreover, in view of the complainant-respondent's statement before Supreme Court that if permitted to withdraw the said amount he would not press before the Sessions Court for conviction or sentence, Supreme Court permitting him to withdraw the said amount and directing the Sessions Court to consider whether in such circumstances, conviction was to be maintained or an order imposing fine was to be passed — Negotiable Instruments Act, 1881, S. 138* (Paras 7, 9 and 10). *Cranex Ltd.* v. *Nagarjuna Finance Ltd.*, (2000) 7 SCC 388: 2000 SCC (Cri) 1388: AIR 2000 SC 3145.

Bench Strength 2. Coram : *M. Jagannadha Rao* and *M.B. Shah*, JJ. [Date of decision : 14-9-2000]

[4100] — S. 374(3)(a) — Appeal against conviction — Mode of disposal of — *Lower appellate court not applying mind to the factual aspects of the case and merely considering the question of quantum of sentence — Such disposal of appeal, held, resulted in denial of opportunity to the appellants to agitate their case on facts — Denial of statutory right of appeal offends Arts. 21 and 14 of the Constitution — Hence, matter rendered back to the said appellate court to hear and decide the appeals on merits — Penal Code, 1860, Ss. 420, 477-A, 468, 109 & 409 — Constitution of India — Arts. 21 and 14* (Para 8). *K. Pandurangan* v. *S.S.R. Velusamy*, (2003) 8 SCC 625: AIR 2003 SC 3318.

Bench Strength 2. Coram : **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision : 18-9-2003]

A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602: 1988 SCC (Cri) 372, relied on

— S. 375 *See* Ss. 372 to 382

— S. 376 *See* Ss. 372 to 382

See also Ss. 386 and 376

[4101] — Ss. 376, 384 and 397 — Procedure regarding appeal under S. 11, Special Courts Act, has wider and more advantageous scope than that prescribed under CrPC, 1973 — *Absence of any provision for revision does not create any procedural disadvantage — Special Courts Act, 1979, S. 11*

An appeal being a creature of statute, an accused has no inherent right to appeal to a particular tribunal. The legislature may choose any tribunal for the purpose of giving a right of appeal. Moreover, an appeal to the High Court is less advantageous than an appeal to the Supreme Court as an appeal to the High Court under the Code of Criminal Procedure is attended with the risk of being summarily dismissed under S. 384. On the other hand, an appeal to the Supreme Court is governed by S. 11(1). Such an appeal lies as of right both on facts and on law. Thus, the right conferred on a convict by S. 11(1) is wider and less restricted than the right of appeal given by the Code of Criminal Procedure, 1973.

Moreover, if the appeal is filed before the Supreme Court or is transferred thereto, the accused becomes entitled to a hearing of his case by the highest court in the country both on facts and on law and thus gets a far greater advantage than a right to move the court for grant of special leave which may or may not be granted, it being a matter of discretion to be exercised by the Supreme Court.

If the Sessions Judge were to try an accused and sentence him to fine or to imprisonment not exceeding three months, he would have no right of appeal at all, under S. 376 CrPC, 1973. On the other hand, if a Special Judge imposes the same sentence, an appeal lies to the Supreme Court as of right both on facts and on law.

In such circumstances the right of appeal provided by the Act cannot be said to be harsher or less advantageous to the accused. *V.C. Shukla* v. *State (Delhi Admn.)*, 1980 Supp SCC 249: 1980 SCC (Cri) 849: AIR 1980 SC 1382 (Judgmen: 1980 Cri LJ 965.

Bench Strength 3. Coram : **S. Murtaza Fazal Ali**, *P.S. Kailasam* and *A.D. Koshal*, JJ. [Date of decision : 11-4-1980]

[4102] — Ss. 376 and 386 — Appeal before High Court against acquittal — *When the view taken by trial court found by the High Court to be manifestly wrong and would lead to miscarriage of justice, High Court entitled to set aside the acquittal and convict the accused. Arun Kumar* v. *State of U.P.*, 1989 Supp (2) SCC 322: 1990 SCC (Cri) 173: AIR 1989 SC 1445: 1989 Cri LJ 1460.

Bench Strength 2. Coram : **S. Natarajan** and *Kuldip Singh*, JJ. [Date of decision : 13-4-1989]

— S. 377 *See* Ss. 354(3), 377 and 386

See also Ss. 372 to 382

See also Ss. 386 and 377

See also Ss. 386(b)(iii), 374(2) and 377

See also Ss. 397, 377 & 401

See also Ss. 397, 401, 374, 377 and 386

[4103] — S. 377 — Scope and nature

Section 377 does not exclude revisional jurisdiction of the High Court to act suo motu for enhancement of sentence in appropriate cases. What is an appropriate case has to be left to the discretion of the High Court.

The provisions under S. 401 read with S. 386(*c*)(*iii*) CrPC, 1973 are clearly supplemental to those under S. 377 whereby appeals are provided for against inadequacy of sentence at the instance of the State Government or Central Government, as the case may be. *Nadir Khan* v. *State (Delhi Admn.)*, (1975) 2 SCC 406: 1975 SCC (Cri) 622: AIR 1976 SC 2205: 1976 Cri LJ 1721.

Bench Strength **1**. Coram : **P.K. Goswami**, J. [Date of decision : 3-6-1975]

[4104] — S. 377 — Prosecution only entitled to urge for inadequacy of sentence and not for its enhancement on ground of the offence being of graver kind

In an appeal against inadequacy of sentence it is not permissible to alter the conviction to an aggravated category of offence for which the accused was not convicted. While the accused in such an appeal under S. 377, Criminal Procedure Code can show that he is innocent of the offence, the prosecution is not entitled to show that he is guilty of a graver offence and on that basis the sentence should be enhanced. The prosecution will only be able to urge that the sentence is inadequate on the charge as found or even on an altered less grave charge. *Eknath Shankarrao Mukkawar* v. *State of Maharashtra*, (1977) 3 SCC 25: 1977 SCC (Cri) 410: AIR 1977 SC 1177: (1977) 3 SCR 513: 1977 MLJ (Cri) 421: 1977 Cri LJ 964.

Bench Strength **3**. Coram : *Y.V. Chandrachud*, **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision : 12-4-1977]

[4105] — S. 377 — Appeal before High Court against unconscionably lenient or 'flea-bite' sentences — *High Court's refusal to interfere with the sentences imposed by the trial court on ground of long pendency of the appeal causing mental agony to the accused, held, unjustified — Considerations of undue sympathy in such case will lead to miscarriage of justice and undermine conscience of the public in efficacy of criminal judicial system . State of Karnataka* v. *Krishna*, (1987) 1 SCC 538: 1987 SCC (Cri) 198: AIR 1987 SC 861: 1987 Cri LJ 776.

Bench Strength **2**. Coram : *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision : 21-1-1987]

[4106] — S. 377 — Court's interference with sentence — *When called for — Drastic reduction in sentence especially in murder cases not justified — Constitution of India — Art. 136*

It is the duty of the court to impose a proper punishment. To allow the respondent to escape with payment of a fine of Rs 10,000 will deprive the law of its effectiveness and result in travesty of justice. Such drastic reduction to sentence in murder cases, apart from creating law and order problems, would be repugnant to the basic concepts of criminal justice. In dealing with a sentence which has been made the subject of an appeal, the court will interfere with a sentence only where it is erroneous in principle. The fact that the respondent acted in a heat of passion without any intention to cause the death of the deceased was a sufficient ground for a lesser punishment, but it could not be a ground for remitting the entire sentence and substituting it with a fine. The High Court failed to appreciate the desirability of imposing a proper punishment as a measure of social necessity, as a means of deterring other potential offenders. *State of Haryana* v. *Prabhu*, 1987 Supp SCC 177: 1988 SCC (Cri) 51(2).

Bench Strength **2**. Coram : *A.P. Sen* and *S. Natarajan*, JJ. [Date of decision : 15-12-1986]

[4107] — S. 377 — Sentence — *Accused, a bank employee, drawing a sum of Rs 8400 by utilising signed cheque leaves of co-accused — Sentence of imprisonment till rising of court and a fine of Rs 1000, held, inadequate — However, in view of long lapse of time no interference by Supreme Court called for — Constitution of India — Art. 136 — Prevention of Corruption Act, 1947, S. 5(2) and (1)(d). State of Karnataka* v. *M. Obanna*, 1989 Supp (2) SCC 199: 1990 SCC (Cri) 49.

Bench Strength **2**. Coram : *S. Natarajan* and *Kuldip Singh*, JJ. [Date of decision : 29-3-1989]

[4108] — S. 377 — Appeal against sentence — *Where Magistrate releases accused on probation under S. 4 of U.P. First Offenders' Probation Act, 1938, appeal will lie before Sessions Court under S. 11(2) and not before High Court under S. 377(1) CrPC — Probation of Offenders Act, 1958, S. 11(2)*

In a case where the conviction is recorded by the trial court but instead of awarding sentence of imprisonment the convict is released on probation under the provisions of the relevant special law then it is a case where no sentence at all has been awarded and as such S. 377(1) is not attracted. The respondent has been released on probation under S. 4 of the U.P. First Offenders' Probation Act. Section 11(2) specifically provides that an appeal against an order under S. 3 or 4 of the Act shall lie to the court to which the appeals ordinarily lie from the sentences of the trial court which obviously means the next superior court in the hierarchy. Ordinarily, appeals lie from the sentences awarded by the Magistrate to the Court of Session. Therefore, the appeal filed by State of U.P. before the High Court in this case was incompetent. (Para 5). *State of U.P.* v. *Nand Kishore Misra*, 1991 Supp (2) SCC 473: AIR 1991 SC 763: 1991 Cri LJ 456.

Bench Strength **2**. Coram : *Kuldip Singh* and *K. Ramaswamy*, JJ. [Date of decision : 14-11-1990]

[4109] — S. 377 — Enhancement of sentence by Supreme Court in appeal under — *Even in absence of an appeal by Govt. specially for that purpose and in absence of revisional power such as that available to High Court and Sessions Court under CrPC, held, Supreme Court has power under Art. 142 r/w S. 19 to enhance the sentence for doing complete justice in the matter when in the circumstances of the case it appears it to be too inadequate — Constitution of India, Art. 142 — Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 19*

It was contended that the Supreme Court has no power to enhance sentence in the absence of an appeal by the Government presented specifically for that purpose more so because the Supreme Court has no revisional powers which the High Court and Court of Session are conferred with by the Criminal Procedure Code.

Held :

Powers of the Supreme Court in appeals filed under Article 136 of the Constitution are not restricted by the appellate provisions enumerated under the Code of Criminal Procedure or any other statute. When exercising appellate jurisdiction, the Supreme Court has power to pass any order.

However, the present appeals have not been filed under Article 136 of the Constitution, but under Section 19 of TADA. Hence while dealing with a statutory appeal, plenary powers of the Supreme Court cannot be exercised. But even otherwise the Supreme Court has wide and residual powers to deal with a situation like this, which are well enclosed in Article 142 of the Constitution.

Supreme Court's powers under Article 142 of the Constitution are vastly broad-based. That power in its exercise is circumscribed only by two conditions, first is, that it can be exercised only when Supreme Court otherwise exercises its jurisdiction and the other is that the order which Supreme Court passes must be necessary for doing complete justice in the cause or matter pending before it. The first condition is satisfied here as the appellate jurisdiction of the Supreme Court is exercisable by virtue of Section 19 of TADA. *Chandrakant Patil* v. *State*, (1998) 3 SCC 38: 1998 SCC (Cri) 720: AIR 1998 SC 1165.

Bench Strength **2**. Coram : *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision : 2-2-1998]

[4110] — S. 377 — Sentence — Quantum of — *Conviction of Manager of the factory for offence under — Sentence of six months' RI and a fine of Rs 75,000 imposed by the High Court in appeal against sentence is unduly harsh — Trial court was also not justified in imposing a fine Rs 750 only while convicting the appellant on his plea of guilt — Held, having regard to the facts and circumstances of the case, particularly the fact that the appellant was Manager and not owner of the factory, substantive sentence set aside and fine reduced to Rs 20,000 which should be paid to the injured worker — Such payment shall be without prejudice to his right to claim other compensation to which he may be entitled — Factories Act, 1948, S. 92. Jivanbhai Patel* v. *State of Gujarat*, (1997) 10 SCC 329: 1997 SCC (L&S) 1695.

Bench Strength **2**. Coram : *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision : 4-4-1997]

[4111] — Ss. 377 and 386 — Quantum of sentence — Scope of interference in appeal — *Wife committed suicide after a family quarrel — Trial court convicted appellant under Ss. 306 and 498-A IPC, sentenced to four years' imprisonment — High Court relying on two letters observed appellant's quarrelsome and aggressive nature — Sentence enhanced from four to six years — Held, enhancement was not justified on account of appellant's quarrelsome nature — Interference with quantum of sentence should be rare and only in exceptional cases — There was no misbehaviour on part of appellant over a period of time — Incident was a spontaneous one arising out of a family quarrel in the morning — Two letters written about a year before incident, have little value in light of dying declaration — Appellant had undergone about four years of sentence — Appeal allowed — Trial court's judgment restored — Penal Code, 1860, Ss. 306 and 498-A* (Paras 2 to 8). *Ravindra Tukaram Hiwale* v. *State of Maharashtra*, (2010) 13 SCC 253.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 2-8-2010]

[4112] — Ss. 377 and 386(c) — Enhancement of sentence — High Court's power to interfere with discretion of trial Court — *Adequate reasons must be given and not merely the vague phrase 'ends of justice'*

The High Court has the power to supersede the trial court's discretion with regard to sentence provided there is error in principle or there is perverse exercise or like faux pas is pointed out and the reasons are stated.

In the present case, except by referring to the vague term "ends of justice", the High Court's substantial enhancement of the sentence does not amount to a speaking order giving reasons, because, none of the reasons which have been stated by the trial Court have been expressly dissented from by the High Court, and the reasons given by the trial court are certainly pertinent to the question of sentence. *Lingala Vijay Kumar* v. *Public Prosecutor*, (1978) 4 SCC 196: 1978 SCC (Cri) 579: AIR 1978 SC 1485: 1978 Cri LJ 1527.

Bench Strength 3. Coram : **V.R. Krishna Iyer**, *D.A. Desai* and *O. Chinnappa Reddy*, JJ. [Date of decision : 2-8-1978]

[4113] — Ss. 377 and 386(c) — Appeal against sentence on ground of inadequacy — Power of High Court to enhance sentence from life imprisonment to death sentence — *Trial court giving detailed reasons for not choosing to award capital punishment — Reasons given by trial court not perverse or unreasonable — High Court not justified in taking a different view and after five years of trial court's judgment enhancing the sentence from life imprisonment to that of death sentence*

There is undoubtedly power of enhancement available with the High Court which, however, has to be sparingly exercised. No hard and fast rule can be laid down as to in which case the High Court may enhance the sentence from life imprisonment to death. Each case depends on its own facts and on a variety of factors.

In the instant case the trial court dealt with the question of sentence elaborately and came to the conclusion that the sentence of imprisonment for life would meet the ends of justice. Therefore, the trial court did not merely, by a cursory order, impose the sentence of life imprisonment and used its discretion not to award the capital sentence of death for detailed reasons recorded by it. The reasons given by the trial court cannot be said to be wholly unsatisfactory or irrelevant much less perverse. The High Court differed with the reasoning of the trial court and almost five years after the judgment had been pronounced by the trial court proceeded to enhance the sentence from life imprisonment to that of death sentence. The High Court also gave its own reasons in support of its view on the question of sentence. The High Court, however, did not opine that the reasons given by the Sessions Judge were perverse or so unreasonable as no court could have advanced the same. It took a different view of the legislative policy as also of the law laid down by this Court and referred to some other judgments of the Supreme Court also in support of its "reasons" to impose the sentence of death. The view taken by the High Court, it can legitimately be said is also a possible view.

In the peculiar facts and circumstances of this case, when the occurrence took place almost 10 years ago and for the last more than 6 years the spectre of death has been hanging over the head of the appellant the High Court should not have enhanced the sentence from life imprisonment to death because for exercising its discretion in choosing the sentence the trial court had given elaborate reasons which it cannot be said no judicial mind could advance. Only because the High Court looked at those reasons differently did not justify the enhancement of sentence to death sentence. *Jashubha Bharatsinh Gohil* v. *State of Gujarat*, (1994) 4 SCC 353: 1994 SCC (Cri) 1193.

Bench Strength 2. Coram : *K. Jayachandra Reddy* and **Dr. A.S. Anand**, JJ. [Date of decision : 13-4-1994]

Dalip Singh v. State of Punjab, 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465, considered

[4114] — Ss. 377 and 386(c) — Appeal for enhancement of sentence — Power to enhance sentence of life imprisonment to death must be sparingly exercised in rarest of rare cases for special reasons to be recorded — *On facts and in circumstances of the case, High Court not justified in enhancing the sentence of life imprisonment to death*

The reasons given by the High Court to enhance the sentence of life imprisonment to death, without taking into account all circumstances and balancing the aggravating and the mitigating circumstances are neither 'special reasons' nor otherwise adequate and sufficient to impose the sentence of death on either of the three convicts. *Anshad* v. *State of Karnataka*, (1994) 4 SCC 381: 1994 SCC (Cri) 1204.

Bench Strength 2. Coram : **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision : 22-4-1994]

— S. 377 r/w S. 386(c) *See* S. 397 r/w S. 401 and S. 377 r/w S. 386(c)

[4115] — Ss. 377(1) and (2) — State Government has power to file appeal against inadequacy of sentence for offences under Prevention of Food Adulteration Act, 1954, as Central Government has not empowered an agency to investigate as required by S. 377(2)

The Legislature has maintained a watertight dichotomy while dealing with the matter of appeal against inadequacy of sentence. In the absence of the word 'also' found in S. 378, it cannot be read with S. 377 and it cannot be held that both the State and Central Governments have a right of appeal against inadequacy of sentence in all matters.

But, in the absence of any express provision in the Prevention of Food Adulteration Act, 1954, empowering some agency to make investigation under that Act, S. 377(2), Criminal Procedure Code is not attracted and therefore the appeal under S. 377(1), by the State Government is competent.

Under S. 377(1), by using the words 'Save as otherwise provided in sub-section (2)' the State Government has a right of appeal against inadequacy of sentence in all cases other than those referred to in sub-section (2). Section 377(2) confers a right of appeal on the Central Government against inadequacy of sentence in 2 cases, namely, *(a)* where investigation is conducted by the Delhi Special Police Establishment; and *(b)* where investigation is conducted by any other agency empowered to make investigation under any Central Act other than the Criminal Procedure Code. In other words, just like S. 3 of the Delhi Special Police Establishment Act, 1946, there should be an express provision in the Prevention of Food Adulteration Act empowering the making of investigation under the Act. But there is no such express provision in the Prevention of Food Adulteration Act. It is true that some powers exercised by the Food Inspectors under S. 10 of that Act, are included in the investigating powers of the police, but the Food Inspectors have no power of arrest of offenders unless such offenders refuse to give their names and addresse. It is only on receipt of the Analyst's report certifying that an article is adulterated that the Food Inspector can submit a report to the Magistrate, for taking cognizance of the offence and his report will have to be accompanied by the written consent of the appropriate authority under S. 20. Therefore, Food Inspectors are not empowered to make investigation under the Act. *Eknath Shankarrao Mukkawar* v. *State of Maharashtra*, (1977) 3 SCC 25: 1977 SCC (Cri) 410: AIR 1977 SC 1177: (1977) 3 SCR 513: 1977 MLJ (Cri) 421: 1977 Cri LJ 964.

Bench Strength **3**. Coram : *Y.V. Chandrachud*, **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision : 12-4-1977]

— S. 377(2) *See also* Ss. 377(1) & (2)

[4116] — S. 377(2) — Any other agency — Scope — *Officers of the Customs Department (Assistant Collector of Central Excise in this case) whether covered — Question left open. CCE* v. *V. Krishnamoorthy*, (1997) 3 SCC 100: 1997 SCC (Cri) 430: AIR 1997 SC 1904: (1997) 90 ELT 285: (1997) 1 An LT (Cri) 526: 1997 Cri LJ 1930.

Bench Strength **2**. Coram : *M.M. Punchhi* and *K.T. Thomas*, JJ. [Date of decision : 20-2-1997]

[4117] — Ss. 377(2), 24(8) and 401 — Appeal by Government for enhancement of sentence — Maintainability — Conversion of non-maintainable appeal into revision — Permissibility — "Public Prosecutor" — Scope — *Special Public Prosecutor, held, covered — Hence, High Court erred in holding that appeal under S. 377(2) was not maintainable merely because it was filed by Special Public Prosecutor and not by Public Prosecutor — However, since the Special Public Prosecutor, who had filed the said appeal, had not been empowered by the Central Government to file such an appeal, and taking into consideration the contentions raised, Supreme Court found the case to be a fit one for exercise of revisional jurisdiction — Hence, Supreme Court directing the High Court to treat the appeal filed by Special Public Prosecutor as a revision application and decide the same on merits* (Paras 5 to 8). *CCE* v. *Sabnife Power Systems Ltd.*, (2002) 9 SCC 389: (2002) 142 ELT 521.

Bench Strength **2**. Coram : *M.B. Shah* and *B.N. Agrawal*, JJ. [Date of decision : 12-2-2002]

[4118] — Ss. 377(2) and 378(4) — Locus standi — *Appeal under S. 377(2) filed on the ground of inadequacy of sentence by Central Government Public Prosecutor under direction from the complainant (Assistant Collector of Central Excise), held, incompetent — Although the complainant can maintain an appeal against acquittal under S. 378(4), direction to file an appeal under S. 377(2) can be given only by the Central Government and not by the complainant. CCE* v. *V. Krishnamoorthy*, (1997) 3 SCC 100: 1997 SCC (Cri) 430: AIR 1997 SC 1904: (1997) 90 ELT 285: (1997) 1 An LT (Cri) 526: 1997 Cri LJ 1930.

Bench Strength **2**. Coram : *M.M. Punchhi* and *K.T. Thomas*, JJ. [Date of decision : 20-2-1997]

— S. 377(3) *See also* Ss. 401, 377(3), 397 & 386

[4119] — S. 377(3) — Appeal for enhancement of sentence — What constitutes an appeal for enhancement of sentence — *Appeal preferred by State for setting aside the order passed by the High Court imposing a sentence which was less than the minimum sentence (7 years in this case) prescribed* *under the Act — Held, the said appeal in effect is for enhancement of the sentence of the accused because if the sentence is found to be illegal and set aside and appropriate sentence is imposed, it would result in the enhancement of the sentence — Constitution of India — Art. 136* (Para 6). *State of Rajasthan* v. *Kishanlal*, (2002) 5 SCC 424: 2002 SCC (Cri) 1149: AIR 2002 SC 2250: 2002 Cri LJ 2963.

Bench Strength **2**. Coram : *Y.K. Sabharwal* and **B.P. Singh**, JJ. [Date of decision : 10-5-2002]

[4120] — S. 377(3) — Extraordinary appellate jurisdiction of Supreme Court under Art. 136, in relation to criminal matters — Scope — Provisions of S. 377(3) CrPC do not apply to an appeal under Art. 136 — *However, Supreme Court keeps in mind the principles analogous to those found in CrPC including those under S. 377(3), apart from Supreme Court Rules, in order to make the procedure a "fair procedure" — Constitution of India — Art. 136*

It was contended that if the Supreme Court is inclined to go into the merits of the State appeal (in this case preferred under Article 136) then it should consider the effect of Section 377(3) read with Section 386(*c*)(*iii*) CrPC. It was argued that in the event of the appellate court entertaining an appeal of the State against sentence then it is open to the accused not only to show cause against the enhancement of such sentence but also to plead for his complete acquittal or for reduction of the sentence. It was also pointed out that in view of the provisions of Section 386 of the Code, it is open to the Supreme Court as an appellate court in an appeal for enhancement of sentence to alter the sentence also.

Rejecting the contention,

Held :

Section 377(3) CrPC is applicable only when the matter is before the High Court and the same is not applicable to the Supreme Court when an appeal for enhancement of sentence is made under Article 136 of the Constitution. An appeal to the Supreme Court in criminal matters is not provided under the Code except in cases covered by Section 379 CrPC. An appeal to the Supreme Court under Article 136 is not the same as a statutory appeal under the Code of Criminal Procedure, 1973. The Supreme Court under Article 136 is not a regular court of appeal which an accused can approach as of right. It is an extraordinary jurisdiction which is exercisable only in exceptional cases when the Supreme Court is satisfied that it should interfere to prevent a grave or serious miscarriage of justice, as distinguished from mere error in appreciation of evidence. While exercising this jurisdiction, the Supreme Court is not bound by the rules of procedure as applicable to the courts below. The Supreme Court's jurisdiction under Article 136 is limited only by its own discretion. Section 377(3) CrPC in terms does not apply to an appeal under Article 136. (Para 10)

However, this does not mean that the Supreme Court will be unmindful of the principles analogous to those found in the Criminal Procedure Code including those under Section 377(3) CrPC while moulding a procedure for the disposal of an appeal under Article 136. Apart from the Supreme Court Rules applicable for the disposal of the criminal appeals in the Supreme Court, the Supreme Court also adopts such analogous principles found in the Criminal Procedure Code so as to make the procedure a "fair procedure" depending on the facts and circumstances of the case. (Para 11)

In the instant case both the trial court and the High Court have considered the entire material on record and have concurrently found the respondents guilty of the offence they are charged of. As against the said conviction and sentence, the respondents had preferred a substantive special leave petition under Article 136 before the Supreme Court which was dismissed on merits, and the respondents have not chosen to prefer any review petition against the said dismissal order. In this background it is not appropriate to accede to this request of the respondents because neither the facts and circumstances of the case nor the public interest requires the Supreme Court to do so. (Para 12). *State of U.P.* v. *Dharmendra Singh*, (1999) 8 SCC 325: 1999 SCC (Cri) 1425: AIR 1999 SC 3789:

Bench Strength **2**. Coram : *S.S.M. Quadri* and **N. Santosh Hegde**, JJ. [Date of decision : 21-9-1999]

Nihal Singh v. State of Punjab, AIR 1965 SC 26: (1965) 1 Cri LJ 105; Chandrakant Patil v. State through CBI, (1998) 3 SCC 38: 1998 SCC (Cri) 720, relied on

U.J.S. Chopra v. State of Bombay, AIR 1955 SC 633: 1955 Cri LJ 1410, distinguished

[4121] — S. 377(3) — Applicability of, to an appeal under Art. 136 of the Constitution — *Despite the provision being inapplicable, the court can allow the accused to argue for an acquittal in the appeal preferred by the State for enhancement of the sentence by adopting analogous provision found in S. 377(3) CrPC — Constitution of India — Art.136* (Paras 10 and 12). *State of Rajasthan* v. *Kishanlal*, (2002) 5 SCC 424: 2002 SCC (Cri) 1149: AIR 2002 SC 2250: 2002 Cri LJ 2963.

Bench Strength **2**. Coram : *Y.K. Sabharwal* and **B.P. Singh**, JJ. [Date of decision : 10-5-2002]

State of U.P. v. Dharmendra Singh, (1999) 8 SCC 325: 1999 SCC (Cri) 1425, relied on

[4122] — **S. 377(3) — Appeal by Government against inadequacy of sentence — Accused's right to plead for his acquittal** — *Held, available only at the stage of appeal preferred by Govt. to High Court — Once Supreme Court in appeal already confirmed the conviction of the accused under S. 5 of TADA after considering in detail the contentions raised by the accused and further dismissed the review petition filed by accused, no further opportunity can be afforded to the accused in appeal before Supreme Court under S. 19 of TADA to plead for his acquittal by reviewing the findings already made — Terrorist and Disruptive Activities (Prevention) Act, 1987, Ss. 19 & 5*

The right envisaged in Section 377(3) of the present Code shall be confined to appeals presented by the Government to the High Court against sentence on the ground of its inadequacy. There is no scope to afford a further opportunity in the appeal, at this stage, since the finding of the trial court has already been considered elaborately by re-evaluating the entire evidence in the light of the elaborate arguments canvassed on behalf of the parties. A repetition of the whole process over again is, apart from waste of time of this Court, unnecessary and unwarranted by law. *Chandrakant Patil* v. *State*, (1998) 3 SCC 38: 1998 SCC (Cri) 720: AIR 1998 SC 1165.

Bench Strength **2**. Coram : *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision : 2-2-1998]

[4123] — **S. 377(3) — Appeal by State for enhancement of sentence — Right of accused in — Scope** — *Held, in said appeal, the accused is entitled to be heard for his acquittal* (Para 3). *Arun Balkrishna Nirmal* v. *State of Maharashtra*, (2006) 6 SCC 429: (2006) 3 SCC (Cri) 175.

Bench Strength **2**. Coram : *B.N. Srikrishna* and *Tarun Chatterjee*, JJ. [Date of decision : 11-5-2006]

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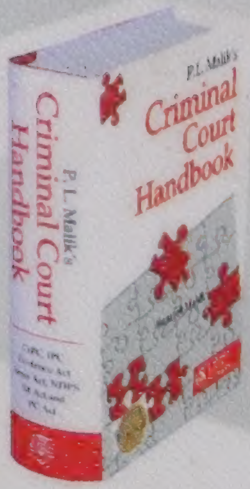

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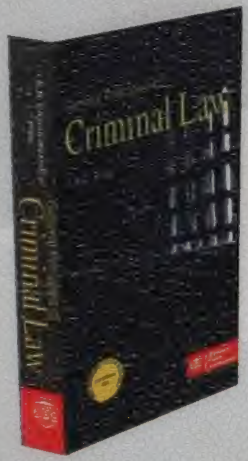

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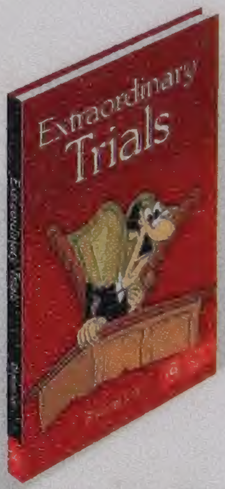

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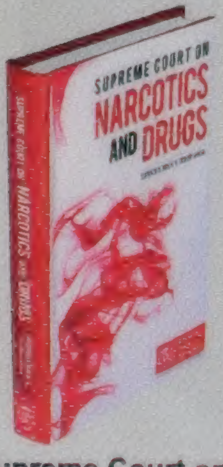

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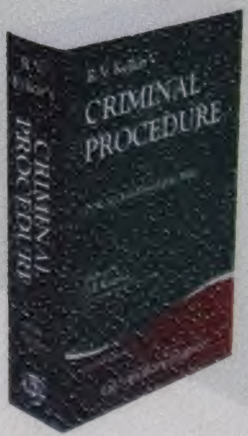

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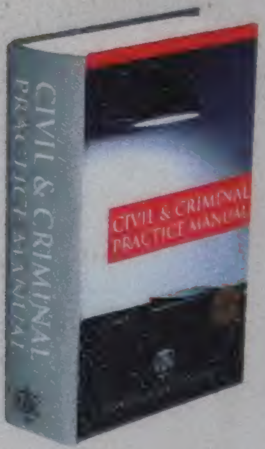

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